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Government of India

Ministry of Commerce & Industry

Department of Commerce

Directorate General of Anti-Dumping & Allied Duties

4th Floor, Jeevan Tara Building, Parliament Street, New Delhi

Dated the 15th March, 2017

FINAL FINDINGS

(Anti-Dumping Investigation)

Subject: Anti-dumping investigation concerning imports of "Polytetraflouroethylene" (PTFE) originating in or exported from Russia remanded by Hon'ble CESTAT through Order dated 16.09.2016.

15/02/2015-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 no. 53592/2016 dated 16.09.2016

A. Background of the Case

Based on a Sunset Review petition filed by the by M/s Gujarat Fluorochemicals Ltd., the Authority had issued Final Finding dated 12th April, 2016 recommending imposition of AD Duty on imports of "Polytetraflouroethylene" (PTFE) originating in or exported from Russia. DOR through Notification No 23/2016-Customs (ADD) dated 6th June 2016 levied AD Duty for a period of 5 years from the date of Notification.

Based on the domestic industry's appeal, the Hon'ble CESTAT on the issue of NIP determination have remanded the case to the Designated Authority directing the

Authority to complete determination and give Final Finding to the Competent Authority of the Government to take the action as deemed fit within a period of six months from the date of the Order i.e. 16th September, 2016 in accordance with the directions in para 9 of the aforesaid order. The revised Final Finding have therefore to be completed by 15th March, 2017.

Domestic industry has represented that Non-Injurious Price (NIP) determined by the Authority is low and inconsistent with the principles laid down in Annexure III of AD Rules and also contrary to the consistent position taken by DA while valuing inputs captively used for manufacture of subject goods since as per consistent practice, the Authority adds 22% return on capital employed for assets utilized for producing such inputs if these are transferred at cost of production.

The Domestic Industry submitted before the Tribunal that the appellant had provided detailed statement showing cost of production of these various captive inputs to DA during investigation.

CESTAT has observed that the only point of determination is correctness of method adopted by DA while arriving at NIP considering a large number of captively produced and consumed inputs while manufacturing the subject goods by the appellant. The Tribunal, further observed that DA has been adding 22% return of capital employed in producing captively inputs for arriving at NIP.

CESTAT also observed that the Authority has not recorded any reasons for such sudden change in practice, nor any reason stated for adopting Central Excise provision of Valuation (Rule 8) for captively used inputs. There is no provision in AD Rules or in Customs Tariff Act which mandates the application of such rule and to calculate NIP in AD investigation. In such a matrix, CESTAT found that NIP determined in the present case was faulty, in so far as, it relate to the treatment of captively used goods with specific reference to profit/return on capital deployed.

CESTAT therefore set aside the Final Finding dated 12th April 2016 of the Authority on this account and directed the Authority that the matter may be re-examined afresh after giving due opportunity to the interested parties to arrive at a finding in consonance with the legal provision applicable. The reason for arriving at a particular NIP with specific reference to the treatment of captively used inputs are to be recorded.

Thereafter the injury margin and the AD duties liable to be imposed may be determined as per law in the present case.

B. <u>Procedure adopted</u>

(i) In accordance with Rule 6(6) of the Rules and CESTAT's order dated 16th September 2016, the Authority provided an opportunity to all interested parties to present their views orally in a public hearing held on 2nd December, 2016. All the parties who presented their views in the oral hearing were requested to file written submissions of these views for mutual exchange with opposing interested parties for filing rejoinders thereafter by others.

(ii) The petitioner filed response giving details of cost of production of R-22 at Ranjit Nagar and the net fixed assets deployed for its production vide letter dated 11th January 2017, *stating that the data submitted may have error in calculations and therefore, the same is being reviewed*. *It further stated that rules require the Authority to consider actual cost of production of captive input and not at NIP of captive inputs.*

(iii) The data submitted by the petitioner in DGAD was verified on 23rd February 2017, as made available.

(iv) *** in this final finding represents information furnished by an interested party/any other party on a confidential basis and so considered by the Authority under the Rules.

(v) In accordance with Rule 16 of the Rules Supra, the essential facts were disclosed by the Authority on 8th March, 2017 to the concerned interested parties. Comments were requested by 14th March, 2017. Comments received on the disclosure statement to the extent considered relevant by the Authority have been considered in this final finding.

(vi) 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 various Interested Parties

a. Submissions by Exporter M/s World Trade Consultants & Advocates representing OAO HaloPolymer OJSC, Russian Federation

i) The appeal before the Hon'ble Tribunal has been based on the premise that the Designated Authority has been consistently adopting cost of production of the captively produced raw materials and add 22% Return on Capital Employed to such raw material cost to work out the Non-injurious price for the finished product and the Non-injurious price determined in the Final Findings under appeal has not been worked out on the same basis. Based on such argument, the Hon'ble Tribunal set aside the Final Findings and asked to the Designated Authority to re consider the whole issue. The argument of the Domestic Industry that the Designated Authority has been consistently applying 22% return on capital employed in case of captively produced raw materials appears to be misleading and not based on facts. In the last Sunset Review Investigation concluded vide Final Findings No. 15/30/2008-DGAD, dated 26th February 2010, in respect of PTFE from Russia, it can be inferred from the para 23 that the Designated Authority did not adopt 22% ROCE in respect of captively produced and consumed raw material- R 22 to arrive at the Non-injurious price of PTFE. The Domestic Industry has wrongly submitted before the Hon'ble Tribunal that it has been a consistent practice of the Designated Authority to add 22% of ROCE to the cost of production of captively produced raw materials to arrive at the Non-Injurious Price of the finished products. The claims of the Domestic Industry in the current investigation about transfer price of R 22 are entirely different from its claims in the last SSR concluded in 2010. It is stated that the Domestic industry's claim of providing 22% ROCE on R22 in last SSR is therefore false.

ii) The Designated Authority shall distinguish between captive consumption of raw material produced at different location and moved to another location for captive consumption and raw material produced and consumed at the same location.

iii) The Captive Consumption has been defined in chapter 1 of the guidance note on Cost Accounting Standard on Cost of Production for Captive

Consumption (CAS-4). The Institute of Cost & Works Accountants of India has also classified captive consumption into two categories, namely –

a. Raw materials produced in the same factory premises and used for captive consumption, and
b. Raw materials produced by the same company but at different factory/location and moved to another factory for captive consumption for further production of different product.

iv) The Institute has prescribed different treatment for both the type of captive consumption. In case the raw material used is manufactured in the same factory premises the same must be valued at cost and in case the raw material is moved from one factory premises to another factory premises for captive consumption, the same must be valued by adopting principles laid down under CAS-4. In the instant case R 22 is captively produced at Ranjit Nagar plant of Gujrat Fluorochemicals Ltd., and then moved to Dahej plant for captive consumption to manufacture PTFE.

v) For goods manufactured, not sold but captively consumed the cost of production is to be determined as per CAS-4 vide Government of India, Ministry of Finance & Company Affairs (Department of Revenue's Circular dated 13th February, 2003. As per chapter-3 of Principles of determination of cost of production for captive consumption issued by the Institute of Cost & Works Accountants of India, for the self-manufactured items, Circular No. 692/08/2003-CX 13th February, 2003, F.No.6/29/2002-CX.I, Ministry of Finance and Company Affairs, Department of Revenue states that the cost of production of captively consumed goods will henceforth be done strictly in accordance with CAS-4.

vi) The cost of production for captively consumed goods is to be determined as per CAS-4, in light of Supreme Court's judgment dated 1.8.2006 in case No. Appeal (civil) 2947-2948 of 2001 Commissioner of Central Excise, Pune vs M/s Cadbury India Ltd.

vii) The Designated Authority has rightly worked out the transfer price of R 22 used captively for manufacture of PTFE by Gujrat Fluorochemicals Ltd., in accordance with guidelines issued by the Institute of Cost & Works Accountants of India.

b. <u>Submissions by Domestic Industry</u>

(i) Petitioner considers that there was no need for granting oral hearing in the present case. The CESTAT has not directed holding of oral hearing in the present case. When the CESTAT wished the Designated Authority to hear the interested parties, the same was specifically stated by the CESTAT. In the decision of the CESTAT in the matter of rubber chemicals, wherein the CESTAT had remanded the case back to the Designated Authority it had specifically directed the Designated Authority to hear the interested parties.

(ii) The limited issue in the present case concerns only one aspect of NIP determination. The Petitioner domestic industry had requested the Designated Authority to consider captive input at its cost of production and add 22% return on capital employed. CESTAT has held that the Designated Authority is required to add 22% return on capital employed.

(iii) The only limited issue to be considered in the present case is to modify the NIP earlier determined by adding 22% return on the capital employed. All other aspects of NIP determination have already been frozen by the Designated Authority and the domestic industry or other interested parties have not raised any concern about the same.

(iv) In a remand back proceedings, the Designated Authority is not required to undertake fresh determination. The Designated Authority is required to only address the issue raised by the party and decided by the CESTAT. The only issue raised by the domestic industry was that the NIP should be determined after adding 22% ROCE to the captive inputs. No other aspects of NIP are required to be revisited at this stage.

(v) The CESTAT has held that Excise Valuation is not relevant for the present purposes.

(vi) As regards contention of one interested party that the DI submitted, without any basis, before the Hon'ble Tribunal that it has been a consistent practice of DA to add 22% of ROCE to the cost of production of captively produced raw materials to arrive at the NIP of the finished products tantamount to challenging correctness or otherwise of the decision of the CESTAT. Firstly, the party preferred not to participate in the appeal before CESTAT despite being made a respondent. Secondly, scope of the present proceedings is not to review the correctness or

otherwise of the order of CESTAT. If an interested party does not agree with the CESTAT order, it is open for such party to prefer an appeal against the order before higher courts. The DA however is not required to consider the correctness or otherwise of the order of the CESTAT. The DA is required to determine the NIP and injury margin having regard to the order of the CESTAT, which clearly states that the DA shall consider R-22 at its cost of production and add 22% return thereon. Barring the very limited issue of (a) adding 22% return on capital employed in R-22 value, (b) determining NIP thereafter and (c) calculating revised injury margin, nothing else is required to be re-done in the present remand proceedings. The DA may therefore not entertain any argument with regard to appropriateness or otherwise of the CESTAT order.

(vii) The domestic industry submits that it is not open for the parties to challenge the correctness or otherwise of CESTAT order before Designated Authority. The interested parties have no locus standi as it was open for the parties to challenge the appeal filed by the domestic industry before CESTAT and defend their interest and/or DA's order. Now that the CESTAT has passed an order, the interested parties cannot sit on the judgment of CESTAT and contend anything with regard to correctness or otherwise of the CESTAT order.

(viii) As regards (CAS-4) and the Supreme Court's judgment mentioned by an interested party is concerned, the same has absolutely no relevance to the present investigation. For the present purposes, as held by the CESTAT, the Govt. has formulated a methodology and has introduced a law and the same is required to be applied. The law does not state that captive input shall invariably be considered at its cost of production. All decisions referred by the interested party relates to excise cases which have no relevance to the present issue. In fact, the CESTAT has already held that excise valuation and the methodology applied therein is entirely irrelevant for the present purposes.

a. On the issue that the DA shall distinguish between captive consumption of raw materials produced at different location and moved to another location for captive consumption and raw material produced and consumed at the same location there is no scope with the parties to argue against CESTAT order. CESTAT order cannot be construed to imply two different methodologies. On the contrary, the CESTAT has clearly held that the excise methodology shall not be considered for the present purposes.

(ix) In the light of the orders of the CESTAT and information earlier provided Petitioner requests the Designated Authority is not required to consider the correctness or otherwise of the order of the CESTAT should add 22% to the captive inputs and modify the NIP appropriately and modify injury margin appropriately considering revised/modified NIP and recommend upward revision/enhancement of the quantum of anti-dumping duty.

C. <u>Submissions by the Ministry of Economic Development of the Russian Federation</u>

(i) The requested revision of the Final Findings has to be in full compliance with the Agreement of implementation of Article VI of the General Agreement on Tariff and Trade 1994 WTO (the Anti-dumping agreement) and conclusions of the Directorate General, and be outside the framework of calculation of Non-Injurious Price in the course of the revision.

(ii) According to Article 10 of the Custom, Excise and Gold (control) Appellate Tribunal (Procedure) Rules, 1982 and that in the frame of the Customs Excise & Services Appellate Tribunal the calculation of the Dumping Margin, the Injury Margin done by the Directorate General should not be revised.

(iii) Calculation of non-injurious price itself is not essential and is not prescribed by the Anti-dumping agreement. Universal practice to apply Anti-dumping measures shows that in the most cases a rate of duty corresponds to an Injury Margin determined during the course of an investigation.

(iv) According to WTO's Rules calculation of non-Injurious price in the frame of Anti-dumping investigation is a realization of Lesser Duty Rule, implicating the imposition of an Anti-dumping duty at the rate sufficient to remove the Injury to the Domestic Industry. This methodology is a tool of securing of the state economic interests, understood in this case, as ensuring a balance between the injury to the Indian domestic industry and possible consequences to the consumers of the imported goods. Those calculations and analyse shall be conducted by the competent body, Authorized to conduct such Anti-dumping investigation.

(v) Under clause 9.1 of the Anti-dumping agreement, the decision whether or not to impose an Anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the Anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the Authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

(vi) The Directorate General of Anti-dumping and Allied Duties as the competent Authority is authorized to make a decision concerning the rate of the Anti-Dumping duty using calculation of the non-injurious price in order to ensure a balance between interests of the importers and the producers.

(vii) Besides, according to the document of the Customs Excise & Services Appellate Tribunal, the appellant considers that the Non-Injurious Price determined by the Directorate General is incorrect, with the unreasonably used methodology other than applicable during the previous investigations.

(viii) Notwithstanding the Indian Anti-dumping legislation contains as an appendix an approximate methodology of calculation of non-injurious price, it does not state an obligation of the competent body to use one or another methodology. Therefore, the Indian Anti-dumping does not suppose the Directorate General to prove a choice of a methodology to calculate non-injurious price for the purpose of implementation of the lesser duty Rule.

(ix) We express our concerns regarding intentions of the Indian side to re-count of the rate of Anti-dumping duty stipulated in the article 8 of the Customs Excise & Services Appellate Tribunal's statement and that the Russian exporters shall not bear responsibility for the incorrectness methodology (from the point of view of the Appellant), chosen by a competent body in the course of review of the Anti-dumping duty.

(x) The claim of the Appellant could lead to the breach of the Anti-dumping legislation by the Indian side.

(xi) If such modification of the non-injurious prices is done, it should, taking into account of the lesser duty rule, then the amount of price underselling and price undercutting, calculated for the Russian companies during the course of the revision, be complied with.

D. Facts of the Case and re-examination of NIP

(i) The petitioner M/s Gujarat Fluorochemicals Ltd. is having two plants –one in Ranjit Nagar and the other at Dahej. During POI, one of the key inputs R- 22 produced in Ranjit Nagar was used in its Dahej Plant for the production of TFE. TFE is the key raw material for the production of subject goods PTFE. Both the plants are multi-product and multi-process plants.

(ii) The petitioner in its original SSR petition did not provide cost of production including details of assets deployed for the production of R-22 at its Ranjit Nagar Plant. Also during on the spot verification, such data was not provided by the company. As petitioner did not claim price of R-22 at cost of production plus 22% return on capital employed, the value of R-22 was considered as per their books of accounts.

(iii) Rule 8 of Central Excise Valuation (Determination of price of excisable goods) Rule 2000 provides that where the excisable goods are not sold by the assesse but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods. CAS 4 is the guidance note issued by the Institute of Cost Accountants of India stating that this Standard lay down the principles and methods for determining the cost of production of excisable goods used for captive consumption, presentation and disclosure in the cost sheet. This Guidance Note further states that "cost of production of captively consumed gods will henceforth be done strictly in accordance with CAS-4". This Standard lays down the principles for determination of cost of production on which 10% element of profit will be added to arrive at assessable value for the purpose of invoice value of inputs removed for the purpose of consumption by another unit of the assesse.

(iv) Since the petitioner did not claim price of R-22 and did not provide necessary details neither at the stage of submission of petition nor at the time of on-the spot verification, it was understood that the company is following CAS-4 and Central Excise Valuation Rules for determination of transfer price of R-22. The Authority on its own could not have estimated cost of production and value of assets deployed for the production of captive

input R-22 and had to rely on books of accounts. Clause (3) of Annexure III also provide for determination of NIP by considering the information or data relating to cost of production for the period of investigation in respect of the producer constituting domestic industry and cost of production comprise real numbers as shown in the audited books of accounts not the notional or imaginary numbers. It does not state that the Authority on its own should construct the cost of production of constituent domestic industry without any cost data being provided by the Domestic Industry.

(v) This issue was raised by the representative of the petitioner vide letter dated 31.03.2016 for the first time requesting for additional return on wind power assets and assets deployed for producing R-22 at Ranjit Nagar. The Domestic Industry's representative categorically stated that while reviewing the costing of MDC another case of the same company going simultaneously in DGAD, the petitioner found that information in regard of capital deployed for production of captively input at other location was not provided inadvertently.

(vi) The petitioner was given due opportunity to provide duly substantiated and certified details/documents relating to cost of production of R-22 but they failed to provide the same. Therefore, in the absence of duly certified and substantiated cost information it was not possible for the Authority to consider their claim without verification. Moreover, ***% profit was already in-built (assuming the company had not violated the Excise Valuation Rules) in lieu of 22% return on capital deployed for the production of R-22 at its Ranjit Nagar plant. The practice in DGAD to accept the transfer price as per excise valuation rules has been followed earlier in number of cases including this case during earlier investigations, and such a practice has never been raised or challenged by the petitioner or other Domestic Industry in any case in the past. The Authority notes that in the following previous PTFE cases the appellant did not raise any objection:

- SSR investigation relating to import from Russia (F. No. 15/30/2008-DGAD)- The position taken by the Authority vide Para 23 (d) of Final Finding dated 26th February 2010 was "…..since the domestic industry is captively producing R-22, the Authority is required to

consider market price of R-22. The cost of production of R-22 is therefore, in any case not relevant for determination of NIP of PTFE"

- SSR case for imports from China. (F. No. 15/8/2010-DGAD). The position taken by the Authority vide Para 29 (iii) of Final Finding dated 25thJuly 2011 was ".....With regard to the issue of transfer pricing of R-22 on the basis of GAPP and based on records maintained by the companies.
- Similar position taken was during MTR finding vide para 29 (c) "…the Authority is required to consider market price of R-22. The cost of production of R-22 is therefore, in any case not relevant for determination of NIP of PTFE."

E. <u>Response to the disclosure</u>

<u>Domestic industry in response to the disclosure has made the following submissions</u>

(i) The disclosure statement does not enable the petitioner to fully understand amounts adopted by the authority, not accepted and accepted. In the absence of complete disclosure, petitioner is unable to fully comprehend the calculations done by the authority, methodology applied for determination of revised NIP and elements of costs and capital employed accepted and elements of costs and capital employed rejected.

(ii) The Authority had earlier verified cost of production of R22 at the time of sunset review investigations and the same has now been revised. This implies that the authority has considered two different cost of production for R22 – one at the time of sunset review investigations and another now. Since the cost of production of R22 was already verified at the time of sunset review, the same was not required to be revisited. There is no justification for the modification to the R22 cost of production carried out now.

(iii) The petitioner has provided each and every information demanded by the DGAD and there is no communication to the petitioner prior to the present disclosure statement stating therein that the petitioner has not provided some information or some clarification sought could not be given either in

writing. Petitioner considers that it is inappropriate to hold that during the verification no satisfactory reply could be furnished.

(iv) The NFA for chloroform has been taken without doing averaging of the opening and closing NFA. Only opening NFA figure has been considered. Closing NFA appears to have been ignored. If so, petitioner submits that it is Authority's consistent practice to consider average NFA by doing simple averaging of opening and closing NFA.

(v) Petitioner submits that the NIP determined does not include capital employed in Dahej amounting to Rs *** which is the capital employed in production of R22 and all its captive inputs in Dahej. Since a portion of R22 has been produced and consumed in Dahej, the capital employed in R22 and all its inputs produced and consumed in Dahej itself is required to be considered. This amount is clearly shown in the NFA schedule of Dahej plant. Further, this amount was also clearly reported in the information filed in MDC case.

(vi) The NIP has been determined considering wind mill power rate as Rs. ** per unit. This figure is not correct. The figure of Rs. ** is the cost of production of power at Mihad wind mill plant and is shown in the books of Ranjit Nagar. All this power is consumed in Dahej. This power is however given by the company to the Govt. at Mihad @ Rs. ** and bought at Dahej @ Rs. ** per unit (Rs. ** tfd cost and Rs. ** Wheeling Charges). The company has paid for this power at Dahej at the rate of Rs. ** per unit in the books of Dahej. Since the power brought at Dahej has been paid @ Rs. ** per unit, the power rate that is required to be considered as Rs. ** per unit. Notwithstanding, the figure of Rs. ** in any case is cost of production of power at Mihad, if this figure is required to be considered, then return on investment made in power plant is also required to be considered/included.

(vii) The petitioner has reported the cost of production R22 as Rs. **, whereas the authority has adopted Rs ** as the cost of production. Apparently, authority has considered that the figure of Rs. ** is the cost of production reported in the books as per CAS4. In other words, authority appears to have considered figure of Rs. ** as the cost of production of R22 considered

by petitioner in its books. Petitioner however submits that the figure of Rs. ** is the cost of production of R22 as per CAS4. Further, this cost of production as per CAS4 is based on cost of production of previous period i.e. till Mar'14. This is not cost of production in the investigation period. In books of accounts, since cost of production for the current period is never available, the petitioner adopts cost of production as per CAS4 on the basis of previous accounting year. The cost of production as per CAS4 for the investigation period was adopted in the period subsequent to the investigation period i.e. March, 2015. Thus, if CAS4 cost of production is to be considered a cost of production of R22, the right figure is Rs **, which has been adopted as CAS4 cost in the books for the year March.

F. Recomputation of the Non-Injurious Price

(i) In terms of Annexure III and the consistent practice being followed by the Authority, the cost of production as shown in the audited books of accounts has to be relied upon for the purpose of determination of NIP. In this case, R-22 was transferred from Ranjit Nagar to Dahej which was used for the production of subject goods. The transfer from one unit to another of the same company can be made at cost of production or at selling price. Since the company has evidenced that the transfer was made at cost of production, a return @ 22 % on net fixed assets deployed for the production of subject goods is considered. The verification of data submitted post Tribunal orders show that total quantity of *** kg of R-22 was transferred at basic cost of Rs. *** on which excise of Rs. *** was shown in the books and claimed as CENVAT. Thereby, average cost of production or net transfer price as per financial books works out Rs. *** per kg. In support, the company furnished two statements of cost of production certified by a practising cost accountant stating the cost of production of Rs. *** per MT (Rs. *** per kg) and Rs *** per MT (or Rs *** per kg).

(ii) The financial books of Dahej showed different values, though the line entries of some of the sample transactions verified did not show any deviation from the cost of production shown in Ranjit Nagar books. The company was requested to give cogent reasons for such variation in the mail dated 21/02/2017 but during the verification no satisfactory reply could be furnished.

The main reason could be that a quantity of *** kg was shown in the books of Dahej as capitalized item for which no cost was assigned, and therefore the average cost would be higher if the cost of *** kg R-22 was spread on the cost of remaining quantity. Since, the sample line entries of some of the transactions verified showed the same quantity of goods received in the inventory ledger of Dahej at same value, the cost of production on which R-22 was transferred in the books of Ranjit Nagar. The said cost of production was adopted on the basis of cost statement duly verified by a practising cost accountant from the books of account, cost accounting records and other records. The petitioner had also certified the statement saying that it was in compliance with generally accepted cost accounting principles and practices followed by the industry. Therefore, the cost of production of R-22 has been adopted at Rs. *** per kg**.**

(iii) As regards computation of return on net fixed assets, the details provided by the company were test checked from the trial balance and found to be in order. The company had claimed NFA of Rs *** lacs and volume of *** MT transferred to Dahej. If return is allowed @ 22% on the said NFA, the total return and per kg return works out to Rs. *** lacs and Rs *** per kg. As against this, DGAD working shows the return as Rs. *** per kg and the same has been considered.

(iv) The detailed working of NFA was thoroughly examined. It included the NFA of chlorine, used for production of chloroform, Chloroform itself which was transferred from Dahej to Ranjit Nagar, NFA of AHF the intermediate used in the production or R-22 and NFA of R-22. The indirect common assets were also included on pro rata basis. The only deviation in the working was made in the case of NFA of chloroform. In fact, chloroform was a joint product with MDC for which NIP was determined by the Authority for the same POI. The actual NFA adopted for MDC was adopted in appropriate ratio claimed by the petitioner. The arithmetic error in the NFA submitted by the Domestic Industry was corrected leading to change in the claim of return on NFA.

(v) By applying the return on NFA, the revised transfer price or R-22 works out to Rs. *** and weighted average rate has been computed at Rs *** per kg against Rs *** per kg used earlier in the determination of NIP.

(vi) The consumption norms adopted for the production of TFE was *** kg of R-22 per kg of TFE. At this consumption norm the cost of production of TFE will be

higher by Rs. *** per kg. As *** kg of TFE is required for production of subject PTFE, by applying the change in cost of TFE, NIP of PTFE is considered as Rs. *** per kg.

The Authority has examined the issues raised by the Domestic Industry in response to the disclosure and holds that;

(i) The capital employed at Dahej Plant was duly shared with the petitioner during the earlier SSR findings and since the petitioner had not stated NFA of R22 assets at Dahej, implying that it has already been subsumed in the assets of TFE.

(ii) The return on wind mill assets at Mihad is not admissible as it is a separate profit centre and sells its power to Dakshin Gujarat Viz Company Limited.

(iii) The average cost of production of R22 has been adopted as reflected in the financial books of accounts. The Authority has therefore modified the NIP to Rs. *** per Kg as against earlier approved NIP of Rs. *** per kg (Increased by Rs. *** per kg) in view of additional return on NFA not considered earlier.

(iv) As regards the issue of two different numbers of COP, the Authority has already stated in the foregoing para that such a situation arose due to petitioner's reporting of different numbers at the belated stage of disclosure during the course of original SSR investigation.

(v) The return on chloroform assets was provided in accordance with that of MDC in proportion claimed by the petitioner since both are joint products. NFA of MDC was never challenged by the petitioner.

G. Conclusions

The Authority in view of the aforesaid submissions and evaluation has recomputed the NIP appropriately after taking into account the methodology of providing 22% return on corresponding NFA required for production of captive inputs in case those inputs were transferred at cost in terms of Annexure-III.

H. Recommendations

The Authority keeping in view of the recomputed NIP in accordance with CESTAT's order dated 16/9/2016 consequently recommends revision of the existing ADD in accordance with the Lesser Duty Rule as under:

Having regard to the lesser duty rule followed by the Authority, the Authority recommends modification of the existing ADD imposed vide Customs Notification No. 23/2016 dated 6th June, 2016. Anti-dumping duty to a quantum equal to the lesser of the margin of dumping and the margin of injury, on the imports of the subject goods, originating in or exported from Russia so as to remove the injury to the domestic industry.

Accordingly, the Anti-dumping duty equal to the amount indicated in Col. 9 of the table below is now recommended to be imposed by the Central Government on the imports of the subject goods, originating in or exported from Russia, thereby modifying the ADD imposed vide Custom Notification No. 23/2016 dated 6th June, 2016.

Duty Table

Sl.No.	Tariff Item	Description of goods	Specification	Country of origin	Country of export	Producer	Exporter	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	3904 61 00	Polytetrafluoroethylene (PTFE)	Any	Russia	Russia	Any	Any	874.56	MT	US Dollar
2.	3904 61 00	Polytetrafluoroethylene (PTFE)	Any	Russia	Any other than Russia	Any	Any	874.56	MT	US Dollar
3.	3904 61 00	Polytetrafluoroethylene (PTFE)	Any	Any other than Russia or People's Republic of China	Russia	Any	Any	874.56	MT	US Dollar

An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

Dr. Inder Jit Singh
Additional Secretary & Designated Authority