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F.No.15/06/2016-DGAD
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Trade Remedies)
4th Floor, Jeewan Tara Building, 5, Parliament Street, New Delhi

Dated 08th November, 2019

FINAL FINDINGS
(Anti-Dumping Investigation)

Subject: Anti-dumping investigation concerning imports of “Sodium Nitrite” originating in or exported from China PR – remanded by Hon’ble CESTAT through Order dated 17.06.2019.

15/06/2016-DGAD: Having regard to Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the AD rules), and the Hon’ble CESTAT’s order dated 17.06.2019.

A. Background of the Case

1. Whereas having regard to the above Act and the Rules, the Designated Authority (hereinafter referred to as the Authority) initiated an antidumping investigation against import of Sodium Nitrite originating in or exported from China PR vide Notification No.39/1/99-DGAD on 4th November, 1999 and preliminary findings were issued by the Authority on 6th April, 2000. Provisional duties were imposed on 23rd May, 2000 vide notification no. 76/2000-Customs. The Authority notified final findings on 3rd November, 2000 recommending imposition of definitive duties on imports of Sodium Nitrite originating in and exported from China. The definitive anti-dumping duties on the subject goods imported from the subject country were imposed by the Department of Revenue vide Customs Notification No. 147/2000 dated 19th December, 2000
2. The imposition of duty has been reviewed from time to time and the second sunset review final finding was notified by the Authority vide Notification No. 15/4/2010 - DGAD dated 30th June, 2011 recommending continued imposition of the anti-dumping duty on the imports of the subject goods, originating in or exported from the subject country. As per the recommendations of the Authority, the anti-dumping duty was imposed by the Central Government vide Notification No. 76/2011-Customs dated 17th August, 2011.
3. After the mid-term review conducted at the behest of the petitioner requesting for change in the form of antidumping duty from the existing benchmark form to fixed form and enhancement in the quantum of anti-dumping duties, the Authority notified final findings recommending change in the form of anti-dumping duty vide Notification No. 15/2/2013-DGAD dated 15th October 2014. The anti-dumping duty was in force up to 16th August

2016 in accordance with Notification No. 76/2011-Customs dated 17th August, 2011 and the quantum of duty was modified in accordance with Notification No. 15/2/2013-DGAD dated 15th October 2014.

4. And whereas, M/s. Deepak Nitrite Limited (hereinafter also referred to as “Petitioner” or “Applicant”) filed an application in the present case before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and the Rules for initiating sunset review of the anti-dumping duty on imports of Sodium Nitrite (hereinafter also referred to as the subject goods), originating in or exported from China PR (hereinafter also referred to as the subject country) and requested for extension of anti-dumping duties on the imports of the subject goods, originating in or exported from the subject country.
5. And whereas the Designated Authority issued Final Findings on 19th July, 2017 recommending imposition of anti-dumping duty on imports of “Sodium Nitrite” originating in or exported from China PR and definite Anti-dumping duties were imposed by the Ministry of Finance vide Notification No 40/2017-Customs (ADD) dated 25th August 2017.
6. And whereas domestic industry filed appeal before the Hon’ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi challenging the Final Findings dated 19th July, 2017 and the Customs Notification No 40/2017-Customs (ADD) dated 25th August 2017. The grievance of the domestic industry is that Non-Injurious Price (NIP) determined by the Authority is low and inconsistent with the principles laid down in Annexure III of AD Rules.
7. And whereas the Hon’ble CESTAT after extensively hearing the interested parties issued an order dated 17th June, 2019 wherein the Tribunal allowed the appeal by remitting the matter back to Designated Authority to re-determine the NIP, keeping in mind the observations made in this Order.

The CESTAT in para 29 of its order has stated as under:

*The grievance of the Appellant is that though clause 4(vi) of the principles for determination of NIP provides that the common expenses should be apportioned on a reasonable and scientific basis, one of which one is the ‘production quantity’, the designated authority has determined the common expenses on the basis of ‘sales value’. The contention is that not only is the apportionment of common expenses on “production quantity” basis a reasonable and scientific, **but it has also been applied consistently by the domestic producers** but the disclosure statement does not give any reason as to why NIP was not determined on ‘production quantity’ basis. It has also been urged that even though the Appellant had in the comments submitted to the disclosure statement, elaborately pointed out why the common expenses should be worked out on the basis of “production quantity” and not “sales value”, yet no reasons have been given in the final findings arrived at by the designated authority for determining the common expenses on ‘sales value’.*

The CESTAT in para 41 of its order has stated as under:

Thus, it is clear from the aforesaid decisions of the Supreme Court that the principles of natural justice not only require the designated authority to grant an opportunity to the party to show cause but the order passed by the designated authority should also

give reasons for arriving at conclusions and any violation of these two facets can vitiate the order. In the present case, neither was any information supplied to the Appellant in the disclosure statement nor do the final findings give any reason.

Hon'ble CESTAT vide final order No. AD/A/50774/2019-CU (DB) dated 17.06.2019 (Anti-Dumping Appeal No. 50401 of 2018) inter-alia decided as under:

“ The final findings of the designated authority notified in the Government Gazette dated 19 July 2017 in regard to the determination of NIP, therefore, cannot be sustained and are set aside. Thus, the extent of imposition of duty in the notification dated 25 August 2017 issued by the Ministry of Finance is not correct. The matter is, therefore, remitted to the designated authority to re-determine the NIP, keeping in mind the observations made in this Order. However, the imposition of duty contained in the notification dated 25 August 2017 shall continue till a fresh notification is issued in this regard by the Ministry of Finance. The Appeal is, accordingly, allowed to the extent indicated above”.

B. Procedure

8. The procedure described below has been followed
 - (i) Pursuant to the order of the Hon'ble CESTAT, the Authority provided an opportunity to the interested parties to present their views orally in a Oral Hearing held on 22nd August, 2019. The interested parties who presented their views orally at the time of Oral Hearing were requested to file written submissions of the views expressed by them orally. The Domestic Industry filed detailed submissions regarding their NIP claims.
 - (ii) In accordance with Rule 16 of the Rules Supra, the essential facts were disclosed by the Authority on 15th October, 2019 to the concerned interested parties. Comments were requested by 25th October, 2019. Only domestic industry filed comments to the disclosure statement issued. Comments received on the disclosure statement to the extent considered relevant by the Authority have been considered in this final finding.
 - (iii) ‘***’ in this document represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
 - (iv) In accordance with Rule 16 of the Rules Supra, the essential facts were disclosed by the Authority on 15th October, 2019 to the concerned interested parties. Comments were requested by 25th October, 2019. Comments received on the disclosure statement to the extent considered relevant by the Authority have been considered in this final finding.
 - (v) All other parameters related to the Product Under Consideration, scope of Domestic Industry, Period of Investigation, dumping and injury assessment remain the same. The findings are limited to determination of NIP only as the remand by Hon'ble CESTAT is on issue of redetermination of NIP only.

C. Submissions made by domestic industry

9. The following is the response from domestic industry.
 - (i) The limited issue in the present case concerns appropriateness of the apportionment of expenses done by the petitioner and rejection of the same and adoption of another basis by the Authority.
 - (ii) That the Rules provide that the Authority may reject the apportionment adopted by the petitioner only under following circumstances – when the petitioner has not applied the same consistently, when the same is not scientific, when the same is not reasonable.

- (iii) Further, reasonableness and justification can be examined and scrutinised by comparing with the corresponding amounts in the immediate preceding year.
- (iv) Apportionment in the ratio of prime cost for expenses regarding Repair and maintenance, Insurance, Rate and taxes and effluent treatment plant may be reconsidered-
- (v) Repair and maintenance expenses largely pertain to machine running, hence the factors such as life of machine, maintenance contract etc. are relevant.
- (vi) While sodium nitrite and sodium nitrate plant are very old and were set up in 1972, MAHCL solid plant is very new and was set up in 2014- 15. Further, the number of machines installed in SNI & SNA plant is much higher as compared number of machines installed in MAHCL plant.
- (vii) Repair and maintenance expenses are directly proportional to the space consumed by the machinery and the space consumed by SNI/SNA plant is far higher as compared to MAHCL plant.
- (viii) It would not be appropriate to link repairs and maintenance, insurance, rates and taxes, and effluent treatment plant expense to prime cost.

D. Examination by the Authority

10. Multiple investigations in respect of Sodium Nitrite against different countries have been conducted by DGTR in the past. Recently, investigation was conducted regarding **imports of "Sodium Nitrite" originating in or exported from Russia**, where initiation was done on 19/12/2017 and Final Finding terminating the investigation was issued on 30/07/2018.
11. There is another series of investigations against imports of **Sodium Nitrite originating in or exported from European Union**, where original initiation was done on 02/11/2001 and Preliminary findings was issued on 01/02/2002.the Final Finding was issued on 28/10/2002. The Final Finding of Second SSR was issued on 12/05/2014. A Mid-term review (MTR) was initiated on 19/12/2017 in this case, and Final Finding was issued on 30/07/2018 recommending continuation of anti-dumping duty imposed earlier vide Customs Notification dated 08.08.2014. It may be recalled that NIP related issues w.r.t. basis of allocation were raised during the aforesaid MTR also. Para 108 (i) of the MTR final finding dated 30.07.2018 reads as under:

*The Authority notes that the methodology adopted for NIP determination in this investigation is the same as the one adopted consistently in previous investigations. It is noted that in the manufacture of PUC, significant proportion of costs consists of cost of raw material costs and utilities, which have been allowed on actuals as claimed by the DI. It may be added that the DI has number of products under anti-dumping investigation for last several years. **It was noticed during the anti-dumping investigation on imports of Sodium Nitrite, originating in or exported from European Union vide notification No. 15/1009/2012-DGAD dated 12.05.2014 that the company had adopted different methods of allocation for two different joint products namely Sodium Nitrate and Sodium Nitrite.** Since, the domestic industry had not adopted the consistent method as required under Annexure-III of AD Rules, a uniform methodology has been applied for allocation of others costs since then in respect of both products namely Sodium Nitrate and Sodium Nitrite. There has been no change in methodology thereafter.*

The Company did not file any appeal against this order.

12. **The petitioner company has another product namely “Sodium Nitrate”,** which is also under anti-dumping duties against imports from European Union, China PR, Ukraine and Korea RP. The first initiation was done on 05/06/2013 and PF was issued on 06/01/2014. Final Findings were issued on 12/11/2014. **The same methodologies were followed in this case also.**
13. **The present case relates to the 3rd SSR final finding w.r.t product “Sodium Nitrite” originating in or exported from China PR, which was issued on 19/07/2017.** This case was initiated on 04/11/1999 and Preliminary findings was issued on 06/04/2000. The Final Finding was issued on 03/11/2000. Further, the Final Finding in case of second SSR was issued on 30/06/2011. Subsequently, MTR was initiated on 18/10/2013 and Final Finding was issued on 15/10/2014. **The third SSR was initiated on 27/07/2016 and the Final Finding was issued on 19/07/2017. The same methodologies have been consistently followed in this case also as were followed earlier.**
14. The Para 8 of CESTAT Order indicates that the Nitrite Plant is producing the following Chemicals:

S.No	Product	Sales Price Per MT during POI (In Rs.)
(i)	Sodium Nitrite	***
(ii)	Sodium Nitrate	***
(iii)	Nitro Sulphuric Acid	***
(iv)	Potassium Nitrate	***
(v)	MAHCL	***

It is clear from above that there are significant variations in the per unit sales prices of different chemicals and company is basically pleading that all chemicals irrespective of costs or prices should be apportioned the same amount of overheads;

15. Clause 4(vi) of Annexure-III reads ad under:

*“The expenses to the extent identified to the product are to be directly allocated and common expenses or overheads classified under factory, administrative and selling overheads may be apportioned on reasonable and scientific basis such as machine hours, vessel occupancy hours, direct labour hours, **production quantity, sales value**, as applied consistently by domestic producers and the reasonableness and justification of various expenses claimed for the period of investigation may be examined and scrutinised by comparing with the corresponding amounts in the immediate preceding year.”*

16. It is clear from above that the objective is to ensure reasonability of costs and there is no bar on use of “sales value” method based on merit, which has been stated to be consistently followed by DGTR in this case;
17. The products (sodium nitrite, sodium nitrate, nitro sulphuric acid, potassium nitrate and MACHL) manufactured by the Appellant are of different nature and have different price and are manufactured at different plants in the same campus. The manufacturing processes are also different for different products. Therefore, considering the particular method such as ‘production ratio’ is not appropriate.

18. Another drawback of the physical units' method is that it uses the quantity of physical units of main products only to spread the joint costs regardless of their value. This typically would ignore by-products and other misc. income, which shall be allocated no costs.
19. Indirect Labour Cost, which constitutes almost *** % of Administration Overheads has been apportioned on the basis of number of employees both by the domestic industry and accepted by the DGTR. Corporate Overheads, which constitute almost *** % of Administration Overheads, seems to have been allocated on the basis of turnover by the company themselves amongst different divisions. Therefore, there is no reason as to why the same methodology should not be followed within the division for the various products.
20. While reviewing the NIP, the bases of apportionment of manufacturing overhead, administrative expenses, selling expenses have been found in order. However, at the time of determination of Prime cost, inadvertently, cost like Primary Packing, Direct labour cost and Water cost were not included in the prime cost, now same has been rectified.

E. Post Disclosure Comments

21. Domestic industry in response to the disclosure has made the following submissions –
 - (i) Submissions of the domestic industry have not been considered on change of basis of apportionment on accounts of (a) Repair and maintenance, (b) Insurance, (c) Rate and taxes and (d) Effluent treatment plant.
 - (ii) NIP has only been revised only on the account of inclusion of cost like primary packing, direct labor cost and water cost for determination of prime cost, thereby not considering the submissions of the Petitioner.
 - (iii) The Disclosure provides reasoning as consistency from past cases of Sodium Nitrite. However, statutory requirement is not consistency followed by the Authority, but consistency followed by the domestic industry. Rejection of apportionment method on the ground that it has been consistently applied by the Authority is not as per law.
 - (iv) It is factually incorrect that this is the consistent methodology applied by the Authority. The Authority had followed the methodology proposed by petitioner in the original investigations. Further, since it is the methodology followed by the Authority in the original investigations, the review investigation is only recalculation of NIP based on new period data. The Authority has not modified methodology for NIP determination in review investigations.
 - (v) Existence of one consumer, high cost of raw material leading to high price of the product, petitioner being the sole producer globally commanding high price, etc. cannot be ignored in deciding whether turnover or production is an appropriate basis. Further, petitioner submitted that expenses such as repair and maintenance, insurance, effluent treatment plant are directly linked to production, and not turnover.

- (vi) As regards there is no bar on use of “sales value”, the disclosure statement has not stated that production is an inappropriate method and turnover is an appropriate method. Manufacturing expenses like repair and maintenance, insurance, effluent treatment plant and rate and taxes which are directly related to the production of the product, and not value of production as an appropriate apportionment methods
- (vii) The Authority has consistently applied production as an apportionment method where different goods of different nature, having different price, manufactured at different plants in the same campus, different manufacturing processes
- (viii) The domestic industry has disputed allocation method used for allocating expenses like repair & maintenance, effluent treatment plant, insurance, and rates & taxes, which are manufacturing expenses. Corporate expenses are not manufacturing expenses. Linking manufacturing expenses with corporate expenses is a grossly inappropriate method.
- (ix) Detailed reasoning as to how (a) Repair and maintenance, (b) Insurance, (c) Rate and taxes and (d) Effluent treatment plant should be allocated on the basis of production have been provided, however the same has been rejected.

Examination by Authority

22. It is noted that post disclosure comments have been filed only by domestic industry in this case. It is also noted that the no new issues/comments have been filed by the domestic industry post disclosure. It is also noted that the Authority has already examined the issues raised by the domestic industry in the disclosure statement and the issues have also been addressed appropriately and does not require any further reconsideration. In view of this, the examination carried out by the Authority regarding NIP re determination and as mentioned in para 10-20 is confirmed.

CONCLUSIONS

23. Having regard to the contentions raised, information provided and submissions made by the interested parties, facts available before the Authority as recorded in this finding and the facts available before the authority in the final finding dated 19.07.2017, the revised NIP is Rs. *** /MT.

RECOMMENDATION

24. Accordingly, the Authority recommended that revised anti-dumping duties be continued to be imposed from the date of issue of notification by the Central Government on imports of Sodium Nitrite falling under chapter 28 of Custom Tariff Classification Act 1975, originating in or exported from China PR. The anti-dumping duty shall be the amount mention in Column No. 8 of the following table. This anti-dumping duty will remain effective for 5 years from the date of Customs Notification No. 40/2017-Custom (ADD) dated 25.08.2017.

Duty Table

S N	Sub-headin g or Tariff Item	Descript ion of Goods	Countr y of origin	Countr y of Export	Producer	Exp orte r	Duty Amou nt	Unit of Measuremen t	Currency
1	2	3	4	5	6	7	8	9	10
1	2834.1 010	Sodium Nitrite	China PR	China PR	Any	Any	79.58	MT	US\$
2	-Do-	-Do-	China PR	Any Countr y other than China PR	Any	Any	79.58	MT	US\$
3	-Do-	-Do-	Any Countr y other than China PR	China PR	Any	Any	79.58	MT	US\$

FURTHER PROCEDURES

25. An appeal against this notification, after its acceptance by the Central Government, shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

(Sunil Kumar)

Special Secretary & Designated Authority