

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

New Delhi the 17th April, 2009

Corrigendum

Subject: Anti Dumping Investigations concerning imports of Cathode Ray Colour Television Picture Tubes originating in or exported from Malaysia, Thailand, China PR and Korea RP.

No. 14/8/2007-DGAD: Attention is invited to the Final findings notification no. 14/8/2007-DGAD issued on 17.02.2009 on the above noted subject and the corrigendum thereto issued on 27th February 2009. The corrigendum dated 27th February 2009 was challenged before the Hon'ble High Court of Delhi in the W.P.(C) 7649/2009 and CM 3804-3805/2009. The Hon'ble Court vide its Order dated 20th March, 2009 set aside the impugned order (Corrigendum dated 27.02.2009) and directed the Petitioner to appear before the Designated Authority (DA) on 2nd April, 2009 at 3.00 p.m. Accordingly, the hearing was held and the participants were asked to give their Written Submissions by 6th April, 2009 with rejoinders on 9th April, 2009. To enable the authority to deal with the situation of any material changes arising out of the hearing, necessitating changes in the final findings, a request was sent to the Department of Revenue to extend the investigation by two months that is up to 18th April 2009, which has been agreed to.

In compliance with the orders of the Hon'ble High Court, after examination of the submissions and rejoinders made by various parties in pursuance to the hearing, the authority decided vide order dated 17th April 2009 to issue another corrigendum.

Accordingly, the duty table and the notes to the duty table in the above said Notification dated 17.02.2009 at para no.146 shall read be as follows:

Duty Table

Sl No	Sub-Heading	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Specification In inches	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10	11
1	854011	Television	Malaysia	Malaysia	Chunghwa	Chunghwa	14"	21.77	per	USD

		Picture Tubes (Detailed description given below)			Picture Tubes (M) Sdn. Bhd	Picture Tubes (M) Sdn. Bhd	15"	30.56	piece	
							20"	33.28		
							21"	40.42		
							29"	81.68		
							Any Other size	87.19		
2	854011	-do-	Malaysia	Malaysia	Samsung SDI (Malaysia) Berhad	Samsung SDI (Malaysia) Berhad	14"	20.88	per piece	USD
							15"	31.06		
							20"	34.68		
							21"	38.68		
							Any Other size	87.19		
3	854011	-do-	Malaysia	Malaysia	Other than combination in Serial No. 1 & 2		14"	25.81	per piece	USD
							15"	36.44		
							20"	40.00		
							21"	42.92		
							29"	87.19		
							Any Other size	87.19		
4	854011	-do-	Malaysia	Any country other than Malaysia	Any	Any	14"	25.81	per piece	USD
							15"	36.44		
							20"	40.00		
							21"	42.92		
							29"	87.19		
							Any Other size	87.19		
5	854011	-do-	Any country other than subject countries	Malaysia	Any	Any	14"	25.81	per piece	USD
							15"	36.44		
							20"	40.00		
							21"	42.92		

							29"	87.19		
							Any Other size	87.19		
6	854011	-do-	Republic of Korea	Republic of Korea	LG. Philips Displays Korea Co. Ltd.(LPD)	LG. Philips Displays Korea Co. Ltd.(LPD)	14"	31.75	Per piece	USD
							15"	32.32		
							21"	40.66		
							29"	86.11		
							Any Other size	97.53		
7	854011	-do-	Republic of Korea	Republic of Korea	Other than combination in Serial No. 6		14"	31.75	per piece	USD
							15"	43.60		
							21"	50.95		
							29"	97.53		
							Any Other size	97.53		
8	854011	-do-	Republic of Korea	Any country other than Republic of Korea	Any	Any	14"	31.75	per piece	USD
							15"	43.60		
							21"	50.95		
							29"	97.53		
							Any Other size	97.53		
9	854011	-do-	Any country other than subject countries	Republic of Korea	Any	Any	14"	31.75	per piece	USD
							15"	43.60		
							21"	50.95		
							29"	97.53		
							Any Other size	97.53		
10	854011	-do-	China	China	Irico Display Devices Co. Ltd.	Irico Display Devices Co. Ltd.	14"	21.72	per piece	USD
							15"	34.31		
							21"	46.03		
							Any Other size	96.51		

11	854011	-do-	China	China	Shenzhen Samsung SDI Co. Ltd.	Samsung SDI (Hong Kong) Limited.	21"	43.55	per piece	USD		
							29"	96.51				
							Any Other size	96.51				
12	854011	-do-	China	China	Thomson Guangdong Display Company Limited (TGDC Guangdong Display Company Limited)	Thomson Guangdong Display Company Limited (TGDC Guangdong Display Company Limited)	21"	45.26	per piece	USD		
							29"	73.55				
							Any Other size	96.51				
13	854011	-do-	China	China	Beijing Matsushita Color CRT Co. Ltd.	Beijing Matsushita Color CRT Co. Ltd.	14"	21.46	per piece	USD		
							15"	29.32				
							Any Other size	96.51				
14	854011	-do-	China	Singapore	Beijing Matsushita Color CRT Co. Ltd.	Panasonic Industrial Asia Pte Ltd. Singapore	14"	21.36	per piece	USD		
							Any other size	96.51				
15	854011	-do-	China	China	Other than combination in Serial No. 10 to 14			14"	28.88	per piece	USD	
					15"		42.81					
					21"		47.89					
					29"		96.51					
					Any Other size		96.51					
16	854011	-do-	China	Any Country Other than China	Any	Any	14"	28.88	per piece	USD		
							15"	42.81				
							21"	47.89				
							29"	96.51				
							Any Other size	96.51				
17	854011	-do-	Any	China	Any	Any	14"	28.88	per	USD		

			country other than subject countries				15"	42.81	piece	USD
							21"	47.89		
							29"	96.51		
							Any Other size	96.51		
18	854011	-do-	Thailand	Thailand	Any	Any	14"	28.73	per piece	USD
							15"	34.28		
							20"	40.59		
							21"	44.58		
							29"	81.08		
							Any Other size	81.08		
19	854011	-do-	Thailand	Any country Other than Thailand	Any	Any	14"	28.73	per piece	USD
							15"	34.28		
							20"	40.59		
							21"	44.58		
							29"	81.08		
							Any Other size	81.08		
20	854011	-do-	Any country other than subject countries	Thailand	Any	Any	14"	28.73	per piece	USD
							15"	34.28		
							20"	40.59		
							21"	44.58		
							29"	81.08		
							Any Other size	81.08		

Notes

(a) Complete description of the product - Complete or incomplete thermionic, cold cathode or photo cathode valves and tubes such as vacuum or vapor or gas filled valves and tubes, mercury arc rectifying valves and tubes, also called cathode ray tubes, television camera tubes or cathode ray colour television picture tubes, or colour television picture tubes, or colour picture tubes etc. Video and computer monitor cathode ray tubes are beyond the scope of the present petition.

(b) If imports of bare tubes are reported, the benchmark would be reduced as follows – (i) US\$ 2.75 for 14", (ii) US \$ 3.33 for 15" (iii) US \$ 4.13 for 20" (iv) US \$ 3.84 for 21".

R. Gopalan
The Designated Authority

No. 14/8/2007-DGAD

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

ORDER New Delhi the 17th April, 2009

Decision, in compliance with the Order dated 20.03.2009 of the Hon'ble High Court of Delhi in the W.P.(C) 7649/2009 and CM 3804-3805/2009, based on the submissions made by the interested parties during the Public Hearing held on 2nd April 2009 in respect of the Anti Dumping Investigations concerning imports of Cathode Ray Colour Television Picture Tubes originating in or exported from Malaysia, Thailand, China PR and Korea RP.

In this case, the Final Findings were issued on 17th February, 2009 and subsequently a Corrigendum was issued on 27th February, 2009 converting the earlier recommended duties from Indian Rupees to US Dollar. This was challenged before the Hon'ble High Court of Delhi. The two questions pressed before the court were:

- i) Firstly, that after returning a final finding vide order dated 17.02.2009, the designated authority proceeded to review the said findings by passing the impugned order without the requisite jurisdiction to do so.
- ii) Secondly, that while doing so the petitioners were not granted an opportunity of being heard and hence the principles of natural justice had been violated.

2. The Hon'ble Court vide its Order dated 20th March, 2009 set aside the impugned order (Corrigendum dated 27.02.2009) and directed the Petitioner to appear before the Designated Authority (DA) on 2nd April, 2009 at 3.00 p.m. Accordingly, the hearing was held and the participants were asked to give their Written Submissions by 6th April, 2009 and the rejoinders thereof by 9th April, 2009. To enable the authority to deal with the situation of any material

changes arising out of the hearing, necessitating changes, if any and to remove any possible legal infirmities in this regard, a request was sent to the Department of Revenue to extend the period of conducting the investigation by two months that is up to 18th April 2009, which has been agreed to.

3. The submissions and rejoinders made by various parties in pursuance to the hearing by DA are summarized below:

a) By Importers namely Samsung India Electronics Pvt. Ltd, LG Electronics India Pvt. Ltd., MIRC Electronics Ltd and Panasonic ABC Network India Co.

(i) Notice calling for hearing on 2nd April, 2009 is vague as it merely states that the hearing is fixed as per directions of Hon'ble High Court. It has been stated that after the corrigendum notification had been set aside, the notice intimating the hearing should have clearly specified as to what hearing was for.

(ii) A single page representation by DI seeking imposition of antidumping duties in US\$ terms is time barred as it has been presented after the expiry of the period available to the DA for completion of the investigation. If any of the interested parties is aggrieved by the final findings it could appeal to CESTAT under the relevant rule.

(iii) The Law Lexicon by P Ramanatha Aiyer defines Corrigendum as 'a printing or typographic error detected after publication and corrected separately on an added page'. Whereas modify has been defined as, inter alia, 'a change, an alteration which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect on the subject matter intact. The new quashed corrigendum was not purported correct any clerical or typographical error and specifically sought to modify the entire nature and rate of duty imposed. Through their present representation the DI, and the hearing on 2nd April, before DA, a new element cannot be introduced in the final antidumping duties already imposed.

(iv) Provisional duties were imposed in Indian rupees and after the disclosure statement the DI reiterated their request for imposition of antidumping duties in US\$ whereas DA imposed the duties in Indian rupees. It is thus, apparent that DA has duly considered their repeated requests of DI and after full considerations as consciously concluded that rate in terms of antidumping duties in Indian rupees was sufficient to offset the injury be caused to DI.

(v) It was always open to the DI, to take appropriate remedial measures against levy of provisional duties in Indian rupees. They however, shows to remain silent being satisfied with the nature and rate of duty imposed.

(vi) If the currency is not changed in US Dollars the importers would have to suffer the additional burden of over 17% towards cost of paying the duties as the dollars rose from Rs.44 to Rs.52.

(vii) DA has no powers, authority or jurisdiction to review or revised or to sit in appeal or its own final findings.

(viii) The nature of antidumping investigations being a specialised set of rules or a complete code in themselves and there would be no need or occasions to link or borrow the procedures of another tax regime such as income tax excise or customs etc.

(ix) The Act does not confer any review powers to in DA except as provided in Rule 23 and therefore the Authority cannot suo moto assume jurisdiction for areas which have been consciously not conferred upon. They have quoted a few judgements to this effect.

(x) The provision of General Clauses Act would arise only when the parent legislation dealing with the issues is silent on it and even then the established legal principle cannot be ignored.

(xi) The domestic industry seeking imposition of antidumping duties in US Dollar terms is not maintainable and DA has no jurisdiction to entertain the same.

b) By Chungwa Picture Tubes, Malaysia

It has been contended that in the facts and circumstances of the case, no corrigendum can be issued to change the recommended duties in Indian Rupees to Dollars for following reasons:

(i) The Corrigendum if any would seek to review Final Findings issued under Rule 17. This would be in total disregard to settled jurisprudence on the subject.

(ii) Once a matter is finally disposed of by a quasi-judicial authority, the said authority in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for the same relief unless the former order is set aside by a court of competent jurisdiction in a manner prescribed by law.

(iii) The Corrigendum if issued would be in the nature of a substantive review and would have the effect of substantially changing or reviewing the effect of the Final Findings. The Designated Authority has no power to review his own Final Findings.

(iv) There exists no power or provision in the Act or the Rules that authorizes the Designated Authority to issue corrigendum to review his own order once the same has been issued and is published in a Gazette.

(v) The corrigendum if any issued to review duty from INR to US Dollars to give effect to representations made by Domestic Industry post issue of Final Findings would be contrary to law as that would tantamount to reviewing a decision by accepting the representations and not an exercise to correct errors or mistakes.

(vi) The preliminary findings were notified in Indian Rupees terms and were never changed or challenged by the Domestic Industry. Clearly the same were not notified by mistake but by way of concisions decision. Even Final Findings were notified in Indian Rupee terms. This further confirms that it was not an error or typographical mistake which alone can be a subject matter of corrigendum.

(vii) Grant of opportunity in terms of directions of the Hon'ble Delhi High Court cannot be said to be effective as Designated Authority failed to provide copy of comments to disclosures statement made by Domestic Industry which formed part of letter dated 20.02.2009.

(viii) The term 'Corrigendum' is a Latin word meaning 'Correction' , which has been defined by Black's Law Dictionary as 'An error in a printed work discovered after the work has gone to press'. That through a Corrigendum only an error of typographical or clerical nature can be corrected and not a substantive part of a decision. The subject matter of the proposed change in duties is not in the nature of an error and hence cannot be corrected through a Corrigendum.

(ix) Assuming but not admitting that Designated Authority had such power of review, he was obligated to follow the same procedure that was followed while issuing the Final Findings. Hence the proposal to issue corrigendum is contrary to the scheme of the Rules and principles of natural justice.

(x) Domestic Industry if aggrieved with the rejection of their request to impose duties in Dollars could have only filed an appeal under Section 9C of the Customs Tariff Act, 1975 or alternatively could have resorted to procedure of Review under Rule 23 of Customs Tariff (Identification, Assessment and

Collection of Anti-Dumping duty on Dumped Articles and for Determination of Injury) Rules, 1995. They could not have reopened investigations by way of representation dated 20.2.2009.

Concluding the arguments, it has been submitted that present proposal and prayer of the Domestic Industry to review the duties by way of issue of amendments to original final findings is required to be rejected.

c) By Samsung SDI, Malaysia and Samsung SDI, China

(i) Letter dated 20th February, 2009 submitted by DI does not contain any plausible justification and reasons for the DA to modify its findings from rupee terms to US Dollars. Further while modifying its recommendations the DA has not given any justification for such a change in its decision. To this effect, they have quoted the CESTAT case of Puneet Resin Limited vs. DA.

(ii) In the notification dated 27th February, 2009 has specifically mentioned “partial modification” and therefore, the basic question arises whether the said notification is a corrigendum or amendment notification. In the instant case the corrigendum notification is changed the whole structure of antidumping duties therefore the same cannot be treated as a typographical error. Further on account of the changed in the exchange rate there is an upward revision of 15% in antidumping duties while importer due to new notification which cannot be termed as a corrigendum.

(iii) The issue of corrigendum notification after the expiry of the period of investigation is ultravires and uncalled for as any interested party aggrieved by an order of the authority can seek a review of such order by way of filing an appeal before the appellate tribunal.

(iv) Designated Authority cannot modify its own final findings once the same has been notified in the official gazette.

(v) The changed in exchange rate has been considered as one of the grounds of mid terms review under Rule 23 and therefore, the aggrieved party could have approached for a midterm review at the appropriate time.

d) By M/s BMCC, China their trader PIA Singapore, IRICO Group Electronics Co. Ltd and IRICO Display Devices Co. Ltd China.

i) There is no precedent for a substantive change to final findings in any jurisdiction through a corrigendum.

ii) Currency fluctuation is an accepted ground for mid- term review and disagreement may be best expressed through an appeal.

iii) The requested currency change would distort and inflate the effective duty beyond the dumping margin.

iv) The real issue was that distortion/inflation of ADD/RP above provisional DM/Injury margins was criticized by BMCC/PIA

v) Samtel had sought rupee denominated ADD/RP in both petition and the hearing submissions etc and such would be the party attracting estoppel.

e) By Domestic Industry.

(i) The corrigendum issued on 22nd February, 2009 by the Authority was not based on any new material or evidence, the same being strictly and solely based upon material already available on the records of the Authority. The Domestic Industry had made requests only on the issue of modifying the duties to US\$ and making few other corrections to the final findings, apart from this, the Domestic Industry did not make any further submissions and no other material was made available to the Designated Authority.

(ii) While doing this conversion from Indian rupees to US Dollars, the Authority has simply applied the exchange rate prevalent during the period of investigation. The authority should have applied the exchange rate to the amount of duty calculated in Indian rupees and converted the same into US Dollars at the time of issuing the final findings itself.

(iii) The Duty amount pursuant to this conversion has not undergone any change. The dumping margin or the injury margin determined by the Authority was not amended. Even the petitioners before the High Court and those present before the Designated Authority in the subject hearing did not content that the Authority has substantively modified the duty rate. The only submissions made by them were that by virtue of significant depreciation of the rupees against US Dollars after the POI, if the duties are imposed in Indian rupees. It would amount to lesser duty in terms of US Dollars and therefore, they should be given benefit of paying duties at a lower than what was determined as a dumping margin or the injury margin.

(iv) Export sales are denominated in US Dollars, selling prices are paid in US Dollars and dumping margins are determined in US Dollars and in such a situation denominating the duty in US Dollars is the most appropriate method as it would be devoid of any exchanged in fluctuations that takes place subsequently.

(v) Denomination of duty in US Dollars is fully in accordance with the requirements of Section 9A (i) which talks about levy of duty not exceeding dumping margin.

(vi) They have referred to decision of Hon'ble CESTAT in the case of pig iron manufacturers Association vs. DA as also in the case of automotive tyre manufacturers Association vs. DA wherein it has been held that denomination of antidumping duty in US Dollars is necessary to carry into effect the purpose of antidumping duty and is therefore, fully in conformity with the Law. And the Authority while issuing the corrigendum has brought the antidumping duty in line with the purpose of the duty and is in conformity with the Law. Such corrections can be made by the Authority within the inherent powers conferred on it.

(vii) They have also referred to the case of Assistant Commissioner Income Tax, Rajkot Vs. Saurashtra Stock Exchange Ltd. (Manu/SC/4034/2008 (Exhibit 3)) wherein a decision was given by

the tribunal without referring to the ratio of the judgement in another case of Hiralal Bhagwati Vs. Commissioner of Income Tax which was decided a few months prior to the impugned decision but it was not brought to the attention of the Tribunal. It was held by the Honourable Supreme Court that such a mistake can be said to be a 'mistake apparent from the record' which could be rectified and the Tribunal did not commit any error of law or of jurisdiction in rectifying mistake apparent from the record.

(viii) They have highlighted the issues raised by various interested parties namely, LG Electronics India pvt. Ltd., LG Philips Display Korea Company Limited, BMCC, China, Panasonic AVC Network Pvt. Ltd. and LG Philips Shuguang Electric Company Limited, post public hearing held on 15th July, 2008 where they argued that there were errors in the reference prices calculated in view of being recommended in Indian Rupees instead of foreign exchange though calculations were clearly in foreign exchange. Now, merely because of post-final finding developments in exchange rate, they want to have the duty denominated in INR as it would help them pay antidumping duty less than what was determined based on their own figures. Such opportunistic stand shall not be permitted by the authority.

(ix) They have contended that there is no merit whatsoever in the issues raised by certain interested parties that Authority does not have powers to issue corrigendum after the expiry of the extension granted by the Central Government for completion of investigation. It has been pleaded that the law provides that Central Government can extend time up to a maximum of 18 months for completion of the investigation and in this case, admittedly, 18 months deadline has not expired. The Authority can seek an ex-post facto approval for extension of time. In any case, authority can seek extension of time even now and get the corrigendum regularized. There is nothing in the law that prohibits (a) seeking an extension after the period has expired or (b) granting an extension based on such a belated application. In this regard, please refer to the decision of the honourable Supreme Court of India in the case of Commissioner of Income Tax, Jullundur Vs. Ajanta Electricals Punjab [(1995) 4SCC 182] (Exhibit 4) wherein it was held that (a) application for extension of time could be made even after expiry of the period allowed originally or the extended period; and the authorities would consider the same for grant of extension as per the provisions of the statute.

(x) On the issue of statement made by certain interested parties that the Authority becomes "Functus officio" of initial final findings has been claimed to be untenable on the premise that the Authority has only corrected arithmetic errors in denominating the duty in US Dollars instead of Indian rupees and the power to issue corrigendum to correct errors and omissions falls within the purview of "incidental or consequential" Act. It has further been argued that neither the provisions contained in Customs Tariff Act 1975 (Sections 9A, 9AA, 9B and 9C) nor the Antidumping Rules provide for modification, amendment or correction final findings issued by the Authority. In the absence of specific provisions in the relevant statute, one should look at the provisions of the General Clauses Act, 1897. In this context they have also referred to decision of the Hon'ble High Court, Bombay in the case of Khemka & Company (Agencies) Pvt. Ltd. vs. Polish.

(xi) It has further been submitted that the final findings are only recommendatory in nature and Central Government has to act upon the said recommendations within the time limit prescribed by Rule 18. So long as the central government has not acted upon the recommendations of the authority, the final findings issued by the authority do not acquire finality. Designated Authority may issue corrigendum before the Central Government acts upon the final findings. If such a power is not vested with the authority, it would cast a huge

administrative burden on the authority and it would also lead to a number of writs before the High Court's seeking various types of corrections to the final findings, in every case. The principle that modifications may be made before the Central Government has acted upon the recommendations of an authority is well settled. In this context they have also referred to the decision of High Court of Calcutta in case of Dular Chandra Ghosh Limited vs. District Magistrate, Birbhum and others.

(xii) Concluding their submissions they have stated that since the High Court has already set aside the corrigendum, the Authority needs to issue a speaking order after considering the views of opposite interested parties, once again denominating the antidumping in US Dollars.

4. On an examination of views expressed by interested parties pursuant to the hearing, it is noted that as regards the issue of providing copy of comments to disclosure statement made by domestic industry, it is clarified that non confidential versions of submissions made by any interested party on the disclosure statement were kept in the Public File. Further, it is noted that the main issue under contest is whether the Authority has the powers to issue Corrigendum after the Final Findings have been issued or whether it becomes *Functus officio*. Another issue raised is that the DA had changed the currency of duty from Rs to US\$ based on the (post final findings) representations made by the domestic industry vide its letter dated 20th February 2009 and since new facts were relied upon, adequate opportunity was not given to other interested parties. The same are examined as following.

a) Whether the Designated Authority becomes *functus officio* after giving the final recommendations/ findings or is authorised to issue corrigendum to the final recommendations/ findings.

It is noted that the whole process of imposition of anti dumping duty is laid down under the Customs Tariff Act, 1975. The Designated Authority has been conceived, to assist in the process of investigation, under the Rules made to Section 9A of the Act and not in the Act itself. The legal position in this regard is -

- i) Section 9(A) of the Custom Tariff Act 1975 provides for the anti-dumping duty on dumped articles. It inter-alia prescribes "----the Central Govt. may, by notification in the Official Gazette, impose an anti dumping duty not exceeding the margin of dumping in relation to such article".
- ii) Sub-section 6 to 9(A) inter-alia prescribes "----- by the Central Govt. after such enquiry as it may consider necessary and 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----- duty". Thus, the inherent power to impose anti-dumping duty lies solely with the Central Government and the Central Government has powers to make rules for the purpose of anti dumping investigation leading to imposition of duty.
- iii) The rules namely Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duties on Dumped Articles and for Determination of Injury) Rules, 1995 were notified on 1stJanuary, 1995. Rule 3 prescribes for appointment of Designated Authority & Rule 4 prescribes the Duties of the Authority. Rule 4(d) prescribes that it is the duty of the Authority to recommend the amount of Anti-Dumping Duty. Under Rule 17 (b), the Authority recommends amount of duty. Under Rule 18 (1) the Central Government may within three months of the date of publication of Final Findings,

impose the duty, by Notification in the Official Gazette. It may be seen that the inherent powers to notify duties are with the Central Government. The use of word 'may' give an option to the Central Government to agree to the recommendations of the Authority or not. The recommendations of the Authority attain finality only after these are notified by the Central Government. Accordingly, Section 9 (C) of the Act prescribes for an Appeal against such Notification (by the Central Govt.) with the Appellate Tribunal.

iv) Thus, it is after acceptance and Notification of the recommendations of the Authority under the Customs tariff Act, 1975 that it becomes the order of the Central Govt and attains finality and then only the issue of Functus Officio arises. Till such Notification, the recommendation of the DA does not attain finality under the Customs Tariff Act as the recommendations may be accepted or otherwise may not be accepted by the Central govt. Under Section 9C of the act, the issue of appeal (against such notification and not recommendations of the authority) arises before the Appellate authority only after the recommendations are ultimately accepted by the Central Govt. as such or with modifications/ corrections as may be deemed fit and then notified. Thus, under the act, the issue of becoming Functus officio arises after issuance of such Customs Notifications under the customs tariff Act, 1975.

b) Whether the authority can issue corrigendum to its final recommendations before the same are accepted or notified by the Central Govt.

i) It may be seen that the Authority is working as per the anti dumping rules framed vide the Customs Tariff Act. At times, Ministry of Finance, on receipt of the recommendations from the DA seeks clarifications, points out errors seeking their corrections such as improvement in the duty table for clarity of enforcement by the field formations etc. and satisfies its correctness before the notification. In practice, such clarifications/ corrections are being sought in routine or are even suggested by the DA suo moto in case any error is detected for appropriate consideration by the Central Govt. till the recommendations are finally notified by the Central Govt. in the form of an order. It may be noted that even quantum of duty payable has been modified after issuance of notifications on being realised that the same was not correct.

ii) However, the authority neither considers new facts nor undertakes any fresh analysis for revisiting the merits of the case after making its final recommendations to the Central Govt except rectifying error, if any that might have been realized in the recommendations. In situations, where corrigendum is required, the same is issued.

- iii) In the present case, in respect of the issue of recommending duty in Dollar terms by way of a corrigendum, it may be noted that the Domestic Industry had raised the issue of recommending the duty in Dollar Terms after the Preliminary Findings was notified in Rupees. It was argued that the currency of duty should be such so as to address erosion due to exchange fluctuations. There was no rebuttal made by any interested party to this request of the domestic industry. On the contrary, LG Electronics India Pvt. Ltd., LG Philips Display Korea Company Limited, BMCC-China, Panasonic AVC Network Pvt. Ltd. and LG Philips Shuguang Elect. Co. Ltd. argued in the public hearing held on 15th July 2008 that there were errors in the reference prices calculated in view of being recommended in Indian Rupees instead of foreign exchange though calculations were clearly in foreign exchange.
- iv) It is pertinent to mention here that dumping margins were calculated in the respective currency of the exporting countries as the domestic sales of the responding exporters and the export prices were in the currency of the concerned exporting countries. Finally, the dumping margins were calculated by adopting US \$ as a common currency for Indian Rs vis a vis currencies of respective exporting countries. Similar approach was adopted for calculation of injury margin by considering US \$ as a common currency. Hence, US \$ was taken as a common currency for analysis by adopting the respective exchange rates during the period of investigation. Accordingly, recommending the anti dumping duty in Rs. in final findings was treated as an omission and was felt reasonable to correct it. Thus, the Corrigendum dated 27th February 2009 was issued. Further, as the recommendations were still subject to the acceptance of the Government and notification of final duties, the Authority corrected the Duty Table by changing the currency of Duty only without taking into account any additional fact or evidence except what had already been submitted and taken on record and also referred to in the Disclosure statement. As the duty was recommended and notified in Rs. term, the domestic industry agitated for final imposition in US\$ terms, the same was not opposed to by other interested parties including the petitioners. Hence, the authority had no reason not to correct the omission which was lost sight of.
- v) By way of this Corrigendum dated 27.02.2009, no change was made to the structure, essential facts and the analysis, duty Amount, Dumping/Injury Margin etc. No new facts were taken into consideration after the final recommendations which could have required opportunity to all interested parties. All data and figures were analysed for US \$ term comparison and hence accordingly, corrigendum was issued to reflect duties in the same denomination.

c) Whether the authority required any extension to the investigation period for issuance of Corrigendum.

i) It may be seen that the corrections which does not include any material change can be undertaken. The issue is whether the Designated Authority should leave such corrections to be made by the Appellate Authority (and not carry out at this stage itself) only for the reason that the Authority has already issued the final findings. Further, when an error/ omission apparent on the face of the final findings has been noticed before implementation of such final findings, whether the Authority should leave it to the Appellate Authority only for the reasons that such final findings have been issued and are under consideration of the Central Govt.

ii) To the extent whether the issue (conversion of Rs to US\$) involved any new facts which was to be shared with the interested parties became irrelevant as it involved no new facts and does not take any fresh evidence on record after the final recommendations were sent to the Ministry of Finance. As the duty in Preliminary findings was recommended and notified so in Rs term, the domestic industry agitated for imposition in US\$ terms, the same was not opposed to by other interested parties rather supported by some of them, the authority had no reason not to correct the omission which was lost sight of. Thus, this recommendation by way of Corrigendum does not require any extension in the investigation period.

iii) As the Hon'ble High Court directed for a hearing to be granted, an extension was sought, without any prejudice. The extension was sought primarily keeping the scope (in compliance with the High Court's directions) that if Final Findings may be required to be amended on the basis of fresh submissions made by the interested parties, it needs to have the requisite investigation period. Further, the extension was sought to remove any possible legal infirmities in the corrigendum with regard to its issuance within the time period allowed by the Central Govt. and to take into account any other possible issues on which a corrigendum might be necessary. Nonetheless, the extension was taken primarily with a view that in case any substantial changes are required to be done in the final recommendations, it will need to be shared with interested parties.

iv) In compliance to the Order of the Court, hearing has already been completed, hence compliance has been ensured of the directions. It may be seen from the submissions that the final findings dated 17.02.2009 need no amendment as no interested party raised any issue whatsoever in this regard in the hearing.

d) Whether any other issues rose during the hearing.

i) In line with the directions of the Hon'ble High Court, an opportunity to hear the Petitioners was given on 2nd April, 2009 at 3.00 p.m. It may be seen that no interested party rose any issue whatsoever about the methodology adopted in the Final Findings itself. As per the investigation procedure, adequate opportunities were already provided to the interested parties, disclosure issued, their issues taken care of so no fresh opportunity was required to be given. However, in compliance with the Hon'ble High Court's order another opportunity by way of Public Hearing was given, in which no issues whatsoever about the Final Findings were raised.

ii) It may be seen that no interested party during the hearing argued before the Authority nor given in their written submissions that the Final Findings need be altered. No issue about the analysis, facts, methodology followed or merits were raised. Thus, in a way the recommendations in the Final Findings of the Authority attain finality in compliance of the High Court's Order.

5. In absence of any new recommendations based on any new facts, the original final finding/ recommendation stands. However, in view of the fact that the corrigendum dated 27.02.2009 has been set aside by the Court, another corrigendum after hearing the interested parties (in compliance with the High Court's directions) is being issued separately.

6. A copy of this order is being sent to all interested parties and has been placed in the Public File.

R.Gopalan

The Designated Authority