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An e-newsletter from
Lakshmikumaran & Sridharan, India

October 2021 / Issue – 123

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October
2021



Article

Imports by the domestic industry – Law and practice in India

By Devinder Bagia and Sangam Grover

Introduction

Applications for initiating anti-dumping and countervailing duty investigations are usually filed by or on behalf of the 'domestic industry'. Therefore, one of the foremost requirements in any Anti-Dumping ('AD') or Countervailing Duty ('CVD') investigation is to identify the scope of the 'domestic industry'.

One must be careful to note that the term used is 'domestic industry' and not 'domestic producer'. In fact, the standing of an applicant domestic producer of the Product Under Consideration ('PUC') to constitute the 'domestic industry' in most AD/CVD investigations often varies from case to case. The purpose of this Article is to provide a brief overview of certain aspects of the law and practice concerning the scope of the 'domestic industry' in AD and CVD investigations in India. Particularly, this article concentrates on domestic producers acquiring disqualification from scope of 'domestic industry' if they are found to be importing the PUC.

Legal provisions concerning definition of 'Domestic Industry'

While the Customs Tariff Act, 1975 makes reference to the term 'domestic industry', the term is defined in the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ('AD Rules') and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 ('CVD Rules'). Rule 2(b) of the AD Rules defines 'domestic industry' as:

'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 such case the term 'domestic industry' may be construed as referring to the rest of the producers.

The definition of 'domestic industry' in the CVD Rules is largely similar. A key difference between both the definitions is that the CVD Rules also exclude a domestic producer who has imported the like article from other countries, whereas this disqualification is not there in the AD Rules.

The common elements in both definitions are:

- a. domestic producers as a whole engaged in the manufacture of the like article; or
- b. domestic producers whose collective output constitutes a major proportion of the total domestic production of the like article;
- c. excluding such producers who are related to the exporters or importers of the alleged dumped/subsidised article, or are themselves importers thereof

The importance of determining the scope of the 'domestic industry' in any investigation is that Rule 5(1)/Rule 6(1) of the AD Rules/CVD Rules expressly stipulates that the designated authority

('Authority') shall initiate an AD/CVD investigation only upon receipt of a written application by or on behalf of the domestic industry. Further, determination of alleged injury caused by dumped/subsidized imports is required to be made in the context of economic performance of the domestic industry. Therefore, it becomes important to determine the scope of the 'domestic industry'.

Disqualification acquired by importing the PUC: Varied practice

We have already noted that Rule 2(b) of the AD/CVD Rules disqualifies an entity from constituting the domestic industry if it has imported the PUC. The rationale behind this is simple. A market player who has himself benefitted from dumping cannot seek protection from dumping to the prejudice of other importers. However, a close look at the definition would show that the rules use the word 'may' which seem to provide a discretion to the Authority to see facts of each case and determine qualification or disqualification of domestic producers found to be importing the PUC.

In most investigations, this is one of the most agitated grounds challenging the applicant(s) standing to constitute the DI. The DGTR's case-to-case determination in this regard has produced some varied practices on this aspect in India. The Indian Authority has tried to apply some yardsticks to determine this crucial aspect, for instance, quantum of imports (whether significant or insignificant); reasons for import (such as for testing the market, fulfilling the shortfall in production due to shutdown, etc.).

In the AD investigation on imports of 'Glazed/Unglazed Porcelain/Vitrified tiles' from China PR (Final Findings dated 8 April 2017), the Authority had disqualified a number of domestic producers from constituting the domestic industry since their volumes of imports of the PUC were found to be significant.

On the other hand, in the recent AD investigation concerning imports of 'Natural Mica based Pearl Industrial Pigments' from China PR (Final Findings dated 8 June 2021), the petitioner, Sudarshan Chemicals Ltd., was found to have imported the PUC during the period of investigation. However, the Authority held that its imports as a percentage of total demand and total imports into India of PUC were insignificant and hence did not disentitle the Petitioner from constituting the domestic industry.

In the recently concluded AD investigation concerning imports of 'Caprolactam' from European Union, Korea RP, Russia and Thailand, the GSFC, the sole producer and petitioner, was also an importer of the PUC. However, the Authority considered it as eligible to constitute the domestic industry for the reason that the volume of PUC imported by it was insignificant.

Sometimes domestic producers import the PUC under duty-free schemes announced by the Government for export purpose. In the sunset review investigation on imports of '2 Methyl (5) Nitro Imidazole' from China PR (Final Findings dated 29 June 2007), even though the Petitioner therein was found to have imported the PUC, the Authority did not disqualify it from constituting the domestic industry since the imports were made under the duty exemption scheme for manufacture of export goods. The same practice was followed in the AD investigation on imports of Purified Terephthalic Acid from China PR, Iran, Indonesia, Malaysia & Taiwan (Final Findings dated 9 June 2016),

In some instances, even if the imports by a domestic producer were insignificant, the Authority has examined the purpose of imports by a domestic producer to determine whether it should be disqualified to constitute the domestic industry. In the AD investigation on imports of Aluminium Foil from China PR (Final Findings dated 10

March 2017), one of the applicants, Raviraj Foils Ltd. (**'Raviraj'**) was found to have imported the PUC from China PR. The volume of PUC imported by this entity was found not to be significant. However, since almost all the imported PUC were sold in the domestic market by Raviraj, and there was no plausible reason for importing the PUC for re-sale when it itself was engaged in producing the like article, the Authority found that the company has unduly benefited from such dumping and hence excluded it from the scope of the 'domestic industry'.

In Caprolactam, the Authority reasoned that, unlike in Aluminium Foil, the petitioner had provided reasons for importing the PUC which was re-sold in the domestic market. Hence, the Authority did not consider it reasonable to disqualify the Petitioner. In Caprolactam, the Authority specifically recognized an element of discretion by observing that the deliberate use of the word 'may' in Rule 2(b) invests the investigating authority with the discretion to analyze the facts of an individual case and thereafter decide upon disqualification of a producer.

The Authority's practice - Many open questions

The Authority has very often used the yardstick of 'significant' and 'insignificant' import to determine standing. However, there is no clarity on the base to be used for calculating the said significance. The percentage can be easily altered by taking a different base, for instance, production quantum of tested party, total Indian production, total imports into India or the total Indian demand.

Let us take the example of a market dominated by imports having a few Indian producers who also import and re-sell the PUC. A producer 'X' is producing 1,00,000 units p.a. in

India but has high imports at 2,00,000 units p.a. for re-sale purposes. The total Indian production is 5,00,000 units p.a. and the total Indian demand is significantly high at 10 million units p.a. In this situation, if producer 'X' along with other producers apply to the Authority for initiating an AD investigation, will 'X' constitute a part of the domestic industry? It may be noted that 'X's imports are 200% of its total production implying thereby that it is majorly an importer and trader rather than a domestic producer. But if we compare its imports to total demand in India, it can be construed as 'insignificant' at 2% making it eligible as part of domestic industry. The law on this point is still unclear and there is not enough jurisprudence on this point either in Indian courts or at the WTO.

Conclusion

The scope of the domestic industry in any investigation is of utmost importance as it forms the basis for the investigating authority to examine injury allegedly caused by the dumped/subsidized imports. Where an entity has imported the PUC, the AD/CVD Rules require an examination on the aspect of disqualification. The practice adopted by the Indian Authority in this regard has been varied and requires such determination to be made on a case to case basis. It would be helpful to the industry if the Government or the Authority issues some guidelines or clarifications on what would constitute 'significant' imports of the PUC and also the 'purposes' that would attract disqualification for a domestic producer to constitute the domestic industry.

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Trade Remedy News

Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
1,1,1,2-Tetrafluoroethane or R-134a	China PR	F. No. 7/1/2021-DGTR	8 October 2021	Anti-dumping duty recommended to be continued after sunset review
Aceto Acetyl Derivatives of aromatic or hetrocyclic compounds	China PR	60/2021-Cus. (ADD)	14 October 2021	Definitive anti-dumping duty imposed
Aluminium alloy road wheels	China PR	F.No. 7/12/2021-DGTR	1 September 2021	Mid-term review of anti-dumping duty initiated
Aluminium and Zinc coated flat products	China PR, Vietnam and Korea RP	F. No. 7/30/2020-DGTR	13 October 2021	ADD mid-term review limited to change of name of producer/exporter from Korea RP initiated
Aluminium foil	China PR, Malaysia, Thailand and Indonesia	51/2021-Cus. (ADD)	16 September 2021	Definitive anti-dumping duty imposed
Aluminium foil – 5.5 micron to 80 micron	China PR	F. No. 7/27/2021-DGTR	16 September 2021	Sunset review of anti-dumping duty initiated
Aluminium Wire in coil form/Wire Rod in coil form - Diameter from 9 mm to 13 mm	Malaysia	4/2021-Cus. (CVD)	24 September 2021	Definitive countervailing duty imposed
Amoxycillin / Amoxycillin Trihydrate	China PR	F. No. 7/29/2021-DGTR	10 September 2021	Sunset review of anti-dumping duty initiated
Axle for trailers	China PR	F. No. 4/11/2020-DGTR	14 September 2021	Anti-circumvention – ADD recommended on goods in CKD/SKD condition

Product	Country	Notification No.	Date of notification	Remarks
Calcined gypsum powder	Iran, Oman, Saudi Arabia and UAE	F. No. 6/45/2020-DGTR	27 September 2021	Definitive anti-dumping duty recommended
Caprolactam	EU, Korea RP, Russia and Thailand	F. No. 6/39/2020 - DGTR	27 September 2021	Definitive anti-dumping duty recommended
Ceftriaxone sodium sterile	China PR	F. No. 6/46/2020-DGTR	23 September 2021	Definitive anti-dumping duty recommended
Ceramic tableware and kitchenware, excluding knives and toilet items	China PR	59/2021-Cus. (ADD)	4 October 2021	Anti-dumping duty extended on imports from Malaysia after anti-circumvention investigation
Cold rolled /cold reduced flat steel products of iron or non-alloy steel or other alloy steel of all width and thickness - not clad, plated or coated	China PR, Japan, Korea RP and Ukraine	F. No. 7/6/2021-DGTR	14 September 2021	Anti-dumping duty recommended to be continued after sunset review
Colour coated/pre-painted flat products of alloy or non-alloy steel	China PR and EU	F. No. 7/16/2021-DGTR	8 October 2021	Anti-dumping duty recommended to be continued after sunset review
Colour coated/pre-painted flat products of alloy or non-alloy steel	China PR and EU	53/2021-Cus. (ADD)	29 September 2021	Anti-dumping duty extended till 31 March 2022

Product	Country	Notification No.	Date of notification	Remarks
Decor paper	China PR	F. No. 6/38/2020-DGTR	28 September 2021	Definitive anti-dumping duty recommended
Elastomeric filament yarn	Singapore	F. No. 6/44/2020-DGTR	28 September 2021	Anti-dumping investigation terminated after finding of negative dumping margin
Flat rolled products of aluminium	China PR	F. No. 6/27/2020-DGTR	7 September 2021	Definitive anti-dumping duty recommended
Flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc	China PR, Vietnam and Korea RP	57/2021-Cus. (ADD)	30 September 2021	Temporary revocation of anti-dumping duty extended till 31 January 2022
Glazed/unglazed porcelain/vitrified tiles in polished or unpolished finish with less than 3% water absorption	China PR	54/2021-Cus. (ADD)	30 September 2021	Anti-dumping duty extended till 28 February 2022
Glycine	China PR	F. No. 6/14/2021-DGTR	30 September 2021	Anti-dumping investigation initiated
High-speed steel of non-Cobalt grade	China PR and Germany	56/2021-Cus. (ADD)	30 September 2021	Temporary revocation of anti-dumping duty extended till 31 January 2022
Hot rolled and cold rolled stainless steel flat products	China PR	5/2021-Cus. (CVD)	30 September 2021	Temporary revocation of countervailing duty extended till 31 January 2022
Hot rolled and cold rolled stainless steel flat products	China PR	F. No. 7/21/2021-DGTR	8 October 2021	Sunset review of anti-subsidy duty initiated

Product	Country	Notification No.	Date of notification	Remarks
Hot-rolled flat products of alloy or non-alloy steel	China PR, Japan, Korea RP, Russia, Brazil and Indonesia	F. No. 7/5/2021-DGTR	14 September 2021	Anti-dumping duty recommended to be continued after sunset review
Hydrofluorocarbon (HFC) blends	China PR	F. No. 06/34/2020-DGTR	27 September 2021	Definitive anti-dumping duty recommended
Hydrofluorocarbon (HFC) component R-32	China PR	F. No. 06/33/2020-DGTR	23 September 2021	Definitive anti-dumping duty recommended
Hydrogen peroxide	Bangladesh and Thailand	F. No. 7/22/2021-DGTR	13 September 2021	Sunset review of anti-dumping duty initiated
Jute products	Bangladesh and Nepal	58/2021-Cus. (ADD)	1 October 2021	Anti-dumping duty extended till 31 May 2022
Isopropyl alcohol	-	F. No. 22/6/2019-DGTR	30 September 2021	Safeguard measures - Quantitative restrictions recommended
Measuring tapes	China PR	F. No. 07/36/2020-DGTR	3 September 2021	Anti-circumvention - Anti-dumping duty recommended on goods from Singapore and Cambodia
Melamine	China PR	F. No. CBIC-190354/191/2021-TRU	1 October 2021	Finance Ministry decides not to impose anti-dumping duty as recommended by DGTR
Ofloxacin and its intermediates	China PR	F. No. 6/12/2021-DGTR	17 September 2021	Anti-dumping investigation initiated
Opal Glassware	China PR and UAE	F. No. 7/23/2021-DGTR	9 September 2021	Sunset review of anti-dumping duty initiated
Peroxosulphates	China PR and USA	F. No. 6/25/2020 - DGTR	24 September 2021	Definitive anti-dumping duty recommended
Plain medium density fibreboard having thickness 6 mm and above	Vietnam	F. No. 7/2/2021-DGTR	13 September 2021	Sunset review of anti-dumping duty terminated

Product	Country	Notification No.	Date of notification	Remarks
Polytetrafluoro ethylene (PTFE)	China PR	F. No. 7/4/2021-DGTR	16 September 2021	Sunset review of anti-dumping initiated
Rubber chemical PX-13	China PR and Korea RP	F. No. CBIC-190354/191/2021-TRU	27 September 2021	Finance Ministry decides not to impose anti-dumping duty as recommended by DGTR
Semi-finished ophthalmic lenses	China PR	F. No. 6/6/2021-DGTR	30 September 2021	Anti-dumping investigation initiated
Silicone sealants	China PR	F. No. 06/31/2020-DGT	23 September 2021	Definitive anti-dumping duty recommended
Sodium hydrosulphite	China PR and Korea RP	F. No. 6/35/2020-DGTR	14 September 2021	Definitive anti-dumping duty recommended
Stainless steel seamless tubes and pipes	China PR	F. No. 6/13/2021-DGTR	10 September 2021	Anti-dumping investigation initiated
Straight length bars and rods of alloy steel	China PR	55/2021-Cus. (ADD)	30 September 2021	Temporary revocation of anti-dumping duty extended till 31 January 2022
Tyre curing presses	China PR	52/2021-Cus. (ADD)	22 September 2021	Anti-dumping duty notification rescinded
Untreated fumed silica	China PR and Korea RP	F. No. 6/40/2020-DGTR	20 September 2021	Definitive anti-dumping duty recommended

Trade remedy actions against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Cold-rolled steel flat products	USA	86 FR 54421	1 October 2021	Affirmative sunset review of countervailing duty
Cold-rolled steel flat products	USA	86 FR 54924	5 October 2021	Affirmative sunset review of anti-dumping duty

Product	Investigating Country	Document No.	Date of Document	Remarks
Corrosion-resistant steel products	USA	86 FR 54927	5 October 2021	Affirmative sunset review of countervailing duty
Corrosion-resistant steel products	USA	86 FR 55581	6 October 2021	Affirmative sunset review of anti-dumping duty
Utility scale wind towers	USA	86 FR 56896 and 56890	13 October 2021	Final affirmative countervailing duty determination and Final affirmative determination of sales at less than fair value issued
Welded stainless pressure pipe	USA	86 FR 54423	1 October 2021	Sunset reviews of anti-dumping and countervailing duties initiated
Zinc coated (galvanised) steel	Australia	Anti-dumping Notice No. 2021/127	6 October 2021	Continuation inquiry initiated



WTO News

WTO Panels established to review Chinese ADD on steel from Japan and Panama's measures against certain agricultural imports from Costa Rica

The Dispute Settlement Body of the WTO has on 27 September 2021 established two panels for finding solutions to the two separate disputes – Japan's case against Chinese anti-dumping duty on import of stainless-steel products from Japan (DS601), and a dispute brought by Costa Rica against certain measures by Panama on import of certain agricultural products from Costa Rica (DS599). India has reserved its third-party rights to participate in both the proceedings.

According to the consultation request shared earlier in WTO by Japan in DS 601, Chinese anti-dumping duties on stainless steel billets, hot-rolled coils, and hot-rolled plates from Japan appear to be inconsistent with China's obligations under various provisions of the GATT 1994 and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('**Anti-Dumping Agreement**').

In DS599, Costa Rica disputes Panama's measures against import of various agricultural goods, including dairy products, meat products, fish food, strawberries, pineapple, plantains and bananas. Costa Rica alleges violation of various

provisions of Agreement on the Application of Sanitary and Phytosanitary Measures ('**SPS Agreement**') and the GATT 1994.

Safeguard investigations notified to WTO

Grinding balls and similar articles for mills – Turkey launches safeguard investigations: Turkey has on 9 October 2021 launched

safeguard investigations on imports of grinding balls and similar articles for mills. The interested parties are required to fill and submit the questionnaire within 30 days.

PVC profiles – Ukraine launches safeguard investigations: Ukraine has on 1 September 2021 launched safeguard investigations against imports of PVC profiles.



India Customs & Trade Policy Update

RoDTEP and RoSCTL Schemes notified by CBIC – Manner to issue duty credits also prescribed

The Central Board of Indirect Taxes and Customs ('**CBIC**') has notified the manner to issue duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products ('**RoDTEP**') and the Electronic Duty Credit Ledger Regulations, 2021. The Regulations prescribe procedures for issuance of duty credit scrip, creation and registration of scrip, use, validity, transfer and suspension of the scrip. The Notification prescribing conditions for the duty credit also states the procedure for cancellation of duty credit and recovery of amount of duty credit. Notifications Nos. 75 and 76/2021-Cus. (N.T.), both dated 23 September 2021 have been issued for the purpose.

The CBIC has similarly issued Notification No. 77/2021-Cus. (N.T.), dated 24 September 2021 for the Rebate of State and Central Taxes and Levies ('**RoSCTL**') scheme against exports of garments and made-ups. This scheme is also

applicable in respect of exports made from 1 January 2021. Rates and cap are as listed in Schedules 1, 2, 3 and 4 to the Notification No. 14/26/2016-IT (Vol.II), dated the 8 March 2019 issued by Ministry of Textiles.

The e-scrips for both the schemes must be generated by the exporters themselves based on the scrolls generated in the customs automated system. In case the exporter does not avail the option of generation of e-scrip within one year of generation of scroll, the e-scrip will be automatically generated based on the available duty credits. The e-scrips are valid for a period of one year and can also be freely transferred but, only for the full value (entire amount on the e-scrip). These e-scrips can be used for payment of Basic Customs Duty ('**BCD**') only. It must however be remembered that duty credit allowed under both the schemes – RoDTEP and RoSCTL, is subject to realisation of export proceeds with the prescribed period. CBIC has also issued Circulars Nos. 22 and 23/2021-Cus., both dated 30 September 2021 for this purpose.

Service Exports from India Scheme ('SEIS') for services exported in 2019-20 notified

The Directorate General of Foreign Trade ('DGFT') has notified the list of eligible services and the rates under SEIS for services exported in the financial year 2019-20. It may be noted that the benefit is capped at INR 5 crore per IEC. The deadline for submission of online applications for the benefit is 31 December 2021. As per new Para 3.10B of the Foreign Trade Policy, provision of late cut shall not apply for SEIS applications for the above-mentioned period and such applications will get time-barred after 31 December 2021. Notification No. 29/2015-20, dated 23 September 2021 has been issued for the purpose.

Duty credit scrips – Validity period and last date for submitting applications revised

The last date for submitting applications under MEIS, SEIS, ROSCTL, ROSL and 2% additional *ad hoc* incentive (under Para 3.25 of FTP) is now 31 December 2021. DGFT Notification No. 26/2015-20, dated 16 September 2021 amends Chapter 3 of the Foreign Trade Policy for this purpose. It may be noted that late cut as notified in the notification will also apply in certain cases of MEIS and SEIS. Further, the validity of any scrip issued under Chapter 3 and 4 of the Foreign Trade Policy after this Notification will be 12 months from the date of issue.

India-Mauritius CECPA – Tariff Rate Quota and procedure for import notified

The DGFT has notified list of items under Tariff Rate Quota (TRQ) as Annexure III to Appendix 2A in accordance with Table 4 of Notification No. 25/2021-Cus dealing with India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement. Additionally, procedural conditions have also been laid down in the Public

Notice No. 23/2015-20, dated 7 September 2021. Further, as per Public Notice No. 24/2015-20, dated 17 September 2021, the DGFT has invited applications for allocation of TRQ for the year 2021-22. The last date for filing application is 31 October 2021.

Crude soya-bean, palm and sunflower oils – BCD exempted and AIDC lowered

Basic Customs Duty ('BCD') has been removed on imports of crude soya-bean oil, crude palm oil and on crude sunflower oil into India with effect from 14 October 2021. The exemption by Notification No. 48/2021-Cus., dated 13 October 2021 will remain in force up to 31 March 2022. Simultaneously, Agriculture Infrastructure and Development Cess ('AIDC') has also been lowered for these products by Notification No. 49/2021-Cus. which will also remain in force till 31 March 2022.

Mercury – Imports and exports restricted

Import and Export policies of Mercury, classifiable under HS Code 28054000, have been revised from 'Free' to 'Restricted'. Both imports and exports will now be subject to Prior Informed Consent from Ministry of Environment, Forest and Climate Change (MOEF & CC). DGFT Notifications Nos. 24/2015-20, dated 9 September 2021 (for imports) and 31/2015-20, dated 23 September 2021 (for exports) have been issued for the purpose.

Syringes with or without needles, of specific denominations – Exports restricted

The Ministry of Commerce and Industry has amended the Export Policy of syringes, to restricted. Accordingly, export of syringes with or without needles, falling under HS Code 9018 31 00 or falling under any other HS Code was put under restricted category with effect from 4

October 2021 [till 13 October 2021] by Notification No. 34/2015-20, dated 4 October 2021. However, it may be noted that from 14 October 2021 further amendments have been made in Chapter 90 of the Schedule-2 of ITC (HS) to specify that only syringes of certain specific denominations, falling under HS Code 9018 31 00, are restricted for export. According to Notification No. 38/2015-20, dated 14 October 2021, only syringes of denominations i) 0.5 ml / 1 ml AD syringes; ii) 0.5 ml / 1 ml / 2 ml / 3 ml disposable syringes; and iii) 1 ml / 2 ml / 3 ml

RUP syringes covered under ITC HS Code 901803100, are restricted. The DGFT has also meanwhile on 5 October 2021 issued Trade Notice No. 20/2021-22 to provide for monthly quota of 4 crore syringes in the months of October and November 2021 and 9 crore each in December 2021 and January 2022. Exporters need to apply online for export licences validity of which will be only one month. The Trade Notice also requires submission of certain other documents by the manufacturers.



Ratio Decidendi

Multi-functional devices – Compulsory Registration Order 2012 prescribing standards for import of goods, is beyond scope of BIS Act 1986 and BIS Rules 1987

The Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') Chennai has held that Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012 ('CRO 2012') has, in clause (3), gone beyond the scope of the BIS Act, 1986 and the BIS Rules, 1987 in prescribing a standard for import of goods and in prohibiting import of goods which did not meet the standards. The Tribunal noted that just like BIS Act, BIS Rules did not provide for regulating or prohibiting import of goods. The Tribunal hence expressed doubt as to whether the CRO 2012 was legally sustainable. Further, noting that the said CRO 2012 not covered multi-functional devices, the

Tribunal rejected the contention of the Department that the said goods were covered under printers/plotters (as per Meity Circular). [*Commissioner v. S.P. Associates* – 2021 VIL 446 CESTAT CHE CU]

Re-classification by department for subsequent period not permissible

The CESTAT Chennai has held that where the classification adopted by the Appellant under Tariff Item 4911 99 90 was accepted by the department previously and proceedings were dropped, the department cannot allege misclassification for import of same goods made during subsequent period. Further, considering Appellant's contention that entire proceedings were vitiated as SCN was issued by the DRI, the Tribunal set aside the impugned order and allowed the appeal. [*Hi-Tec Corporation v. Commissioner* – 2021 TIOL 544 CESTAT MAD]

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