CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

ANTI DUMPING APPEAL NO. 50228 OF 2019

(Arising out of Final Findings No. 14/51/2016-DGAD dated 23.04.2018 and Customs Notification No. 28/2018-Customs dated 25.05.2018 and Corrigendum Notification No. 48/2018 Customs (ADD) 25.09.2018 issued by Ministry of Finance.)

M/s. Inter-Continental Oils and Fats Pte. Ltd. **....Appellant**
150 Beach Road, #16-01 Gateway
West, Singapore - 189720

versus

1. **Union of India**
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi-110001

2. **The Designated Authority, Directorate General of Anti-Dumping & Allied Duties,**
   Ministry of Commerce & Industry,
   Parliament Street, Jeevan Tara
   Building, 4th Floor, New Delhi-110001

3. **M/s VVF (India) Limited**

4. **M/s. Inter-Continental Oils & Fats Pte Ltd., Singapore**

5. **M/s PT Ecogreen Oleo Chemicals, Indonesia**

6. **M/s. Ecogreen Oleo Chemicals (Singapore) Pte Ltd., Singapore**

7. **M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia**

8. **M/s. FPG Oleo Chemicals Sdn Bhd.**

9. **M/s Procter & Gamble International Operations SA, Singapore**

10. **Thai Fatty Alcohols Co. Ltd**

11. **SABIC Asia Pacific Pte Ltd.,**

12. **M/s Saudi Kayan Petrochemical Company, Saudi Arabia**

13. **Saudi Basic Industries Corporation (SABIC), Saudi Arabia**

14. M/s Wilmar Trading Pte Ltd., Singapore

15. M/s. PT Wilmar Nabati Indonesia, Indonesia

16. M/s. Indian Glycols Limited, Noida

17. M/s. Eternis Fine Chemicals Ltd., Mumbai

18. M/s Galaxy Surfactants Limited, Navi Mumbai

19. High Commissioner of Malaysia,
50-M, Satya Marg, Chanakyapuri,
New Delhi-110021

20. Embassy of Republic of Indonesia
No. 50-A, Kautilya Marg, Chanakyapuri,
New Delhi-110021

21. Royal Thai Embassy
D-1/3, Vasant Vihar,
New Delhi-110057

22. Embassy of the Kingdom of Saudi Arabia,
2, Block C, Vasant Vihar,
New Delhi-110057 **...Respondents**

WITH

ANTI-DUMPING APPEAL NO. 50229 OF 2019

(Arising out of Final Findings No. 14/51/2016-DGAD dated 23.04.2018 and Customs Notification No. 28/2018-Customs dated 25.05.2018 and Corrigendum Notification No. 48/2018 Customs (ADD) 25.09.2018 issued by Ministry of Finance.)

M/s. Tide Industreis **....Appellant**
312-313, Paradise Complex,
Sayajigunj, Vadodara-390 005
Gujarat

versus

1. Union of India
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001

and 21 others **....Respondents**

WITH

ANTI-DUMPING APPEAL NO. 50230 OF 2019

(Arising out of Final Findings No. 14/51/2016-DGAD dated 23.04.2018 and Customs Notification No. 28/2018-Customs dated 25.05.2018 and Corrigendum Notification No. 48/2018 Customs (ADD) dated 25.09.2018 issued by Ministry of Finance.)

M/s. PT Muslim Mas **....Appellant**
JL. K.L. Yos Sudarso KM 7,
8 Tanjung Mulia-Medan 20241
Sumatera Utera,
Indonesia

versus

1. Union of India
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001

and 21 others **....Respondents**

And

ANTI-DUMPING APPEAL NO. 50232 OF 2019

(Arising out of Final Findings No. 14/51/2016-DGAD dated 23.04.2018 and Customs Notification No. 28/2018-Customs dated 25.05.2018 and Corrigendum Notification No. 48/2018 Customs (ADD) dated 25.09.2018 issued by Ministry of Finance.)

M/s. Eternis Fine Chemicals **....Appellant**
1004 Penisula Tower,
Penusula Corporate Park,
Lower Parel, Mumbai – 400 013

versus

1. Union of India
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001

and 21 others **....Respondents**

APPEARANCE:

Shri Jitendra Singh, Shri Anshuman Sahni and Shri Akshay Soni, Advocates for the appellant

Shri Vipin Jain and Ms. Tuhina, Advocates for the respondent

Shri Ameet Singh and Ms. Bhavana Varsha, Advocates for the Designated Authority

Ms. Jaya Kumari, Authorised Representative for the Government

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P.V. SUBBA RAO., MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA MEMBER (JUDICIAL)

Date of Hearing: 12.12.2022
Date of Decision: 06.01.2023

FINAL ORDER NO's. 50010-50013/2023

JUSTICE DILIP GUPTA:

The principal relief that has been claimed in all the aforesaid Anti-Dumping Appeals, which have been filed by exporters and importers, is for quashing the final findings dated 23.04.2018 of the designated authority recommending imposition of anti-dumping duty as also the consequential Customs Notification dated 25.05.2018 issued by the Central Government imposing anti-dumping duty. The appellants have also sought the quashing of the Corrigendum Notification dated 13.07.2018 issued by the designated authority to the final findings and the consequential Corrigendum Notification dated 25.09.2018 issued by the Central Government to the Customs Notification dated 25.05.2018.

2. The two issues that have been raised in these appeals are as to:

i. Whether the designated authority can, on its own accord, increase the scope of the 'Product Under Consideration' beyond the scope of the 'Product Under Consideration' described in the application filed by the domestic industry for initiation of anti-dumping investigation; and

ii. Whether the designated authority erred by covering such products within the scope of the 'Product Under Consideration', which are not manufactured by the

domestic industry and which could not have caused injury to the domestic industry during the 'Period of Investigation'

3. In order to examine these submissions it would be useful to first examine the relevant provisions of the Customs Tariff Act, 1975[1], and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995[2].

4. Anti-dumping duty is imposed by the Central Government under section 9A of the Tariff Act. It provides that where any article is exported by an exporter or producer from any country 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. The margin of dumping, the export price and the normal price have all been defined in section 9A(1) of the Tariff Act. Sub-section (5) of section 9A provides that anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition. Sub-section (6) of the section 9A of the Tariff Act provides that the margin of dumping has to be ascertained and determined by the Central Government, after such enquiry as may be considered necessary and the Central Government may, by notification in the Official Gazette, make rules for the purpose of this section.

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1 the Tariff Act
2 the 1995 Anti-Dumping Rules

5. In exercise of the powers conferred by sub-section (6) of section 9A and sub-section (2) of the section 9B of the Tariff Act, the Central Government framed the 1995 Anti-Dumping Rules. The duties of the designated authority are contained in rule 4. Rule 5 deals with initiation of investigation to determine the existence, degree and effect of any alleged dumping. Rule 6 deals with the principles governing investigation.

6. Rule 17 deals with final findings. It is reproduced below:

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

7. Rule 18 deals with levy of duty and the relevant portion is reproduced below:

> **"18. Levy of duty.-**
>
> (1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17."

8. It transpires that M/s VVF (India) Ltd., a domestic industry, filed an application before the designated authority for initiation of anti-dumping investigation under the provisions of the Tariff Act and the 1995 Anti-Dumping Rules. The product under consideration for the purpose of the proceedings was described in the application filed by the domestic industry in the following manner:

> **Product description**
>
> "The product under consideration for the purpose of the present petition is **"Saturated Fatty Alcohols with carbon chain length of C8, C10, C12, C14, C16 and C18 including single, blends and unblended (not including branched isomers) which includes blends of combination of carbon chain lengths, C12-C14, C12-C16, C12-C18, C16-18 and C14-C16 (commonly categorized as C12-C14)"** (hereinafter referred to as the "subject goods"). By way of abundant precaution, it is clarified that unsaturated fatty alcohols are excluded from the scope of the product under consideration, as the same are not produced in India. It is submitted that fatty alcohols of all the above carbon chain types be considered as product under consideration, whether produced as a main product by the petitioner or as a by product."
>
> **(emphasis supplied)**

9. The domestic industry, in the said application, also indicated the four digit Product Control Number of the various carbon chains in

order to allow a reasonable and fair comparison of normal value and export price and the same is reproduced below:

Description of Product Concerned

Carbon Chain Type	Product Description	PCN
C8 Alcohol	Capryl Alcohol	0800
C10 Alcohol	Decyl Alcohol	1000
C12 Alcohol	Lauryl Alcohol	1200
C12-14 Alcohol (Blend)	Lauryl Myristyl Alcohol	1214
C12-16 Alcohol (Blend)	Lauryl Cetyl Alcohol	1216
C12-18 Alcohol (Blend)	Lauryl Stearyl Alcohol	1218
C14 Alcohol	Myristyl Alcohol	1400
C16 Alcohol	Cetyl Alcohol	1600
C16-18 Alcohol	Cetostearyl Alcohol	1618
C18 Alcohol	Stearyl Alchohol	1800

10. As sufficient evidence was submitted by the domestic industry, a Notification dated 24.04.2017 was issued by the designated authority, initiating investigation under rule 5 of the 1995 Anti-Dumping Rules to determine the existence, degree and effect of the alleged dumping and recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry. This anti-dumping investigation was initiated in respect of all types of Saturated Fatty Alcohols excluding Capryl Alcohols (C-8) and Decyl Alcohols (C-10) and blends of C8 and C10 regarding imports of these goods originating in or exported from Indonesia, Malaysia and Thailand[3]. The period of investigation for the purpose of investigation was considered to be from 01.04.2016 to 31.03.2017 and the injury investigation period was considered as the period from 2013-14, 2014-15 and 2015-16 and the period of investigation. Oral hearing was conducted by the designated

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3. the subject countries

authority on 11.01.2018 and all the interested parties who presented their views at the time of hearing were advised to file written submission of the views expressed orally. The interested parties were also provided an opportunity to offer rejoinder submissions to the submissions made by the opposing parties. The disclosure statement containing the essential facts under consideration of the designated authority was issued on 26.03.2018 and time up to 04.04.2018 was granted to furnish comments, if any, on the disclosure statement. These essential facts mentioned in the disclosure statement are as follows:

> **"B. Product under Consideration and Like Article**
>
> **B.3. Examination by Authority**
>
> **8.** The Authority has noted submissions made by various interested parties with regard to scope of product under consideration and like article offered by the domestic industry. **With respect to the product under consideration, the Authority notes as follows**:
>
> a. Having regard to the submissions made by the domestic industry and other interested parties, pure forms of C8 and C10 alcohol, and blended C8C10 alcohol are excluded from the scope of product under consideration. **The product under consideration in the present investigation is, therefore, modified to "Saturated Fatty Alcohols with carbon chain length of C12, C14, C16 and C18 including single, blends and unblended** (not including branched isomers) **which includes blends of a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18, C16-18 and C14-C16**.
>
> b. By way of abundant precaution, it is clarified that unsaturated fatty alcohols are excluded from the scope of the present investigation.

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f. **The exclusion of C8 and C10 form of fatty alcohols is warranted inasmuch as the domestic industry has neither produced the fatty alcohols, nor a product that may be considered as like article to these grades.** The other interested parties have made submissions with regard to the lack of commercial interchangeability between C8/C10 and the goods produced by the domestic industry. These submissions have not been controverted by the domestic industry. In fact, it has been admitted by the domestic industry that these may be excluded. Thus, the Authority takes note of the submission by various parties, and finds it appropriate to exclude these grades from the scope of product under consideration.

g. As regard exclusion of pure form of C12 and C14 alcohols, the Authority finds force in the argument of the domestic industry that it has produced and sold C12C14 alchohol. In fact, C12C14 has the most demand in India. When the domestic industry has sold the blended form of these alcohols, the pure forms cannot be excluded, as such exclusion would defeat the very purpose of the duty. The Authority also takes note of the final findings of the Director General, Safeguards that these items are interchangeable and originate out of identical raw material by an identical manufacturing process. Thus, there is no warrant for the exclusion of C12 and C14 grades of fatty alcohols.

h. In order to ensure fair comparison for the purpose of determination of dumping margin and injury margin, the Authority has assigned a Product Control Number (PCN) to each grade. It was noted that none of the interested parties have raised any objections with regard to the PCN methodology suggested by the domestic industry at the stage of petition. Thus, the Authority has

opted to use the methodology suggested in the petition.

9. In view of the above, the Authority concludes PUC as follows:

"All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C-8) and Decyl Alcohols (C-10) and blends of C8 and C10[4]"

10. The petitioner has claimed that there are no known material difference between the subject goods exported from the subject countries, and that produced by the domestic industry. The subject goods are commercially and technically substitutable to the products produced by the petitioner; and are bought and sold by the same consumers/ manufactures of surfactants and other products, for the same or similar applications. **Therefore, for the purpose of the present investigation, the Authority has treated the subject goods produced by the petitioning domestic industry as 'Like Article' to the subject goods being imported from the subject country."**

(emphasis supplied)

11. The designated authority, after consideration of the comments made by the interested parties on the disclosure statement, made the following recommendations:

"**138.** After examining the submissions made by the interest parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

139. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interest parties to provide positive information on the aspects of dumping, injury and the causal link. **Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the AD**

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4. subject goods

> **Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive antidumping duty is required to offset dumping and consequent injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of the subject goods from subject countries in the form and manner described hereunder.**
>
> **140**. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. **Accordingly, definitive antidumping duty as per amount specified in the table below is recommended to be imposed from the date of the Notification to be issued by the Central Government, on all imports of the subject goods originating in or exported from subject countries."**
>
> **(emphasis supplied)**

12. The Central Government, thereafter, issued a Notification dated 25.05.2018 imposing anti-dumping duty on the subject goods from the subject countries for a period of five years from the date of publication of the notification by the Central Government in the Official Gazette. However, as a corrigendum was issued by the designated authority to the final findings on 13.07.2018, the Central Government issued a consequential Corrigendum Notification dated 25.09.2018 imposing anti-dumping duty on the subject goods from the subject countries duty for a period of five years. The relevant portion of the notification dated 25.09.2018, that amended the earlier notification dated 25.05.2018, is reproduced below:

"Ministry of Finance

Notification No. 28/2018-Customs (ADD)

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, and rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under sub-headings of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (8), in the currency specified in the corresponding entry in column (10) and per unit of measurement as specified in the corresponding entry in column (9) of the said Table:

S. No.	**Tariff Item**	**Description of goods**	**County of Origin**	**County of export**	**Producer**	**Exporter**	**Amount**	**Unit**	**Currency**
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	2905 17, 2905 19, 3823 70	All types of Saturated Fatty Alcohols excluding Capryl Alcohol (C8) and Decyl Alcohols (C10) and blends of C8 and C10	Indonesia	Singapore	PT Ecogreen Oleochemi-cals	Ecogreen Oleochemi-cals (Singpore) Pte Ltd.	NIL	MT	USD
2	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	PT Musim Mas	Inter-Continental Oils & Fats Pte Ltd,	7.10	MT	USD
3	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	PT Wilmar Nabati Indonesia	Wilmar Trading Pte Ltd.	52.23	MT	USD
4	2905 17, 2905 19,	-do-	Indonesia	Indonesia	Any combination	Any combinat-ion	92.23	MT	USD

	3823 70				other than S.No. 1,2 & 3	other than S.No. 1,2 & 3			
5	2905 17, 2905 19, 3823 70	-do-	Indonesia	Any country	Any	Any	92.23	MT	USD
6	2905 17, 2905 19, 3823 70	-do-	Any contry other than those subject to anti-dumping duty	Indonesia	Any	Any	92.23	MT	USD
7	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	FPG Oleochemicals Sdh Bhd	Procter & Gamble Internati-onal Operatio-ns SA	17.64	MT	USD
8	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	KL-Kepong Oleomas Sdn Bhd	KL-Kepong Oleomas Sdn Bhd	NIL	MT	USD
9	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	Any combination other than S. No. 7 & 8	Any combinat-ion other than S.No. 7 & 8	37.64	MT	USD
10	2905 17, 2905 19, 3823 70	-do-	Malaysia	Any country	Any	Any	37.64	MT	USD
11	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject to anti-dumping duty	Malaysia	Any	Any	37.64	MT	USD
12	2905 17, 2905 19, 3823 70	-do-	Thailand	Thailand	Thai Fatty Alcohols Co. Ltd	Thai Fatty Alcohols Co. Ltd	NIL	MT	USD
13	2905 17, 2905 19, 3823 70	-do-	Thailand	Thailand	Any combination other than S.No. 12	Any combinat-ion other than S.No. 12	22.50	MT	USD
14	2905 17, 2905 19, 3823 70	-do-	Any country other than country of origin	Thailand	Any	Any	22.50	MT	USD
15	2905 17, 2905 19, 3823 70	-do-	Thailand	Any country	Any	Any	22.50	MT	USD

13. On the **first issue** as to whether the designated authority, on its own accord, could increase the scope of the 'product under consideration' beyond the scope of the product mentioned in the application filed by the domestic industry, Shri Jitendra Singh, learned counsel for the appellant assisted by Shri Akshay Soni submitted that the product under consideration, as determined in the final findings of the designated authority and the Customs Notification, should be amended as follows:

Existing PUC	**Amendment in PUC requested under first issue**
"All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C-8) and Decyl Alcohols (C-10) and blends of C8 and C10".	Saturated Fatty Alcohols with carbon chain length of C12, C14, C16, and C18 including single, blends and unblended (not including branched isomers) which includes blends of a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18, C-16-18 and C14-C16

14. On the **second issue** as to whether the designated authority committed an error by including such products within the scope of the product under consideration which were not even manufactured by the domestic industry and which could not have caused any injury to the domestic industry during the period of investigation, learned counsel for the appellants made the following submissions:

(i) The domestic industry neither manufactured nor had the capability to manufacture pure form of C12 and C14 variants (pure cuts) of the product under consideration;

(ii) A joint reading of paragraphs 6(g) and 6(h) of the final findings would indicate that as regard the exclusion of the pure cuts C8 and C10, the domestic industry claimed that they have the capacity to produce such grades, but such a claim was not made with respect to the pure cuts C12 and C14. The only reason given for the non-exclusion of pure cuts C12 and C14 in the product under consideration is the apprehension of circumvention of the duty imposed on blend C12-14;

(iii) During the investigation domestic industry did not claim that they manufacture or even have the capability to manufacture pure cuts C12 and C14. While the appellant provided evidences that the domestic industry do not produce pure cuts C12 and C14, a fleeting remark was made by the representative of the domestic industry that they had the capability to produce and provide pure cuts C12 and C14 during the period of investigation (April 2016- March 2017);

(iv) At no place in the impugned final findings or the submission made by the domestic industry before the designated authority there is even a whisper that the domestic industry had manufactured pure cuts C12 or C14;

(v) It has been the consistent approach of the Tribunal as well as the designated authority that the product grades not manufactured by the domestic industry cannot cause injury to the domestic industry and thus, the same have to be excluded from the scope of the product under consideration. In support of this contention reliance has been placed on the following decisions:

- **(a) Magnet User Association** vs. **Designated Authority[5];**
- **(b) Oxo Alcohols Industries Association** vs. **Designated Authority[6];**
- **(c) Indian Refractory Association** vs. **Designated Authority[7]; and**
- **(d) Exotic Decor Pvt Ltd** vs. **Designated Authority[8].**

(vi) The Manual of Operating Practices, which provides the operating practices of the Directorate, specifically mentions that the product under consideration should only include those products which are **produced and commercially sold by the Domestic Industry** with only exception available to a newly formed industry.

15. Shri Vipin Jain assisted by Ms. Tuhina, learned counsel for the domestic industry (respondent no. 3), submitted that on the first issue the respondent would have no objection if the product under consideration is re-defined as 'Saturated Fatty Alcohol with carbon

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5. 2003 (157) E.L.T. 150 (Tri-Del).
6. (2001 (130) E.L.T. 58 (Tri-Del)
7. 2000 (119) E.L.T. 319 (Tribunal)
8. Anti-dumping Appeal No. 52239 of 2018 decided on 12.08.2020

chain length of C12, C14, C16 and C18 including single, blends and unblended which includes blends of a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C16-C18 and C14-C16'.

16. However, with regard to issue no. 2, learned counsel for the respondent made the following submissions:

(i) The final findings of the designated authority recorded that the pure grades C12 and C14 and its blend C12-C14 are interchangeable and originate out of identical raw material by an identical manufacturing process. As such, its exclusion from the product under consideration was not warranted;

(ii) During the course of investigation it was submitted by the respondent that grade C12 and C14 can be easily blended together in desired ratio to get grade C-12-C14. Since the main demand in India is of C12-C14, exclusion of C12 and C14 grade would defeat the very purpose of levy of anti-dumping duty. In this regard reliance has been placed on the following decisions:

(i) Huawei Technologies Co. Ltd. vs. **Designated Authority[9];**

(ii) Marino Panel Products Ltd. vs. **Designated Authority[10];** and

(iii) Kajaria Ceramics Ltd. vs. **Designated Authority[11];**

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9. 2016 (334) E.L.T. 339
10. 2016 (334) E.L.T. 552
11. 2006 (195) E.L.T. 146

(iii) The appellants had neither in their response to the disclosure statement nor in the present appeal placed any evidence on record to suggest that grades C12 and C14 are not interchangeable with C12-C14;

(iv) 'Like Product', as defined under rule 2(d) of the 1995 Anti-Dumping Rules, includes not only an article which is identical or alike in all respects to the article under investigation for being dumped in India, but also such an article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation. Thus, in absence of any evidence to the contrary, there can be no dispute that grade C12 and C14 are 'like articles' and, therefore, cannot be excluded from the scope of product under consideration;

(v) It is a settled principle in law that the burden to prove any particular fact lies on the person who claims in its existence. In the instant case, a finding was recorded by the designated authority that pure grades C12 and C14 are interchangeable with the blend of C12-C14. To contest the said finding, it was for the appellants, if they so desired, to adequately prove that they are not interchangeable. However, apart from making a bald statement, the appellants have not brought

any evidence on record to dispute the finding that grades C12 and C14 are interchangeable;

(vi) The submission made on behalf of the appellants during the course of hearing that the blending of C12 and C14 to get C12-C14 would not be economically viable cannot be accepted as it was not only made for the first time before this Tribunal without seeking leave of the Tribunal, but also without producing or relying upon even an iota of evidence which could substantiate the contention urged by the appellants, especially that blending of C12 and C14 would require substantial expenditure or setting up of any plant/machinery;

(vii) The claim that pure cuts C12 and C14 attract higher customs duty as compared to blends is also incorrect and misleading as imports of both pure cuts (C12 & C14) as well as blends (C12-C14) from the subject countries attract 'Nil' Basic Customs Duty under ASEAN Free Trade Agreement; and

(viii) As regards the claim of the appellants that the domestic industry does not have the capacity to manufacture pure cuts, the domestic industry had in its Petition before the designated authority as well as during the onsite verification explained in detail the entire manufacturing process. It was stated that using the same raw material and manufacturing process, the respondent could distil

> any carbon chain length fatty acid as was required by it. In fact, during the investigation, the designated authority had verified the fact that the respondent possesses the capacity to produce all grades of the product under consideration as both pure cuts as well as blends thereof are produced using same raw materials and the same manufacturing process and the only distinguishing factor is the degree at which the distillation process is undertaken.

17. Shri Ameet Singh, leaned counsel appearing for the designated authority assisted by Ms. Bhavana Varsha and Ms. Jaya Kumari learned authorised representative appearing for the Government of India also supported the final findings of the designated authority and the consequential Customs Notification issued by the Central Government.

18. The submissions advanced by the learned counsel appearing for the appellants and the learned counsel and the learned authorised representative appearing for the respondents have been considered.

19. There is no dispute between the appellants and the domestic industry (respondent no.-3) regarding the first issue. The 'product under consideration' is, therefore, modified as 'Saturated Fatty Alcohol with carbon chain length of C12, C14, C16 and C18 including single, blends and unblended which includes blends of a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C16-C18 and C14-C16'.

20. The submission advanced by the learned counsel for the appellants with regard to issue no. 2 is that pure form of C12 and C14 could not have been included in the scope of the product under consideration since these two products are not manufactured by the domestic industry and nor does the domestic industry have the capacity to manufacture them. In this connection, learned counsel referred to the findings of the designated authority regarding pure cuts C8 and C10, which products have been excluded from the product under consideration for the reason that the domestic industry has neither produced them nor has the domestic industry produced any product that can be considered as 'like article' to the said product, and contended that for the same reason C12 and C14 should have been excluded. Learned counsel for the appellants also contended that the designated authority was not justified in assuming that non- exclusion of pure cuts C12 and C14 would result in circumvention of anti-dumping duty imposed on the blend C12-C14.

21. The contention of the learned counsel for the domestic industry, however, is that pure grades C12 and C14 and its blend C12-C14 are interchangeable and originate out of the identical raw material by an identical manufacturing process and, therefore, there was a good reason not to exclude C12 and C14 from the product under consideration. Learned counsel for the domestic industry further contended, as was also noticed by the designated authority, that the primary demand in India is for blend C-12-C14 grade and since C12 and C14 can be blended together by a simple physical process, its exclusion would defeat the very purpose of levy of anti-

dumping duty. Learned counsel further submitted that 'like article' would include not only article which is identical or alike in all respects to the article under investigation, but also such an article which has characteristics closely resembling those of the article under investigation and since there is no dispute that C12 and C14 are like articles, they cannot be excluded from the product under consideration.

22. It would, therefore, have to be examined as to whether pure cuts C12 and C14 are interchangeable with blend C12-C14. It is seen that both pure grade C12 and C14 and its blend C12-C14 originate out of the same raw material by the same manufacturing process. It has also been contended by the domestic industry that C12 and C14 can be blended together by a simple process. The only contention that has been raised by the learned counsel for the appellants during the course of hearing of the appeal is that blending would incur expenditure and, therefore, would not be economically viable. In the absence of such an averment having being made before the designated authority or in this appeal and in the absence of any evidence having been led, this submission cannot be accepted.

23. It is also not possible to accept the contention of the learned counsel for the appellants that pure cuts C12 and C14 would attract higher customs duty as compared to blend as both pure cuts and blends from the subject countries attract 'Nil' basic customs duty under ASEAN Free Trade Agreement.

24. It also needs to be noticed that since the main demand in India is of C12-C14, exclusion of C12 and C14 grade may defeat the very purpose.

25. In **Huawei Technologies** it was held by the Tribunal that it is permissible for the designated authority to include within the preview of the product under consideration, parts and component, which if not included, would make the levy ineffective for the reason that if parts and components are excluded, the importers may bring the items in unassembled form and assemble the same in India and defeat the levy. The relevant portion of the decision of the Tribunal is reproduced below:

> "**28. As regards the parts and components, it is contended by the appellants that there is no domestic industry for the part and components, and hence no duty can be imposed on their import.** Ld. advocate for the domestic industry contended that (i) the course of production of SDH Equipment by Tejas, various parts, components and sub-assemblies come into existence. Tejas is a producer of all the items, which arise in the manufacturing process, even though these items are not produced for sale, but for captive consumption. (ii) DA has devised a PCN system, which enables determination of the dumping and injury margin, for each part, component, or type separately, to the extent information has been made available by the exporters. (iii) As regards injury to the domestic industry, Rule 2(b), 11 and Annexure II of the Anti-dumping Rules and WTO decisions were referred to. (iv) It is evident that the Designated Authority is required to determine injury to the domestic industry engaged in manufacturing like article. Such being the case, injury to the domestic industry is required to be seen in respect of the article under investigation.
>
> 29. **In our view it is permissible for the Authority to include within the purview of the PUC, parts and components, which if not included, would make the levy ineffective. The coverage of the product for levy of duty should be such that the purpose and intent of the levy is achieved.** Anti-dumping duty is levied to safeguard the domestic

> producers from ill effects of dumping. If the parts and components meant for SDH application are excluded, the importers could simply bring the items in different consignments, in unassembled form, and assemble the same in India and defeat the levy. **Indeed, including parts and components is consistent with the global practice of defining the PUC in a manner so as to prevent avoidance or circumvention of the levy by the exporters as is evident from the USITC decisions cited by ld. advocate for domestic industry** and reproduced below:-
>
> xxxxxxxxxx
>
> **(emphasis supplied)**

26. In **Merino Panel Products**, it was sought to be contended before the Tribunal that the domestic industry does not manufacture MDF exceeding a particular size and, therefore, anti-dumping duty should not be imposed on such imports of MDF exceeding that size. The Tribunal agreed with the finding of the designated authority that if they were excluded, higher sizes can be brought into the country and cut into lower sizes which would amount to substitutability. The relevant portion of the decision of the Tribunal is reproduced below:

> "(k) **Based on the above, the Authority considered the claims of interested parties for exclusion of some types of MDF.**
>
> xxxxxxxxxx
>
> (iii) **Large Size Panels : The responding exporters as well as other interested parties have claimed that the Domestic Industry do not manufacture MDF Board exceeding sizes 1220x2440 MM (4'x8').** The Domestic Industry has claimed that they are capable to manufacture large size panels. On analysis of data received from DGCI&S, it has been observed that large 31 size panels exceeding the size 1220x2440 MM (4'x8') either in width or in breadth or in both have been imported to the extent of 3.15% of the total imports from the subject countries. **The**

> **Domestic Industry has stated that if large size panels are kept out of the purview of the investigations, the dumped imports shall occur and cause injury to the Domestic Industry as higher sizes can be brought into the country and can be cut into lower sizes and this amounts to substitutability. The Authority holds that the large size panels constitute the product under consideration."**

The decisions relied upon by the appellant, as analysed below, do not come to its rescue. In the case of **Andhra Petrochemicals Ltd.** v. **Designated Authority** (supra) exclusion was sought of a product which was not imported in India, whereas in the present case, the argument is that different types of MDF are imported which are not made in India. In the case of **Indian Refractory Makers Association** v. **Designated Authority (supra)**, exclusion was allowed since the burnt magnesia of less than 4% was not in commercial competition with the indigenous product. **The exclusion in the case of Magnet Users Association** v. **Designated Authority (supra) was allowed**, as the imported product admittedly did not offer any competition to the indigenous product. The decision in the case of **Videocon Narmada Glass** v. **Designated Authority (supra) was decided** based on a concession given by Domestic Industry that it was not being injured by import of strontium in granular form.

In view of the above, we hold that the Authority has extensively and analytically dealt with the issue and has correctly held that the imported product is in commercial competition with the domestic product and its import would cause injury to the Domestic Industry."

27. In **Kajaria Ceramics** it was held that since the product imported by the appellant could be substituted for the products manufactured by the domestic industry, imposition of anti-dumping duty would be justified even if the domestic industry did not

manufacture the particular size of tile which was being dumped. The relevant portion of the decision is reproduced below:

> "6.6 Under the scheme of the imposition of Anti Dumping Duty, the Designated Authority is required to determine whether the dumped products caused injury to the Domestic Industry. **In this case it is evident that the products imported by the appellants can be substituted for the products manufactured by the Domestic Industries. The imported products viz. 2' x 2' vitrified/porcelain tiles can definitely replace the 1' x 1' vitrified/porcelain tiles manufactured by the Domestic Industry,** inasmuch as the user will prefer to use the dumped low cost imported tiles of a bigger size to substitute his requirement of tiles of smaller size. The dumped imports of vitrified/porcelain tiles would be an efficient substitute for the vitrified/porcelain tiles manufactured by the D.I. A consumer would readily compromise on the size/pattern of tiles as long as it satisfies his need for vitrified/porcelain tiles. The products imported by the appellant would technically substitute the D.I.'s product of vitrified/porcelain tiles and commercially also the product imported would substitute the D.I.'s products. When there is a variety of grades available in vitrified/porcelain tiles, that would in itself, give a leverage to the consumer to substitute from one type/size/pattern to another type/size/pattern of vitrified/porcelain tiles. In technical terms a vitrified/porcelain tile of 1000 x 1000 mm will equivalent to four vitrified/porcelain tiles of size of 500 x 500 mm but the price of the 1000 x 1000 mm tiles will not be the price of four tiles of 500 x 500 mm. It would be lesser then the price of the four tiles of smaller size. **Hence technically and commercially the dumped imports of different sizes may substitute the vitrified/porcelain tiles manufactured by D.I., even though the D.I. may not manufacture the particular size of tile which is dumped."**
>
> **(emphasis supplied)**

28. Learned counsel for the appellants, however, submitted that when the domestic industry was not producing carbon of grade C12 and C14, no possible injury could have been caused to the domestic industry if these two articles were imported and, therefore, they should be excluded from the scope of the product under consideration.

29. The decisions relied upon by learned counsel for the appellants in **Magnet User Association** and **Indian Refractory Association** to support the aforesaid contention have been considered and distinguished by the Tribunal in **Kajaria Ceramics**. In **Oxo Alcohols**, the Bench found that for articles to be treated as 'like articles', a finding should be recorded that they have characteristics closely reassembling each other. In **Exotic Decor**, the Tribunal was not called upon to examine whether the two products were interchangeable and originated out of identical raw material so that the exclusion would defeat the very purpose of levy.

30. Learned counsel for the appellants also submitted that the Manual of Operating Practices also mentions that the product under consideration should only include those products which are produced and commercially sold by the domestic industry.

31. In the present case, a finding has been recorded by designated authority that pure grade C12 and C14 and its blend C12-C14 are interchangeable and originated out of identical raw material by an identical manufacturing process. It was also noticed that as the main demand in India is for C12-C14, a simple process of blending can be applied on C12 and C14 so as to defeat the purpose of levy. It was also found that C12 and C14 were like products and, therefore, could

not be excluded from the product under consideration. A broad proposition pleaded on behalf of the appellants that the product under consideration should only include those products which are produced by the domestic industry would, therefore, not help the appellants in the facts and circumstance of the present case.

32. Thus, as pure cuts C12 and C14 are interchangeable with blend C12-C14 and can also be easily blended together to get C12-C14 blend, the exclusion of pure cuts C12 and C14 would defeat the very purpose of levy of anti-dumping duty.

33. It also needs to be stated the domestic industry had explained in detail the manufacturing process undertaken by it in the application filed before the designated authority for initiation of anti-dumping investigation. It was stated that the subject goods of all grades are manufactured by first splitting the vegetable oil (such as crude palm kernel oil) to get fatty acid, which is, thereafter subjected to plain/fractional distillation at high temperature and vacuum. It is through this process of distillation that the required grade/carbon chain length of Fatty Acid is distilled out, which is, thereafter subjected to esterification and hydrogenation to get fatty alcohol of carbon chain length. Crude palm kernel oil inherently consists of carbon chain lengths of C8 to C18, which can be separated through process of fractional distillation. Thus, by using the same material and manufacturing process, the domestic industry can distil any carbon chain length fatty acid as may be required, the only distinguishing factor is the degree at which the distillation process is undertaken. The domestic industry also stated that it manufactured pure cuts C16 and C18 during the period of investigation but as the

demand for pure cuts C12 and C14 was negligible it did not manufacture pure cuts C12 and C14 during the period of investigation, though it does have the capacity and capability to manufacture pure cuts C12 and C14.

34. There is, therefore, no error in the finding recorded by the designated authority in including pure cuts C12 and C14 in the product under consideration.

35. The only relief, therefore, that can be granted to the appellants is the modification of the 'product under consideration' to 'Saturated Fatty Alcohol with carbon chain length of C12, C14, C16 and C18 including single, blends and unblended which includes blends of a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C16-C18 and C14-C16'. The Customs Notification dated 25.05.2018 and the Corrigendum Notification are, accordingly, modified to the said extent. The rest of the findings of the designated authority and the imposition of anti-dumping duty in the Customs Notification are maintained. The four appeals are, accordingly, allowed only to the extent indicated above.

(Order pronounced on **06.01.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Sb/JB/Shreya