

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

ANTI DUMPING APPEAL NO. 51073 OF 2022

(Arising out of Final Findings F.No. 06/27/2020-DGTR dated 07.09.2021 of the Designated Authority, Directorate General of Trade and Customs Notification No. 68/2021-Customs (ADD) dated 06.12.2021)

ACP Manufacturer Association

2E/7, Jhandewalan Extension,
New Delhi-110055

...Appellant

VERSUS

1. The Union of India

Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001

**2. Designated Authority, Directorate
General of Trade Remedies**

Department of Commerce & Industry
Parliament Street, Jeevan Tara
Building, 4th Floor, New Delhi-110001

3. Hindalco Industries Limited

3rd Floor, B Wing, S.K. Ahire Marg,
Worli, Mumbai 400030

4. Jiangsu Dingsheng New Materials Joint-Stock Co.

Jingkou Industrial Park,
Zhenjiang, Jiangsu (338 Provincial Highway
/ West of Beijing – Hangzhou Grand Canal)

5. Hangzhou Dingsheng Import & Export Co., Ltd.

PingYao Zone, Yuhang Industrial Area,
Hangzhou, Zhejiang, 311115, China

6. Dingsheng Aluminum Industries

(Hongkong) Trading Co., Limited
Flat/RM 1405 Gloucester Road, Wanchai, HK

7. Inner Mongolia Liansheng New Energy Material Co.

Xiaoshan Ganghui Center,
Hazgzhou City, Zhejiang Province

8. Arconic (Kunshan) Aluminum Products Co., Ltd

No. 111 Yanhu Road Huaqiao Town,
Kunshan City, 215332, Jiangsu Province, China

- 9. M/s Granges Aluminium (Shanghai) Ltd. (GAS)**
1111 Jiatang Highway Shanghai
China, 201807.
- 10. M/s. Alkraft Thermotechnologies Pvt. Ltd.**
35A & B/1, Ambattur Industrial Estate,
Chennai 600058
- 11. Technova Imaging Systems Private Limited**
124, 1st Floor, Ansal Bhawan, 16,
KG Marg, Barakhamba, New Delhi
- 12. Mahle Anand Thermal Systems Private Limited**
Plot No. 3, Sector 41, Kasna Industrial Area,
201310 Greater Noida, Uttar Pradesh
- 13. Aluminium Secondary Manufacturers Association**
1/6B, Asaf Ali Road, New Delhi- 110002
- 14. Alutech Packaging Private Limited**
DSM-315, DLF Tower,
Shivaji Marg, Moti Nagar, Delhi – 110005, India
- 15. Greenberry Foils India Limited**
Plot No. 6, Near Godrej Factory Valia,
GIDC Industrial Estate, Valia Rd,
Ankleshwar, Gujarat 393135
- 16. Jindal (India) Limited**
Jindal Centre, 12, Bhikaji Cama Palace,
New Delhi – 1100666
- 17. Raviraj Foils Limited**
702, 7th Floor, Saffron, Panchvati,
Ambavadi, Ahmedabad, Gujarat 380006
- 18. R.S. Foils Private Limited**
Survey No. 54, Samlaya-Tundav Road,
Village – Moto Motipura,
Tal – Savli, Dist. – Vadodara
391770, Gujarat, India
- 19. Shree Venkateshwara Electrocast Private Limited**
Flat No. 204, Block – B,
Panchsheel Apartment, 493/B/1,
GT Road (S), Shibpur, Howrah,
Kolkata, WB, 711102
- 20. Indomax Industries**
D19/3, Okhla Phase-2, New Delhi-110020

21. Hanon Automotive Systems India Pvt. Ltd.

No.-1, Nelson Mandela Marg,
Shanti Kunj B Block, Anand Gram,
Vasant Kunj, New Delhi-110070

22. Aludecor Lamination Pvt. Ltd.

.....Respondents

Martin Burn Building, Suite 52, Floor 5, 1, RN,
Mukherjee Road,
Kolkata – 700001, West Bengal

APPEARANCE:

Shri Pragyan Sharma, Shri Rajesh Sharma, Ms. Rupali Sharma, Shri Anoop George, Shri Kartikey Dutta and Shri Nikhil Sharma, Advocates for the Appellant

Shri S. Seetharaman and Shri Darpan Bhuyan Advocates for the Respondent No. 3

Ms. Reena Asthana Khair, Ms. Shreya Dahiya and Shri Subham Jaiswal, Advocates for Respondent No.9

Shri Ameet Singh and Ms. Bhawna, Advocates for Designated Authority

Shri Nagendra Yadav and Shri Viswajeet Saharan, Authorized Representatives for the Central 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: 01.11.2022
Date of Decision: 13.04.2023**

FINAL ORDER NO. 50477/2023

JUSTICE DILIP GUPTA:

ACP Manufacturer Association, New Delhi¹ has filed this appeal with a prayer that the final findings dated 07.09.2021 of the designated authority be modified so as to exclude the product 'colour coated aluminium coils' from imposition of anti-dumping duty. The

1. the appellant

second relief that has been claimed is to also modify the consequential customs notification 06.12.2021 issued by the Central Government to exclude 'colour coated aluminium coils' from imposition of anti-dumping duty retrospectively w.e.f. 06.12.2021 and for refund of the excess/additional duty so collected on the import of 'colour coated aluminium coils' w.e.f. 06.12.2021.

2. It transpires from the records that Hindalco Industries Limited², which has been impleaded as respondent no. 3 in this appeal, had filed an application before the designated authority on behalf of the domestic industry under the provisions of the Customs Tariff Act, 1975³ and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and Determination of Injury) Rules, 1995⁴ for initiation of anti-dumping investigation on the imports of certain flat rolled products of aluminium⁵ originating in or exported from China PR⁶. The investigation was initiated by the designated authority by a notification dated 08.09.2020 to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry. The investigation was conducted for the period from 01.04.2019 to 31.03.2020 and the injury analysis period was notified to be from 01.04.2016 to 31.03.2019 and the period of investigation. The designated authority provided an opportunity to all the interested

2. Hindalco
3. the Tariff Act
4. the 1995 Rules
5. the subject goods
6. the subject country

parties to present their submissions orally in the hearing conducted on 25.05.2021 and the interested parties who presented their views were advised to file written submissions of the views expressed orally by them. The interested parties were also provided an opportunity to file rejoinder submissions to the views expressed by the opposing interested parties. A disclosure statement containing the essential facts which would form the basis for the final findings was issued to the interested parties on 26.08.2021 and the interested parties were allowed time upto 02.09.2021 to give their comments. The final findings of designated authority were notified on 07.09.2021. The conclusion and the recommendation made by the designated authority in the final findings are as follows:

"L. CONCLUSION

127. After examining the submissions made by the domestic industry and the other interested parties and issues raised therein and considering the facts available on record, the Authority concludes that:

- a) Considering the normal value and export price for the subject goods, dumping margin for the subject goods from the subject country has been determined, and the margin is positive and significant.
- b) The domestic industry has suffered material injury and the injury margin is positive. The examination of the imports of the subject product and the performance of the domestic industry shows that the volume of dumped imports from the subject country has increased in both absolute and relative terms. The volume of the subject goods has increased by more than 60% whereas demand has increased by only 18%. It is also noted that the imports of the subject goods from

the subject country are suppressing the prices of the domestic industry. The production and the sales of the domestic industry have remained largely stable in the period of investigation while the capacity utilization remains suboptimal. It is noted that the market share of domestic industry has declined by 12% in the period of investigation whereas market share of the imports from the subject country has increased by 35%. The performance of the domestic industry has significantly deteriorated in respect of profits, cash profits and return on capital employed. The domestic industry has suffered financial losses, cash losses and negative return on investments in the period of investigation.

- c) The material injury suffered by the domestic industry has been caused by the dumped imports.

M. RECOMMENDATION

128. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to the domestic industry, the exporters, the importers and the other interested parties to provide information on the aspects of the dumping, the injury and the causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that imposition of anti-dumping duty is required to offset the dumping and the injury. Therefore, the Authority recommends imposition of the anti-dumping duty on the imports of subject goods originating in or exported from the subject country.

129. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of the 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. The Authority, therefore, considers it necessary to recommend

imposition of the definitive anti-dumping duty equal to the amount mentioned in the column (7), on all imports of the subject goods described at Column (3) of the duty table, originating in or exported from China PR, from the date of notification to be issued in this regard by the Central Government.”

3. The Central Government, thereafter, issued the customs notification dated 06.12.2021 imposing anti-dumping duty on flat rolled products of aluminium for a period of 5 years from the date of publication of the notification. However, the following two products were excluded from the scope of the subject goods.

- i. Can-body Stock–also includes Can End Stock (CES) used to make aluminium cans.
- ii. Aluminium Foil up to 80 microns.”

4. The appellant is an Association of Manufacturers of Aluminium Composite Panel⁷ sheets in India and represents more than 80% of ACP manufacturers who are using different types of colour coated coils as a raw material to manufacture the finish goods i.e. ACP. According to the appellant, the subject goods include the product ‘colour coated coils’, which was neither produced in commercial volumes nor sold in commercial volumes by the domestic industry and was being imported into India in significant volumes because of absence of domestic production. The appellant, therefore, contends that the subject goods includes products such as ACP stock, and colour coated coils but the domestic industry does not produce color coated coils for which the demand in the domestic market is about 40,000 MT and the domestic

7. ACP

industry only produces ACP stock, which is a raw material for the production of colour coated coils. According to the appellant, the process of converting ACP stock to colour coated aluminium coils is not a minor process since it requires installation of production facilities and would involve significant investment to the extent of Rs. 100 crores for installing 20 coating machines to meet the demand of 40,000 MT. According to the appellant, Hindalco, as a domestic industry, does not produce colour coated coil since it produces ACP stock only which requires further processing for making colour coated aluminium coils. The appellant also contends that colour coated aluminium coil was earlier excluded from the final findings notification dated 29.05.2009 issued in connection with the safeguard duty investigation against imports of aluminium flat rolled products and aluminium foil into India from China PR. The appellant also contends that colour coated aluminium coil was also excluded from the scope of product in the decision of the Tribunal rendered on 09.10.2017 in **M/s. G.M. Alloys Pvt. Ltd. vs. Union of India and others**⁸

5. Based on these facts, Shri Pragyan Sharma, learned counsel for the appellant, made the following submissions:

- (i) The designated authority committed an error in including colour coated aluminium coils within the scope of the subject goods ignoring the fact that the domestic industry did not manufacture/produce colour coated aluminium coils in any commercial volumes nor they were sold in the market in commercial volumes and in fact the domestic industry does not even have the

8. Anti-Dumping Appeal No. 51344 of 2017 decided on 09.10.2017

capacity/capability/own plant and equipment to manufacture it and the appellant had been importing it only for this reason;

- (ii)** The designated authority committed an error in including colour coated aluminium coils in the subject goods only on the basis of a statement made by Hindalco, without even verifying the claim which was based only on one invoice provided by Hindalco;
- (iii)** The designated authority committed an error in not following its own Manual of Standard Operating Practices according to which the product under consideration should include only those products which are produced and sold by the domestic industry commercially;
- (iv)** The present determination made by the designated authority is contrary to the safeguard duty investigation against import of aluminium flat rolled products from China PR initiated at the instance of the Hindalco, where colour coated aluminium coil was excluded from the scope of the product under consideration;
- (v)** The finding recorded by the designated authority that the domestic industry was manufacturing colour coated aluminium coils is contrary to the records as it was not even the case of the domestic industry that it was manufacturing colour coated coils. In fact, the case set up by Hindalco was that it was engaging job workers for applying colour to the product which clearly means

that Hindalco did not have the capacity to produce colour coated coil for ACP manufacturers;

(vi) The findings recorded by the designated authority that the domestic industry was producing colour coated coils is also perverse as Hindalco had not placed any record which would give the details of its capacity or the number and type of plant and machinery used for colour coating. This is for the reason that manufacture of colour coated coils is quite elaborate, requires separate plant and investment and involves significant value addition. The product in question is highly technical and the domestic industry does not have the technical know-how or technology to produce the product;

(vii) The final findings recorded by the designated authority are in violation of the principles of natural justice as the domestic industry had neither responded to the submissions of the appellant at the stage of initiation nor responded to the submissions of the appellant at the time of oral hearing or post hearing written submissions and the designated authority, for the first time in the disclosure statement, stated that the domestic industry has shown some sale invoices. In fact, the designated authority only in the final findings disclosed that the domestic industry has given evidence that it produces the product and engages job worker for merely applying the colour to the products based on customer specifications;

- (viii)** The designated authority has relied upon certain material and facts, which facts did not form part of the disclosure statement and to which the appellant had no opportunity to respond;
- (ix)** The findings of the designated authority are in violation of the 1995 Rules; and
- (x)** The determination made in the present case is contrary to the past determination made by the designated authority.

6. Shri S. Seetharaman assisted by Shri Atul Sharma and Shri Darpan Bhuyan, learned counsel appearing for the Hindalco, which is the domestic industry, however, supported the final findings of the designated authority and made the following submissions:

- (i)** Colour coated aluminium coil was produced and sold by the domestic industry during the period of investigation. Hindalco had provided evidence to the effect that it had produced and sold colour coated aluminium coils to an interested party in the investigation;
- (ii)** The dumped imports of colour coated aluminium coils from China PR is preventing the domestic industry from competing with imports of colour coated aluminium coils;
- (iii)** The anti-dumping duty levied on colour coated aluminium coils will counteract the effects of dumping and ensure that colour coated aluminium coils are imported at fair and undumped prices;

- (iv)** If certain grades of the product under consideration are exempted on the basis that they cannot cater to the entire demand/requirement of that particular grade in India and cheap dumped imports at unfair prices are allowed to continue as they did before the imposition of anti-dumping duty through the impugned notification, the domestic industry would never be able to increase capacity with respect to such grades;
- (v)** The cases cited by the appellant are not applicable to the facts and circumstances of the present case as in the said cases, the domestic industry was not manufacturing a like article to the imported article under investigation. In the present case, the domestic industry has produced and sold colour coated aluminium coils during the period of investigation and, therefore, the question of exclusion from the scope of the product under consideration does not arise; and
- (vi)** Non-disclosure of factum of job work does not violate principles of natural justice.

7. Shri Ameet Singh, learned counsel for the designated authority and Shri Nagendra Yadav learned authorized representative appearing for the Central Government have, however, supported the final findings of the designated authority and the notification issued by the Central Government.

8. The submissions advanced by the learned counsel for the appellant and the learned counsel and the authorized representative appearing for the respondents have been considered.

9. The sole issue that arises for consideration in this appeal is as to whether colour coated coils should be excluded from the product on which anti-dumping duty has been levied. Anti-dumping duty has been levied on imports of flat rolled products of aluminium originating in or exported from China PR. The appellant is a manufacturer of Aluminium Composite Panel sheets in India, and uses different types of colour coated coils as a raw material to manufacture the finish goods i.e. ACP. Thus, imposition of anti-dumping duty on colour coated coils would work to the prejudice of the appellant. The main contention urged by the learned counsel for the appellant is that the domestic industry produces only ACP stock, which is a raw material for the production of colour coated coil and the domestic industry does not produce colour coated coil.

10. It would, therefore, be useful to reproduce the paragraphs of disclosure statement of the designated authority that deal with product under consideration.

11. The key submissions made by the domestic industry have been recorded by the designated authority in the following manner:

“5. The following are the key submissions made by the domestic industry with regard to the product under consideration and the like article:

a. The product under consideration is “Flat Rolled Products of Aluminium” (FRP). FRP is made in the form of ALuminium Rolled Coils, or Aluminium Rolled Sheets of various dimensions. FRP is made from primary or secondary aluminium which may undergo several processes such as melting & alloying, slab casting (slabs/concast), hot rolling, cold rolling, and other finishing processes and used for a variety of applications

depending upon the gauge, temper, alloy, width, finish etc.

e. Exclusion requests: With regard to exclusion requests made by the interested parties, the domestic industry has submitted as follows:

Colour Coated Aluminium Coil

ix. The domestic industry has supplied Colour Coated Aluminium Coil to various customers in the POI."

12. The submissions made by the other interested parties on colour coated aluminium coils are as follows:

"C.2 Submissions made by the other interested parties

6. The following are the submission made by the other interested parties with regard to the product under consideration and like article:

a to c *****

d. Exclusion requests: Following exclusions have been requested by the opposing interested parties:

Colour Coated Aluminium Coils

i to ix *****

x. The domestic industry does not have the capacity to produce colour coated coils. Production of colour coated coil from ACP stock / ACP mill finish requires a separate plant and entails an investment to the tune of ₹ 5 crores, which the domestic industry has not done even though it is an insignificant cost to it.

xi. Consumers are not in a position to undertake the significant investment needed to produce colour coated coil themselves.

xii. Colour coated aluminium coil was excluded in the previous safeguard investigation concerning imports of Aluminium Flat Rolled Products. Colour coated aluminium foil was also excluded from the scope of the product under consideration by the CESTAT in the anti-dumping investigation concerning imports of aluminium foil originating in and exported from China PR. Accordingly, colour coated aluminium coil should be excluded from the present investigation as well.

xiii. The domestic industry has not sold any colour coated coil to the consumers despite such a large demand in the country. This can be verified from the PCN wise sales information that must have been provided by the present domestic industry.”

13. The designated authority examined the matter in the following manner:

“C.3 Examination by the Authority

7. Various interest parties have raised a number of issues with regard to the scope of the product under consideration in the present case. Interested parties have sought exclusion of certain products from the scope of the PUC on the grounds that the domestic industry is not capable of producing the product type or supply the product in the desired product type, or the quality of the product produced and supplied by the domestic industry is not satisfactory. The arguments of interested parties have been examined after calling relevant information from the parties and examined the same during the table verification and also taking into account the evidence submitted on record by the interested parties.”

8 to 20 *****

"Colour Coated Aluminium Coil

21. The interested parties have argued that the domestic industry does not have the capacity to produce colour coated coils. However, the domestic industry has provided evidence that it has supplied Colour Coated Aluminium Coil to various customers, including an interested party in this case in the POI.

22. With respect to the exclusion of Colour Coated Aluminium Coil in past investigations, the Authority notes that for the purposes of the current investigation, the Authority has looked at the evidence and data provided by the domestic industry and the Authority notes that the domestic industry is manufacturing and has supplied colour coated aluminium coil to customers and, therefore, they are included within the scope of the PUC."

14. The appellant filed comments to the disclosure statement and submitted a list of 21 members of ACP Manufacturers who had not been supplied the said product by the domestic industry to controvert the claim made by the domestic industry regarding sale 'to various customers'. An affidavit was also filed by the appellant before the designated authority to the effect that none of the members had ever purchased any quantity of colour coated aluminium coil from Hindalco, and in fact, they were not even aware that Hindalco was producing or selling the said product nor Hindalco had ever approached them for supply of the goods. A number of questions were also raised with regard to the fact that it was not possible for Hindalco to produce colour coated coil since it did not have coating facilities and that Hindalco should be asked to give a certificate that it has in-house coating facilities for production of colour coated coils. It was also categorically stated that the annual requirement of colour coated coils

in India is 40,000 MT and since one coil machine can produce only 150 MT per month, the production of 40,000 MT would require more than 20 colour coating machines.

15. The designated authority recorded the following final findings with regard to colour coated coils:

"I.3 Examination by the Authority

123. The analysis and the decision of the Authority on the issues raised above are as below:

(xiii) With respect to exclusion on colour coated, the Authority notes that the domestic industry has given the evidence that it produces the product and engages job workers for merely applying the colour to the products based on the customer specifications. Mere job working with respect to application colour/paint does not warrant exclusion of the product. The domestic industry does not part with title of the goods. In any event, the cost towards color coating is not significant and, therefore, it will be incorrect to say that the domestic industry does not manufacture color coated aluminium coil."

16. What needs to be noticed is that in the disclosure statement all that was recorded by the designated authority was that the domestic industry had supplied the product to various customers in the period of investigation, but in the final findings it has been recorded that the domestic industry has given evidence that it produces the product and engages job workers for merely applying the colour to the products based on customer specifications.

17. It needs to be noted that the Manual of Standard Operating Practices for Trade Remedy Investigations issued by the Directorate General of Trade Remedies, Department of Commerce, Government of India provides in Article 3.10 that the product under consideration should include those items only, which are manufactured by the domestic industry and commercially sold in the domestic market by the domestic industry. The said Article is reproduced below:

“3.10. The PUC is defined to include those items only, which are manufactured by the DI. Mere competence without any production or merchant sales may not be sufficient to include an item in the definition of the PUC. Similarly, if an item is produced and consumed only captively (in-house) without any outside sales the DI's request for an investigation against this product may be considered with caution. **The PUC should preferably include those items, which are produced and commercially sold in the domestic market by the respective DI.** An exception could be the cases where the applicant is a new industry, who has set up facility for a new product or could be an upstream product of an existing industry and the new industry is facing difficulty in capturing market on account of dumped imports of the product”

(emphasis supplied)

18. The designated authority has included colour coated coil within the scope of the product under consideration for imposition of anti-dumping duty ignoring the following facts:

- (a)** It was not being manufactured/produced by domestic industry in any commercial volumes;
- (b)** It was not being sold in the market in commercial volumes;

- (c)** It has been imported in significant volumes;
- (d)** Domestic industry does not even have the capability and/or own capacity and/or, own plant and equipment to manufacture such products;
- (e)** Manufacturing of colour coated coil is not mere application of colour/paint; and
- (f)** The appellant imports the said products only for the reason that there is no potential production of said goods in India to cater the entire demand.

19. In this connection, it needs to be noted that production of colour coated coil requires installation of production facilities and significant investments. It requires a coating machine and installation of one coating machines facility would cost about Rs. 5 crores to give a production of about 150 MT. For a demand of 40,000 MT colour coated coil in India, atleast 20 coating machines would be required to be installed involving an expenditure of Rs. 100 crores. The process of converting ACP stock, which is a raw material for production of colour coated coil and which is produced by the domestic industry, to colour coated aluminium coils requires an elaborate process and not a simple colouring of the aluminium coil. The domestic industry did not provide any production quantity in regard to the colour coated coil nor the same have been examined by the designated authority in the final findings. There is nothing on the record which may indicate that the domestic industry is present in the market in any commercial way. It is only at the stage of rejoinder, a copy of which was not even made

available to the appellant, that the domestic industry produced an invoice which led the designated authority to record a finding in the disclosure statement that the domestic industry supplied colour coated aluminium coil to various customers and despite specific comments having being filed by the appellant to the disclosure statement, a general statement has been made by the designated authority in the final findings. It was imperative for the domestic industry to have come out with specific details of its production capacity of colour coated aluminium coil and the volumes of sale in the domestic market but the domestic industry failed to produce such evidence and merely came out with a case that some job workers were painting the aluminium coil to make it colour coated aluminium coil. This is not what a colour coated aluminium coil is because machines are required to process the ACP stock, which is a raw material. It is not the case of the domestic industry that such a process is not required to be undertaken.

20. What also needs to be noticed is that in the earlier final findings dated 29.05.2009 relating to safeguard duty investigation in respect of import of aluminium flat rolled products and aluminium foil to India from China PR, which concerned Hindalco also a domestic producer, it was sought to be contended by the interested parties that aluminium colour coated coils are not manufactured by the domestic industry and, therefore, cannot be included in the ambit of product under consideration. It would be seen from the aforesaid final findings recorded by the designated authority that it was not a case set up by Hindalco that it manufactures colour coated coil. The process of manufacture of colour coated coil has also been elaborately described

by the designated authority. The designated authority noticed that manufacture of colour coated coil requires separate plant of high investment and the coating is done either by fluorine carbon or polyester. In the case of coating by fluorine carbon, the aluminium coil is subjected to fluorine carbon resin, pigment and it is after high temperature roasting and baking that the paint is solidified with dry films with super weather resistance. This process has to be repeated 2-3 times. Likewise, when coating is done by polyester an elaborate procedure is also undertaken. The findings of the designated authority are as follows:

"61. The fact that M/s Hindalco does not manufacture colour coated coil as referred by the interested parties is not in dispute as M/s Hindalco has never argued that they manufacture such coils.

62. M/s Hindalco has contended that imported colour coated coil has direct adverse impact on the sales of the bare ACP coils sold by the Aluminium FRP industry. In other words, if the coated coils are imported from China it would directly replace the domestic sales of bare ACP coils by the India FRP industry. In order to analyze the contention of domestic industry and interested parties a comparison have been made between imported colour coated coils and bare Aluminium coils of similar thickness which is manufactured by Hindalco.

63. As admitted by the "domestic industry" the aluminium coils manufactured by Hindalco are used as input in the manufacture of colour coated coil. The process of manufacturing of colour coated coil is quite elaborate and requires separate plant of high investment. The manufacturing process is not a minor process which does not change the physical

or chemical characteristics. The coating is done by fluorine carbon (PVDF) or polyester (PE). In case of PVDF coating the aluminium coil is subjected to fluorine carbon resin, pigment, ester solvent, and after high temperature roasting and baking the paint is solidified with dry films with super weather resistance. The process is repeated 2-3 times for coating and baking. The colour coated coil so manufactured has anti-acid and anti-alkali properties. In contrast to that Aluminium coils are active to acid as well to alkali and by virtue of chemical properties of aluminium it reacts with weather conditions. **The colour coated coil made of PVDF coating are weather resistance and used for external wall cladding. The PVDF coating coil is used in making aluminium composite panels where one of the layers is the layer of PVDF colour coated coil.** The uses of PVDF coated colour coils is different from that of bare coil and bare coil cannot be used on external wall on account of its sensitivity to weather condition. **Further, price structure of such coated coils is different and is normally higher on account of extra cost to be incurred in manufacturing.**

64. The PE coating colour coil uses high molecular polymer as monomer with addition of alkyd to made UV resistant coating. The compact molecular structure makes paint surface luster and smooth. The PE coating coil has weather resistant properties for 8-10 years. It is specially applied for internal decoration and sign board. In contrast to this aluminium coils are not weather resistant on account of aluminium being chemically active. The physical properties of bare aluminium are different than that of PE coating coils. The chemical properties of PE coated coil is different than that of bare aluminium coil as certain chemical properties of the aluminium coil are suppressed by PE coatings to make it weather proof. **The bare coil cannot substitute the use of PE coils on account of specialty treatment of bare aluminium coil through elaborate process accomplished by a separate high investment plant. Besides this the price structure of such coated coils are different and**

ordinarily higher on account of extra manufacturing coat incurred in manufacturing such coils.

65. Therefore, the imported PVDF coating coil and PE coating coil of various thickness are not "like or directly competitive" article to the bare aluminium coils manufactured by Hindalco."

(emphasis supplied)

21. It also needs to be noted that colour coated aluminium foil was also excluded from the scope of product under consideration by the Tribunal in the decision rendered on 09.10.2017 in **G.M. Alloys**. The appeals had been filed before the Tribunal against the final findings of the designated authority and the Notification issued by the Central Government as colour coated aluminium foil had not been excluded from the scope of product under consideration for imposition of anti-dumping duty. The relevant portions of the decision of the Tribunal are as follows:

"5. The learned Counsel appearing on behalf of the 5 appellants who are pleading for exclusion of colour coated aluminium foil from the scope of product under consideration, submitted that the DA did not record separate finding on the request made by the appellants for exclusion of colour coated aluminium foil from the scope of investigation and imposition of AD duty. The said colour coated aluminium foil is a basic and main raw material for manufacture of aluminium composite panel. **The learned Counsel submitted that though the appellants submitted elaborate details regarding non-availability or non manufacture of colour coated aluminium foil by D.I., no specific finding was recorded by the DA.** In fact, it would appear that, by error, the impugned final findings excluded aluminium composite panel from the scope of product under consideration instead of colour coated aluminium foil. **The**

learned Counsel submitted that the said colour coated aluminium foil was excluded from safeguard duty in 2009 and the same reason is valid even now. The Domestic Industry (DI) has no capacity to manufacture the said product. Accordingly, the learned Counsel prayed for an order to exclude the colour coated aluminium foil from the scope of AD levy in terms of the above-mentioned customs notification.

6. The learned Counsel appearing on behalf of the Domestic Industry supported the submissions made by the above appellants on the excludability of colour coated aluminium foil from the scope of AD levy. It is submitted that the Domestic Industry do not manufacture the said product and, as such, there is no injury for them in case of import of the same.

7. The learned Counsel for the DA admitted that there is no separate finding recorded with reference to colour coated aluminium foil. As the appellants and the Domestic Industry are in agreement on this proposal, he has nothing further to submit.

8. We note that there is no specific finding regarding the inclusion or exclusion of colour coated aluminium foil in the final findings by the DA. However, in the overall scope of recommendation of AD duty on aluminium foils in the absence of specific exclusion the apprehension of the appellants will be correct to the effect that AD duty will get attracted by default. **We note that the product is not being manufactured in India. The DI had specifically supported in the submissions before us that the product under consideration can exclude colour coated aluminium foil as the same is not manufactured in India.**

9. We note all the parties before us are in agreement to the effect that the colour coated aluminium foil is not specifically discussed for Anti Dumping duty and there are valid grounds for its exclusion from the scope of the AD

levy. Noting the consent as pleaded before us, we find it fit and proper to order for the exclusion of the said product, namely colour coated aluminium foil from the scope of Anti Dumping duty imposed vide Customs Notification dated 16/05/2017. Accordingly, we order that in para 1 of the said notification after entry (viii) the following shall be inserted :-

“(ix) colour coated aluminium foil”.

(emphasis supplied)

22. The inevitable conclusion that follows from the aforesaid discussion is that Hindalco does not manufacture/produce colour coated coil as it has failed to produce any evidence before the designated authority or before the Tribunal to substantiate that it has even the capacity to manufacture/produce colour coated coil, much less produce colour coated coil in commercial volumes.

23. It is, therefore, not possible to accept the contention of Shri S. Seetharaman, learned counsel appearing for Hindalco that colour coated aluminium coil was produced and sold by the domestic industry. It is, therefore, also not open to Hindalco to contend that the imports of colour coated aluminium coil would cause any injury to the domestic industry.

24. Thus, if the domestic industry does not manufacture/produce colour coated coil, this product would have to be excluded from scope of the product on which anti-dumping duty has been imposed under the customs notification dated 06.12.2021 issued by the Central Government on the basis of the final findings dated 07.09.2021 issued by the designated authority.

25. The customs notification dated 06.12.2021 is, accordingly, modified by excluding the 'colour coated coil' from imposition of anti-dumping duty. The appeal is, accordingly, allowed to the extent indicated above.

(Order Pronounced on **13.04.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Shreya