



**IN THE HIGH COURT AT CALCUTTA
EXTRAORDINARY CIVIL JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

WPO 148 of 2025

**India Paint Association
Versus
The Union of India & Ors.**

For the petitioner	:	Mr. S. N. Mookherjee, Sr. Advocate. Mr. Ashish Chandra, Advocate. Mr. Anupal Dasgupta, Adv. Mr. Shubrojoyoti Mookherjee, Adv. Ms. Y. Mookherjee, Adv. Mr. Arnab Roy, Adv.
For the UOI	:	Mr. Siddhartha Bhattacharyya, Adv. Mr. Prithu Dudhoria, Adv.
For the respondent Nos. 3 to 5.	:	Mr. Pragyan Pradip Sharma, Sr. Adv. (VC) Mr. Rajesh Sharma, Adv. Mr. Awani Kumar Roy, Adv. Mr. Arijeet Bera, Adv.
For the respondent No.5.	:	Mr. Abhrajit Mitra, Sr. Adv. Mr. Samriddha Sen Adv
Heard on	:	03.04.2025, 07.04.2025, 08.04.2025, 09.04.2025, 10.04.2025, 22.04.2025, 02.05.2025, 14.05.2025 and 21.05.2025.
Judgment on	:	22.09.2025

RAJA BASU CHOWDHURY, J:

1. The present writ petition has been filed, *inter alia*, challenging the disclosure statement dated 29th January, 2025, and the final findings



dated 12th February, 2025 passed by the respondent no.2, being the designated authority, within the meaning of the Customs Tariff Act, 1975, and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the “said Act” and “said Rules”, respectively), on the ground of procedural irregularity, in relation to the non-disclosure of the summary of confidential information in non-confidential form, including but not limited to the non-compliance of the said Rules.

2. Although, the respondent nos. 2 to 5 have questioned the maintainability of the writ petition largely on the ground of presence of alternative remedy in the form of an appeal before the Customs, Excise and Service Tax Appellate Tribunal constituted under Section 129 of the Customs Act, 1962 (hereinafter referred to as the “appellate tribunal” or “appellate authority” or “CESTAT”), however, since, by an affidavit the petitioner contends that the Bench of the appellate tribunal to hear out tariff related cases has not been constituted for more than a year and further the parties on that basis having advanced arguments touching the merits of the matter, this Court has proceeded to hear the matter. On the issue of alternative remedy at the time of moving the petition, the petitioner has affirmed an affidavit stating that although, the appellate authority under Section 9C of the said Act has been provided for however, such appellate authority is of no avail, as the anti dumping Bench of the



CESTAT which is empowered to hear the appeals under Section 9C of the said Act has not been constituted for more than one year and is not functional. In support of the aforesaid, the roster of CESTAT from 26th October, 2023 till 28th February, 2025 has been disclosed. Having regard thereto, this Court had continued to hear the challenge and accepted the petition by keeping the issue of maintainability on the ground of alternative remedy alive.

3. The petitioner claims to be a society registered under the Societies Registration Act, 1860 and is engaged in the business of selling and manufacturing paints used across India for domestic, commercial, industrial and other purposes. According to the petitioner, the total aggregate market share held by the members of the petitioner tantamount to almost 90 per cent of the market share of domestic paint industry in India. The respondent no.2 is the Directorate General of Trade Remedies (DGTR), which is the designated authority under the said Act (hereinafter referred to as the “designated authority”). On the basis of a complaint filed by the respondent nos. 3, 4 and 5 (in short, the “domestic industry”), the designated authority had initiated an anti-dumping investigation vide a Notification Case No. AD(OI)-03/2024 dated 28th March, 2024 (hereinafter referred to as the “said Complaint”). According to the petitioner, the domestic industry had alleged material injury and threat being caused to the domestic industries due to the dumped imports of the products under consideration (PUC) from China.



4. The petitioner had duly participated as an interested party before the designated authority in the anti-dumping investigation and had opposed the imposition of anti-dumping duties on the imports of PUC from China and had also requested that certain products which the petitioner claims are not “like articles” to the products of the domestic industry which allegedly suffered due to dumping, should be excluded from the scope of PUC and consequentially not be subjected to the anti-dumping investigation.
5. It is the petitioner’s case that the petitioner had submitted its comments on the scope of the PUC on 6th May, 2024 and the PCN methodology before the designated authority urging that the anti-dumping investigation be limited to PUC of the grades/variants that are manufactured and commercially sold by the domestic industry. Accordingly, the petitioner had sought for exclusion of Rutile-Sulphate grade/variant and certain superior performance grades/variants of the PUC, as there is no comparable domestic production and commercial sales of these products by the domestic industry, during the period of investigation.
6. According to the petitioner, the designated authority had issued a public notice on 9th May, 2024 circulating a list of interested parties in the impugned anti-dumping investigation, wherein the petitioner was also acknowledged as an interested party. The list was later reviewed/revised



on 29th August, 2024 wherein the petitioner was named as a registered interested party.

7. Subsequently, on 29th January, 2025 the designated authority issued a disclosure statement in terms of Rule 16 of the said Rules by permitting the interested parties to offer their comments within the time specified therein. According to the petitioner, the designated authority in the disclosure statement while dealing with the exclusion request made by the petitioner, to exclude Rutile through Sulphate process TiO_2 , while controverting the claims made by the petitioner that the domestic industry does not produce Rutile through sulphate process had noted in such disclosure statement that the domestic industry produces Rutile through sulphate process, as well as through chloride process and that the respondent no.4 (one of the domestic industry) has the necessary technology and setup, to produce Rutile through sulphate route and has manufactured and sold Rutile TiO_2 produced using sulphate process. Since, according to the petitioner, the above did not constitute an appropriate disclosure for the petitioner to appropriately respond, as the petitioner had always maintained that there was no commercial sale of Rutile through sulphate process to the Indian industries, and the aforesaid finding of the designated authority being contrary to the claim made by the petitioner, without any supporting particulars, the petitioner had sought for the names of the paints companies, who had purchased such products so as to verify the claim of the domestic



industry and to appropriately respond to the disclosure statement. Such fact would corroborate from the email communication dated 30th January, 2025. According to the petitioner, notwithstanding the aforesaid representation, the designated authority did not respond to the same, consequentially, in the facts noted hereinabove, the petitioner was compelled to file a response holding out that the observation made by the designated authority were factually incorrect, legally untenable and lacks eventual substantiation. In such representation the petitioner had categorically held out that though the designated authority had claimed that rutile sulphate has been sold, no particulars thereof had been disclosed, no separate evidence to substantiate the same had been also disclosed for the petitioner to verify the authenticity of such claim. Records would reveal that a final finding was published by the designated authority on 12th February, 2025 and in paragraph 10 thereof, the designated authority had reproduced the reasons for disregarding the exclusion request made by the petitioner to exclude the Rutile through sulphate process from the PUC. According to the petitioner, such reasons reflected in the final findings are verbatim reproduction of the disclosure statement and no attempt had been made by the designated authority to redress the grievances of the petitioner as reflected in the email communication dated 30th January, 2025 or the representation dated 5th February, 2025. According to the petitioner,



non-disclosure of the aforesaid particulars has the effect of vitiating the final finding and constitutes denial of principles of nature justice.

8. Mr. Mookherjee, learned senior advocate appearing in support of the writ petition, by drawing attention of this Court to the initiation notification published in the Gazette of India on 28th March, 2024, would submit that the product under consideration which is alleged to be dumped in India is Titanium Dioxide, the same is within the exclusions as enumerated in paragraph 3 and 4 of the said notification. He would submit that there are ordinarily two grades of titanium dioxide i.e. rutile and anatase grades. These grades are identifiable, and have independent physical and chemical properties. While drawing attention of this Court to paragraph 12 of the said notification, it is submitted that the interested parties in the investigation were offered opportunity to provide their comments on the product under consideration (PUC). He would submit that the said notification, *inter alia*, also provided for a sub-heading 'L' as regards "**Submission of Information on a Confidential Basis**". By referring to paragraph 32 of the aforesaid notification under sub-heading 'L', he would submit that the same duly clarified that although, a party was entitled to disclose any information on confidential basis before the designated authority, however, the said party was required simultaneously, to submit a non-confidential version or summary of the same in terms of Rule 7(2) of the said Rules, and that failure to adhere to the same may lead to rejection of



response/submission. The manner in which confidential version and the non-confidential version, were to be provided has also been detailed in the said notification. By placing reliance on paragraph 38 under sub-heading 'L', it is submitted that an opportunity was required to be given to the interested parties to offer their comments on the issue of confidentiality claimed by the other interested parties within 7 days of circulation of non-confidential version of the documents filed before the designated authority. According to him, since India is a signatory to the General Agreement on Tariff and Trade, 1994 (hereinafter referred to as the "GATT agreement"), the aforesaid clause has been incorporated in consonance with the Agreement on Implementation of Article VI of the GATT agreement (hereinafter referred to as the "anti-dumping agreement" or "ADA"). In the event, according to him, if any information is claimed as confidential by any of the parties although, the designated authority has no right to disclose the same however, whether or not to accept such information as confidential information is within the competence of the designated authority. To emphasise, he would submit that the language used in Rule 7(2) of the said Rules and paragraph 36 of the notification affords the designated authority the right either to accept or to reject a request for confidentiality on examination of the nature of information submitted. If the designated authority is not satisfied with the request for the confidentiality as being not warranted, or if the supplier of information is either unwilling to make the



information public or authorise its disclosure in generalised or summary form, it may disregard such information. According to him, in this case, no intimation was given to the petitioner contending that any party/domestic industry had claimed confidentiality with regard to any information within 7 days of circulation of such alleged confidential information for the petitioner to object to the acceptance of such confidential information. He submits that in the instant case, it is only when the disclosure statement was circulated in connection with the above anti-dumping investigation on 29th January, 2025, inviting comments from the parties by overruling the objection raised by the petitioner as regards exclusion of titanium dioxide manufactured through rutile process, it was asserted that one of the domestic industries namely the respondent no.4 has the necessary technology and set up to produce rutile through sulphate route and has manufactured and sold rutile titanium dioxide products using sulphate process during the period of investigation.

9. Since, the aforesaid disclosure statement was made without making disclosure as regards the basis therefor, especially having regard to the positive claim made by the petitioner that the domestic industry does not manufacture titanium dioxide through sulphate process that the petitioner was compelled by email communication dated 30th January, 2025, to call upon the designated authority so as to contend that merely disclosing the name of the paint company would not constitute



disclosure of non-confidential summary of the confidential information and as such sought for details of the transactions. This according to the petitioner was crucial for the petitioner to verify the accuracy of the domestic industry's claim as the petitioner maintained its position that no commercial sale of rutile sulphate had taken place. Notwithstanding issuance of such letter, since, the petitioner did not receive any response, without prejudice to the above, the petitioner had offered its comments within the time specified in the disclosure statement. The petitioner maintained and denied that titanium dioxide in the form of Rutile sulphate grade had been sold by the domestic industry during the period of investigation. No disclosure had been made, for the petitioner to verify the assertion of manufacture and sale of TiO_2 by the domestic industry. The claim is not substantiated with supporting evidence, the volume of sale was also not disclosed. Having regard thereto, the petitioner once again called upon the designated authority to make the disclosure of the names of the companies who had purchased titanium dioxide procured through rutile sulphate grade, from the domestic industry to verify the credibility of the assertion made by the domestic industry. By referring to the final findings of the designated authority and determination made, he would submit that in paragraph 10 of the final findings the assertion made in the disclosure statement has only been reiterated.

10. By referring to the post disclosure submissions made both by the interested parties as also by the domestic industries and the examination



by the designated authority, he highlights that in paragraph 127 thereof, it has been asserted that the domestic industry has provided the names of paint manufacturers to whom goods have been sold along with relevant evidence, though no particulars of the evidence has, however, been disclosed, no disclosure had been made as to whether the domestic industry had also disclosed any summary of the confidential information in non-confidential form. In any event, he would submit that the designated authority while deciding on the confidential information submitted by the interested party/domestic industry, has claimed that the information provided on confidential basis were examined concerning sufficiency of such confidentiality, whereupon the designated authority held that the domestic industry's claim on confidentiality of the price parameters have been accepted, while the volume parameters have been disclosed and that the designated authority is satisfied with the information provided on confidential basis. He would submit that in the instant case, the non-confidential summary of the volume of sales had, however, not been disclosed to the petitioners, though the acceptance on the claim of confidentiality was only limited on price and having regard thereto, the other information ought to have been supplied by the designated authority and that the designated authority could not have held on to the same by treating the same to be confidential. According to Mr. Mookherjee, if the domestic industry had insisted for holding back all information, such information ought to have been rejected, having regard



to the procedure provided for holding the investigation, in particular Rule 7(3) of the said Rules. According to him, the recording of satisfaction as required under Rule 7 of the said Rules is mandatory, the same cannot be lightly resorted to, so as to deny a registered interested party, a credible information, to object to the determination. Any infraction in this regard vitiates the investigation and the final findings, especially having regard to the terms contained in ADA and the GATT agreement to which India is a signatory.

11. Thus, according to him, the designated authority could not have claimed confidentiality in respect of data for selling titanium dioxide through rutile sulphate process, especially when the petitioner claims that there is no commercial sale of rutile sulphate and especially when such contention had been turned down by contending that the respondent no.4 has the necessary technology and set up to produce rutile through sulphate route and has manufactured and sold titanium dioxide products using sulphate process. Since, the aforesaid finding is contrary to the claim made by the petitioner, the same has to be supported by reasons and documentary evidence. Ordinarily, the evidence in support ought to have been disclosed, for the petitioner to test out the veracity thereof, and in the event the domestic industry insisting for confidentiality, to ignore the same.

12. By placing reliance on a judgment delivered in the case of ***Reliance Industries Ltd. v. Designated Authority & Ors.*** reported in



(2006) 10 SCC 368, he would submit that the Hon'ble Supreme Court while considering the scope of the disclosure of the confidential information as provided for in Rule 7 of the said Rules had concluded that Rule 7 of the said Rules does not contemplate any right in the designated authority to *suo moto* claim confidentiality. Rule 7 of the said Rules provides that the right on confidentiality is restricted to the parties, who had supplied information and that the said party has to satisfy the designated authority that the matter is confidential. Even if the material is confidential, the designated authority has to ask the parties which provide information on confidential basis to furnish a non-confidential summary thereof. By placing reliance on paragraph 45 of the judgment, he would submit that the Hon'ble Supreme Court has opined that excessive and unwarranted claim of confidentiality has the effect on defeating the right to appeal. It held that in absence of knowledge of the consequences, grounds, reasoning and methodology by which designated authority has arrived at its decision and made recommendation, the parties to the proceedings cannot effectively exercise their right to appeal either before the Tribunal or before any other forum. By placing reliance on a judgement delivered by the Hon'ble Supreme Court in the case of **S.N. Mukherjee v. Union of India**, reported in (1990) 4 SCC 594, he would submit that it is now well recognized that the rule, requiring reasons to be given in respect of an order is like the principles of *audi alteram partem*, a basic principle of natural justice.



13. He has also placed reliance on the and the judgment delivered by the Division Bench of the Hon'ble High Court of Gujarat in the case of ***Nirma Limited v. Union of India & Ors.***, reported in **2017 SCC OnLine Guj 2526.**, and would submit that the Division Bench of the Hon'ble High Court of Gujarat has categorically held that all information, which are relied upon by the designated authority to the extent the same is not protected by Rule 7 of the said Rules is in the nature of necessary information, which should be disclosed to the interested parties to enable them to comment on the completeness and correctness of facts that were being considered by the designated authority and to provide additional information to correct the perceived errors and to make arguments on proper interpretation of those facts. Having regard thereto, the Division Bench had concluded that non-disclosure of essential information/facts is clearly in breach of the principles of natural justice and that disclosure statement forms the very foundation of the final findings.

14. On the scope of powers of designated authority to treat an information as confidential and the manner in which a decision in that regard is made, he places reliance on the judgment delivered by the Hon'ble Gauhati High Court in the case of ***Century Plyboards Ltd. & Anr. v. Union of India & Ors.***, having neutral citation **GAHC010219632017**. He has also placed reliance on the judgment delivered in the case of ***Jindal Saw Ltd. v. Ministry of Finance***, reported in **2019 (369) E.L.T. 507 (Guj.)**, concerning the exercise of



powers of judicial review under Article 226 of the Constitution of India from an order passed by the designated authority in a *quasi-judicial* proceedings. According to him the final findings stands vitiated by reasons of non-compliance with the principles of natural justice, as no requisite information was made available and the conclusions were not supported by the materials on record. To drive home the point that in pursuance of ADA and the amendments to which India is a signatory, the said Act was enacted, and that the provisions of the said Act and the Rules framed thereunder are thus, to be read in consonance with same, reliance is placed on the judgment delivered in the case of ***Commissioner of Customs, Bangalore v. G.M. Exports and Ors.***, reported in **(2016) 1 SCC 91**. On the issue of the jurisdiction of this Court to entertain this petition, Mr. Mookherjee, has submitted that the initiation of the enquiry was by publication of notification in the official gazette, thereby, inviting objections from all interested parties. The same has the effect through-out the length and breadth of India. The petitioner had participated from Kolkata, effect of the final findings is also being felt by the petitioner within the jurisdiction of this Court and as such, part case of action has arisen within the jurisdiction of this Court. Having regard thereto, this Court has the jurisdiction to try and entertain the instant petition. The effect of the final findings is also being felt by the petitioner within the jurisdiction of this Court and the resultant levy would be collected by the Customs Authority operating within the



jurisdiction of this Hon'ble Court. In support of this contention, he placed reliance on the judgment delivered in the case of ***M/s. Vikash Trading Company v. Designated Authority***, reported in **2012 SCC OnLine Mad 4801**. On the issue of alternative remedy, reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.***, reported in **(1998) 8 SCC 1**. He submits that the petitioner having been denied the opportunity to make an effective representation in tune with article 6.9 of the ADA and the said Rules, the final findings stands vitiated and the consequential the levy of anti-dumping duty effected by notification dated 10th May, 2025 which has been made during the pendency of the petition, by an order of this Court has been made to abide by the result of the writ petition. According to him if the final findings stands vitiated the imposition of levy by the central Government also cannot be sustained, the same should be quashed.

15. *Per contra*, the Mr. Bhattacharyya learned advocate appearing on behalf of the Union of India, would submit that this Court in exercise of its extraordinary writ jurisdiction ought not to entertain the writ petition, since, an efficacious alternative remedy in the form of an appeal under Section 9C of the said Act is available to the petitioner. He would submit that having regard to the availability of efficacious alternative remedy,



there is no scope to enter into the facts. According to the learned advocate for the Union of India and the respondent no.2, the only remedy available to the petitioner is to prefer an appeal that too from the decision to impose levy and not from the final findings. The writ petition is premature at this stage, and this Court should dismiss the writ petition at the threshold. In support of his contention that the petitioner has an efficacious alternative remedy in the form of an appeal, he has placed reliance on Section 9C of the said Act and has also on the following judgments:

- 1). The unreported judgment of the Hon'ble Supreme Court dated 28th August, 2019 dismissing the special leave petition in the case of ***The Directorate General of Trade Remedies v. Jindal Saw Ltd. & Anr.***, in Civil Appeal no 6678 of 2019.
- 2). The judgment delivered in the case of ***Nitco Tiles Ltd. v. Gujarat Ceramic Floor Tiles MFG Assn.***, reported in (2005) 12 SCC 454 : 2006 (199) E.L.T. 198(S.C.)
- 3). ***Designated Authority v. Sandisk International Ltd.***, reported in (2018) 13 SCC 402 : 2017 (347) E.L.T. 577 (S.C.)
- 4). ***Saint Gobain India Pvt. Ltd. v. Union of India***, reported in 2018 (359) E.L.T. 373 (Mad.)
- 5). ***Jindal Poly Film Ltd. v. Designated Authority***, reported in 2018 (362) E.L.T. 994 (Del.)



6). ***M/s. Suncity Sheets Pvt. Ltd. v. The Designated Authority & Ors.***, reported in **2017 SCC OnLine Del 9412**

7). Unreported judgment delivered by the Hon'ble High Court of Delhi at New Delhi, in the case of ***Exxonmobil Asia Pacific Pvt. Ltd. v. Union of India & Ors.***, in W.P (C) 1856 Of 2025.

16. Mr. Sharma, learned advocate representing the respondent no.3, on the other hand, has placed before this Court the provisions of Section 9A and 9C of the said Act. He has also placed before this Court in detail that the said Rules, *inter alia*, including the definition of like article as defined in Rule 2(d) of the said Rules, the scope of initiation of investigation as defined in Rule 5, the confidential information as identified in Rule 7, the preliminary findings in terms of Rule 9, the disclosure of information and the final findings as provided in Rules 16 and 17, and the levy of duty as provided in Rule 18 thereof.

17. Apart from submitting that this Court ought not to entertain a writ petition of this nature especially when an alternative remedy is available, he has also claimed that it is entirely pre-mature at this stage for the petitioner to challenge the final findings, since, according to him, the final findings at the stage of filing the petition had not fructified into an order of determination of anti-dumping duty in terms of Section 9A of the said Act, and the final findings are at the stage of a recommendation only which may or may not be accepted by the central Government. The challenge to the same is entirely pre-mature. It is only when the central



Government accepts the same and a notification to that effect is published that a cause of action to challenge the same arises. In support of his contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Designated Authority & Ors. v. Andhra Petrochemicals Limited***, reported in **(2020) 10 SCC 209**.

18. While addressing this Court on the scope of the confidential information as provided in Rule 7 of the said Rules, he would acknowledge that such a clause incorporated in the form of Rule 7 of the said Rules is based on the ADA. Under such agreement all members states including India, concurred on the broad principles for applying anti-dumping measures under the circumstances as provided for in the ADA and on the investigation process in accordance with the provisions of ADA. He would submit that the aforesaid aspect has been elaborately dealt in the case of ***Union of India & Anr. v. Meghmani Organics Limited & Ors.***, reported in **(2016) 10 SCC 28**, wherein the judgment delivered in the case of ***Reliance Industries Ltd.*** (supra) has duly been considered. According to him the Hon'ble Supreme Court while interpreting Rule 7 had observed that the said Rule was an exception to the principles of natural justice. By referring to paragraph 29 of the said judgment, he would submit that the Hon'ble Supreme Court has come to a finding that the Hon'ble Supreme Court in the case of ***Reliance Industries Ltd.*** (supra) did not go into the details of the relevant rules including Rule 7 but the observations made therein in respect of the rule



of confidentiality as spelt out in Rule 7 of the said Rules do not diminish the scope of Rule 7 as provided. He has next placed reliance on the judgment delivered in the case of ***Outokumpu Oyj v. Union of India & Ors.***, reported in **2017 SCC OnLine Del 12643**, to drive home the point that the review provided under Article 226 of the Constitution of India is an extraordinary remedy and the High Courts do not as a matter of course entertain a writ petition when an equally efficacious alternative remedy is available. Similar principle applies especially when, the statute which creates a right or liability, provides for a machinery to remedy and correct any wrong by way of an appeal. He would next submit by drawing attention of this Court to the final findings that the product under investigation (PUC) in this case is titanium dioxide, the respondent no.4 is a manufacturer and has the capability to manufacture and has manufactured and has sold the PUC. The respondent no.4 had also disclosed data in the form of confidential information as regards manufacture and sale of rutile sulphate. The plea raised by the petitioner herein to seek exclusion of rutile sulphate is an entirely hyper technical one and this Court ordinarily ought not to entertain a challenge of this nature as the same deals with disputed questions of fact.

19. According to Mr. Sharma since, the final findings are mere recommendations and they do not assume any final character though the determination on recommendation may be final, the final decision thereof whether or not to levy and impose a duty is decided by the



central Government, and till such time a decision is made there, no cause of action to challenge the same arises and the entire matter remains pre-mature. Further ordinarily, when an alternative remedy in the form of an appeal under Section 9C is available unless the order is wholly without jurisdiction, a writ remedy cannot be invoked. In support of his aforesaid contention he has placed reliance on the following judgments:

- 1) ***Jindal Poly Flim Ltd. v. Designated Authority*** (supra)
- 2) ***Designated Authority v. Sandisk International Ltd.*** (supra)
- 3) ***Saint Gobain India Pvt. Ltd. v. Union of India***, (supra)
- 4) ***Nitco Tiles Ltd v. Gujarat Ceramic Floor Tiles Mfg. Assn. & Ors.*** (supra).

20. Mr. Mitra, learned senior advocate ably assisted by Mr. Sen, learned advocate appearing on behalf of the respondent No. 5 would at the very outset submit that the instant writ petition is not maintainable by reasons of lack of territorial jurisdiction to entertain the same. He would submit that the entire cause of action relating to the challenge to the final findings issued by the designated authority had arisen outside the jurisdiction of this Court. According to him not only the initiation notification was published outside the jurisdiction of this Court but the petitioner had also responded to the same through its advocate who are based in New Delhi, outside the jurisdiction of this Court. All communications were exchanged between the petitioner through its



advocates and the designated authority at the office of the designated authority at New Delhi, outside the jurisdiction of this Court. The disclosure statement including the final findings were published at New Delhi outside the jurisdiction of this Court. The petition does not disclose any cause of action at least on the basis of the statements made in the petition to invoke the extraordinary writ jurisdiction of this Court as admittedly, all records are situated outside the jurisdiction of this Court. In support of his aforesaid contention he has placed reliance on the judgments delivered in the following cases.

- 1) ***State of Rajasthan & Ors. v. M/s Swaika Properties & Anr.***, reported in **(1985) 3 SCC 217.**
- 2) ***Oil and Natural Gas Commission v. Utpal Kumar Basu & Ors.***, reported in **(1994) 4 SCC 711.**
- 3) ***Kusum Ingots & Alloys Ltd. v. Union of India & Anr.***, reported in **(2004) 6 SCC 254.**

21. Alternatively, Mr. Mitra would submit that if this court is of the view that this Court has the jurisdiction to entertain the writ petition, the same should not be entertained by reasons of the alternative remedy available to the petitioner. In support of his aforesaid contention he has placed reliance on the following judgment:

- 1) ***Jindal Poly Film Ltd. v. Designated Authority*** (supra)
- 2) ***Outokumpu Stainless v. Union of India***, reported in **2013 (288) E.L.T. 67 (Mad.)** and



- 3) An unreported judgment delivered by the Hon'ble High Court at Delhi in **WPC 1856 of 2025** on 28th March 2025
22. On the issue that the final findings are only the recommendations which may or may not be accepted by the central Government and the writ petition is thus, pre-mature, reliance is placed on the following judgments:
- 1) ***Union of India & Ors v. Pradip Kumar Dey***, reported in **(2000) 8 SCC 580**.
 - 2) ***Union of India & Anr. v. Mohit Minerals Private Limited***, reported in **(2022) 10 SCC 700**.
23. In the facts noted hereinabove, he submits that the instant petition deserves to be dismissed.
24. Heard the learned advocates appearing for the respective parties and considered the materials on record. It appears that the respondent no.5 has come forward to resist the writ petition, at the very threshold, from being entertained by claiming that no part of cause of action has arisen within the jurisdiction of this Court on the basis of the disclosures made in the petition, and that the above writ petition is not only premature but also should not be entertained by reasons of the alternative remedy available.
25. In this case, the petitioner questioning the final determination made by the designated authority has approached this Court and claims that the same suffers from procedural irregularities and the action of the



designated authority is not only violative of the constitutional provisions but is also contrary to the very statutory provision which enables the designated authority to carry out the investigation. Thus, on the basis of the submissions made by the parties, the following questions fall for consideration:

- a. Whether this Court has the territorial jurisdiction to entertain the writ petition? **[paragraphs 27 to 36]**
- b. Is the challenge premature? **[paragraphs 37 to 44]**
- c. Whether the petitioner had an alternative efficacious remedy available to approach the Appellate Tribunal (CESTAT)? **[paragraphs 45 to 51]**
- d. Whether the designated authority had committed procedural irregularity & whether its actions are violative of principles of natural justice? (Issue of judicial review and decision making process) **[paragraphs 52 to 56]**
- e. Does failure to disclose and to rely on confidential material without disclosure of the summary of the confidential information constitutes any statutory infraction and/or procedural irregularities by the designated authority? (Issue of Confidentiality) **[paragraphs 52 to 56]**
- f. Whether denial of opportunity to contest the non-disclosure of confidential information and to rely upon the same without the domestic industry disclosing relevant information in terms of the



initiation notification published on 28th March, 2024, the final findings stand vitiated? And to what reliefs if any, the petitioner is entitled to? (Issue of non-disclosure and reliefs) **[paragraphs 52 to 56]**

26. In order to consider the above issues, including but not limited to the issue no.(a), it is necessary to note that the entire investigation had been conducted as per Section 9A of the said Act and the rules framed thereunder.

Territorial Jurisdiction

27. On the issue of territorial jurisdiction it is thus, necessary to consider the provisions of 9A of the said Act and Rules 3, 4, 5, 6, 7, 12, 14, 16, 17 and 18 of the said Rules, which are extracted hereinbelow.

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

Explanation—For the purposes of this section,—

- (a) *“margin of dumping”, in relation to an article, means the difference between its export price and its normal value;*
- (b) *“export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be*



constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) “normal value”, in relation to an article, means—

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

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

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

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

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



[(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the antidumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be [from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify].]

[(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the antidumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of intitiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.]

Explanation.—For the purposes of this sub-section, “absorption of anti-sumping duty” is said to have taken place,—

(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.]

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into



India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined:—

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

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

[(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2) shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless,—

(i) it is specifically made applicable in such notification or to such undertaking or unit; or

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation —For the purposes of this section,—]

(a) the expression “hundred per cent. export-oriented undertaking” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Exise Act, 1944 (1 of 1944);

(b) the expression “special economic zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);]

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



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

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the antidumping duty liable to be levied,

the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

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

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

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

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



pending the outcome of such a review for a further period not exceeding one year.

[Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained [* *] by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.*

[(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:

Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.]

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

[(8) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in



relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.]”

Rules 3 to 7, 12, 14 and 16 to 18 of the said Rules are also extracted herein below.

“ 3. Appointment of designated authority.—(1) *The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as the Government may think fit as the designated authority for purposes of these rules.*

(2) The Central Government may provide to the designated authority the services of such other persons and such other facilities as it deems fit.

4. Duties of the designated authority.—*It shall be the duty of the designated authority in accordance with these rules—*

(a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;

(b) to identify the article liable for anti-dumping duty;

(c) to submit its findings, provisional or otherwise to Central Government as to—

(i) normal value, export price and the margin of dumping in relation to the article under investigation; and

(ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries.



(d) to recommend the amount of anti-dumping duty, which if levied would be adequate to remove the injury to the domestic industry and the date of commencement of such duty; and

(e) to review the need for continuance of anti-dumping duty.

5. Initiation of investigation.—*(1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.*

(2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority and the application shall be supported by evidence of—

(a) dumping,

(b) injury, where applicable, and

(c) where applicable, a casual link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless—

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent. of the total production of the like article by the domestic industry, and



(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding—

(i) dumping,

(ii) injury, where applicable, and

(iii) where applicable, a casual link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation.—For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent. of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

(4) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Collector of Customs appointed under the Customs Act, 1962 (52 of 1962), or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3).

(5) The designated authority shall notify the Government of the exporting country before proceeding to initiate an investigation.

6. Principles governing investigations.—(1) *The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following:—*



- (i) the name of the exporting country or countries and the article involved;*
- (ii) the date of initiation of the investigation;*
- (iii) the basis on which dumping is alleged in the application;*
- (iv) a summary of the factors on which the allegation of injury is based;*
- (v) the address to which representations by interested parties should be directed; and*
- (vi) the time-limits allowed to interested parties for making their views known.*

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to—

- (i) the known exporters or to the concerned trade association where the number of exporters is large, and*
- (ii) the Governments of the exporting countries:*

Provided that the designated authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing.

(4) The designated authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.



Explanation.—For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping injury where applicable, and casualty.

(6) The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation.

(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

7. Confidential information.—*(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of Rule 6, sub-rule (2) of Rule 12, sub-rule (4) of Rule 15 and sub-rule (4) of Rule 17, the copies of applications received under sub-rule (1) of Rule 5, or any other*



information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

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

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

12. Preliminary findings.—*(1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain—*

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;



(ii) a description of the article which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(2) The designated authority shall issue a public notice recording its preliminary findings.

14. Termination of investigation.—The designated authority shall, by issue of a public notice, terminate an investigation immediately if—

(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;

(b) it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;

(c) it determines that the margin of dumping is less than two per cent. of the export price;

(d) it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three per cent. of the imports of the like product, unless, the countries which individually account for less than three per cent. of the imports of the like product, collectively account for more than seven per cent. of the import of the like product; or

(e) it determines that the injury where applicable, is negligible.



16. Disclosure of information.—*The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.*

17. 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 reason therefor and date of commencement of such retrospective levy:

Provided that the Central Government may, in circumstances of exceptional nature, extend further the aforesaid period of one year by six months:

Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in Rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year.



(b) recommending the amount of duty which, if levied, would be adequate to remove the injury where applicable, to the domestic industry.

(2) The final finding if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding—

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:

Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the value of the exports from the country in question which can reasonably be investigated, and any selection of exporters producers or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned:



Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

(4) The designated authority shall issue a public notice recording its final findings.

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:*

Provided that in case of imports from the specified countries the amount of duty shall not exceed the amount which has been found adequate to remove the injury to domestic industry.

(2) In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to in sub-rule (3) of Rule 17, any dumping duty applied to imports from exporters or producers not included in the examination shall not exceed—

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers, not individually examined:



Provided that the Central Government shall disregard for the purpose of this sub-rule any zero margin, margins which are less than 2 per cent. expressed as the percentage of export price and margins established in the circumstances detailed in sub-rule (8) of Rule 6. The Central Government shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation as referred to in the second proviso to sub-rule (3) of Rule 17.

(3) Notwithstanding anything contained in sub-rule (1), where a domestic industry has been interpreted according to the proviso to sub-clause (b) of Rule 2, a duty shall be levied only after the exporters have been given opportunity to cease exporting at dumped prices to the area concerned or otherwise give an undertaking pursuant to Rule 15 and such undertaking has not been promptly given and in such cases duty shall not be levied only on the articles of specific producers which supply the area in question.

(4) If the final finding of the designated authority is negative that is contrary to the evidence on whose basis the investigation was initiated, the Central Government shall, within forty-five days of the publication of final findings by the designated authority under Rule 17, withdraw the provisional duty imposed, if any.”

28. As would appear from the provisions contained in Section 9A of the said Act, Rule 5 of the said Rules read with the notification dated 28th March, 2024, the designated authority upon publication of such notification had invited all interested parties throughout the territory of India to offer their comments within the time specified therein, not only on the scope of consideration of the products under consideration but



with regard to the exclusion thereof, and also with regard to any information that the party interested may make available. The aforesaid initiation notification was published in the Gazette of India and was intended to operate throughout the length and breadth of India.

29. The petitioner has its registered office at Kolkata, and claims, upon going through the above notification had participated in such enquiry through its advocates. The preliminary objection of the petitioner was with regard to the inclusion of rutile sulphate in PUC on the ground of lack of domestic capability in manufacturing and commercial sale thereof. The petitioner also contended that a comparative analysis between the rutile sulphate and rutile chloride is impractical. According to the petitioner, the domestic industry lacks the necessary manufacturing setup to produce sulphate based rutile as their facilities are configured solely for chloride process. According to the petitioner, chloride process is inherently distinct from the sulphate process and requires a completely separate specialized plant and infrastructure, precluding any possibility of conversion or production of sulphate based rutile. The physical characteristic, colour of the sulphate based rutile and chloride based rutile, have also been distinctly identified by the petitioner.

30. On 29th January, 2025, a disclosure statement was published. It would transpire from such disclosure statement and in particular



paragraph 10 thereof, that the designated authority had made the following observations:

“10. The Authority proposes to consider as follows with regard to exclusion requests made and concerns expressed by the interested parties:

a. Rutile through sulphate TiO₂ should be excluded- With respect to submissions alleging that the domestic industry does not produce rutile through sulphate process, the Authority notes that the Indian industry produces rutile grade through sulphate process as well as chloride process. Further, it is noted that TTPL, has the necessary technology and setup to produce rutile through sulphate route and has manufactured and sold rutile TiO₂ produced using sulphate process during POI. Therefore, the Authority proposes to disagree with the exclusion sought for this product type.”

31. A perusal of disclosure statement would also demonstrate that the interested parties were offered an opportunity to offer their comments to the same. According to the petitioner, the above disclosure did not constitute appropriate disclosure for the petitioner to test out the veracity of the claim, especially having regard to the consistent stand taken by the petitioner that there has been no commercial sale of rutile sulphate to the Indian paint industries and having regard thereto, since merely disclosing the names of the paint industries would not constitute appropriate information, the petitioner by email dated 30th January, 2025 had sought for the details of the names of the paint companies who had purchased the same from the domestic industry, so as to verify the



accuracy of the claim made by the domestic industry that it had the technical setup not only to produce rutile sulphate but also has manufactured and sold of the same during the period of investigation (POI).

32. Since, the petitioner did not receive any response, without prejudice to the above, the petitioner had filed a comprehensive response through its advocates on 5th February, 2025. The same was followed by the final findings which had been notified in the Gazette of India on 12th February, 2025. It appears that in paragraph 10 a., of the final findings the designated authority had reproduced its earlier stand by verbatim reproduction thereof. In this context, it would be relevant to note that the learned advocate representing the respondents have jointly claimed that the information which have not been disclosed are all confidential information and the designated authority is estopped from disclosing the same having regard to the provisions contained in Rule 7 of the said Rules.

33. Mr. Sharma, has in fact went on to add that non-disclosure of such information which is confidential does not constitute violation of principles of nature justice and the same has the sanction of the Hon'ble Supreme Court in the case of ***Union of India & Anr. v. Meghmani Organics Limited & Ors.*** (supra). In this context, I may note that a procedure had been laid down to deal with the confidential information, and in fact the initiation notification dated 28th March, 2024 elaborately



deals with the same. To morefully appreciate the same, paragraphs 32 to 38 of the aforesaid initiation notification is extracted hereinbelow:

“32. *Any party making any confidential submissions or providing information on a confidential basis before the Authority is required to simultaneously submit a non-confidential version of the same in terms of Rule 7(2) of the Rules. Failure to adhere to the above may lead to rejection of the response/submissions.*

33. *The parties making any submission (including Appendices/Annexures attached thereto), before the Authority including questionnaire response, are required to file confidential and non-confidential versions separately.*

34. *The “confidential” or “non-confidential” submissions must be clearly marked as “confidential” or “non-confidential” at the top of each page. Any submission made without such marking shall be treated as non-confidential by the Authority, and the Authority shall be at liberty to allow the other interested parties to inspect such submissions.*

35. *The non-confidential version is required to be a replica of the confidential version with the confidential information preferably indexed or blanked out (in case indexation is not feasible) and summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on a confidential basis. However, in exceptional circumstances, the party submitting the confidential information may indicate that such information is not susceptible to summary, and a statement of reasons why summarization is not possible must be provided to the satisfaction of the Authority.*



36. *The Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the Authority is satisfied that the request for confidentiality is not warranted or if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information.*

37. *Any submission made without a meaningful non-confidential version thereof or a good cause statement on the confidentiality claim shall not be taken on record by the Authority.*

38. *The interested parties can offer their comments on the issues of confidentiality claimed by other interested party within 7 days of the circulation of the non-confidential version of the documents filed before the Authority.”*

34. From the petition it is abundantly clear that not only the investigation initiated vide initiation notification dated 28th March, 2024 was to operate throughout the territory of India but all the interested parties were called upon to provide their inputs primarily with regard to the product under consideration (PUC) and subsequently at the various stages of the investigation which provide rights to such interested parties to seek for necessary particulars in relation to investigation including but not limited to objecting to the claim of confidentiality made by a party. As would appear from the petition, the final findings and the levy are to have a direct impact on the business of an interested party including the petitioner which has the registered office at Kolkata and has been operating from Kolkata. As such it cannot be said that no part of cause of action had arisen within the jurisdiction of this Court. In fact, the effect



of the initiation notification, disclosure statement, the determination as reflected in the final findings and the levy, are to have a direct impact and the effect thereof, was felt by the petitioner at its registered office at Kolkata, within the territorial limits of Kolkata and within the jurisdiction of this Hon'ble Court.

35. Mr. Mitra, learned senior advocate, has, however, by placing reliance on the judgments delivered in the case of ***M/s Swaika Properties*** (supra), ***Oil and Natural Gas Corporation*** (supra) and ***Kusum Ingots & Alloys Ltd.*** (supra) has purported to claim that this Court does not have the territorial jurisdiction since, no part of cause of action has arisen within the jurisdiction of this Court. I, however, find that while in the case of ***M/s Swaika Properties*** (supra) the acquisition proceedings which was initiated by the State of Rajasthan in respect of the land situated at Jaipur, of a Kolkata based company and the cause of action in such case notwithstanding service of notice at the registered office of the company at Kolkata could not have arisen within the territorial limits and the jurisdiction of this Court for the simple reason that the service of a mere notice under Section 52(2) of the Rajasthan Urban Improvement Act, 1959 which was served at Kolkata, did not give right to a cause of action for acquisition of such property situated outside the jurisdiction of the Court at Rajasthan. The above judgment is distinguishable on facts and does not assist Mr. Mitra's client. The judgment delivered in the case of ***Oil and Natural Gas Corporation***



(supra) also does not assist Mr. Mitra's client for the simple reason that in the said case bids were invited from outside the jurisdiction of the Court for setting up a Kerosene rectifying processing unit at Hazira Complex in Gujarat, by circulating an advertisement in the 'Times of India' within the jurisdiction of the Calcutta High Court though the final decision in that regard was to be taken by the steering committee at New Delhi presided over by the chairman of ONGC. Admittedly, in a matter relating to formation of contract on the basis of a notice inviting tender, the contract comes into being with the acceptance of the offer. Though, the party had made an offer from Kolkata, acceptance or non-acceptance thereof, was to take place at Delhi. Since, the offer was not accepted the same did not culminate into a contract and the effect of non-acceptance could not extent to Kolkata for the simple reason in such case the non-acceptance of the offer can at best give rise to a cause of action which arose at Delhi, outside the territorial limits of the High Court at Calcutta. Without going into the issue that a point of territorial jurisdiction if taken, as and by way of demurer, the statement made in the petition has to be taken to be true and correct the Hon'ble Supreme Court held in such case even by accepting the statement made in the petition to be correct, no part of the cause of action has arisen within Kolkata. Such is not the case here. The above judgment also does not assist Mr. Mitra's client at all.



36. In so far as the judgment delivered in the case of ***Kusum Ingots & Alloys Ltd.*** (supra) is concerned the Hon'ble Supreme Court in paragraph 6 of the judgment has amplified the implication of the cause of action and has noted that the cause of action implies a right to sue and the material facts which are imperative for the suitor to allegedly constitute a cause of action. As per the observations made therein, each and every fact which is necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court, negatively put it would mean everything which, if not proved, gives the defendant an immediate right to judgment, would constitute to be part cause of action. In the said case one of the questions that fell for consideration was the situs of the respondents. It is in that context the Hon'ble Supreme Court observed that when an order is passed by a Court or tribunal or an executive authority, part cause of action arises at that place, the same includes both an appellate order or a revisional order though the original order was passed at a place outside the said area. As such, when a part of the cause of action has arisen within one or the other High Court, it will be for the petitioner to choose therefrom. Although, according to Mr. Mitra since, the decision of the designated authority is being rendered from outside the jurisdiction of this Court, this Court does not have jurisdiction, I am afraid such contention cannot be sustained for the simple reason that in the present case the enquiry is not limited to a particular place or a particular state but is Pan India, giving rise to rights



and obligations of the parties to participate in the determination process from their respective place of business and the decision or the determination is to be felt at their respective place of business. The judgement delivered in the case of **Otokumpu Stainless** (supra) does not consider the aforesaid aspect. The Hon'ble Court in the said case had noted from the pleadings that the concerned goods would be cleared through Chennai airport i.e. the assessment of duties upon clearance of the subject goods exported by the petitioner would take place at Chennai. Thus, the issue was whether the assessment and payment of anti-dumping duty on the goods that is going to take place constitute a material, essential or integral part of the cause of action. Since, an anticipated event would not give rise to cause of action and noting that the petitioner was a non-resident company and was represented by its Power of Attorney holder, who resides at New Delhi and the respondent who passed the order was also situated at New Delhi, the Hon'ble Madras High Court had decided to conclude that no cause of action had arisen within the territory of the Hon'ble Court. The above judgment does not consider the scope of either the initiation notification or the right of the parties to participate in the adjudicating process, in fact such issue did not fall for consideration. The above judgement in the facts of this case cannot assist the respondents having regard to the scope of cause of action being elaborately dealt with herein above. On such grounds, the



objection on territorial jurisdiction as raised by Mr. Mitra fails and **the issue no.(a) is decided in favour of the petitioner.**

Is the Challenge Premature?

37. Moving on to the next issue of the writ petition being premature and not being maintainable by reasons of the presence of an alternative remedy, although, the parties have advanced detailed arguments and have relied on several judgments, I find that Section 9C of the said Act which deals with the scope of the appellate provision has since been amended. To understand the aforesaid provision and the implication of the amendment, it is necessary to consider the scope of the aforesaid amendment. In that context, I may note that the said Act has been amended by the Finance Act, 2023 (No. 8 of 2023) (in short, the “Finance Act”) which was published in the Gazette of India on 31st March, 2023. Section 134 of the Finance Act deals with the amendment of Section 9, 9A and 9C of the said Act, while Section 135 of the Finance Act deals with the amendment of first schedule of the said Act and the Section 136 of the Finance Act deals with the amendment of the second schedule of the said Act. To understand the scope of the above amendment, both the unamended provisions and the amended provisions of the said Act, as amended by the Finance Act, 2023 are set out hereinbelow in a tabulated form:



Provision of Customs Tariff Act, 1975 as has been amended by the Finance Act, 2023 (No. 8 of 2023)	Unamended Provision	Amended Provision
Section 9 (a) in sub-section (6), in the first proviso, for the words “in a review”, the words “on consideration of a review” shall be substituted;	(6) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition: Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period 30[up to five years] and such further period shall commence from the date of order of such	(6) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition: Provided that if the Central Government, 29[on consideration of a review], is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period 30[up to five years] and such further period



	extension: Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year. 31[Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]	shall commence from the date of order of such extension: Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year. 31[Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]
(b) in sub-section (7), the words “and determined” shall be omitted;	(7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be	(7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be



	ascertained <u>and</u> <u>determined</u> by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.	ascertained 32[* * *] by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.
Section 9A (a) in sub-section (5), in the first proviso, for the words “in a review”, the words “on consideration of a review” shall be substituted;	5) <i>The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such</i>	5) <i>The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such</i>



	<i>imposition:</i> <i>Provided that if the Central Government, <u>in a review</u>, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period [up to five years] and such further period shall commence from the date of order of such extension:</i> <i>Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a</i>	<i>imposition:</i> <i>Provided that if the Central Government, [on consideration of a review], is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period [up to five years] and such further period shall commence from the date of order of such extension:</i> <i>Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in</i>
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	<i>review for a further period not exceeding one year.</i> <i>[Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]</i>	<i>force pending the outcome of such a review for a further period not exceeding one year.</i> <i>[Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]</i>
(b) in sub-section (6), the words “and determined” shall be omitted;	(6) <i>The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained <u>and</u> <u>determined</u> by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this</i>	(6) <i>The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained [* * *] by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without</i>



	section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.	prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.
Section 9C (a) in sub-section (1), the words “order of” shall be omitted;	(1) An appeal against the <u>order</u> of determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted	(1) An appeal against the 50[* * *] determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section



	under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal), in respect of the existence, degree and effect of— (i) any subsidy or dumping in relation to import of any article; or (ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.]	129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal), in respect of the existence, degree and effect of— (i) any subsidy or dumping in relation to import of any article; or (ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.]
(b) in sub-section (2), for the word “order”, the words “determination or	(2) Every appeal under this section shall be filed within ninety days of the	(2) Every appeal under this section shall be filed within ninety days of the



review” shall be substituted;	date of <u>order</u> under appeal: Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.	date of 52 [determination or review] under appeal: Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
(c) in sub-section (3), for the word “order”, the words “determination or review” shall be substituted;	(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the <u>order</u> appealed against.	(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the 53 [determination or review] appealed against.
(d) after sub-section (5), the following <i>Explanation</i> shall	(5) Every appeal under sub-section (1) shall be heard by a Special Bench	(5) Every appeal under sub-section (1) shall be heard by a Special Bench



be inserted, namely:— <i>‘Explanation.- For the purposes of this section, “determination” or “review” means the determination or review done in such manner as may be specified in the rules made under Sections 8-B, 9, 9-A and 9-B.’</i>	constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.]	constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.] 54 [<i>Explanation.—For the purposes of this section, “determination” or “review” means the determination or review done in such manner as may be specified in the rules made under Sections 8-B, 9, 9-A and 9-B.]</i>
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First Schedule

In the Customs Tariff Act, the First Schedule shall—

- (a) be amended in the manner specified in the Second Schedule;
- (b) be also amended in the manner specified in the Third Schedule;



(c) with effect from the 1st May, 2023, be also amended in the manner specified in the Fourth Schedule;

(d) with effect from the 1st April, 2023, be also amended in the manner specified in the Seventh Schedule;

Second Schedule

In the Customs Tariff Act, the Second Schedule shall, with effect from the 1st May, 2023, be amended in the manner specified in the Fifth Schedule.

38. In the above context, it must be borne in mind that the ADA envisages an appellate mechanism to review the administrative action relating to the final determination by the designated authority. Following the above, an appellate mechanism has been provided for in the said Act and the application of such appellate mechanism in the Rules has also been incorporated. Section 9C of the said Act deals with the appellate provision. It may be noted that the above provision of Section 9C as it stood prior to the amendment used the words “*order of determination or review thereof*” has been interpreted to mean the decision of the central Government, though in the case of **Jindal Poly Film Ltd.** (supra), the Hon’ble Delhi High Court observed that the refusal to levy anti-dumping duty would also constitute an order of determination. The court, in such case by observing that the word ‘determination’ qualifies the word ‘order’, held that an appeal would lie only against such orders which are determinative and final in respect of the existence, degree and effect of



any subsidy or dumping in a relation to import of any article. The above situation has since, changed with the amendment of Section 9, 9A and 9C of the said Act. Today, an appeal would lie from the ‘determination’ itself. Post the amendment the word ‘determination’ no longer qualifies the word ‘order’.

39. I find that the word determination as rightly pointed out by Mr. Mookherjee, both in the said Act and Rules appear to be derived from Articles 2 and 3 of the ADA. To morefully appreciate the same the relevant portions of the aforementioned articles are extracted below:

“Article-2 – Determination of Dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. ...”



“Article 3 – Determination of Injury

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relevant to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product. ...”



40. As noted above, the amended provision of Section 9C of the said Act is now in line with the ADA, in particular Article 13 of the ADA, which provide for prompt review of administrative action.

“Article 13: Judicial Review

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.”

41. It may also be noted that the word ‘*determination*’ and ‘*review of determination*’ appears to be connotations used in the context of administrative judicial review to be carried out against the decision of the designated authority. The connotations appear to have been incorporated in the domestic anti-dumping law, i.e. the said Act, in the form of borrowed provisions from the GATT agreement and the ADA.
42. By reasons of amendment of the said Act by the Finance Act, 2003, Section 9A of the said Act has been amended whereby in sub-section (6), the margin of dumping duty though may be ascertained by the Central Government, however, the words “and determined” have been omitted. The amendment of Section 9C makes the position clear as the appeal would now lie against the determination, thereby bringing within the ambit of judicial review, the very determination itself unlike, the pre-amended position. Similar amendment has also been provided for in sub-



section (3) of Section 9C which now provides for a remedy against the determination itself.

43. Thus, on a perusal of the above provision, it is now amply clear that unlike the pre-amended provisions of the said Act, under the amended provision, an appeal can be filed against the '*determination*' by the designated authority which if read with the ADA would mean and include the determination made by the designated authority. As such it can no longer be said that a challenge to a determination, unlike to an '*order of determination*' regarding existence of degree and effect of dumping, is premature, especially when the '*order of determination*' has been judicially interpreted to be in the form of imposition or non-imposition of anti-dumping duty. In the former eventuality, the Court has however, also recognised the right to challenge such negative finding, as the same is final, as contrary interpretation would be incongruous. The above position has now been altered. A judicial review in the form of an appeal having regard to the provisions of said Act can therefore, post the amendment of Sections 9, 9A, and 9C of the said Act, in my view, is maintainable. I may note that the respondents have, however, laid much stress on paragraph 27 of the judgment delivered in the case of ***Directorate General of Trade Remedies. v. Andhra Petrochemicals Ltd.***, (supra) to hold out that the final findings is only recommendary and the central Government is the authority to take a final call but having regard to the amendment of the said Act, the central Government



no longer enjoys the right to determine, though it still continues with the right to ascertain the levy.

44. This apart although, Mr. Bhattacharjee has placed reliance on the judgment delivered by the Hon'ble High Court of Delhi in the case of **Exxonmobil Asia Pacific Pvt. Ltd.** (supra) and the case of **Suncity Sheets Pvt. Ltd.** (supra), to, *inter alia*, contend that this Court ought not to entertain the writ petition by reasons of presence of alternative remedy, I find that while in the case of **Exxonmobil Asia Pacific Pvt. Ltd.** (supra) the said judgment has been delivered by placing reliance on the case of **Suncity Sheets Pvt. Ltd., and Jindal Poly Film** (supra), both of which have been delivered prior to the amendment of the said Act. Insofar as the judgment delivered in the case of **Suncity Sheets Pvt. Ltd.** (supra) is concerned, I find that the said judgment has also been delivered prior to the amendment of the said Act. It may, however, be relevant to note that in the case of **ExxonMobil Asia Pacific Pvt. Ltd.** (supra), the petition was disposed of as being premature since, in terms of Section 9C a determination made was not found to be then appealable and it was the levy which could be appealed against. Such situation has, however, completely changed consequent upon the amendment of the said Act by the Finance Act, 2023 for reasons noted above. The above issue is thus, decided against the respondents. **Thus, the issue no. (b) is decided against the respondents.**



Alternative Remedy

45. The parties have elaborately argued on the issue of alternative remedy. It may be relevant to note that although, in the case of **Suncity Sheets Pvt. Ltd.** (supra), the challenge was not entertained by reasons of presence of an alternative remedy. In paragraph 6 of such judgment, the Hon'ble Delhi High Court had quoted the observations made in the case of **Hindustan Lever v. Union of India**, reported in **2017 SCC OnLine Del 8354**.

“ 6. This Court has in its order dated 16th May, 2017 in W.P.(C) 2632/2017 (Hindustan Lever Ltd. v. Union of India) declined to entertain a writ petition, challenging the Final Finding of the DA on account of the availability to the Petitioner there of an efficacious statutory remedy of appeal before the CESTAT. In the said decision, this Court referred to and distinguished the above decision of the Gujarat High Court in Nirma Limited v. Union of India (supra). This Court preferred to follow its earlier decisions in Alcatel-Lucent India Ltd. v. Designated Authority (2016) 338 ELT 397 (Del); PTA Users Association v. Union India (2016) 340 ELT 125 (Del) and Balaji Action Buildwell v. Union of India (2016) 337 ELT 166 (Del.) in which this Court had consistently declined to entertain a petition under Article 226 of the Constitution of India challenging the Final Finding of the DA without the Petitioner exhausting the statutory remedy of an appeal before the CESTAT. In Hindustan Lever Ltd. v. Union of India (supra), the Court explained:

“10. The question is not whether this Court can entertain the present writ petition. The question is whether, in the facts and circumstances, it should? The power under Article 226 of the Constitution is an extraordinary one and should not be exercised in a routine manner especially when the Petitioner has an efficacious and adequate alternative statutory remedy available. Otherwise, the Court would be supplanting the functioning of the statutory appellate authority tasked specifically with reviewing the correctness of the orders of the subordinate statutory authorities. Therefore, while acknowledging that this Court does



have the jurisdiction to entertain the writ petition, in the facts and circumstances of the present case the Court finds that no case has been made out to persuade it to exercise its jurisdiction under Article 226 of the Constitution to examine the correctness of the Final Finding of the DA. The Court is of the firm view that every ground urged in the present writ petition can well be urged before the CESTAT.” ”

Thus, from the above quoted paragraph it would be clear that the power of the writ Court to entertain the writ petition was duly acknowledged though with the rider that in the facts of the case the petition was not entertained. It is clear from the above that the Court in the facts of such case was not persuaded to exercise jurisdiction.

46. Insofar as the judgment relied on by the respondents in the case of **Sandisk International Ltd.** (supra) is concerned, I find that in paragraph 7 of the said judgment the Hon'ble Supreme Court had observed that from the perusal of the materials on record, there were serious disputed questions of fact with regard to the locus of the respondent i.e. Sandisk International Limited, to file writ petition before the Delhi High Court. The Hon'ble Supreme Court had also observed that the final notification though published during pendency of the petition had remained operative and since then the duty had been collected on such basis, the Sandisk or any importer on whom the levy was imposed had not come forward to seek interference. It is in such context that the Hon'ble Supreme Court felt that the appellate tribunal should consider all aspects of the matter, including correctness of the findings. While



observing as such, the Hon'ble Supreme Court in paragraph 7 had observed and recorded the following:

“ Though we would not deem it appropriate to lay down any inflexible proposition of law that in no case the final findings of the Designated Authority can be subject to challenge under Article 226 of the constitution of India, we are of the view that in the facts of the present case the High Court was not justified in exercising its writ jurisdiction and in setting aside the final findings of the Designated Authority. ”

47. Insofar as the judgment delivered by a coordinate Bench of the Madras High Court, in the case of **Saint Gobain** (supra) is concerned, one of the contentions raised by the domestic industry before the designated authority was that the designated authority had no jurisdiction due to the lapse of time as the maximum period available to the designated authority to conclude the investigation which was 18 months as per Rule 17 of the said Rules had expired. In that context the Hon'ble Court in paragraph 17 had been pleased to note down the questions for consideration as follows:

“17. The following questions arise for consideration in these writ petitions.

(i) Whether the New Shipper Review Investigation commenced by the Designated Authority vide initiation notification, dated 23-9-2015 culminating in the final findings, dated 10-4-2017 is barred by time as it has exceeded 18 months?

(ii) Whether the New Shipper Review initiated under Rule 22 of the ADD Rules is required to be completed within a period of 12 months



from the date of initiation, failing which the same will lapse or in 18 months if extension is granted for a further period of 6 months?

(iii) Whether the procedures on time limits for carrying out the New Shipper Review should be in consonance with the time limit prescribed under Rule 23(3) read with Rule 17 of the ADD Rules?

(iv) Whether the present writ petitions are maintainable before this Court?

(v) To what other remedy, the petitioner is entitled to.”

48. It is in this context that the coordinate Bench of the Madras High Court in paragraphs 28, 29 and 30 had decided the issues raised therein and observed as follows:

“ 28. *The arguments based on the replies to the questions posed by Korea concerning the notification provided by Government of India before the World Trade Organisation does not in any manner advance the case of the petitioner, as the reply given by India before the WTO is that the term "periodical reviews" (as appearing in rule 22) implies accelerated review. Thus, it is clear that there are no timelines prescribed for a review undertaken under rule 22 and going by the dates and events, it is seen that the initiation notification is dated September 23, 2015, period of investigation is from July 1, 2015 to March 31, 2016. After the investigation was over, the designated authority has forwarded a notification to the applicant/third respondent, the domestic producers (the petitioner and others), the interested parties giving them opportunity to make their views in writing. The non-confidential version of the evidence presented by the various interested parties were provided for inspection by the interested parties. Personal hearing was granted on September 17, 2016 and November 2, 2016. Further, information*



was sought for from the applicant and other interested parties to the extent deemed necessary. In accordance with rule 16, the designated authority informed all the interested parties of the essential facts under consideration, which form the basis for its decision and this was required to be done before giving its final finding and this disclosure of information was made on March 27, 2017. Then, the confidentiality claims of various interested parties in respect of data submitted by them were examined and the final findings were issued on April 10, 2017. Thus, the procedure adopted by the designated authority is undoubtedly an accelerated review and suffers from no error.

29. *In view of the above reasons, questions framed are answered in the following terms :*

(i) The new shippers review initiated vide notification, dated September 23, 2015, culminating in the final findings dated April 10, 2017, is not barred by time.

(ii) In the absence of any time limit fixed in rule 22, a review undertaken under rule 22 is not required to be completed within 12/18 months as required under rule 23(3), but an accelerated procedure.

(iii) As rule 22 and rule 23 of the ADD Rules operate in different fields spheres and well-defined compartments the limitation prescribed under rule 23(3) read with rule 17 cannot be superimposed in rule 22, in doing so, it would amount to rewriting the rule, impermissible in law.

(iv) For the reasons assigned and in the light of the law laid down in NITCO Tiles Ltd. and Sandisk International Ltd., the writ petitions are not maintainable.



(v) The petitioner is entitled to avail the alternate remedy available under section 9C of the Customs Tariff Act.

30. *For the above reasons, all the writ petitions are dismissed, leaving it open to the petitioners to avail the alternate remedy available to them under the Customs Tariff Act, as against the Notification dated June 16, 2017, bearing No. 30 of 2017, with a direction to the first respondent to forthwith give effect to the notification. No costs. Consequently, connected miscellaneous petitions are closed.”*

49. From the above, it was crystal clear that on the question of law though the writ petition was entertained, the writ petitioners were directed to avail alternative remedy, once the Court *prima facie* found that the procedure adopted by the designated authority suffers from no error as is noted in paragraph 28 thereof. The aforesaid judgment also does not assist the respondents.

50. From the above, it is crystal clear that the High Court while exercising jurisdiction under article 226 of the Constitution of India has planetary powers and presence of an alternative remedy does not interfere with the exercise of its jurisdiction in a fit case. The exercise of jurisdiction is discretionary, and the High Court follows self-restraint to weed out matters where adequate alternative remedy is provided for. In this context it is thus necessary to consider whether the petitioner at the time of filing the petition had availability of alternative remedy. I find that though an appellate provision has been provided for, the petitioner has



stated on oath that the appellate authority (CESTAT) anti-dumping Bench has not been constituted for more than one year and is not functional. In support of the aforesaid, the roster of CESTAT from 26th October, 2023 till 28th February, 2025 has also been disclosed. In the light of the above, the matter had been taken up for consideration. In my view, simply because there is an appellate forum available though such forum is not functional, it would be wholly unjust and unfair to direct the petitioner to approach such forum. In the instant case, since the tribunal had not been functional, this Court had entertained the petition and has accordingly taken up the matter for hearing on merits.

51. In the facts of the case, the judgement delivered in the case of ***Outokumpu Oyj v. Union of India & Ors.*** (supra), though provides that when a machinery is created by the statute to remedy and correct any wrong and when a right or liability is created by the same statute which gives a special remedy by way of an appeal, such remedy should not normally be circumvented, however, since in the instant case, the very machinery providing for the remedy to correct the wrong being unavailable, the matter was taken up for consideration. Thus, the above judgement does not assist the respondent. **The issue no. (c) is decided against the respondents.**

On Judicial Review of the Decision Making Process

And

Issue of confidentiality



And

Issue of non-disclosure

52. The above issues are taken up together. From the perusal of the final findings, it would transpire that the designated authority had noted that requests had been received by the authority to disclose the names of the paint company that have purchased rutile sulphate from the domestic industry as claimed in the disclosure statement and have also noted that the domestic industry had provided the names of the paint manufacturers to whom goods have been sold along with the relevant evidence. The said final findings along with disclosure statement does not however, demonstrate that the petitioner had not been granted any opportunity to offer its comments on the issue of confidentiality claimed by the interested parties as required in terms of paragraph 38 of the initiation notification. Although, a lot has been submitted on the scope of confidentiality and restriction on the designated authority to disclose the same, I may, however, note that having regard to the scope of Rule 7(2) of the said Rules, in my view, in guise of confidentiality, an interested party/domestic industry cannot be permitted to withhold the necessary information at least in the form of a non-confidential summary, unless, the designated authority is satisfied as regards its confidentiality and the reason for non-summarization of such confidential information. The aforesaid is also in consonance with the article 6.9 of ADA, which is extracted hereinbelow:



“ Article 6: Evidence

...

6.9 *The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.”*

53. In the light of the above, and having regard to the provisions of the said Act and Rules, it would be relevant to test out the following:

(a) whether any confidentiality has been claimed by any of the interested parties and to what extent?,

(b) whether the confidential information had been provided in summarized non-confidential form?,

(c) whether any exemption has been sought for to file the summarized non-confidential form by claiming summarization is not possible.

(d) whether any satisfaction has been arrived at by the designated authority as regards any such claim since, in the absence of such satisfaction the designated authority is ordinarily required to ignore the required information.

54. It would transpire from the records, especially the disclosure statement and the final findings that in paragraph 23, the designated authority has accepted all claims on confidentiality, whenever warranted, and such information has been considered confidential and not disclosed



to the other interested parties. Incidentally, however, the designated authority appears to have departed from the procedure of determining confidentiality, and has only provided that disclosure of non confidential information filed on confidential basis wherever possible. The said observation has been made by the designated authority without affording the petitioner who is one of the interested parties to contest the claim for confidentiality by the domestic industry in the tune with paragraph 38 of the initiation notification. In this context it will be relevant to note that the observations made by the Hon'ble Supreme Court in the case of **Meghmani Organics Limited & Ors.** (supra), wherein the Hon'ble Supreme Court, while noting the observations made in the case of **Reliance Industries** (supra) had specifically held that the findings returned in **Reliance Industries** (supra) do not require review and that Rule 7 of the said Rules does not postulate that the designated authority can claim confidentiality in respect of information supplied by the party but in respect of the reasons and findings derived from the information supplied by the very same party. The confidentiality under Rule 7 of the said Rules is not something which must be automatically assumed as that the designated authority has to be satisfied as to the confidentiality of the material and even if the material is confidential, the designated authority has to ask the party to provide information on a confidential basis, and to furnish a non-confidential summary thereof. If such statement is not furnished then the parties should submit to the



designated authority a statement of reasons as to why summarization is not possible. In my view, prior to the stage of satisfaction by the designated authority, the interested parties are entitled to, having regard to the provisions contained in paragraph 38 of the initiation notification, not only a notice but a right to object to such confidential information being accepted. It would further appear from paragraph 19 of the final findings that the domestic industry had made the following submission on the issue of confidentiality and the observations made by the designated authority are reproduced hereinbelow:

“E.2. Submission by the domestic industry

19. The following submissions have been made by the domestic industry with regard to confidentiality:

- i. The domestic industry consists of three entities: two PSUs (KMML and TTPL) and one private company (VVT). KMML produces only Rutile grade by chloride process, VVT produces only Anatase grade, and TTPL produces both grades. There is a significant difference in the cost and selling price of Rutile and Anatase grades during the POL.*
- ii. Disclosure of aggregate figures could enable producers to deduce the cost and price of grades they do not produce, harming the DI's competitive interests. Cost, profit, and selling price are highly sensitive business information, and disclosure would negatively impact the competitive position of the DI.*
- iii. It is further submitted by domestic industry that claims of confidentiality are in consonance with the practice of the Authority in cases such as **Anti-dumping investigation***



concerning imports of Phthalic Anhydride originating in or exported from Russia and Japan¹², where there were 3 (three) producers as a part of the domestic industry, the Authority did not provide details such as selling price and PBIT of the constituents of the domestic industry and has claimed it confidential. This pattern was also followed in other cases such as **Anti-dumping investigation concerning imports of Phthalic Anhydride (PAN) originating in or exported from China PR, Indonesia, Korea RP and Thailand¹³**, **Anti-dumping investigation concerning imports of Glazed Unglazed Porcelain Vitrified tiles in polished or unpolished finish from China PR¹⁴** and **Anti-dumping investigation concerning imports of Plastic Processing Machines originating in or exported from China PR¹⁵**.

- iv. Further, many respondents have not disclosed affiliated companies, names of shareholders, details of the company such as telephone and fax numbers. These details have been claimed confidential without a valid jurisdiction.
- v. Sample domestic and export sales documents have not been disclosed. **While documents itself may be confidential, the list of documents submitted has not been disclosed.”**

“ E.3. Examination by the Authority

20. The Authority made available the non-confidential version of the information provided by the various parties to all the other interested parties as per Rule 6(7).

21. With regard to confidentiality of the information, Rule 7 of the Rules provides as follows:

“7. Confidential Information:



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

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

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

22. *The information provided by the interested parties on confidential basis was examined with regard to sufficiency of such claims. **The Authority holds that the domestic industry's claims on price parameters have been accepted, while volume parameters have been disclosed.** Hence, the Authority is satisfied with information provided by the domestic industry on confidential basis.*



23. On being satisfied, the Authority accepts the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, the parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.”

55. In the light of the above, it can be deduced that the claim of confidentiality which was allowed by the designated authority was limited to the disclosure of price only, the names of the domestic industries which allegedly purchased the product under consideration, during the period of investigation or the volume thereof was not accepted. Though, Mr. Mookherjee, has submitted that in absence of a claim of confidentiality being allowed the designated authority was not authorized to withhold such information on the claim of confidentiality thereof, I however, find that the domestic industry had claimed complete confidentiality on all information, as such the same could not have authorised the designated authority to disclose such confidential information having regard to the judgement delivered in the case of **Meghmani Organics Limited & Ors.** (supra). However, at the same time, if the domestic industry failed to disclose non-confidential summary of the confidential information as is required in terms of the initiation notification, it was for the designated authority to call for such information from the domestic industry, and in absence of such



disclosure, to reject such information. In this case, admittedly, the petitioner had called upon the designated authority to disclose necessary information as regards the names of the paint companies with whom there have been transactions of the domestic industries in connection with sale of rutile sulphate, for the petitioner to verify the accuracy of such information. In my view, the entirety of the aforesaid disclosure sought for by the petitioner though was not only in consonance with Rule 7(2) of the said Rules, however, the designated authority having only accepted the claim for confidentiality on price parameters and thus, having refused the claim for confidentiality on volume and other parameters as is reflected from the final findings, ought to have directed the domestic industry to provide summary of such confidential information in non-confidential form, and in the event, such disclosure was not made, ought to have refused the claim in terms of paragraphs 35 to 38 of the initiation notification. The same has not been done. By reasons of refusal of the designated authority to call for information in terms of the initiation notification from the domestic industry and disclose the claim for confidentiality made by the domestic industry to the petitioner, the petitioner has been prevented from objecting and contesting the claim for confidentiality especially when the domestic industry has held all business related information to be confidential. The designated authority could not have allowed confidentiality in respect of all the business data for selling titanium dioxide through rutile sulphate



process, especially when the petitioner claims that there are no commercial sale of rutile sulphate and especially when such contention had been turned down by contending that the respondent no.4 has the necessary technology and set up to produce rutile through sulphate route and has manufactured and sold titanium dioxide products using sulphate process. Since, the finding to the contrary has to be supported by reasons and documentary evidence, ordinarily, the same or the non-confidential summary thereof, ought to have been disclosed and in the event the domestic industry insisted for total confidentiality, in terms of Rule 7(3) the said Rules the same ought to have been ignored. Further the designated authority was also obliged to disclose essential facts prior to rendering the final findings in terms of Rule 16 of the said Rules. In absence of such disclosure, the petitioner had been unable to verify the very basis on which the aforesaid product has been included within the scope of product under consideration and to test out whether there has been domestic sale of the PUC which forms the foundation of the claim of the levy of duty. The sub issues are accordingly answered.

56. In my view, the procedural safeguard in terms of article 6.9 of the ADA which has been incorporated in the said Act, and the rules framed thereunder, especially in Rule 7(2) of the said Rules has not been followed. The petitioner was thus, not made aware of the essential facts under consideration which forms the basis of the decision for applying the definitive measures. In the peculiar facts, morefully noted



hereinabove, I am of the view that the final findings of the designated authority stands vitiated. In the interregnum, however, there has been a development. During the pendency of the writ petition, the Government has already ascertained and imposed a levy of anti-dumping duty vide notification dated 10th May, 2025. In this context, it would be relevant to note that by an order dated 6th March, 2025, this Court considering the lengthy arguments advanced and considering the balance of convenience and the prima facie case had granted an interim protection by, *inter alia*, observing that steps, if any, taken by the respondents shall abide by the result of the writ petition. Since, respondents were aware and were conscious that any steps taken by the respondents are subject to the final decision to be rendered by this Court, I am of the view that since, the levy of duty is based on the final findings, which stands vitiated for reasons noted hereinabove, the levy of duty effected by notification dated 10th May, 2025 also cannot be sustained and the same with the final findings are accordingly quashed. The matter is remanded back to the designated authority for reconsideration of the aforesaid issue, from the stage of the response filed by the petitioner for the purpose of considering the same in accordance with the observations made herein and the scope and object of Rule 7(2) of the said Rules. Levy if any, collected in the meantime shall be subject to the final outcome of the proceedings. **The issue nos. (d), (e) and (f) are thus, decided in favour of the petitioner.**



57. The writ petition thus, stands disposed of in the above terms.
58. The copies of documents, which were marked confidential and retained in a sealed cover, are permitted to be taken back in a sealed form by the advocate for the respondent nos. 1 and 2 against a receipt to be retained on the file.
59. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)