Union Of India & Anr vs M/S Meghmani Organics Ltd.& Ors on 7 October, 2016

Equivalent citations: AIR 2016 SUPREME COURT 4733, 2016 (10) SCC 28, 2016 (6) ADR 609, (2016) 9 SCALE 723, 2017 (174) AIC (SOC) 12 (SC)

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Bench: Abhay Manohar Sapre, Shiva Kirti Singh, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1679 of 2010

Union of India & Anr. …..Appellants

Versus

M/s Meghmani Organics Ltd. & Ors. …..Respondents

W I T H

S.L.P.(C) No. 14099 of 2015,

S.L.P.(C) No. 14524 of 2015

AND

CIVIL APPEAL NOS. 3498-3500 of 2004

J U D G M E N T

SHIVA KIRTI SINGH, J.

While hearing special leave petition against a judgment of the Delhi High Court, the Division Bench on January 27, 2009 in the case of Designated Authority, Ministry of Commerce and Industry & Anr. v. Indian Metals & Ferro Alloys Limited[1] noticed that in the context of interpretation of anti-dumping provisions of the Customs Tariff Act, 1975 (in short "the Act") and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (for brevity "the Rules"), the Delhi High Court had allowed the writ petition mainly by following the judgment of this Court in the case of Reliance Industries Ltd. v.

Designated Authority & Others[2] and also by following interpretation of Section 9-A(5) given in Rishiroop Polymers (P) Ltd. v. Designated Authority & Additional Secretary.[3] At the instance of counsel for the petitioners in that case, in paragraph 5 of that judgment, the Division Bench recorded its views that Reliance Industries case needed a fresh look and two questions needed to be dealt with by a larger Bench. Since the first question, as per submissions of all the parties is no longer relevant on account of subsequent amendment of the Act, we take note of only the other relevant question requiring answer by this Bench. The question reads thus:

> "Whether the interpretation placed upon Rule 7 of the Rules is correct insofar as it diminishes the rule of confidentiality statutorily provided for under Rule 7." Learned counsels for the rival parties have advanced submissions only in relation to the aforesaid question of law and not on the merits of the matters on an understanding that the matters shall be disposed of by competent Benches in the light of our answer to the aforesaid question/issue of law.
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> At the outset we record that it is the Union of India and the Designated Authority who have sought for a relook in respect of interpretation of Rule 7 of the Rules as flowing from the case of Reliance Industries Ltd.

(supra). Mr. Yashank Adhyaru, learned senior advocate appearing for the appellants in Civil Appeal No. 1679 of 2010 has argued that appeal as the lead matter. According to him the view taken in the Reliance Industries case whittles down the effect of Rule 7 and unless we re-state the law differently, the Designated Authority (hereinafter referred to as "the DA") will be forced to disclose materials which are otherwise protected by the confidentiality provisions in Rule 7. According to learned senior counsel, the Division Bench in Reliance Industries case noticed and extracted a passage from the earlier judgment of a co-ordinate Bench in the case of Sterlite Industries (India) Ltd. v. Designated Authority, M/o Commerce & Others[4] but erred in taking a somewhat different view by a misplaced reliance upon the view taken by the Constitution Bench in S.N. Mukherjee v. Union of India.[5] To the contrary, as we shall notice hereinafter, a stand has been taken by the counsels appearing for the parties who have made complaints of dumping, that Rule 7 has been correctly understood and interpreted in Sterlite Industries Ltd. (supra) casting duty upon the DA to examine and decide on case to case basis whether information supplied is required to be kept confidential or not. The whole of the paragraph 3 of that judgment has been highlighted to submit that it is for the DA to decide in any relevant situation whether a particular material/information for which confidentiality has been claimed, is required to be kept confidential. Of course the Appellate Authority namely CEGAT will always have the power to look into the relevant files including the materials treated as confidential for deciding the issues raised in appeal. With a view to place Rule 7 and other relevant rules in their correct perspective, we have been taken through Sections 9A, 9B and particularly sub-section (2) of Section 9B of the Act. Section 9A clarifies as to when an article exported from any country or territory to India at less than its normal value may be subjected to an anti-dumping duty not exceeding the margin of dumping in relation to such article. By the aid of explanation, margin of dumping has been clarified as the difference between the export price and the normal value of an article. The meaning of export price and normal value require some factual investigation to find out whether dumping has taken place or not and if yes, what is the margin of

dumping. Therefore, sub-section (6) of Section 9A not only authorizes the Central Government to ascertain and determine after necessary enquiry, the margin of dumping but also empowers it to make rules for identifying articles liable for anti-dumping duty and for the manner in which the export price, the normal value and the margin of dumping in relation to such articles need to be determined as well as for the assessment and collection of such anti-dumping duty. Section 9B (1) states the circumstances and situation when an article shall not be subjected to countervailing duty or anti- dumping duty under Sections 9 and 9A. However, sub-section (2) of Section 9B empowers the Central Government to frame the rules under which an investigation may be made for the purpose of Section 9B to meet exceptional situation contemplated by Section 9B(1)(b)(ii).

The Central Government framed and notified the rules on 01.01.1995 in exercise of powers conferred by sub-section (6) of Section 9A and sub- section (2) of Section 9B of the Act. There is no dispute that the Rules are based largely upon an International Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (for brevity "GATT 1994"). Under this Agreement all the members including India concurred on the broad principles for applying anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigation in accordance with the provisions of the Agreement. Let us take a bird's eye–view of its relevant Articles. Article 5 of the Agreement contains provisions for initiation of investigation and its completion in respect of an alleged dumping. The initiation has to be generally upon a written application by or on behalf of the domestic industry. In special circumstances the DA may initiate an investigation even without a written application provided it has sufficient evidence of dumping. A time limit of one year to eighteen months is prescribed for concluding the investigation. Article 6 deals with "Evidence" which is generally to be made known to all interested parties except where the information is confidential. Paragraphs 2, 4, 5 and 8 under Article 6, shown as paragraphs 6.2, 6.4, 6.5 and 6.8 have ample connection with the matter at hand and hence they are extracted herein below:

> "6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 XXXXXXXXXXXX 6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to sell all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti- dumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a

significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.

6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted n confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

6.6 XXXXXXXXXX 6.7 XXXXXXXXXX 6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

Before adverting to Rule 7 which is of prime significance, it will be useful to notice the relevant Rules also. Rule 2 embodies definition of various terms such as 'domestic industry', 'interested party' etc. Rules 3 and 4 relate to appointment of Designated Authority and its duties. Rule 5 relates to initiation of investigation. Usually it is done upon a written application by or on behalf of the domestic industry but in certain circumstances it may be initiated suo motu by the DA on being satisfied from the information received from the Collector of Customs as to the existence of certain circumstances. The DA has the duty to notify the Government of exporting countries before proceeding to initiate an investigation. Rule 6 contains principles governing investigations. It includes provisions for issuance of public notice notifying the decision to initiate an investigation with adequate informations of specified nature. The copy of the public notice is to be given to all known exporters of the article involved in the alleged dumping, the Government of exporting countries concerned and other interested parties. Copy of the application alleging dumping is also to be made available to all concerned as noted above. The DA has power to issue a notice calling for any information in the specified form from the exporters, foreign producers and other interested parties within a time bound schedule. The DA is required to provide opportunity of furnishing relevant information even to the industrial users of the article under investigation and to representative consumer organizations (in appropriate cases). Rule 6 (7) obligates the DA to "make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation." Rule 7 is as follows:

"Rule 7. Confidential information – (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

2. The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

3. Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information." Only to complete the bird's eye view of the Rules, it may be noted that as per Rule 8 the DA has to satisfy itself as to the accuracy of the information supplied by the interested parties if findings are based upon such information. Rule 12 contains details as to how preliminary findings are to be arrived at and a public notice to be issued of such preliminary findings. Provisional duty may be levied on the basis of preliminary findings, by the Central Government, as empowered by Rule 13. Rule 17 is similar to Rule 12 but deals with the final findings which have to be arrived at normally within one year of investigation and in exceptional cases within further period of six months provided the Central Government grants the extension. The DA is required to issue public notice of its final findings also. Rules 13 and 18 whereunder the Central Government is empowered to levy provisional duty on the basis of preliminary findings or duties as per final findings, as the case may be, demonstrate that the findings of the DA recorded after investigation are of immense significance though they look recommendatory in nature. Therefore, the investigation is required to be carried on in a fair manner by issuance of public notice at relevant stages and after informing all interested parties so that they may also have their say. The Central Government appears to have a discretion in the matter of determining the quantum of provisional duty as well as final duty but with a clear limitation that anti-dumping duty cannot exceed the margin of dumping as determined by the DA.

Since Mr. Yashank Adhyaru, learned senior advocate for the Union of India has based his criticism of the judgment in Reliance Industries on the basis of observations in paragraph 43 of that judgment, the same is reproduced hereinbelow:

"43. In our opinion, Rule 7 does not contemplate any right in the DA to claim confidentiality, Rule 7 specifically provides that the right of confidentiality is restricted to the party who has supplied the information, and that party has also to satisfy the DA that the matter is really confidential. Nowhere in the rule has it been provided that the DA has the right to claim confidentiality, particularly regarding information which pertains to the party which has supplied the same. In the present case, the DA failed to provide the detailed costing information to the appellant on the basis of which it computed NIP, even though the appellant was the sole producer of the product under consideration, in the country. In our opinion this was clearly illegal, and not contemplated by Rule 7." Elaborating his points further, learned senior counsel for the Union of India submitted that the very opening sentence of above quoted para 43 lays down an incorrect proposition of law that Rule 7 does not permit the DA to claim confidentiality and that right to make such a claim is vested only in a party who has supplied the particular information. The use of the term 'any party' in the opening sentence of Rule 7(1) in place of the expression 'interested party', according to learned counsel, indicates that the DA may receive in course of his suo motu action certain confidential informations and in such a situation if he is satisfied that the confidentiality of such information needs to be protected and should not be disclosed to any other party without specific authorisation, the DA may be justified in his action whereby he himself claims confidentiality in appropriate cases without any party exercising the right of confidentiality.

To buttress his aforesaid stand learned senior counsel placed emphasis upon Articles 6.2 and 6.5 of GATT 1994. By placing reliance upon paragraph 23 of the judgment in the case of Commissioner of Customs, Bangalore v. G.M. Exports[6] he submitted that in the light of Article 51(c) of the Constitution of India, in a situation where India is a signatory to an international Treaty or Agreement and a statute is made to enforce a treaty obligation, then in case of any difference between the language of such statute and a corresponding provision of the Treaty, the statutory language should be interpreted in the same sense as the language of the Treaty. In abstract the proposition is salutary and needs no caveat. Articles 6.2 and 6.5 have already been extracted earlier. In essence, Rules 6 and 7 of the Rules ensure the obligations flowing from Articles 6.2, 6.4 and 6.5. While interested parties are entitled to have full opportunity to defend their interests, such opportunities need to be hedged by the need to maintain confidentiality. Informations other than confidential must be shown to all interested parties whenever practicable in terms of Article 6.4. Any information which is by nature confidential or which is provided on a confidential basis is required to be treated as confidential by the authorities but only on being satisfied by good cause shown for the confidentiality claimed. No doubt the opening clause of Article 6.5 covers any information which is by nature confidential but the examples indicated therein clearly reveal that such information is required to be kept confidential because if revealed it would give significant advantage to a competitor or would have significant adverse effect upon the person supplying the information or his resource person from whom he acquired the information. The submission that DA

> is entitled to presume such effects without any claim being made by the party supplying the information is, however, not acceptable for reasons more than one. The examples are clearly meant to be only a guiding factor for the DA who cannot by exercise of discretion presume confidentiality and thereby restrict the rights of the interested parties to see relevant informations that may be used by the DA for the investigation. The DA, being a statutory investigator, cannot assume for himself the role of a party for the purpose of Rule 7 and to claim as well as accept on information to be confidential.

The other reason is provision of appeal under Section 9C of the Act. The appeal provided is against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article. It is one thing to use confidential information for the purpose of investigation on account of statutory provisions and not communicating the same. It is quite another, not to maintain transparent records of reasons as to why claim of confidentiality made by any party has been accepted by the DA. Where appeal is provided, the appellate authority will definitely be entitled to look into the records including the confidential information as well as into the correctness of the decision for accepting a claim of confidentiality. The situation is similar to one under the administrative law where a policy may exempt the authority from requirement of communicating its reasons for an administrative decision/order affecting rights and interests of parties but certainly reasons must exist in the records so as to justify the reasonableness and fairness of the decision if it has adverse effects upon any party. Any court or tribunal exercising judicial review is entitled to call for the records to satisfy itself as to the existence of reasons in appropriate cases involving a challenge to such order. In case the DA is conceded power to gather informations from sources other than interested parties, he must not treat such information as confidential unless the party which has supplied the information makes a request to keep the information confidential. Even in such a situation where an uninterested party claims confidentiality in respect of information supplied, as per Rule 7, the DA has to take all necessary precautions to decide the genuineness of such claim. In appropriate cases he must ask for summary of the information and if that is also not possible, the reasons as to why it is not possible should be supplied for scrutiny. The reasons of confidentiality must be discernible on scrutiny of records by the appellate authority because of mandate of Rule 7(3) that if the claim of confidentiality is not worthy of acceptance, or the supplier of the information is unwilling to make the information public without any good reasons, the DA has to disregard such information.

The aforesaid discussion leads to the conclusion that even the relevant provisions in the GATT 1994 relied upon on behalf of appellant do not require the interpretation of Rule 7 in the manner sought for on behalf of the Union of India or the DA.

Mr. Basava Prabhu Patil, learned senior advocate appearing for the petitioner – Moser Baer India Ltd. – in one of the SLPs has taken pains to refer to various paragraphs of the judgment in the case of Reliance Industries to submit that the said judgment was rendered in an entirely different context which did not involve detailed discussion of Rule 7. On the basis of para 23 of the judgment it was shown that the two main issues falling for determination were – (1) the correct principles for determination of Non Injurious Price (NIP) of PTA, and (2) the scope of Rule 7 of the Rules.

Referring to para 37 of the judgment, he pointed out that the Court had directed for revising NIP by taking the market price of electricity and the actual capacity utilisation during the period of investigation. Since the DA in that case had refused to disclose its findings even to the person who had supplied the information leading to such findings, the court observed thus : "Further, the DA should be directed not to misuse Rule 7, by keeping confidential its findings and that too from the person who has supplied the information to it." In para 39 it was held that the proceedings before the DA are quasi judicial. Then came a reiteration in para 41 in the following words :

> "41. The DA claimed confidentiality from the appellant about its finding on the data supplied by the appellant itself. In our opinion, there was nothing confidential in the matter, and hence reasons for not accepting the appellant's version should have been stated in the order of the DA." Para 43 has already been extracted earlier.
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> Looking at the contents of Rule 7 and the facts and issues involved in Reliance Industries case, we agree with the submissions of Mr. Patil that fact situation in that case was entirely different and the Court was not examining the provisions of Rule 7 in any detail but made rather scathing observations against the DA because the DA claimed confidentiality not in respect of any information but in respect of its findings based upon information supplied by the same party who was aggrieved by non-supply of the findings. The observations in Reliance Industries case must be understood in the fact situation of that case in view of well established proposition of law that the ratio decidendi consists in the reasons formulated by the court for resolving an issue arising for determination and not in what may logically appear to flow from observations on non issues. Reference in this regard may be made to law enunciated on this point by a Constitution Bench, in paragraph 20 of the judgment in the case of Krishena Kumar v. Union of India & Ors.[7] In the given facts, the observations in paragraph 43 in the case of Reliance Industries are fully justified and do not require any review. We are in agreement that Rule 7 does not postulate that the DA can claim confidentiality and that too not in respect of any information supplied by a party but in respect of its reasons or findings derived from information supplied by the same very party.
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> We find no conflict between the view taken in Reliance Industries case and that in Sterlite Industries, particularly in paragraph 3, which has been extracted in Reliance Industries case and reads as follows :
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> "3. In our view, it is not necessary for us to go into the merits of this matter as we propose to send the matter back to CEGAT after laying down certain guidelines. From what has been argued before us, it appears that in pursuance of Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Designated Authority is treating all material submitted to it as confidential merely on a party asking that it be treated confidential. In our view, that is not the purport of Rule 7. Under Rule 7, the Designated Authority has to be satisfied as to the confidentiality of

that material. Even if the material is confidential the Designated Authority has to ask the parties providing information, on confidential basis, to furnish a non-confidential summary thereof. If such a statement is not being furnished then that party should submit to the Designated Authority a statement of reasons why summarization is not possible. In any event, under Rule 7(3) the Designated Authority can come to the conclusion that confidentiality is not warranted and it may, in certain cases, disregard that information. It must be remembered that not making relevant material available to the other side affects the other side as they get handicapped in filing an effective appeal. Therefore, confidentiality under Rule 7 is not something which must be automatically assumed. Of course in such cases there is need for confidentiality as otherwise trade competitors would obtain confidential information, which they cannot otherwise get. But whether information supplied is required to be kept confidential has to be considered on a case-to-case basis. It is for the Designated Authority to decide whether a particular material is required to be kept confidential. Even where confidentiality is required it will always be open for the Appellate Authority, namely, CEGAT to look into the relevant files." The concern shown by the Court in the above quoted paragraph as regards the ill-effect of being too liberal in accepting claims of confidentiality has been echoed in the same vein in paragraph 45 of the Reliance Industries case in following words:

"45. In our opinion, excessive and unwarranted claim of confidentiality defeats the right to appeal. In the absence of knowledge of the consequences, grounds, reasoning and methodology by which the DA has arrived at its decision and made its recommendation, the parties to the proceedings cannot effectively exercise their right to appeal either before the Tribunal or this Court. This is contrary to the view taken by the Constitution Bench of this Court in S.N. Mukherjee case." Mr. V. Lakshmikumaran appearing for some of the respondents such as SanDisk International Ltd. has highlighted particular facts of his case. According to him anti-dumping investigation was initiated against SanDisk on the petition of sole domestic producer Moser Baer India Limited against imports of USB Flash Drives exported from China PR, Taiwan and Republic of Korea during the period of investigation, calendar year 2012. According to him SanDisk duly participated in the investigation, filed objections, comments and submissions and co-operated at every stage of the investigation. His main grievance is that when the reliability of import volume provided by Moser Baer came under question, the DA claimed to have used transaction- wise import data provided by Directorate General of Commercial Intelligence and Statistics (DGCI&S) for arriving at import volume of the subject goods. He has submitted that the DA wrongly treated the import data provided by DGCI&S as confidential and in any case erred in not accepting the request of the SanDisk to furnish the import data after deleting the names of exporters/importers concerned, for verifying the veracity of the volume of imports. According to him the essence of investigation lies in finding out the correct import volume of a particular product under investigation. The DA disregarded the past practice of disclosing such details, especially when SanDisk was prepared for deletion of names of exporters and

importers from the import data obtained by the DA.

Mr. V. Lakshmikumaran has in his written notes given two instances, one of 2007 and another of 2014 where the DA had disclosed the DGCI&S import data to exporters and importers and had called for comments. According to him DGCI&S had not claimed confidentiality in such matters for good reasons because the concerned Director General of Commercial Intelligence and Statistics under the Ministry of Commerce, Government of India is covered under Right to Information Act and its data is therefore part of official record and lies in public domain. According to him DA is a quasi-judicial authority who must keep in mind that Rule 7 is an exception to rules of natural justice and hence DA can accept a claim of confidentiality only when it is raised by the information provider and such claim is found acceptable after due scrutiny.

Since we are not entering into arena of facts for deciding individual cases, it is not relevant to go deeper into the facts highlighted on behalf of M/s SanDisk International Limited. However, the submission that data available with DGCI&S is available to the public and also under the RTI Act has not been rebutted in reply.

Mr. V. Lakshmikumaran has referred to and relied upon judgment of this Court in Designated Authority (Anti-Dumping Directorate), Ministry of Commerce v. Haldor Topsoe A/S[8] to highlight that in the scheme of the Act and the Rules, in paragraph 25 of that judgment this Court considered the proviso to Rule 17 which empowers the Central Government to extend the time for publication of final finding by the DA by further six months and repelled the submission that while granting extension of time, the Central Government is obliged to afford opportunity of hearing to the parties concerned with the investigation. The Court held that in the course of investigation the principles of natural justice would have limited application only to the extent indicated in the statute, because elaborate provisions for the same are already provided for. In our view this judgment helps the respondents only to a limited extent that general principles of natural justice need not be imported to govern each and every step during the investigation proceedings.

We are in respectful agreement with the above view and also with the submission that the source of power in the DA to treat an information as confidential must be within the confines of Rule 7. The ordinary meaning of the words used in this Rule are clear and hence there is no requirement to depart from the golden rule of interpretation i.e, the rule of Literal Construction. If the submission advanced on behalf of Union of India and DA are accepted, one will have to adopt a purposive liberal interpretation so as to enlarge the scope of this Rule. That does not appear to be the intention of the statute makers nor it is warranted by the context. The effect of Rule 7 is clear. It permits an exception to the principles of natural justice. In such a situation, even if there had been some ambiguity and requirement of resorting to interpretation, the proper course would be to adopt a construction which would least

offend our sense of justice, as discussed and enunciated in the cases of Simms v. Registrar of Probates[9], Madhav Rao Jivaji Rao Scindia v. Union of India[10] and Union of India v. B. S. Agarwal.[11] It will be useful to remember that when two competing public interests are involved, like in the present case, one is to supply all relevant informations to the parties concerned and the other not to disclose informations which are held to be confidential, the proper course of action would be to lean in favour of the construction "that is least restrictive of individual's rights", as propounded in Inland Revenue Commissioner v. Rossminster Ltd.[12] . However, in our view, as already indicated, there are no ambiguities in Rule 7 to require departure from the rule of Literal Construction.

Mr. Lakshmikumaran also referred to judgment in the case of Reliance Industries to point out that main issue in that case was decided in favour of Reliance Industries in paragraphs 35, 36 & 37 holding that the Non- Injurious Price (NIP) had been determined wrongly and therefore needed to be revised by taking the market price of electricity and the actual capacity utilization during the period of investigation. Thereafter the Court simply condemned the approach of the DA in not disclosing even the reasons for its erroneous decision to reduce the cost price of electricity supplied by the appellant from its captive power plant. When the data had been supplied by the appellant itself, the Court rightly felt disturbed by the act of DA in claiming confidentiality about its findings. In view of proceedings being quasi-judicial, the DA was rightly held duty bound to disclose its reasons for not accepting the version given by the appellant. Finally Mr. Lakshmikumaran submitted that the observations given by the Court in Reliance Industries case do not require any interference and the appeals filed on behalf of the Union of India and the DA should be dismissed.

Mr. Jitendra Singh, advocate, appearing for Meghmani Organics Ltd. in the lead case, reiterated the submissions noted earlier. According to his submissions also there is no conflict between law laid down in Sterlite Industries case and in Reliance Industries case. He also submitted that in fact the appeal against Meghmani Organics Ltd. has also become infructuous. However, we refrain to decide the matter on facts even to the extent whether the appeal has become infructuous or not.

In the light of facts and submissions noted earlier as well as conclusions already recorded at various places, we are of the considered view that the question referred for our answer can be answered in a very straight forward manner by holding that Reliance Industries case did not go into the details of the relevant Rules including Rule 7 but the observations made therein in respect of rule of confidentiality as spelt out in Rule 7 of the Rules does not diminish the scope of Rule 7 as provided. The reasons or findings cannot be equated with the information supplied by a party claiming confidentiality in respect thereto. Hence, Rule 7 does not empower the DA to claim any confidentiality in respect of reasons for its finding given against a party. The law laid down in respect of rule of confidentiality in Sterlite Industries case also

has our respectful concurrence. But at the same time, we reiterate that the Reliance Industries case does not adversely affect or run counter to the law spelt out in Sterlite Industries case. We may only explain here that while dealing with objections or the case of the concerned parties, the DA must not disclose the information which are already held by him to be confidential by duly accepting such a claim of any of the parties providing the information. While taking precautions not to disclose the sensitive confidential informations, the DA can, by adopting a sensible approach indicate reasons on major issues so that parties may in general terms have the knowledge as to why their case or objection has not been accepted in preference to a rival claim. But in the garb of unclaimed confidentiality, the DA cannot shirk from its responsibility to act fairly in its quasi-judicial role and refuse to indicate reasons for its findings. The DA will do well to remember not to treat any information as confidential unless a claim of confidentiality has been made by any of the parties supplying the information. In cases where it is not possible to accept a claim of confidentiality, Rule 7 hardly leaves any option with the DA but to ignore such confidential information if it is of the view that the information is really not confidential and still the concerned party does not agree to its being made public. In such a situation the information cannot be made public but has to be simply ignored and treated as non est. Having answered the question thus, we direct the cases to be posted before appropriate Bench for disposal on merits and in the light of our answer to the question referred and considered.

……J. [J. CHELAMESWAR] ……J. [SHIVA KIRTI SINGH] .....J. [ABHAY MANOHAR SAPRE] New Delhi.

October 7, 2016.

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[2] (2009) 2 SCC 510 [4] (2006) 10 SCC 368 [6] (2006) 4 SCC 303 [8] (2006) 10 SCC 386 decided on November 25, 2003 [10] (1990) 4 SCC 594 [12] (2016) 1 SCC 91 [14] (1990) 4 SCC 207 [16] (2000) 6 SCC 626 [18] (1900) AC 323 [20] (1971) 1 SCC 85 [22] (1997) 8 SCC 89 [24] (1980) 1 All ER 80