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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th March, 2025

+ **CUSAA 42/2023 & CM APPL.24805/2023**

BRIDGESTONE INDIA PVT. LTD.Appellant
Through: Mr. Sparsh Bhargava, Ms. Ishita
Farsiya, Ms. Vanshika Taneja & Ms.
Radhika Sharma, Adv.

versus

UNION OF INDIA & ANR.Respondents
Through: Mr. R. Venkat Prabhat, SPC with Ms.
Kamna Behrani, Mr. Ansh Kalra, Mr.
Divyanshu Sinha & Ms. Archana
Surve, Adv. for UoI
Mr. Rajesh Sharma & Mr. Nikhil
Sharma, Adv. for R-2
Mr. Anurag Ojha, SSC with Mr. Dipak
Raj, Mr. Shubham Kr. Mr. Vipul Lr. &
Ms. Garima Kr. Adv.

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.24806/2023

2. Allowed, subject to all just exceptions. The application is disposed of.

CUSAA 42/2023 & CM APPL.24805/2023

3. This appeal filed under Section 130 of the Customs Act, 1962 (hereinafter "*the Act*") challenges the impugned order dated 23rd December, 2022 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter "*CESTAT*") *vide* which CESTAT had set aside the Office



Memorandum dated 28th October, 2022 (hereinafter “OM”) issued by the Central Government and had remitted the matter for re-consideration.

4. The background of the case is that M/s Reliance Industries Limited had sought before the Designated Authority (hereinafter “DA”) imposition of Anti-Dumping Duty (hereinafter “ADD”) in respect of imports of “*Styrene Butadiene Rubber of 1500 and 1700 series*” (hereinafter “*subject goods*”) from the European Union, Korea RP and Thailand. The DA had published its final findings imposing ADD on 12th July, 2017. The recommendations of the Directorate General of Trade Remedies (hereinafter “DGTR”) was accepted by the Central Government and the notification dated 30th August, 2017 was issued imposing ADD for a period of five years.

5. Thereafter, the DGTR initiated the Sunset Review Investigation and final findings dated 29th July, 2022 were again issued recommending the continuation of ADD for a period of three years. The Central Government, however, did not accept the said recommendation and issued an OM deciding not to impose ADD. This OM was challenged by M/s Reliance Industries Ltd. before the CESTAT.

6. In the proceedings before the CESTAT various other interested parties also sought impleadment which was allowed and finally *vide* the impugned order, the OM was set aside and the matter was remanded back to the Central Government. The relevant portion of the said order of CESTAT is set out below:-

“45. Learned counsel for the appellant also urged that the Tribunal may protect the interest of the appellant in the same manner as was protected by the Delhi High Court in the writ petition filed by the Union of India



against the decision of the Tribunal in **Jubilant Ingrevia Limited vs. Union of India** and others so as to ensure that if the Central Government finally decides to extend/continue the levy, such levy can be given effect to from the date of the original office memorandum.

46. The Tribunal had in **Jubilant Ingrevia**, also set aside a similar office memorandum issued by the Under Secretary conveying the decision of the Central Government not to impose anti-dumping duty despite a recommendation made by the designated authority for imposition of anti-dumping duty. The order passed by the Delhi High Court on 05.09.2022 in W.P.(C)5185/2022 filed by the Union of India against the decision of the Tribunal in **Jubilant Ingrevia**, is reproduced below:

“W.P.(C)5185/2022 & CM
No.15389/2022[Application filed on behalf of the
petitioner seeking interim relief]

5. The respondent before us is the domestic industry. It is not in dispute that the Designated Authority [in short "DA"] via notification dated 25.08.2020 has recommended the imposition of anti-dumping duty [in short "ADD"].

6. It is also not in dispute that the Government of India has disagreed with the recommendation made by the DA.

7. This decision forms part of the Office Memorandum (OM) dated 14.12.2020.

8. Given this position, we are of the view that as an ad interim measure, the following direction would suffice, as the need to impose ADD would arise only if the respondent were to succeed in the instant writ petition.

(i) The provisional assessment of imports concerning the product in issue will be made for the time being. The importers would, thus, be put to notice of the possibility of ADD being imposed, albeit as per law, if, as noticed above, the



respondent were to succeed in the instant writ petition.

(ii) It is, however, made clear that the aforesaid direction will not create any equities in favour of the respondent. (iii) Furthermore, this direction will not have an impact on the merits of the writ petition. 9. CM No.15389/2022 is disposed of in the aforesaid terms. 10. List the matter on 02.03.2023."

*47. A similar interim order was passed by the Delhi High Court in W.P(C) No. 6758/2022 on 05.09.2022 in the writ petition filed by the Union of India to assail the decision of the Tribunal rendered in **Association of Synthetic Fibre Industry vs. Union of India and others**, in which also a similar office memorandum was set aside.*

48. Though the present appeal is being disposed of, but a decision has yet to be taken by the Central Government in the light of the observations made in the order. It is, therefore, considered appropriate to pass an order, as was passed by the Delhi High Court, which will remain operative till a decision is taken by the Central Government on the recommendation made by the designated authority for imposition of anti-dumping duty. The directions are as follows:

- (i) The provisional assessment of imports concerning the subject goods from the subject countries will be made for the time being;*
- (ii) It is, however, made clear that the aforesaid direction will not create any equities in favour of the domestic industry; and*
- (iii) This direction will not have any impact on the decision to be taken by the Central Government pursuant to the directions issued for reconsideration of the recommendation made by the designated authority.*



49. Thus, for all the reasons stated above, the office memorandum dated 28.10.2022 is set aside and the matter is remitted to the Central Government to reconsider the recommendation made by the designated authority in the final findings in the light of the observations made above at an early date but within three months. The directions contained in paragraph 48 of this order shall continue to operate till such time as a decision is taken by the Central Government. The appeal is allowed to the extent indicated above. The Miscellaneous Application also stands disposed of in terms of the observations made above. The learned authorized representative appearing for the Department shall send a copy of this order to all the concerned zones where the imports of the subject goods are likely to be made.”

7. As can be seen from the impugned order passed by CESTAT, as an interim measure, it followed the order of this Court dated 5th September, 2022 in **W.P(C) 5185/2022** titled **Union of India v Jubilant Ingrevia Limited** wherein this Court had permitted provisional assessment and the release of goods in the terms as contained in paragraph 8(1) of the interim order dated 5th September, 2022 in **Jubilant Ingrevia (supra)**.

8. It is noted that in effect the question of law that has been raised by the Appellant is whether an Office Memorandum is capable of being assailed before CESTAT.

9. It is submitted by the Id. Counsels for the parties today that similar petitions in respect of certain other products were filed by the Union of India before the Supreme Court seeking quashing of the order passed by CESTAT setting aside the respective Office Memoranda.

10. In that case, being **SLP (C) Diary No. 31452/2023** titled as **Union of India vs. Plastics Machinery Manufacturers Association of India through**



its Director and Ors., the Supreme Court passed the following order on 9th December, 2024:

“It is pointed out by the learned counsel for the petitioner that the domestic industries have given up their right in terms of the recommendation made by the designated authority, as well as, their claims on the basis of the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi.

In view of the statement made, the special leave petition is dismissed as infructuous.”

11. In terms of the submissions made before the Supreme Court, Id. Counsel for the domestic industry being Respondent No. 2 in the present case, submits that it has already written to the Government that it does not press its rights in terms of the recommendation given by the Designated Authority.

12. In effect therefore, the domestic industry no longer presses for imposition of ADD. Accordingly, the impugned OM is no longer challenged by the domestic industry.

13. The entire matter has thus become infructuous. However, since the subject goods were provisionally released by the CESTAT subject to certain conditions, the said assessment orders would have to now be finalised bearing in mind that ADD is no longer insisted upon by the domestic industry.

14. If any bonds have been furnished by the concerned parties, the same shall be released by the concerned authority while passing the final assessment order.

15. The legal issues raised in these petitions are, however, kept open for adjudication in an appropriate case.

16. In view of these observations, the appeal is disposed of. Pending



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applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 26, 2025
kk/msh