IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/05/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.3008 of 2002 and WRIT PETITION NO. 3009 of 2002 and
W.P.Nos. 4905 and 4906 of 2002
AND
W.M.P.NOS.4242, 4243,6939,6940 & 10193 OF 2002

W.P.Nos.3008 & 3009 of 2002

Sree Karpagambal Mills Ltd.
Regd. Office: Cholapuram,
South P.O., Near Rajapalaym
Virudhunagar District,
Tamil Nadu,
Rep. by its Managing Director .. Petitioner

W.P.Nos.4905 & 4906 of 2002

Pallipalayam Spinners Private Ltd.,
14-A, Bye-pass Road,
Palliapalayam,
Erode 638 006, Tamil Nadu,
Rep. by its Director .. Petitioner

Vs.
1. Directorate General of Anti
Dumping & Allied Duties,
Government of India,
Ministry of Commerce & Industry,
Department of Commerce,
Udyog Bhavan, New Delhi 110 011
through the Designated Authority .. Respondent No.1

2. Union of India
through its Secrtary
Ministry of Commerce & Industry
Dept. of Commerce, Udyog Bhavan,
New Delhi 110 011.

3. The Secretary to Government,
Ministry of Finance,
New Delhi 110 011.

4. The Secretary to Government,
Department of Revenue,
Ministry of Finance,
New Delhi 110 011.

5. The Chairman
Central Board of Excise
& Customs,
Ministry of Finance,
New Delhi 110 011.

6. Reliance Industries Limited,
Maker Chambers – IV,
222,Nariman Point,
Mumbai 400 021.
Rep. by its Managing Director.

7. Indo Rama Synthetics (India) Ltd.
51A, Industrial Area,
District: Dhar, Pithampur (M.P.)
Rep. by its Managing Director .. Respondents

8. The Commissioner of Customs,
" Customs House" Rajaji Salai,
Chennai 600 001. .. Respondent No.3 in
WP.Nos.25154&25155/2001

Petitions filed under Article 226 of the Constitution of India
for the reliefs as stated therein.

!For Petitioner in Mr. Habibulla Badsha
WP.Nos.3008 & 3009/2002 : Senior Counsel for
Mr. Vijay Narayan

For Petitioner in : Mr.P. Chidambaram
WP.Nos.4905 & 4906/2002 Senior Counsel for
Mr. Vijay Narayan

For Respondents 1 & 5 : Mr.V.T. Gopalan
Addl. Solicitor General
for Mr.S. Gajendran, ACGSC

Respondent - 6 : Mr.V. Ramachandran

Respondent - 7 : Mr.T. Ramesh

:JUDGMENT

Petitioners are the Companies registered under the Companies
Act, 1 956. They are importers from various countries such as Thailand,

Korea, etc. of Polyester Staple Fiber (PSF), which is used in the manufacture of 100% polyester spun yarn, polyester viscose blended yarn and polyester cotton blended yarn. They have filed the writ petitions challenging the validity of the preliminary findings dated 16.1.2002 of the first respondent. They have also sought for a declaration that Rule 7 of the Customs Tariff (Identification, assessment and collection of anti dumping duty on dumped articles and for determination of injury) Rules, 1995 is illegal and unconstitutional.

2. Before noticing in detail the assertions made by the petitioners and the contentions of the respondents, it is necessary to notice some of the relevant provisions of the Customs Tariff Act, 1975 (hereinafter called the Act).
SECTION 9A. Anti-dumping duty on dumped articles.

(1) Where any article is exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Officia Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.
. . . . .

Section 9B
(1) . . . .

(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 n which any investigation maybe 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.

SECTION 9C. Appeal – (1) An appeal 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 shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 1 29 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal).

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal :

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

(5) Every appeal under sub-section (1) shall be heard by a Special Bench constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.

3. In exercise of the rule making power under Section 9B (2), the Customs Tariff (Identification, assessment and collection of antidumping duty on dumped articles and for determination of injury) Rules, 1 995 (hereinafter called the Rules) have been framed.
Rule 2 is the definition clause. Rule 2 (c) provides :
(c) interested party" includes -
(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;
(ii) the government of the exporting country; and
(iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India.

Rule 2(e) is as follows :-

provisional duty" means an anti dumping duty imposed under subsection (2) of section 9A of the Act.

Rule 3 envisage appointment of Designated Authority by the Central Government. Rule 4 which contemplates the duties of the designated authority enjoins such authority,

(a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;

(b) to identify the article liable for anti-dumping duty;

(c) to submit its findings, provisional or otherwise to Central Government as to -

(i) normal value, export price and the margin of dumping in relation to the article under investigation and

(ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries.

(d) to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic

industry, and the date of commencement of such duty; and

(e) to review the need for continuance of anti-dumping duty.

Rule 5 relating to initiation of investigation and Rule 6 which incorporates principles governing investigations, being relevant are extracted in full :-

5. Initiation of investigation. - (1) Except as provided in subrule (4) the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority and the application shall be supported by evidence of -

(a) dumping

(b) injury, where applicable, and

(c) where appellable a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) It determines, on the basis of an examination of the degree of support for,or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding-

(i) dumping

(ii) injury, where applicable; and

(iii) where applicable, a casual link such dumped imports and the alleged injury,

to justify the initiation of an investigatiion.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

(4) Notwithstanding anything contained in sub-rule (1) designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs

Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3).

(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

6. Principles governing investigations. - (1) The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following: -

(i) the name of the exporting country or countries and the article involved;

(ii) the late of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed; and

(vi) the time-limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to -

(i) the known exporters or to the concerned trade association where the number of exporters is large, and

(ii) the governments of the exporting countries :
Provided that the designated authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing.

(4) The designated authority may issue a notice calling for any information, in such form as maybe specified by it, from the exporters, foreign producers and other interested parties and such information shall be

furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.

Explanation : For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.

(6) The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation.

(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available toit and make such recommendations to the Central Government as it deems fit under such circumstances.

3. Validity of Rule 7 being in dispute, is quoted hereunder :-

7. Confidential Information. - (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 7, 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 authorisation 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 summarisation 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 authorise its disclosure in a generalised or summary form, it may disregard such information.

Rule 12 deals with preliminary findings. Since the preliminary findings recorded by the designated authority are under challenge, it is also necessary to extract Rule 12 in toto.

12. Preliminary findings. (1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record ai further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain :-

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the article which is sufficient for customs purposes;
(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(2) The designated authority shall issue a public notice recording its preliminary findings.

Rule 13 contemplates levy of provisional duty by the Central Government on the basis of the preliminary findings recorded by the designated authority.

Rule 14 empowers the designated authority to terminate the investigation immediately depending upon certain circumstances enumerated in clauses (a) to (e) of Rule 14.

Rule 16 mandates the designated authority to inform al interested parties of the essential facts under consideration which forms the basis for its decision before giving its final findings as contemplated under Rule 17.

Rule 18 empowers the Central Government to levy duty within three months of the date of publication of final findings by the designated

authority.

Rule 21 relates to refund of duty which is of some relevance, being extracted hereunder :-

21. Refund of duty. - (1) If the anti-dumping duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.

(2) If, the anti-dumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

(3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

4. It is now necessary to notice certain undisputed events. Respondents 6 & 7 which are two of the largest producers of PSF within the country filed application dated 30.4.2001 and revised application on 31.5.2001 seeking for initiation of anti-dumping investigation with respect ot imports of certain PSF (hereinafter referred to as 'the subject goods') which are being imported by the petitioners from four countries, namely Korea RP, Malaysia, Taiwan and Thailand.

5. The first respondent issued a public notice of initiation of investigation dated 25.6.2001 as contemplated under Rule 6(1). Such initiation was challenged by M/s. Madura Coats and others (not the present petitioners) in Karnataka High Court contending that the respondent No.1 had failed to keep in mind the mandatory provisions stipulated under Rule 5(3) and arbitrarily and mechanically initiated investigation. An interim stay was granted for a period of six weeks on 31.7 .2001 and ultimately on 6.9.2001, Karnataka High Court passed the following order :-

ORDER

I. Writ petition is disposed off.

II. A direction is issued to the petitioner company to file its objections to the initiation notification issued by the first respondent Designated Authority dated 25.6.2001 and in that it is at liberty to take up all such contentions which are available to it including the contentions raised in this writ petition within ten days from today.

III. After receipt of the objections that may be filed by the petitioner company within the time granted by this Court, the first respondent

Designated Authority is directed to decide the issue with regard to its jurisdiction to initiate the proceedings as a preliminary issue and pass appropriate orders within a month from the date of filing of the objections. While doing so, the first respondent Designated Authority would hear all the contesting parties and any other persons, who may file their objections before him.

IV. The first respondent Designated Authority shall communicate its orders on the preliminary issue to all the parties and thereafter would give a respite to his proceedings for a period of 15 days.

V. All the contentions of both the parties are left open.
Ordered accordingly.

Subsequently public hearing was held by the respondents on 25.9.20 01 and order was passed on 15.10.2001 by the first respondent upholding its jurisdiction. Operative portion of the "decision" is extracted hereunder :

Decision

93. From the above, it is clear that the allegations made are not based on facts and correct interpretation of anti-dumping laws and procedures. It appears that most of the allegations are based only on the non copy of the application. The assumptions made by the parties challenging the initiation notification are based on incomplete facts resulting in incorrect averments and conclusions. The averments are based on mere conjectures as they are devoid of facts and the law on the subject appears to have not been properly appreciated.

94. The Authority while examining the application filed by the domestic industry, had ensured that the same was complete in all respects as per the Application Proforma to constitute a well-documented petition. Necessary evidence, additional information / clarification as prescribed in the Proforma was also sought and received in accordance with the requirement of the Rules. Thus, it was ensured that the requirements of Rule 5(1) and (2) were fully adhered to and the domestic industry complied with all its obligations under the Rules. As is evident from the above, the domestic industry fulfilled the requirements under Rule 5(3)(a) and the Explanation appended thereto, on the basis of which the Authority made a determination regarding the ' standing' of the applicants to file the petition on behalf of the domestic industry duly recorded in para 3 of the initiation notification. Further, 'sufficient evidence' with respect to dumping, injury and causal link and their adequacy as well as accuracy were available before the Authority to justify the initiation of the investigation. Therefore, the Authority is of the view that the anti-dumping proceedings initiated under the impugned notification are fully consistent with both the substantive as well as the procedural requirements under the law.

95. For all these reasons, the Designate Authority is of the opinion that this is the matter which requires to be investigated in accordance with

the anti-dumping rules and regulations.

6. The aforesaid conclusion of the respondent No.1 was challenged by Madura Coats Limited (not by any of the petitioners) before Karnataka High Court which has been dismissed by the learned single Judge by its order dated 4.12.2001. While rejecting the writ petitions, it was observed :-

. . . Petitioners are permitted to file their questionaire under the Rules before the designated authority within 15 days from today. . . .

The aforesaid order is the subject matter of a pending appeal before the Division Bench of Karnataka High Court which passed an interim order to the following effect :-

. . . the 1st respondent Designated Authority shall proceed with the investigation & pass appropriate orders in accordance with law. However, the appellant is now given a week's time from today to submit the questionaire as per the order of the learned single Judge."

7. It is also not disputed that writ petitions have been filed before Rajasthan High Court challenging the initiation notification and the order dated 15.10.2001. While the matter stood thus, the present writ petitions have been filed in this Court.

8. Petitioners have contended that after passing the order dated 15 .10.2001 upholding its jurisdiction to initiate investigation, the respondent No.1 has proceeded to render a preliminary finding as contemplated under Rule 12 without complying with the mandatory provisions contained in Rule 6 and without giving any further opportunity of being heard to the present petitioners (who are interested parties). It is contended that the decision dated 16.1.2002 having been passed without following the mandatory provisions of Rule 6 and the principles of natural justice, should be quashed. In this context, it is also prayed that Rule 7 may be declared as illegal and ultra vires as it has given unbridled and unguided power to the designated authority to with-hold any relevant information.

9. In the counter affidavit filed by the respondent No.1 and by the respondent Nos.6 & 7, the contentions raised by the petitioners have been refuted. It has been submitted that the designated authority has followed the Rules. It is also contended that the conclusions recorded by the Designated Authority are only preliminary conclusions and final findings as contemplated under Rule 17 are yet to be rendered and the petitioners cannot be said to be prejudicially affected in any manner by the provisional conclusions. It is also contended that the designated authority in the impugned order has expressly indicated that appropriate opportunity shall be given to all concerned before final findings are rendered in accordance with Rule 17 and there is no justification to challenge such preliminary findings at this stage as the petitioners would have enough opportunity to challenge

the same before the designated authority and also ultimately before the appellate authority, if any levy is imposed. It has been contended that the present findings being preliminary in nature, are not binding on the Central Government and the writ petitions are pre-mature.

10. Sri P. Chidambaram, learned Senior Counsel appearing for some of the petitioners has forcefully contended regarding nonobservance of mandatory procedure contemplated under Rule 6. It has been submitted by him that after upholding its jurisdiction to initiate proceedings by the order dated 15.10.2001, the designated authority should have followed the procedure specifically contemplated under Rule 6. It has been specifically submitted that pursuant to the order passed by Karnataka High Court, the respondent No.2 came to the conclusion that materials were sufficient to justify the initiation of investigation. In other words according to the learned counsel, the respondent No.1 by its order dated 15.10.2001 "decided to initiate investigation" and as such should have followed the provisions contained in Rule 6 before recording any preliminary findings as contemplated under Rule 1 2. In this context he has submitted that after deciding to initiate investigation by the order dated 15.10.2001, the respondent No.1 has not issued any public notice as contemplated under Rule 6(1) nor he has forwarded a copy of the public notice to the known exporters of the articles alleged to have been dumped notifying the exporting countries and other interested parties such as the petitioners who were admittedly the importers of the concerned article as contemplated in violation of Rule 6(2). It is also contended that even assuming that respondent No.1 did not issue any fresh notice as contemplated under Rule 6(1) and forwarded the copy of the public notice to the interested parties as contemplated under Rule 6(2), it should have given opportunity to the interested parties, such as petitioners, to present information to the investigation orally as contemplated under Rule 6(6). It has been submitted that public hearing which had been given was on 25.9.2001, prior to the decision of the respondent No.1 to initiate investigation, but the principles contained in Rule 6 indicate that he is required to give opportunity of hearing under Rule 6 (6) and required to observe other formalities contained in Rule 6(1) and (2) after deciding to initiate investigation and not before deciding to initiate investigation.

12. The aforesaid submissions made by Sri P. Chidambaram, learned senior counsel and supported by Sri. Habibullah Badsha, though prima facie attractive do not bear closer scrutiny. Notification dated 25.6.2001 purports to be the public notice as contemplated under Rule 6(1) indicating that the designated authority has decided to initiate investigation. It is no doubt true that the aforesaid public notice had been challenged before Karnataka High Court. The copy of the order of Karnataka High Court, which has been produced by the petitioners and extracted earlier does not show that the public notice dated 25.6.2001 or the initiation notification had been quashed. The Court had merely permitted the applicant before it to file its objection to the initiation notification permitting such applicant to raise all contentions which are available to such applicant including the contentions raised in the writ petition which was obviously for quashing the initiation notification dated 25.6.2001 as evident from the order of the High Court. The High Court had further directed the designated authority to decide

the issue with regard to jurisdiction as a preliminary issue after hearing the contesting parties and any other persons who may file their objections before the authority. The High Court had further directed the designated authority to communicate such orders on the preliminary issue to all the parties and " thereafter would give a respite to his proceedings for a period of 1 5 days." (emphasis added).

13. A perusal of the aforesaid order clearly indicates that the impugned notification had not been quashed, but the designated authority had been merely called upon to decide whether its decision to initiate investigation was without jurisdiction. The Karnataka High Court had not relegated the parties to any stage prior to the stage of publication of notice as contemplated under Rule 6(1). It had merely permitted the applicant to file his objection to the initiation notification. In other words, if the designated authority would have come to a conclusion that the initiation itself was without jurisdiction due to absence of basic facts, the authority itself would have terminated the proceedings, but if it were to find that the initiation was within jurisdiction, there was no necessity nor mandate to issue fresh notification and the designated authority was free to proceed further from that stage. The observation contained in paragraph 4 to the effect that the authority " would give a respite to his proceedings for a period of 15 days" clearly fortifies above conclusion. It is obvious that it was the intention of the Karnataka High Court to permit the authority to continue with the "investigation" obviously from the stage at which it was at the time of decision of the High Court if the initiation was found to be within jurisdiction. It is not disputed that subsequently the designated authority by the order dated 15.10.2001 has concluded that initiation was justified. Having reached this conclusion, it wass not necessary for the respondent No.1 to retrace the steps already covered and it was free to proceed from that stage onwards. From the records it is apparent that the designated authority had already issued public notice and had already complied with Rule 6(1) and Rule 6(2) stage of the contemplated investigation. Thus it was not necessary for the authority to comply with Rule 6(1) and Rule 6(2) afresh.

13. Learned counsels have also submitted that even assuming that it was not necessary to follow the stage of Rule 6(1) and 6(2), the designated authority is bound to allow the interested parties, namely the petitioners to present the information relevant to the investigation orally as contemplated in Rule 6(6) and the petitioners being the admitted interested parties, should have been given opportunity of " oral hearing" . This submission of the learned counsels appearing for the petitioners has been combated by the learned Additional Solicitor General appearing for the respondent NO.2 by drawing my attention to the language used in Rule 6(6) in contra distinction with the language used in Rule 6(2), (3) and (5). It has been submitted by him and in my view with enough justification, that the rule making authority had merely used the expression that the designated authority "may allow" an interested party or its representative "to present the information relevant to the investigation orally" and there is no mandatory indication that the designated authority is bound to allow such an opportunity. He has further submitted that the question of granting such an

opportunity would arise only where the interested party makes a prayer for such an opportunity in which event the designated authority may allow such an opportunity, though it may not be obligatory to grant such opportunity in every case. It is tobe noticed that even where a person is allowed to present information orally such oral information is to be taken into account only when it is reproduced subsequently in writing. It is significant to note that in the same Rule 6 at several places where the Rule making authority expected the designated authority to follow a particular course in taking decision, the word "shall" is used, whereas in Rule 6(6) the expression "may" has been used. I am conscious of the legal position that in many cases even though the expression "may" is used, the courts interpret such expression as mandatory depending upon the setting and the background of a particular provision. However, I am of the considered view that in the present case, Rule 6(6) does not make it obligatory for the designated authority to allow an opportunity to present information orally and at any rate the question of granting such an opportunity would arise only if there is a specific prayer made by any interested party and not otherwise.
Learned counsels have contended by citing several decisions to the effect that the principles of natural justice require that an opportunity of personal hearing should be given. It is well settled that the principles of natural justice had not embodied rules and cannot be contained in a strait-jacket formula. The question of applicability and the extent of principles of natural justice and the manner in which they are to be complied with would depend upon the provisions contained in the relevant Act or Statute or the Rules as well as the facts and circumstances of each case and it cannot be said that in every case an authority while deciding a matter administratively or even quasi-judicially, is bound to give an opportunity of personal hearing.

14. In the present case, there is no material on record to indicate that any of the petitioners either after the publication of public notice under Rule 6(1) or receipt of copy as contemplated under Rule 6(2) had prayed for giving any opportunity as contemplated within Rule 6(6). It has to be noticed that investigation as contemplated in Rule 6 is merely administrative in nature for the purpose of finding out certain facts. Preliminary findings wherever rendered under Rule 1 2 and the final findings as contemplated under Rule 17 are in the nature of fact finding conclusions, obviously not binding on the Central Government. Investigation contemplated under Rule 6 cannot be equated with a quasi-judicial proceeding.

15. Learned counsels for the petitioners have also submitted that in its conclusion dated 15.10.2001, the designated authority itself had decided to proceed further from the stage of Rule 6 and therefore it was not open to the designated authority to change course in the midstream and adopt a different procedure thereafter.
For the aforesaid purpose they have particularly drawn my attention to the decision of the designated authority in paragraphs 91,94 and 9 5 of the order dated 15.10.2001. In paragraph 91 it was observed
. . .The Authority found 'sufficient evidence' regarding the existence of a causal link to justify the initiation of the investigation. However, a detailed examination of the issues would be carried out after

taking into account the arguments as well as the evidence produced by various interested parties during the course of investigation.
In paragraph 94 -
. . Therefore, the Authority is of the view that the antidumping proceedings initiated under the impugned notification are fully consistent with both the substantive as well as the procedural requirements under the law.
" 95. For all these reasons, the Designated Authority is of the opinion that this is the matter which requires to be investigated in accordance with the anti-dumping rules and regulations.

16. Relying upon these observations, the learned counsels have strenuously contended that the authority thus took the decision on 15.10.2001, the matter "requires to be investigated under antidumping rules and regulations" and therefore, it should have followed the procedure strictly contemplated under Rule 6.

17. The observations made by the authority in the portions emphasised by the learned counsel appearing for the petitioners and already extracted may give an impression as if the authority wanted to initiate investigation by the order dated 15.10.2001 if the extracted portions are considered in isolation, bereft of the context in which such observations were made. It has to be remembered that the authority had already issued a notification purporting under Rule 6(1) and it had been called upon by the Karnataka High Court to consider the jurisdiction for adopting such a course as a preliminary issue. Therefore, the authority was again carrying on the exercise of giving a reasoned order in support of its earlier decision to initiate proceedings. This is apparent from the observations to the following effect in paragraph 94,
. . . As is evident from the above, the domestic industry fulfilled the requirements under Rule 5(3)(a) and the Explanation appended thereto, on the basis of which the Authority made a determination regarding the ' standing' of the applicants to file the petition on behalf of the domestic industry duly recorded in para 3 of the initiation notification. Further, ' sufficient evidence' with respect to dumping, injury and causal link and their adequacy as well as accuracy were available before the Authority to justify the initiation of the investigation." (emphasis added)

18. The order dated 15.10.2001 expresses more reasons in detail in justification of the notification already issued and cannot be construed as a conclusion of the designated authority to initiate proceedings afresh. Similarly reference in paragraph 91 to the effect " However, a detailed examination of the issues would be carried out after taking into account the arguments as well as the evidence produced by various interested parties during the course of the investigation." does not reflect that the " investigation"has to start afresh from the stage of Rule 6(1) wiping out the exercise already undertaken.

19. Learned counsels for the petitioners have also referred

to the observations made in paragraph 16.1 to 16.4 in the impugned order dated 16.1.2002 and have contended that after arriving at the preliminary findings, there is no point in again following the procedure contemplated under Rule 6(6). Learned Additional Solicitor General has rightly rebutted the submission by observing that the designated authority is only purporting to follow the procedure contemplated under Rule 12(2). On the other hand he has submitted that the very fact that respondent No.1 has again invited objections and given opportunity of hearing to the persons concerned would rather indicate that the persons including the petitioners would have further adequate opportunity to present their case and the impugned preliminary findings would not prejudice them in any manner as they would be in a position to seek for termination of the investigation as contained in Rule 14(b).

20. Submission of the learned Additional Solicitor General to the effect that the petitioners are not in anyway prejudiced as they had enough opportunity to file their objections pursuant to the public notice and private notice under Rule 6(2) and their sole intention is to prolong the proceedings on some technical plea or other with a view to frustrate the very purpose of having an investigation cannot be rejected outright. He has invited my attention to a letter issued as per which various companies have pursued their remedies in various High Courts at appropriate time.

21. The object under Rule 12 to render a preliminary finding in an appropriate case would be lost if the proceedings taken under the rules which are essentially administrative in nature are allowed to be mired in the judicial controversy at every conceivable stage. It has to be remembered that the findings either preliminary or final are merely recommendatory in nature and do not bind the Central Government and if the Government ultimately decide to impose any levy under Rule 18, such levy is appellable under Section 9C of the Act. Even if, on the basis of a preliminary finding there is levy of provisional duty as contemplated under Rule 13, if ultimately the Government takes a decision not to impose any levy as contemplated under Rule 1 8 or if duty is levied at lesser rate, the excess amount realised from an importer is bound to be refunded to the importer as contemplated in Section 9A and Rule 21(2) and (3) and there is no scope for any misgiving on this account in view of the mandatory language used in the Act and the statutory Rules. Even if any provisional duty is levied, an importer would not be prejudiced if ultimately it is found that levy of provisional duty was not justified. Keeping in view of the above aspects, I am of the view that the petitioners have not suffered any prejudice on account of the alleged illegality or irregularity in the proceedings of the respondent No.1.

22. Learned counsel for the petitioners, particularly Sri. Habibullah Badsha contended that the conclusions reached by the designated authority are without any basis and no reasonable man could have come to such conclusion as such, such conclusion should be quashed. He has painstakingly pointed out several loopholes or defects in the reasonings given by the designated authority. I am afraid, such a contention cannot be countenanced at this stage. As already indicated the findings are merely recommendatory in nature. The designated authority is yet to render its final findings as contemplated under Rule 17. Before such final findings are recorded, it would

be open to an interesting party to point out the loopholes or the shortcomings in the preliminary findings and ultimately if any duty is levied, such order can be challenged before the appellate authority. In such view of the matter, it would not be appropriate at this stage in exercise of jurisdiction under Article 226 to embark upon an enquiry regarding the vulnerability of the conclusions which are merely recommendatory in nature.

23. Learned counsel for the petitioners, particularly Mr. Habibullah Badsha has challenged the validity of Rule 7 on the ground that this Rule has given unbridled power on the designated authority to with-hold any relevant information. It has been pointed out that in the absence of any guidelines indicated to control the untrambled discretion conferred on the designated authority under Rule 7, the designated authority is likely to decide the matters relating to confidentiality arbitrarily.

24. It has to be noticed that the designated authority is a high ranking experienced officer in the rank of Joint Secretary to the Central Government. He is expected to act according to the purpose for which the statutory provisions relating to anti dumping have been incorporated in the Act and the Rules have been framed. It is obvious that he has to be guided by the indications given in the Act as well as the Rules. Merely because there is some apprehension that the authority may be abused in a given case is not a ground to set the Rule at naught. Any abuse in the matter of exercising the discretion conferred under Rule 7 can be corrected if necessary by the appellate authority and there is no substance in the contentions raised relating to invalidity of such Rule.

25. For the aforesaid reasons, I do not find any merit in the writ petitions which are accordingly dismissed. No costs. All the interim orders stand dissolved.

15.05.2002

Index : Yes
Internet : Yes
dpk

P.K. MISRA, J.
Judgment in WP.Nos.3008, 3009,
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