* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 24.03.2015

% Judgment delivered on: 27.03.2015

\+ **W.P. (C) 3022/2014**

MAHINDRA & MAHINDRA LTD ..... Petitioner

Versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:-

For the Petitioner	:	Mr Balbir Singh with Mr Atul Gupta, Mr T. D.Satish, Mr Angad Sandhu, Mr B. Mansatta and Mr Rupinder Simhar
For the Respondents 1 & 2	:	Mr Manish Mohan with Mr Gaurav Sharma, Ms Manisha Rana Singh, Ms Hina Shaheen and Ms Sidhi Arora
For the Respondent No.3	:	Mr Gopal Jain, Sr Advocate with Mr Ratheesh M.

\+ **W.P.(C) 3023/2014**

VOLKSWAGEN INDIA PVT LTD ..... Petitioner

versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:-

For the Petitioner	:	Mr Balbir Singh with Mr Atul Gupta, Mr T. D.Satish, Mr Angad Sandhu, Mr B. Mansatta and Mr Rupinder Simhar
For the Respondents 1 & 2	:	Mr Manish Mohan with Mr Gaurav Sharma, Ms Manisha Rana Singh, Ms Hina Shaheen and Ms Sidhi Arora
For the Respondent No.3	:	Mr Gopal Jain, Sr Advocate with Mr Ratheesh M.

+ W.P.(C) 3250/2014

VOLKSWAGEN INDIA PVT LTD ..... Petitioner

versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:-

For the Petitioner	:	Mr Balbir Singh with Mr Atul Gupta, Mr T. D.Satish, Mr Angad Sandhu, Mr B. Mansatta and Mr Rupinder Simhar
For the Respondents 1 & 2	:	Ms Abha Malhotra
For the Respondent No.3	:	Mr Gopal Jain, Sr Advocate with Mr Ratheesh M.

+ W.P.(C) 3251/2014

MAHINDRA & MAHINDRA LTD ..... Petitioner

versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:-

For the Petitioner	:	Mr Balbir Singh with Mr Atul Gupta, Mr T. D.Satish, Mr Angad Sandhu, Mr B. Mansatta and Mr Rupinder Simhar
For the Respondents/UoI	:	Mr Arun Bhardwaj with Ms Neha Garg
For the Intervenors	:	Ms Meenakshi Arora, Sr Advocate with Ms Anushree Kapadia
For the Respondent No.3	:	Mr Gopal Jain, Sr Advocate with Mr Ratheesh M.

+ W.P.(C) 633/2015

VOLKSWAGEN INDIA PVT LTD ..... Petitioner

versus

THE DESIGNATED AUTHORITY AND ORS ..... Respondents

Advocates who appeared in this case:-

For the Petitioner	:	Mr Balbir Singh with Mr Atul Gupta, Mr T. D.Satish, Mr Angad Sandhu, Mr B. Mansatta and Mr Rupinder Simhar
For the Respondents 1 &2	:	Mr Vivek Goyal
For the Respondent No.3	:	Mr Gopal Jain, Sr Advocate with Mr Ratheesh M.

+ W.P.(C) 634/2015

MAHINDRA & MAHINDRA LTD ..... Petitioner

versus

THE DESIGNATED AUTHORITY AND ORS ..... Respondents

Advocates who appeared in this case:-

For the Petitioner	:	Mr Balbir Singh with Mr Atul Gupta, Mr T. D.Satish, Mr Angad Sandhu, Mr B. Mansatta and Mr Rupinder Simhar
For the Respondents 1 &2	:	Mr Vivek Goyal
For the Respondent No.3	:	Mr Gopal Jain, Sr Advocate with Mr Ratheesh M.

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

Prayers in brief:

1. Out of these six writ petitions, three have been filed by Mahindra & Mahindra Ltd and three have been filed by Volkswagen India Pvt Ltd. Initially, WP(C) 3022/2014 and WP(C) 3023/2014 were filed by the said petitioners, respectively. In those writ petitions the main prayers were for terminating the anti-dumping investigation in relation to imports of Cast Aluminium Alloy Wheels originating in or exported from China PR, Korea RP and Thailand and for setting aside the Preliminary Finding dated 13.01.2013 and the impugned Anti-dumping Duty Notification No.15/2014-Customs (ADD) dated 11.04.2014. Then, WP(C) 3250/2014 and WP(C) 3251/2014 were filed (one each) by the said petitioners, inter alia, seeking the quashing of the Notice bearing F.No.354/241/2012-TRU dated 30.04.2014 and the letter bearing F.No.14/7/2012-DGAD dated 08.05.2014. Finally, WP(C) 633/2015 and WP(C) 634/2015 were filed (one each) by the said petitioners, inter alia, praying for the setting aside of

the Final Finding No.14/7/2012-DGAD dated 09.06.2014 of the Designated Authority.

Points for consideration:

2. Essentially, two points arise for our consideration in these writ petitions:

1. Whether the ex post facto extension of the investigation period granted by the Central Government on 30.04.2014 extending the period of investigation from 09.03.2014 to 09.06.2014 was valid?

2. Whether the petitioners, who are interested parties, were given an adequate opportunity of hearing by the Designated Authority before he issued the impugned Final Finding dated 09.06.2014?

Background facts:

3. Before we examine these points, it would be necessary to set out the background facts.

4. Synergies Castings Ltd, a producer of Cast Aluminium Alloy Wheels or Alloy Road Wheels India, approached the Designated Authority (DA) under the Customs Tariff Act, 1975 (hereinafter referred to as 'the said Act') and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as 'the said Rules') alleging material injury on account of dumping of the said goods from China PR, Korea RP and Thailand.

5. The DA after being, prima facie, satisfied of the alleged dumping and consequent material injury to the domestic industry initiated an anti-dumping

investigation concerning imports of Cast Aluminium Alloy Wheels or Alloy Road Wheels used in Motor Vehicles, whether or not attached with their accessories, of a size in diameters ranging from 12 inches to 24 inches, originating in or exported from China PR, Korea RP and Thailand vide Notification 14/7/2012-DGAD dated 10.12.2012.

6. The DA also recommended provisional anti-dumping duty on imports of the said goods from said countries by Notification No 14/7/2012-DGAD dated 13.01.2014. And, the same was imposed by Central Government by its Notification No. 15/2014-Customs (ADD) dated 11.04.2014. As mentioned above, these were the subject matter of challenge in the first set of writ petitions (WPC 3022/2014 & WPC 3023/2014).

7. The period of one year from the date of initiation of investigation was to expire on 09.12.2013. As the investigation could not be completed by then, the Central Government, on 06.12.2013 extended the period by three (3) months upto to 09.03.2014. Since the investigation could not be completed by the DA by that date also, he requested the Central Government on 03.03.2014 to further extend the period of investigation. This request of the DA was accepted by the Central Government but, much later on 30.04.2014 (after the expiration of the earlier extended period on 09.03.2014) by an Office Memorandum, which was as under:

"F.No.354/241/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit
******

New Delhi, 30th April, 2014.

OFFICE MEMORANDUM

Subject: Anti-Dumping Duty Investigation concerning imports of Cast Aluminum Alloy Wheels or Alloy Road Wheels used in Motor Vehicles, whether or not attached with their accessories, of a size in diameters ranging from 12 inches to 24 inches, originating in or exported from China PR, Korea RP and Thailand – reg.

The undersigned is directed to refer to your D.O. Letter No. 14/7/2012-DGAD dated 03.03.2014 on the above subject.

2. In this connection, it is to inform you that the Competent Authority in the Ministry of Finance has accorded approval for extension of time for completion of investigation by 3 months from 09.03.2014 to 09.06.2014, in the case of Cast Aluminum Alloy Wheels or Alloy Road Wheels used in Motor Vehicles, whether or not attached with their accessories, of a size in diameters ranging from 12 inches to 24 inches, originating in or exported from China PR, Korea RP and Thailand.

(Akshay Joshi)
Under Secretary (TRU)

(Shri J.S. Deepak)
Additional Secretary & Designated Authority,
Department of Commerce,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi"

8. This was followed by a communication dated 08.05.2014 to all the interested parties as under:

"F.No.14/7/2012-DGAD
Government of India
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Anti-dumping and Allied Duties
******

Udyog Bhavan, New Delhi – 110011
Dated the 8th May, 2014.

To

All Interested Parties
(Domestic Industry/Exporters/Producers/Importers/User Industries)

Subject: Extension of time period of anti-dumping investigation concerning imports of Cast Aluminum Alloy Wheels or Alloy Road Wheels used in Motor Vehicles, whether or not attached with their accessories, of a size in diameters ranging from 12 inches to 24 inches, originating in or exported from China PR, Korea RP and Thailand

Sir / Madam,

Vide office Memorandum No. 354/241/2012-TRU dated 30th April, 2014 the competent authority has accorded permission for extension of time upto 9th June, 2014 for completing the subject investigation and notifying the final findings.

This is for information of all the interested parties in this investigation.

Yours Faithfully,
(D.P. Mohapatra)
Director
Room No. 216-A
Tel. Fax. No. 23061845
e-mail:ohapatra.dp@nic.in

Encl: As stated above."

9. The OM dated 30.04.2014 and the letter dated 08.05.2014 became the subject matter of the second set of writ petitions (WPC 3250/2014 & WPC 3251/2014).

10. On 29.05.2014 a new Designated Authority was appointed. On that day itself, the new DA sent an email to all interested parties at 6:22 pm informing them that a public hearing would be given on the very next day (30.05.2014) at 5:00 pm. Because of the short notice, several interested parties sought an adjournment immediately after receipt of the email. But, that request was turned down just 20 minutes before the scheduled start of the oral hearing on 30.05.2014. The DA proceeded with the hearing which could be attended by just one exporter.

11. On 05.06.2014 the DA circulated the disclosure statement. Interested parties were permitted to offer their comments in writing latest by 10:30 am on 09.06.2014. The petitioners submitted their written comments on 09.06.2014. On that very day, which was the last day of the investigation, the DA issued his Final Finding. We may point out that the Madras High Court, in WP (C) 11683, 11684, 14567, 14568 of 2014, had directed the DA to keep the Final Finding in a sealed cover. The said writ petitions were ultimately dismissed by the Madras High Court on 12.12.2014 and the Final Finding, which had been hitherto kept in a sealed cover, was published on 30.12.2014. The third set of writ petitions (WPC 633/2015 & WPC 634/2015) were filed by the petitioners, inter alia, challenging the Final Finding dated 09.06.2014.

Point No.1

12. Mr Balbir Singh, the learned counsel for the petitioners, made the following submissions:

a) The investigation was initiated on 10.12.2012. Rule 17(1) of the said Rules mandates completion of the investigation and issuance of Final Findings

within one year from the date of initiation. Although this period of one year may be extended by the Central Government in terms of the first proviso to Rule 17(1) of the said Rules, the same has to be done before the expiry of the initial period and that, too, only when there exist "special circumstances". In the facts of the present case, the Central Government granted the first extension on 06.12.2013, prior to the expiration of the initial one year period, for a further period of three months expiring on 09.03.2014. But, the Central Government did not extend the time again before 09.03.2014 and allowed the investigation to lapse and the DA became *functus officio*. The ex-post facto extension granted only after 52 days on 30.04.2014 was illegal and without authority of law. Thus, after 09.03.2014, the DA did not have any jurisdiction to continue with the investigation.

b) If such ex-post facto extensions were construed to be permissible it may lead to chaos as the DA may continue to act with the expectation that approval of extension would be granted in due course. In case such an extension is not granted then, obviously, all the actions of the DA would be without any authority of law. Furthermore, take a case where an ex-post facto approval is granted on the last day of the total permissible period of one year and six months. In such eventuality, the DA would not be able to complete the investigation even if such extension is granted by the Central Government.

c) The only provision for suspension and recommencement of investigation has been provided in Rule 15, where price undertakings are accepted.

d) The term 'extend further' in the first proviso to Rule 17(1) means to prolong a time period, which is still in force. The term 'extend' means continuation of an existing thing and therefore, there can be no extension when the investigation has lapsed due to efflux of time. Reliance was placed on

Tarsem Kumar v. CCE: ***AIR 1972 P&H 5***; ***Provash Chandra Dalui & Anr v. Biswanath Banerjee & Anr*****: 1989 Supp (1) SCC 487**; ***Babu Verghese & Others v. Bar Council of Kerala & Others*****: (1999) 3 SCC (422)**.

e) In any event, the extension has been granted in absence of the mandatory requirement of "special circumstances". The term "special" means something not ordinary or usual but different in some way; something that is not usual or ordinary, and is made or done for a special purpose. No "special circumstance" has been indicated for the grant of the extension.

13. The learned counsel for the DA submitted as under:-

a) The order granting extension is administrative in nature as held by the Supreme Court in ***Designated Authority (Anti-Dumping Directorate), Ministry of Commerce v. Haldor Topsoe A/S*****: (2000) 6 SCC 626**. A similar extension was apparent in the ***Haldor Topsoe*** case even though the dates of extension as such were not a matter of consideration. However, the Supreme Court, in paragraph 24, observed that the investigations were completed after obtaining necessary extensions. The relevant extracts of the said judgment are reproduced below:

> "23. Per contra, on behalf of the appellants, it is argued that the extension of time contemplated under the proviso to Rule 17 is an administrative act based on exigencies of the case. A decision taken in regard to the extension of time to complete the investigation does not in any manner effect the right of the parties to the investigation. Therefore, the requirement of the respondent being hurt before granting any such extension, does not arise.
>
> 24. We notice that under the provision empowering the extension of time by the Central Government (proviso to Rule

17), there is no requirement that the concerned parties to the investigation should be heard before extending the time. We agree with the appellant that this decision in question is an administrative decision based on exigencies of the case. The statute governing the investigation into dumping by an Authority has provided an elaborate procedure and wherever the concerned parties are entitled to notice, it has specifically provided for the same. In the absence of any such requirement to issue notice in proviso to Rule 17, we are of the opinion that the contention of the respondent that it is entitled to any notice prior to the exercise of the power under the proviso to Rule 17 by the Central Government, is devoid of any merit. In the instant case, the investigation was completed within the stipulated period after obtaining the necessary extension from the Central Government. The decisions relied upon by the respondent, in our opinion, have no bearing on the facts of this case since in those cases the proceedings were quasi-criminal in nature where application of principles of natural justice was inherent, unlike the present case where the application of principles of natural justice is limited to the provisions already made in the statute. Further, apart from the fact the respondent is not entitled to any notice before extending the time for concluding the investigation under Rule 17, we also notice that the respondent has not established any prejudice suffered by it whatsoever. Here we notice with approval the observations of the Tribunal to the effect that the respondent, though, was aware of the extension granted to the Authority by the Central Government, did not object to the same when the proceedings before the Authority continued after the extension of time and having suffered an adverse order cannot be permitted to raise this question subsequently at an appellate stage. Accordingly, this objection of the respondent also fails and the same is rejected".

b) The first proviso to Rule 17 provides that the Central Government may, in its discretion in special circumstances, extend further the duration of one year by six months. The DA demonstrated the existence of special circumstances which warranted further extension and its inability to complete the entire proceedings within the already extended period in its

request to the Central Government while seeking the extension of investigation and the same was granted by the Central Government. The request for second extension was made by the DA on 03.03.2014 and this was prior to the already extended period. The extension under Rule 17 should be interpreted in a manner to even cover an exigency which may arise even on the last day of such extended period if the investigation is within the overall 18 months period. Thus, what is important is the outer limit of 18 months and the extensions within that limit should be seen as made appropriately.

14. Mr Gopal Jain, senior advocate, appearing for Synergies Castings Ltd submitted as follows:-

a) The first proviso to Rule 17(1) (a) of the said Rules empowers the Central Government to extend the period of investigation by six months:-

> *"Provided that the Central Government may, in its discretion in special circumstances extend further the aforesaid period of one year by six months.*"

b) The decision of the Central Government to extend the period of investigation under Rule 17, is an administrative decision based on the exigencies of a case. This provision is to ensure "continuity" and to achieve the main objective of completing the investigation.

c) The Supreme Court in ***Haldor Topsoe*** *(supra)* (at para 25) held that:-

> "…under the provision empowering the extension of time by the Central Government (proviso to Rule 17), there is no requirement that the parties concerned to the investigation should be heard before extending the time. We agree with the appellant that this decision in question is an administrative decision based on exigencies of the case."

15. There is no stipulation in the said Act or the said Rules that extension must be granted prior to expiry of the first extension. Moreover, there is no bar under the Act or the Rules for the Central Government to exercise the power after expiry of the initial period of investigation but within the overall period of one year and six months.

16. Moreover, in ***Haldor Topsoe's*** *case*, the Central Government had, in fact, granted an extension on 13.10.1997, which was after expiry of the 1 year period of investigation on 05.09.1997. This was upheld by the Supreme Court.

17. Accordingly, there is no infirmity in the Final Findings as the extension has been validly granted by the Central Government in exercise of power conferred under the said Rules. The Final Findings have been issued before the expiry of the 2nd extension on 09.06.2014.

18. Ms Meenakshi Arora, the learned senior counsel for the intervener contended as under:

a) Rule 17 must be read in context of the larger object and purpose of the law regulating anti-dumping measures in India, which has been stated by the Supreme Court in case of ***Reliance Industries Ltd. v. Designated Authority*****: (2006) 10 SCC 368**:-

> "11. The result was that an industrial base was created in India after independence and this has definitely resulted in some progress. The purpose of Section 9A can, therefore, easily be seen. The purpose was that our industries which had been built

> up after independence with great difficulties must not be allowed to be destroyed by unfair competition of some foreign companies. Dumping is a well-known method of unfair competition which is adopted by the foreign companies. This is done by selling goods at a very low price for some time so that the domestic industries cannot compete and are thereby destroyed, and after such destruction has taken place, prices are again raised.
>
> 12. The purpose of Section 9A is, therefore, to maintain a level-playing field and prevent dumping, while allowing for healthy competition. The purpose is not protectionism in the classical sense (as proposed by the German economist Friedrich List in his famous book 'National System of Political Economy' published in 1841) but to prevent unfair trade practices. The 1995 Amendment to Section 9A was apparently made in pursuance to Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) which permitted anti-dumping measures as an instrument of fair competition."

A reference was also made to ***Nirma Limited & Others v. Saint Gobain Glass India Ltd. & Others*****: CDJ 2012 MHC 2163**.

In view of the stated objects and purpose, the said Rules have to be interpreted for the benefit of the *domestic industry* and not in a manner so as to render the entire investigation into dumping, a futile exercise. The interpretation proposed by the petitioner would be contrary to the object and purpose of the provisions and would wreak havoc.

b) The decision under the first proviso to Rule 17(1) to extend time is an administrative decision as held in ***Haldor Topsoe*** *(supra)*.

c) The contention of the petitioners that once the period of 12 months expire, the Central Government cannot grant any extension is not tenable, since such an interpretation is not borne out from a plain reading of the first proviso to Rule 17(1) of the said Rules. The Rule only stipulates a period

of 12 months for the period of investigation and further period of 6 months for which Central Government may grant extension. The Rules are silent as to whether such an extension must be granted before the expiry of 12 months or after the expiry of 12 months. In other words there is nothing in the Rules that prevents the Central Government from extending the period by six months after the expiry of the period of one year.

d) While the use of the word "shall" in Rule 17 makes the time period mandatory. But, at the same time, the proviso clearly allows for the extension of time under special circumstances which may even arise on the last day of the one-year period. The interpretation sought to be placed by the petitioners on the proviso to Rule 17(1) would not allow extension of period despite the existence of special circumstances.

e) If the investigation is allowed to lapse, despite existence of special circumstances necessitating extension of period of one year, it would cause serious hardship to the domestic industry. If the domestic industry requests for a fresh investigation, the whole procedure would have to start all over again with a new period of investigation. To avoid this hardship in "special circumstances", the Central Government is given the power to extend the time period by six months.

19. Mr Balbir Singh, in rejoinder, submitted:-

a) The judgment in ***Haldor Topsoe*** *(supra)* is not applicable because (i) the only issue raised was that "before extension hearing was not granted by the Central Government", that is not the issue in present writ petition; (ii) the issue that investigation terminates and the DA becomes *functus officio* on expiry of the period was not raised, discussed or decided. Further, in the

present case, the objection about such alleged illegal extension was not only raised on the first available opportunity, but writ petitions had also been filed [WP 3250/2014 & 3251/2014].

b) The DA and the Central Government are two different legal entities and are recognized as such in the said Rules. The counter affidavit purported to have been filed by the DA cannot be a substitute for the counter affidavit by the Central Government (which granted the extension) which has not been filed even after several opportunities had been granted.

Discussion:

20. Rule 17 of the said Rules, to the extent relevant, is set out hereinbelow:-

> "**17. Final findings. - (1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding**-
>
> (a) as to,-
>
> (i) the export price, normal value and the margin of dumping of the said article;
>
> (ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;
>
> (iii) a casual link, where applicable, between the dumped imports and injury;
>
> (iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:

> **Provided that the Central Government may, in its discretion in special circumstances extend further the aforesaid period of one year by six months:**
>
> Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year.
>
> xxxxx xxxxx xxxxx xxxxx"
>
> (emphasis supplied)

21. A plain reading of Rule 17(1) makes it clear that the DA is required to submit the Final Finding to the Central Government within one year from the date of initiation of an investigation. By virtue of the first proviso to Rule 17(1)(a), this period of one year can, however, be extended by the Central Government, in its discretion in special circumstances, by six months. It is therefore mandatory that the Final Finding is submitted to the Central Government within the period of one year or the extended period or periods, as the case may be. If the Final Finding is not submitted within the stipulated period, the investigation shall terminate or lapse.

22. The question, however, is whether the investigation would lapse *ipso facto* at the end of one year in case no extension is granted by the Central Government within that period. Or would the investigation be, in a way, suspended till the additional period of six months available to the central government elapses? There is, of course, no doubt that if the Final Finding, for whatever reason, is not

submitted by the end of the period of one year and six months, the investigation shall terminate or lapse.

23. In ***Haldor Topsoe*** *(supra),* the Supreme Court clearly held the Central Government's decision to grant extension to be purely administrative in nature. It is also true that the Supreme Court had observed that in that case *"the investigation was completed within the stipulated period after obtaining the necessary extension from the Central Government"*. And, in point of fact, in that case the extension was granted by the Central Government after the initial period of one year had expired but before the additional period of six months had expired. So, it has been argued by the learned counsel for the respondents and the intervener that the Supreme Court has recognised the fact that ex post facto extension can be granted by the Central Government under the scheme of the said Rule 17. But, to be fair to Mr Balbir Singh, it must also be noted that the question of ex post facto extension was not in issue before the Supreme Court and the point considered by the Supreme Court was whether the decision to extend time under the first proviso to Rule 17(1)(a) was an administrative one or did it have the trappings of a quasi-judicial decision. The Supreme Court held that the decision was administrative in nature and did not require any notice or hearing to be given to the interested parties.

24. Apart from the said decision of the Supreme Court, we are of the view that the Central Government can grant ex post facto extension provided it is done within the overall period of six months beyond one year and the extension does not spill over beyond the eighteen-month period. We take this view because we do not see any bar or prohibition in the said Rule 17 which would prevent the

Central Government from extending the period of investigation even after the initial period of one year or the extended period has expired provided it is granted within the overall period of eighteen months. It is not stipulated in the first proviso to Rule 17(1)(a) that the extension must be granted during the initial period or an extended period. And, we cannot read any such stipulation. We, therefore, do not agree with Mr Balbir Singh that the extension must be granted within the initial period or extended period, as the case may be, otherwise the investigation will lapse automatically at the end of such period. In our view, at the end of the initial period or an extended period, if the period of eighteen months has not expired, the investigation would, in a sense, be suspended till it is revived by an ex post facto extension within the overall period of eighteen months. We are mindful of the argument of Mr Balbir Singh that suspension is contemplated only the circumstances stipulated in Rule 15 of the said Rules. But, there is a difference. In the case of a suspension of investigation under Rule 15, when it is subsequently resumed by the DA, the period for which investigation was kept under suspension shall not be taken into account while calculating the said period of one year. This would not be so where suspension of investigation operates because the extension order from the central government is awaited. The clock, in such a case, would continue to run and the time taken by the Central Government would not be excluded in computing the period of eighteen months. Furthermore, under Rule 15 it is the DA who suspends the investigation, whereas the kind of suspension we are considering is not at the instance of the DA but on the happening of certain events and circumstances. Mr Balbir Singh is right when he contends that the DA, when he made his request for extension on 03.03.2014, could not presume that the Central Government would grant the extension. It is for this reason, that, on 09.03.2014, when the first period of extension expired and the grant of further extension was awaited by the DA, his mandate to investigate

got suspended. The DA's mandate was revived on 30.04.2014 when the extension was ultimately granted. It is from that date that the investigation would resume.

25. We, therefore, hold that the ex post facto extension of the investigation period granted by the Central Government on 30.04.2014 extending the period of investigation from 09.03.2014 to 09.06.2014 was valid.

Point No.2

26. On behalf of the petitioners, Mr Balbir Singh submitted:

a) The Final Finding has been issued in violation of principles of natural justice as no effective opportunity of hearing was provided by the Designated Authority who passed the Final Finding. The DA on 29.05.2014 at 6:22 p.m. sent an unexpected email scheduling oral to be held on 30.05.2014 at 5PM to various interested parties situated in different parts of the country/ world. Though adjournment was sought soon after receipt of email, the request was turned down only 20 minutes before the scheduled start of oral hearing.

b) It was also suggested by the office of the DA that parties, who were unable to attend the oral hearing due to such short notice, could submit their written submissions. Thus, the impugned final finding has been issued in contravention to the settled law laid by the Supreme Court that (i) the Designated Authority has to grant oral hearing before passing the Final Finding and (ii) written submissions cannot substitute oral hearings. Reliance was placed on ***Automotive Tyre Manufacturers Association v.***

***the Designated Authority & Others*:(2011) 2 SCC 258.** (hereinafter referred to at the ATMA case).

c) Furthermore, comments to the disclosure statement issued by the DA on 05.06.2014 were required to be filed on or before 10:30 a.m. on 09.06.2014 (Monday), that is, on the terminal date for issuance of the Final Finding. The petitioner filed its elaborate comments on 09.06.2014, but many of the issues were either not considered in the final findings or were incorrectly addressed in the Final Finding because the DA could not have issued the impugned Final Finding of 91 pages within a matter of hours after considering/understanding the comments of all the interested parties and recording the reasons for accepting/rejecting submissions and then typing/ proof reading and preparing the non-confidential version of the final finding. If the Final Finding was already ready and receipt of replies/submissions were left only as a formality, then the Final Finding is in violation of principles of natural justice.

d) The hearing required should not be an empty formality. The High Court is empowered to entertain a Writ Petition challenging the Final Findings on ground of violation of principles of natural justice and/or jurisdictional defects even prior to same being acted upon by the Central Government. Reliance was placed on a recent decision of this bench in **WP(C) 744/2015: *SanDisk International v. The Designated Authority & Others*** decided on 18.03.2015.

e) The DA functions as quasi-judicial authority and is required to grant hearing to all the parties, who have filed objections and adduced evidence. Reliance was placed on a decision of this bench in ***WP(C) 401/2015:***

Bharat Solvent & Chemical Corporation v. Union of India & Others decided on 09.03.2015.

27. On behalf of the DA it was submitted:

a) The DA was changed on 29.05.2014 when the last date to conclude the investigation was 09.06.2014 which left the new DA only with 12 days to conclude the remaining procedures in the investigation along with a second public hearing as mandated in the ***ATMA case***. The procedures followed between 29.5.2014 and 9.6.2014 by the new DA was as follows:

> 29.05.2014 (Thursday) - New DA took charge of the Office. Same day an intimation for second oral hearing was issued.
>
> 30.05.2014(Friday) - Second oral hearing was convened
>
> 02.06.2014 (Monday)- Time to file written submissions.
>
> 04.06.2014 (Wednesday) - Time to file rejoinder submissions.
>
> 05.06.2014 (Thursday) - DA issued Disclosure statement
>
> 09.06.2014 (Monday) - Final Finding was signed and kept in sealed cover based on the order of the Madras High Court in WP 14567/14568.

b) The stringent time schedule as indicated above differentiates this case from the ***ATMA case*** where the new DA had around 5 months time to conclude the investigation. In the present case, the new DA had only 12 days to complete the entire investigation. It is an incorrect assertion of the petitioners that since the petitioners were located outside Delhi it was impossible for them to reach Delhi in 24 hours time. However, the petitioners had filed letters authorising their advocates/consultants to appear before the DA and also to make their submissions.

c) The principles of natural justice are immutable principles widely held to be indispensable to a fair trial or valid decision in any legal system. In the Indian context, this was explained in ***Swadeshi Cotton Mills v. Union of India*****: (1981) 1 SCC 664**:

> "This rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

28. In the present case, the DA, on 29.05.2014, scheduled the 2nd oral hearing for the 30.05.2014, in the light of the ***ATMA case***, considering the limited time available with the DA to conclude investigation by 09.06.2014 in terms of Rule 17 of the said Rules.

29. Mr Gopal Jain, senior advocate, appearing for Synergies Castings Ltd submitted as follows:-

a) The DA followed the entire procedure prescribed under the said Act as well as the said Rules.

b) After appointment of the new DA, a second oral hearing was conducted in compliance with the decision of the Supreme Court in the ***ATMA case*****.** The new DA, who was appointed on 29.05.2014, had 12 days to complete the investigation and issue the final findings (i.e., from 29.05.2014 to 09.06.2014).

c) After the appointment of the new DA, the only procedure remaining for compliance, prior to issuing the final findings, was issuing the Disclosure Statement and receiving comments on the Disclosure Statement. The interested parties had already given their written submissions, which were in the record before the new DA.

d) The disclosure statement issued by the DA on 05.06.2014 records the written submissions of the interested parties and their comments on the provisional finding (which forms the bulk of the statement). The information is collected in prescribed formats, i.e. exporter / importer questionnaire and application proforma for domestic industry.

e) The examination by the DA records *inter alia* that:-

> *"...the comments / submissions made by the interested parties after the issue of the preliminary findings are mostly reiterations of their earlier submissions, which have been appropriately and adequately addressed in this disclosure statement. The post PF submissions considered relevant are addressed below:"*

The Authority, thereafter, analysed and examined the post Preliminary Finding submissions of interested parties. Comments on the Disclosure Statement were received by the DA on 09.06.2014. The entire Final Findings running into over 90 pages comprises of the submissions submitted *prior* to issuing the Disclosure Statement as well as the comments received on 09.06.2014. Therefore, on 09.06.2014, the DA only had to examine the comments on the Disclosure Statement, which have been adequately considered.

f) The DA has adopted a pragmatic and practical approach in line with the letter and spirit of the Rules to meet the exigencies of the situation. The

Supreme Court in ***Swadeshi Cotton Mills v. Union of India*****: (1981) 1 SCC 664** (in para 78 at page 704) held that:-

> "The *audi alteram partem* rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure), this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case."

Again, in ***Manohar Lal Sharma v. The Principal Secretary*****: (2014) 9 SCC 614**, the Supreme Court held that:-

> "The principles of natural justice, though universal, must be realistically and pragmatically applied."

g) The approach of the DA was a careful balancing act between following the prescribed procedure and ensuring that the entire data driven / fact finding investigation does not lapse with the expiry of the extension granted under Rule 17. In this manner, the available period was used in a fair and reasonable manner, and the integrity of the decision making process was maintained.

30. Ms Meenakshi Arora, the learned senior counsel for the intervener, endorsed the submissions of the respondents.

Discussion:

31. It has been settled by the Supreme Court in the ***ATMA case*** that the DA carries out a quasi-judicial function and that he must give a reasonable opportunity of hearing to interested parties before he arrives at the Final Finding. In fact, the

DA determines a "lis" between persons supporting the levy of duty and those opposing the said levy. The Supreme Court, inter alia, held as under:

> "80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait jacket nor is it a general rule of universal application.
>
> 81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (*See Union of India v. Col. J.N. Sinha* [(1970) 2 SCC 458].)
>
> 82. In the light of the aforenoted legal position and the elaborate procedure prescribed in Rule 6 of the 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said Rules. Insofar as the instant case is concerned, though it was sought to be pleaded on behalf of the respondents that the incumbent DA had issued a common notice to the advocates for ATMA and Ningbo Nylon, for oral hearing on 9-3-2005, however, there is no document on record indicating that pursuant to ATMA's letter dated 24-1-2005, notice for oral hearing was issued to them by the incumbent DA. Moreover, the alleged opportunity of oral hearing on 9-3-2005, being in relation to the price undertaking offer by Ningbo Nylon, cannot be likened to a public hearing contemplated under Rule 6(6) of the 1995 Rules.

> 83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in *Gullapalli* [AIR 1959 SC 308], if one person hears and other decides, then personal hearing becomes an empty formality.
>
> 84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly."
>
> (underlining added)

32. After noting the observations of the Supreme Court in the ***ATMA case***, this court in ***Bharat Solvent*** *(supra)* held that the DA functions as a quasi-judicial authority and decides a "lis" between persons supporting the levy of duty and those opposing the levy. Furthermore, the DA is bound to follow the principles of natural justice and to give an opportunity of hearing to all interested parties, in fact, "*to all the parties, who have filed objections and adduced evidence"*.

33. In the present case, there is no dispute that the petitioners are interested parties. There is also no dispute that all the earlier investigation (including the first oral hearing) was conducted by the earlier DA and not by the DA who took over only on 29.05.2014. In any event, it is an admitted position that the new DA

had to afford an opportunity of hearing to interested parties including the petitioners. The Respondents have taken the plea that the new DA had only 12 days to complete the investigation and submit the Final Finding and the manner in which he conducted the proceedings was the best he could do in the short time available. But, we are afraid that this is not good enough. The opportunity of hearing must not be illusory. Just because there was paucity of time (for no fault on the part of the interested parties), the DA cannot ride roughshod over the principles of natural justice. The DA is bound to grant a meaningful opportunity of hearing to the interested parties and written submissions or comments are no substitute for this. This has been settled by the Supreme Court in the ***ATMA case***.

34. There are several unanswered questions: Why did the central government take so much time (from 03.03.2014 to 30.04.2014) in granting the extension, thereby drastically cutting short the balance time available to complete the investigation? Why did the earlier DA not take any further steps in the investigation, between 30.04.2014 when the extension was granted and 29.05.2014 when he was replaced by the new DA? Why was the DA changed just 12 days prior to the terminal date of 09.06.2014?

35. Anti-dumping investigations are time-bound but, that does not mean that such important matters can be bull-dozed in the manner it has been done in the present case. A period of dormancy of 2 months and 18 days (from 09.03.2014 to 28.05.2014) has been followed by a short period of 12 days of frenetic activity which has resulted in principles of natural justice being violated. The hearing granted on 30.05.2014 cannot be regarded as a reasonable opportunity of hearing. Interested parties were informed by email at 6.22 pm on 29.05.2014 that the

hearing would be granted at 5:00 p.m. the next day (30.05.2014). Requests by interested parties for giving another date so that they are able to avail of the opportunity was rejected by the DA and, that too, just 20 minutes prior to 5:00 pm on 30.05.2014. The fact that the hearing could be attended by only one exporter is testimony of the lack of reasonable opportunity. Sure, the new DA was in a hurry as he had only 12 days with him but, that does not mean that he could give a go-by to the requirement of affording a reasonable opportunity of hearing to the interested parties before he submitted his Final Finding. In the light of the clear dicta in the ***ATMA case*** in the context of anti-dumping investigations, the decisions in ***Swadeshi Cotton Mills*** *(supra)* and ***Manohar Lal Sharma*** *(supra)* would not come to the aid of the respondents.

36. We, therefore, have no hesitation in holding that the petitioners, who are interested parties, were not given an adequate opportunity of hearing by the DA before he issued the impugned Final Finding dated 09.06.2014.

Conclusion

37. Consequently, the impugned Final Finding dated 09.06.2014 having been rendered in violation of the principles of natural justice, cannot be sustained and is quashed. The writ petitions are allowed in part to this extent. The parties are left to bear their own costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

March 27, 2015
HJ