

Union Of India vs Jubliant Ingrevia Limited on 29 March, 2022

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5185/2022 & CM APPL. 15388/2022

UNION OF INDIA

Through

...
Mr Ravi Praka
Government Standing
Ms Bani Dikshit, Ms
and Mr Farman Ali, A

versus

JUBLIANT INGREVIA LIMITED

.....Responde

Through

Mr Sandeep Sethi and Mr Basava
Prabhu Patil, Sr Advocates with
Reena Khair, Mr Rajesh Sharma, M
Geet Ahuja, Ms Shreya Dahiya, Mr
Kathar Shukla, Mr Kartikay Dutta
and Mr Pragyan Sharma, Advs.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA
ORDER

% 29.03.2022 [Physical Court Hearing/Hybrid Hearing (as per request)]

1. Allowed, subject to just exceptions.

W.P.(C) 5185/2022 & CM APPL. 15389/2022[Application filed on behalf of the appellant for ad-interim ex-parte stay on order dated 27.10.2021]

2. This writ petition is directed against the order dated 27.10.2021, passed by the Customs, Excise and Service Tax Appellate Tribunal [in short "CESTAT"] in Anti-Dumping Appeal No.50461/2021, whereby the respondent had assailed the Office Memorandum [OM] dated 14.12.2020, issued by the petitioner i.e., Union of India (UOI).

2.1. Mr Ravi Prakash, who appears on behalf of the petitioner/UOI, says that the impugned order dated 27.10.2021 passed by the CESTAT is flawed, inasmuch as it fails to take into account that the OM dated 14.12.2020 is an order passed, in pursuance of the legislative power vested with the petitioner/UOI.

2.2. In support of this plea, Mr Prakash, inter alia, refers to Section 9A(1) read with 9A(7) of the Customs Tariff Act, 1975 (in short "the 1975 Act"). 2.3. In addition thereto, a reference has also been

made by Mr Prakash to Rules 4, 5, 6, 17(1) and 18(4) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

3. Mr Sandeep Sethi, learned senior counsel, who appears on behalf of the respondent, has contested the stand taken by Mr Prakash, that the OM dated 14.12.2020, issued by the petitioner/UOI, is a legislative act. 3.1. In support of his plea, Mr Sethi has relied upon the judgment of the Supreme Court rendered in *Reliance Industries Ltd. vs. Designated Authority & Ors.* 2006 (202) E.L.T. 23 (S.C.). In particular, our attention has been drawn to paragraph 38 which reads as follows:

"38. We are of the opinion that the nature of the proceedings before the DA are quasi-judicial, and it is well settled that a quasi-judicial decision, or even an administrative decision which has civil consequences, must be in accordance with the principles of natural justice, and hence reasons have to be disclosed by the Authority in that decision vide *S.N. Mukherjee v. Union of India*."

3.2. We may indicate that Mr Prakash has submitted that the judgment of the Supreme Court in *Reliance Industries* case was considered by a division bench of this Court in *Jindal Poly Film Ltd. v. Designated Authority & Ors* 2018 (362) ELT 994. Apart from anything else, Mr Prakash lays stress on the observations made in paragraph 32 of the judgment of this Court, which reads as follows-

"32. On difference between legislative act and quasi-judicial act, reference can be made to the judgment of the Supreme Court in *Mangalam Organics Limited v. Union of India*, (2017) 7 SCC 221, which draws clear distinction between administrative orders and quasi judicial orders and also quasi judicial orders and acts of subordinate legislation. The scope of judicial review in the case of subordinate legislation and administrative orders is different. Most importantly, legislative powers cannot be sub-delegated unless specifically permitted but administrative powers can be sub-delegated. The scheme of the Rules as understood postulates a quasi judicial determination by the Designated Authority, which gives and submits its final finding report. The said report is binding and becomes final for the Central Government in case of negative determination not to impose anti-dumping duty. In that sense, this is the final opinion i.e. "order of determination" of the Central Government. The position is different in case the Designated Authority proposes and recommends imposition of duty, in which event there is further examination and then final determination. While doing so, the Central Government can reduce the rate of anti-dumping duty as recommended by the Designated Authority or even not impose anti-dumping duty. We would observe and hold, that the statutory provisions i.e. Section 9A of the CT Act and the Rules, require a quasi judicial determination at the first stage, which subsequently when implemented requires passing of a subordinate legislation, vide a notification for anti dumping duty to be imposed."

3.3. Based on the aforesaid observations, Mr Prakash says that the OM dated 14.12.2020 is nothing but an act concerning framing of a subordinate legislation.

3.4. On being queried, Mr Prakash has fairly stated that if the OM dated 14.12.2020 is considered to be an order simpliciter and not a legislative act, then perhaps, the CESTAT is correct in the conclusion that it has reached via the impugned order, for the reasons given therein.

4. Therefore, the moot question that arises for consideration is, as to, whether or not the OM dated 14.12.2020 issued by the petitioner/UOI, which, in fact, is a decision not to impose anti-dumping duty contrary to the recommendations of the designated authority, is a legislative act. 4.1. One of the aspects which has come to fore, to which we have made a reference above, is that if the OM dated 14.12.2020 issued by the petitioner/UOI is a legislative act, a notification has to be issued, and in terms of Section 9A(7) of the 1975 Act, every such notification issued under the said provision has to be laid before each House of the Parliament. 4.2. Concededly, there is nothing on record to show that this step has been taken.

4.3. Therefore, at this juncture, we are not inclined to pass any interim orders.

5. The issue, as framed above i.e., whether the OM dated 14.12.2020, issued by the petitioner/UOI, is a legislative act, will be examined on the next date of hearing.

6. Accordingly, issue notice.

6.1 Mr Rajesh Sharma accepts notice on behalf of the respondent. 6.2. Counter-affidavit will be filed in the matter, within one week. 6.3. Rejoinder thereto, if any, will be filed before the next date of hearing.

7. List the matter on 28.04.2022, at the end of the board.

8. Counsel for the parties will file their written submissions, not exceeding three pages each, at least three days before the next date of hearing.

RAJIV SHAKDHER, J POONAM A. BAMBA, J MARCH 29, 2022 rb Click here to check corrigendum, if any