CASE NO.:
Appeal (civil) 1294 of 2001

PETITIONER:
Reliance Industries Ltd.

RESPONDENT:
Designated Authority and Ors.

DATE OF JUDGMENT: 11/09/2006

BENCH:
Ashok Bhan & Markandey Katju

JUDGMENT:
JUDGMENT

MARKANDEY KATJU, J.

This Appeal has been filed against the impugned final order dated 29.11.2000 passed by the (CEGAT) Customs Excise and Gold (Control) Appellate Tribunal, New Delhi.

We have heard learned counsel for the parties.

The appellant is a multi-product company and has various business activities including manufacture of Pure Terephatalic Acid (for short 'PTA'), which is used for the manufacture of polyester yarn (which in turn is used for manufacture of textiles). Apart from the manufacture of PTA, the appellant, inter alia, has a captive power plant from which it draws electricity. The appellant also draws electricity from the Grid for the manufacture of PTA. The cost of electricity forms a significant part of the cost of production. For the electricity drawn from the Grid, the appellant has to pay a tariff rate at the market price of the electricity, while regarding electricity drawn from the captive power plant the appellant transfers electricity at the market rate to its PTA unit.

The appellant, M/s. Reliance Industries Ltd. filed an application dated 12.10.1998 seeking the imposition of Anti- Dumping Duty on PTA originating in, or exported from Japan, Malaysia, Spain and Taiwan. The Designated Authority (hereinafter referred to as 'the DA') in the Ministry of Commerce initiated investigations on the said application in April 1999. The investigations culminated in the findings of the DA dated 20.4.2000, and on that basis there was imposition by the Central Government of anti-dumping duty on PTA originating or exported from Spain at the rate of Rs.521 per M.T. vide Customs Notification No.82/2000 dated 30th May, 2000 of the Department of Revenue. However, no duty was imposed on exports from the other countries.

The appellant filed an appeal before the CEGAT under Section 9C of the Customs Tariff Act, 1975 against this Notification seeking enhancement of duty in the case of the exporter from Spain and imposition of duty on exports from the other countries mentioned in their petition.

The grievance of the appellant was that while the DA had reached its findings in the final finding dated 20th April, 2000 upholding the appellant's contention that exports from Japan and Malaysia were also at dumped prices and that the domestic Industry had suffered injury, yet no anti-dumping duty was recommended in respect of imports from Japan and Malaysia on the ground that the imports from these countries were above the non-injurious price and, therefore, there was no causal link between the dumped imports from these countries and the injury to the domestic industry. The appellant submitted that this finding was inconsistent with the determination that imports were at dumped prices and that domestic

industry had suffered injury. They also submitted that the finding that imports from Japan and Malaysia were at non-injurious prices was also incorrect and was the result of faulty determination of the fair landed value in respect of the imported goods and non-injurious price in respect of the domestic manufacturer. The appellants submitted that they had placed the cost of production data in respect of PTA manufactured by them but the designated authority incorrectly determined the non-injurious price at a lower amount and this led to the incorrect finding that there was no causal link between injury to domestic industry and imports from these countries. With regard to the determination of landed value their submission was that the landed value had been determined at an inflated amount and that was the reason for the incorrect determination that the landed value of imports was more than the non-injurious price.

Before dealing with the contention of the learned counsel for the parties, we may usefully refer to Section 9A of the Customs Tariff Act, 1975, which was inserted by the Customs Tariff (Second Amendment) Act, 1982. Section 9A was substituted by the Customs Tariff (Amendment) Act, 1995 with effect from 1.1.1995, and now it reads as follows:-

"SECTION 9A - Anti-dumping duty on dumped articles. - (1) Where any article is exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation - For the purposes of this section, -

(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article means the price of article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means-

(i) The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -

(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling

and general costs, and for profits, as determined in accordance with the rules made under sub-section (6) :

Provided that in the case of import of the article from a country other than the country or origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined :-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as in excess of the anti-dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to article imported by a hundred per cent export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation. - For the purpose of this section, the expressions "hundred per cent export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meaning assigned to them in explanation 2 to sub-section (1) of Section 3 of the Central Excise Act, 1944 (1 of 1944).

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date or order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry 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 the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to non-levy, short levy, refunds and appeals shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under the Act".

Sub-section (8) of Section 9A was inserted by the Finance Act 2000 and that Act also inserted Section 9AA. Finance Act 2004 amended Section 9A(8).

In this connection it may be mentioned that up to 1947 there was very little industrialization in India.

After India became independent in 1947, the Government of Independent India headed by Prime Minister Jawahar Lal Nehru decided to industrialize India as it was realized that the country cannot escape from poverty, unemployment and other social evils unless there is industrialization. It was also known to them that a country cannot be really independent in modern times unless it is industrialized. Hence, the Industrial Policy Resolution was adopted by the Indian government in the early 1950s and encouragement was given to the growth of heavy industry and other industries so that India may become economically independent and a prosperous nation.

The result was that an industrial base was created in India after independence and this has definitely resulted in some progress. The purpose of Section 9A can, therefore, easily be seen. The purpose was that our industries which had been built up after independence with great difficulties must not be allowed to be destroyed by unfair competition of some foreign companies. Dumping is a well-known method of unfair competition which is adopted by the foreign companies. This is done by selling goods at a very low price for some time so that the domestic industries cannot compete and are thereby destroyed, and after such destruction has taken place, prices are again raised.

The purpose of Section 9A is, therefore, to maintain a level-playing field and prevent dumping, while allowing for healthy competition. The purpose is not protectionism in the classical sense (as proposed by the German economist Friedrich List in his famous book ‘National System of Political

Economy' published in 1841) but to prevent unfair trade practices. The 1995 Amendment to Section 9A was apparently made in pursuance to Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) which permitted anti-dumping measures as an instrument of fair competition.

The concept of anti-dumping is founded on the basis that a foreign manufacturer sells below the normal value in order to destabilize domestic manufacturers. Dumping, in the short term, may give some transitory benefits to the local customers on account of lower priced goods, but in the long run destroys the local industries and may have a drastic effect on prices in the long run.

To levy anti-dumping duty it is essential in terms of Rule 4 and Rule 17 of the Rules to establish:

(i) Dumping, which is reflected by a "Margin of Dumping" - which is undisputed in this case;

(ii) "Injury" - which is also undisputed in this case;

(iii) Causal Link between dumping and injury to the domestic industry to establish that injury to the domestic industry is caused by dumping.

The margin of dumping is the difference between the "Normal Value" (viz. price in the domestic market of the foreign exporter, or if there are no domestic sales, the price at which it is exported to another country or the constructed cost of production) and the "export price" at which goods are exported to India. If goods are exported to India at prices below the "Normal Value", there is a positive dumping margin.

On the determination of a positive margin, the DA has to ascertain whether the dumping of goods is causing injury to the domestic industry by analyzing various injury parameters mentioned in Annexure II to the Rules. The "Margin of Injury" is the difference between the landed value of exports and the fair selling (notional) price of the domestic manufacturer, which is usually called the Non-Injurious Price (for short 'NIP'). The NIP is determined by the DA on the basis of cost of production (less interest), Selling General and Administrative Expenses (SG&A), and a fixed rate of return on the capital employed of the domestic industry.

Anti-dumping duty can legally be levied up to the full extent of margin of dumping [Section 9A(1)] but in practice is restricted to the margin of injury if the injury is lower than the margin of dumping vide Section 9B(1)(b)(ii) and Rule 18(1).

Section 9B(1) states :

> "(1) Notwithstanding anything contained in Section 9 or section 9A, -
>
> (a).....
>
> (b) the Central Government shall not levy any countervailing duty or anti-dumping duty -
>
> (i) .....
>
> (ii) under sub-section (1) of each of these sections, on the import into India or any article from a member country of the World Trade Organization or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary finding has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation :

Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;"

Under the Anti-dumping Rules viz. the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the DA is required on a complaint regarding dumping to carry out investigations and give his findings with regard to the existence of dumping, injury to the domestic industry and a causal link between the two. Having determined the existence of dumping, injury and causal link, the DA determines the quantum of duty. For this purpose, the DA calculates the NIP for the domestic industry as a whole for the product under consideration, which, as already stated above, is a notional fair selling price.

In this connection, we may refer to Rules 10 and 11 of the Anti Dumping Rules which state as follows :

"10. Determination of normal value, export price and margin of dumping -

An article shall be considered as being dumped if it is exported from a country or territory to India at a price less than its normal value and in such circumstances the designated authority shall determine the normal value, export price and the margin of dumping taking into account, inter-alia, the principles laid down in Annexure I to these rules.

11. Determination of injury -

(1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports their effect or price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure-II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury everywhere a substantial portion of the domestic industry is not injured, if -

(i) there is a concentration of dumped imports into an isolated market, and

(ii) the dumped articles are causing injury to the producers of all

or almost all of the production within such market."

In the present case, the DA in his findings dated 20.4.2000 has found that there is dumping by the manufacturers from Japan, Malaysia & Spain. The margins of dumping for manufacturers from Japan was between 29% to 34.26%, for Malaysia 68.20% and Spain 15%. The DA has also found material injury to the domestic industry in India on the basis of reduction in the sales realization and decreases of profitability. It was, however, held by the DA that there was no causal link between dumping and injury as regards Japan and Malaysia. As regards Spain, anti-dumping duty was levied as Rs. 521/- PMT. The determination of causal link has been made solely on the basis of comparison of the landed value of imports and the NIP determined for the domestic industry.

The findings of the DA were appealed against before the Tribunal. The Tribunal upheld the findings of the DA about dumping and injury. However, the Tribunal upheld the method adopted by the DA for computing the NIP.

It is the contention of the appellant before us that the findings of the Tribunal were erroneous in the context of certain imports because of an incorrect computation of the NIP for the domestic industry.

There are two main issues for determination in the present case - (1) the correct principles for determination of the NIP of PTA and (2) the scope of Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and For Determination of Injury) Rules, 1995.

As regards the first contention, learned counsel for the appellant, Mr. Joseph Vellapally, submitted that while computing the NIP of PTA, the DA ought to have taken the transfer price (market value) of electricity and other inputs captively produced by it. Learned counsel for the appellant submitted that it is not the actual cost of production of electricity by the appellant which has to be seen in this connection, but the market price of electricity which has to be seen. In other words, the cost of inputs has to be seen not for an individual industrial unit which captively produces it, but the market price of the inputs is to be seen in order to calculate the NIP. Learned counsel further submitted that the DA has not given any reasoning for coming to its conclusion for its NIP. The Disclosure Statement issued by the DA does not state as to what was the element of cost being disallowed and what was the reason for doing so. It is submitted that there was no requirement in the present case to keep any confidentiality from the appellant with regard to computation of NIP.

Learned counsel submitted that the appellant used the market rate of electricity for determining the cost of production of PTA, but the DA was of the view that instead of taking the market price of electricity for determining the NIP of PTA, the appellant should have taken the actual cost of electricity produced in its captive power plant.

In our opinion, the DA has clearly erred in law because the Authority was required to carry out the determination of injury and computation of NIP for the domestic industry as a whole, and not in respect of any particular company or enterprise. The above is apparent from the definition of "domestic industry" under Rule 2(b) of the Anti Dumping Rules. Rule 2(b) states :

> "2(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry;

> Provided that in exceptional circumstances referred to in sub-rule (3) of rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the procedures within each of such market a separate industry, if-
>
> (i) the producers within such a market sell all or almost all of their production of the article in question in the market, and
>
> (ii) the deemed in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;"

The provisions relating to injury analysis in Annexure II to the Anti-dumping Rules are also clear that the injury determination is always for the domestic industry as a whole and not for individual companies.

In our opinion, since the NIP is for the industry as a whole, it is immaterial if a particular company produces some of its inputs captively. In our opinion, for the purpose of determination of NIP, the DA is always required to take into consideration the transfer price (market value) of the inputs and not their actual cost of captive production. This is because the entire investigation, analysis, recommendation and imposition are for the product under consideration for the whole domestic industry and not for the individual companies and inputs captively manufactured which may be involved in the production and sales of the goods.

The approach adopted by the DA, in our opinion, will lead to a situation where an artificial discrimination will be created between the integrated and non-integrated companies to the peril of the smaller plants with no backward integration (backward integration means a factory which also produces its own raw materials etc). In such situations, the result will be that the companies with no backward integration will suffer adversely. In our opinion, this was neither envisaged under the law nor can be considered as a desired result. The Anti-dumping legislation is meant for protection of the domestic industries as a whole against unfair practice of dumping, irrespective of whether they are backwardly integrated or not.

In our opinion there has to be a single NIP for a product as envisaged by the Rules, and not several NIPs for the same product. The approach adopted by the DA and the Tribunal would, however, result in several NIPs for the same product, because if actual cost of the input is seen for individual units it will differ between units captively producing their inputs and those buying it from the market. This is clearly untenable.

In the present case, the DA has recorded a finding that the normal value is exporter specific. In our opinion this is contrary to the Supreme Court judgment in Designated Authority (Anti-Dumping Directorate v. Haldor Topsoe A/S., [2000[6 SCC 626. In page 635 of the said judgment, this Court observed:

> "With respect, we are unable to accept this finding of the Tribunal. From a careful reading of Section 9-A of the Tariff Act and Rule 6 of the Rules, it is clear that the statute has nowhere put such a restriction on the investigating authority. On the contrary, a perusal of the said provisions clearly shows that the "normal value" will have to be determined with reference to comparable price, the words "comparable price" in the context can only be with reference to the price of similar articles sold under similar circumstances irrespective of the manufacturer. By holding anti-dumping duty to be export-specific, the Tribunal could not have restricted the scope of the investigation only to materials to be produced by a party against whom an investigation is being conducted. Such an interpretation of the statute is wholly

contrary to the very scheme of the statute".

In our opinion, both normal value and NIP are not exporter or domestic industry specific respectively but exporting country specific and importing country specific (India). Once dumping of specific goods from a country is established, dumping duty can be imposed on all exports of those goods from that country to India under Section 9A, irrespective of the exporter. The rate of duty may vary from exporter to exporter depending upon the export price. Similarly, as regards the matter of NIP it is the reasonable price which the subject goods can be produced by the domestic industry as a whole in India that is relevant. Special advantages and disadvantages that one or more domestic producers may have, as a result of manufacture of raw material or utilities that are going into the production of the commodity under investigation, should, in our opinion, be ignored for determination of the NIP for the domestic industry as a whole.

The purpose of imposition of duty is both to redress injury and to prevent material retardation of the establishment or growth of that industry (vide S. 9B(1) (b)(ii), rules 11, 17(a)(ii) and Annexure II). In the present case by fixing an NIP based upon specific advantages in the matter of electricity that the appellant company processed, and permitting dumping of the PTA into India, the DA has ensured that no other company can set up PTA manufacturing facilities without also being in a position to generate its own electricity at a price less than the price of electricity generally available in the domestic market. This, in our opinion, is surely not tenable, as it will result in discrimination.

In our opinion the DA has clearly ignored the purpose for which the NIP is computed. The DA has failed to appreciate that once dumping and injury is established, the existence of an unfair trade practice by the exporters is undisputed and a restrictive view in computing an unduly low NIP would lead to granting a premium to the erring exporters at the cost of the domestic industry, which is suffering injury.

In our opinion, the DA’s determination of NIP was arbitrary and misguided, as the DA has not considered the actual production achieved by the domestic industry for the purpose of apportionment of fixed costs. On the contrary, it was revealed during the hearing that the DA computes the NIP on the basis of the best capacity utilization achieved in the preceding three years. In fact, there is no established practice of the DA in this regard, and the level of capacity utilization taken into account by the DA varies from case to case leading to total arbitrariness and unguided use of power. In our opinion, there is no basis to adopt the best capacity utilization achieved in the past period as the industry is generally bound to achieve higher capacity utilization if it is not affected by injurious dumping. The apportionment of the fixed costs has to be necessarily done on the basis of actual production during the period of investigation and not an assumed level of capacity utilization to avoid all arbitrariness. Thus, in our opinion, the DA’s approach is clearly incorrect inasmuch as it is not the determination of optimum capacity utilization of the domestic industry, but the actual capacity utilization which would be the correct approach. Even as a matter of principle the use of capacity or capacity utilization level in computing the cost of production is unworkable for another reason. The capacity of a particular plant is wholly dependent upon the product mix. For example, the production of a fabric plant in square meters or tonnage basis will be less if the design is intricate. On the other hand, if the fabric is plain, the production expressed in square meters or tonnage basis would be much higher. If the approach of the DA is accepted, it would in our opinion lead to a strange situation where the capacity utilization of the same plant would vary from month to month and from batch to batch of production. In other words, the capacity itself would be indeterminate for plants where the product mix itself is variable. It is for this reason that in our opinion the actual production would be the only and the most appropriate method for arriving at the cost of production.

For the purpose of computing the NIP, the DA appears to have taken the best capacity utilization (which is in excess of 100%) over the past three years for the purpose of apportionment of the fixed expenses in preference to the actual capacity utilization during the period of investigation. In our opinion, this has led to an unusual reduction in the fixed expenses per unit and a consequent reduction in the NIP. This again is clearly untenable.

In our opinion, the NIP needs to be revised by taking the market price of electricity and the actual capacity utilization during the period of investigation. Further, the DA should be directed not to misuse Rule 7, by keeping confidential its findings and that too from the person who has supplied the information to it.

We are of the opinion that the nature of the proceedings before the DA are quasi-judicial, and it is well-settled that a quasi-judicial decision, or even an administrative decision which has civil consequences, must be in accordance with the principles of natural justice, and hence reasons have to be disclosed by the authority in that decision vide S.N. Mukherjee v. Union of India, [1990] 4 SCC 594.

We do not agree with the Tribunal that the notification of the Central Government under Section 9A is a legislative Act. In our opinion, it is clearly quasi-judicial. The proceedings before the DA is to determine the lis between the domestic industry on the one hand and the importer of foreign goods from the foreign supplier on the other. The determination of the recommendation of the DA and the Government notification on its basis is subject to an appeal before the CESTAT. This also makes it clear that the proceedings before the DA are quasi-judicial.

In the present case, the NIP computed by the DA was much lower than that computed by the appellant, and the reasons for such variance and detailed calculations were not disclosed by the DA to the appellant. No good reasons were given for reducing the cost price of electricity supplied by the appellant produced in its captive power plant. This was clearly illegal.

The DA claimed confidentiality from the appellant about its finding on the data supplied by the appellant itself. In our opinion, there was nothing confidential in the matter, and hence reasons for not accepting the appellant’s version should have been stated in the order of the DA.

Learned counsel for the respondent has relied on Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, which states as under:

"7. Confidential informations

(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may, submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary from, it may disregard such information".

In our opinion, Rule 7 does not contemplate any right in the DA to claim confidentiality. Rule 7 specifically provides that the right of confidentiality is restricted to the party who has supplied the information, and that party has also to satisfy the DA that the matter is really confidential. Nowhere in the rule has it been provided that the DA has the right to claim confidentiality, particularly regarding information which pertains to the party which has supplied the same. In the present case, the DA failed to provide the detailed costing information to the appellant on the basis of which it computed the NIP, even though the appellant was the sole producer of the product under consideration, in the country. In our opinion this was clearly illegal, and not contemplated by Rule 7.

In this connection, this Court in Sterlite Industries (India) Ltd. v. Designated Authority, (2003) 158 ELT 673 observed thus:

> "In our view, it is not necessary for us to go into the merits of this matter as we propose to send the matter back to CEGAT after laying down certain guidelines. From what has been argued before us, it appears that in pursuance of Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 the Designated Authority is treating all material submitted to it as confidential merely on a party asking that it be treated confidential. In our view, that is not the purport of Rule 7. Under Rule 7, the Designated Authority has to be satisfied as to the confidentiality of that material. Even if the material is confidential the Designated Authority has to ask the parties providing information, on confidential basis, to furnish a non-confidential summary thereof. If such a statement is not being furnished then that party should submit to the Designated Authority a statement of reasons why summarization is not possible. In any event, under Rule 7(3) the Designated Authority can come to the conclusion that confidentiality is not warranted and it may, in certain cases, disregard that information. It must be remembered that not making relevant material available to the other side affects the other side, as they get handicapped in filing an effective appeal. Therefore, confidentiality under Rule 7 is not something, which must be automatically assumed. Of course, in such cases there is need for confidentiality, as otherwise trade competitors would obtain confidential information, which they cannot otherwise get. But whether information supplied is required to be kept confidential has to be considered on a case-to-case basis. It is for the Designated Authority to decide whether a particular material is required to be kept confidential. Even where confidentiality is required, it will always be open for the appellate authority, namely, CEGAT to look into the relevant files".

(emphasis supplied)

In our opinion, excessive and unwarranted claim of confidentiality defeats the right to appeal. In the absence of knowledge of the consequences, grounds, reasoning and methodology by which the DA has arrived at its decision and made its recommendation, the parties to the proceedings cannot effectively exercise their right to appeal either before the Tribunal or this Court. This is contrary to the view taken by the Constitution Bench of this Court in S.N. Mukherjee’s case (supra).

Although this judgment may not benefit the appellant for the past period, we have thought it necessary to lay down the law in this connection since the Anti Dumping Law operates continuously and on a day-to-day basis and hence its principles have to be clarified. The Anti Dumping Law is extremely important for the country's industrial progress and hence there should be total transparency and fairness in its implementation.

Before parting with this case, we would like to state that our national aim must be to create India as a modern, highly industrialized, powerful state. The real world today is cruel and harsh. It respects power, not poverty or weakness, and power comes from a high level of industrialization. Hence, if we wish to get respect in the comity of nations, we must make India a modern, powerful, highly industrialized state. The truth is that today India is poor. As Rajni Palme Dutt wrote in his book 'India', 'India is a rich country with poor people'. We are rich in raw materials, rich in industrial skills, we have outstanding scientists, engineers, technicians and managers. Despite all this we are a poor nation. Hence, if we want to command respect in the comity of nations, we must rapidly industrialize and make India a powerful, modern, highly industrialized nation. It is industrialization alone which can generate the wealth which we require for the welfare of our people and for progress. Hence our national aim must be rapid industrialization as that is the solution to our country's problems. Industrialization will also provide large scale employment to our people, and will help the growth of science and technology, which is absolutely essential to our progress.

The Anti Dumping Law is, therefore, a salutary measure which prevents destruction of our industries which were built up after independence under the guidance of our patriotic, modern minded leaders at that time and it is the task of everyone today to see to it that there is further rapid industrialization in our country, to make India a modern, powerful, highly industrialized nation.

With the above observations this appeal stands disposed of. There shall be no order as to costs.