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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 1622 of 2022

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QREX FLEX PVT LIMITED THRO KETAN THAKORBHAI PATEL
Versus
UNION OF INDIA

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Appearance:
GARGI R VYAS(7983) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 25/01/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Draft amendment allowed. The necessary incorporation shall be carried out at the earliest. One set of the entire amended petition shall be furnished at the earliest to Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the Union.

2. We have heard Mr. Mihir Joshi, the learned Senior Counsel assisted by Mr. Veena Kher and Ms. Gargi R. Vyas, the learned counsel appearing for the writ applicants and Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the respondents.

3. The subject matter of the present litigation is one relating to the imposition of Anti-dumping duty on the imports of "PVC Flex Films." It appears that the subject goods originates and is being imported from China in huge quantity and is being

dumped in India.

4. At the instance of the writ applicants and others engaged in the business of manufacturing of the “PVC Flex Films”, the Union of India thought fit to issue a Notification dated 08.08.2016 imposing Anti-dumping duty on the subject goods for a period of five years.

5. The period of five years was to expire on 07.08.2021. Before the expiry of the said period, once again the issue was looked into by the authority concerned and by way of a fresh Notification dated 30.06.2021 extended the levy of the Anti-dumping duty for further period of six months, of course, pending the sunset review. It appears that thereafter, once again on 28.10.2021, a Notification came to be issued drawing the final conclusions and recommendation as under:

“M. CONCLUSION

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

a. The volume of imports of subject goods from China PR has declined significantly both in absolute and relative terms. The imports of subject goods from China PR has been less than 1% of the Indian demand and Indian production from 2018-19 onwards.

b. The Authority notes that the decline in the performance of the domestic industry, therefore, is not attributable to the dumped imports, as admitted by the domestic industry itself too.

c. The reliability and authenticity of the "Report of Special Research and Investment Feasibility Assessment on China Polyvinyl Chloride Flexible Film/Sheet Market 2021-2025" relied upon by the domestic industry to establish the likelihood of continuation/recurrence of injury is suspect because neither the name of the author/ publishing agency which has prepared this report has been mentioned nor is there any reference to the original source of data cited in the report. Therefore, any conclusion with regard to likelihood of continuation/recurrence of dumping and injury cannot be made on the basis of this report.

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d. *Even though there is continued dumping of the subject goods from China PR, the likelihood of continuation/recurrence of injury to the domestic industry in the event of revocation of duty could not be conclusively established due to lack of sufficient independent corroborative evidence.*

e. *Therefore, based on examination of information on record, it is concluded that there is no justification for recommending continuation of anti-dumping duty in the present investigation.*

N. RECOMMENDATION

105. *In view of above, the Authority considers it appropriate to recommend withdrawal of antidumping duty on import of subject goods from the subject country recommended vide Notification No.15/13/2015-DGAD dated 30th June, 2016 and enforced vide Customs Notification No. 42/2016-Customs (ADD) dated 8th August 2016 and further extended vide Customs notification No 38/2011-Customs (ADD) dated 30th June 2021 till 31st January 2022."*

6. Thus, it appears that the Designated Authority has now recommended that the Anti-dumping duty on the subject goods should be withdrawn. The writ applicants are aggrieved by such recommendation on the part of the Designated Authority to the Union. Being dissatisfied with the aforesaid conclusion and recommendation, the writ applicants preferred an Appeal before the Appellate Tribunal under Section 9C of the Customs Tariff Act, 1975 being the Appeal No.AD/52173/2021. It appears that the appeal was filed on 23.12.2021 and is pending as on date for listing and adjudication before the Tribunal. It is also pointed out that in order to ensure expeditious hearing of the appeal and the applications for interim relief, a note was filed for urgent listing of the appeal on 13.01.2022. A request was made to constitute a Bench on 17.01.2022. Once again a request was made by filing a memo dated 19.01.2022 for urgent listing of the appeal before the CESTAT.

7. Prima facie, it appears that as the Bench is not available,

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the Tribunal is not in a position to take up the matters for hearing more particularly, the applications seeking interim relief. In the meantime, a further development seems to have taken place in the form of a Notification No.3/2022/Custom-(ADD) dated 24.01.2022. With this Notification every thing comes to an end. Now, there would not be any levy of Anti-dumping duty. The operation of the Notification dated 08.08.2016 was otherwise came to an end on 31.01.2022, but, by way of the aforesaid Notification dated 24.01.2022, it has been brought to an end seven days earlier. It is in such circumstances that the writ applicants had to file a draft amendment which has been allowed today.

8. We have a suggestion to be put forward before the learned Additional Solicitor General of India appearing for the Union. Since an Appeal has already been filed before the Tribunal, it will be in the fitness of the things if the Tribunal hears the Appeal and decides the same on its own merits in accordance with law. However, till the time the Tribunal decides, we may stay the operation of the Notification No.3/2022/Custom-(ADD) dated 24.01.2022 for a period of six weeks from today and also extend the operation of the Notification dated 08.08.2016 for a period of six weeks. What is in our mind is that during this period of four weeks, the Tribunal should take up the Appeals and decide them on their own merits in accordance with law.

9. To the aforesaid suggestion, Mr. Vyas, submitted that he would like to seek appropriate instruction from the authority concerned in this regard and revert to the Court day after tomorrow.

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10. There is no problem in keeping this matter day after tomorrow but, the Notification dated 24.01.2022 shall remain stayed from its operation till day after tomorrow. Further orders shall be passed day after tomorrow subject to what Mr. Vyas has to say further in the matter.

11. One copy of this order shall be furnished at the earliest to Mr. Vyas, the learned ASG for his onward communication.

12. Post this matter for further hearing day after tomorrow i.e. 27.01.2022 on top of the Board.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

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