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

% ***Judgment reserved on: 14.08.2026***

Judgment pronounced on: 17.11.2026

Judgment uploaded on: 17.11.2026

\# **CNR No. DLHC010338782020**

\+ W.P.(C) 10289/2020

SUPREME PETROCHEM LTD. .....Petitioner

Through: Mr. Ramesh Singh, Sr. Adv. along with Mr. Jitender Singh and Mr. Anshumaan Sahni, Adv.

versus

UNION OF INDIA AND ANR. .....Respondents

Through: Ms. Nidhi Raman, CGSC with Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010454872022**

\+ W.P.(C) 16640/2022

CARBORUNDUM UNIVERSAL LIMITED .....Petitioner

Through: Mr. Ramesh Singh, Sr. Adv. along with Mr. Jitender Singh and Mr. Anshumaan Sahni, Adv.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010455222022**

\+ W.P.(C) 16647/2022

GRINDWELL NORTON LIMITED .....Petitioner

Through: Mr. Ramesh Singh, Sr. Adv. along with Mr. Jitender Singh and Mr. Anshumaan Sahni, Adv.

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versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

 # CNR No. DLHC010474552022

\+ W.P.(C) 17186/2022

ASAHI INDIA GLASS LIMITED .....Petitioner

Through: Mr. Ramesh Singh, Sr. Adv. along with Mr. Jitender Singh and Mr. Anshumaan Sahni, Adv.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC along with Mr. Dipak Raj, Mr. Aryaman Singh Chouhan and Mr. Aditya Chaudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.:

W.P.(C) 10289/2020

1. The present Petition has been filed by a domestic producer, challenging the constitutional validity of Section 9A (1) of the Customs Tariff Act, 1975[1] read with Rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995[2]

[1] hereinafter referred to as 'Act of 1975'
[2] hereinafter referred to as 'Rules of 1995'

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[hereinafter referred collectively as 'impugned provisions'], on account of the provisions being *ultra vires* Article 14 of the Constitution. The challenge raised by the Petitioner is founded upon the premise that the impugned provisions confer upon the Respondent No.1/Central Government (CG) an unfettered, unguided and excessive discretion.

2. Briefly stated, the Petitioner herein is one among a number of domestic producers engaged in the manufacture of Polystyrene[3] who approached Respondent No.2/Designated Authority (DA), seeking imposition of Anti-Dumping Duty (ADD) on imports of the subject goods, originating in or exported from Iran, Malaysia, Singapore, Chinese Taipei, UAE and USA.

3. The Respondent No.2, upon conducting an investigation came to conclusion on 12.06.2020[4], recording a positive determination of definitive ADD on the subject goods from subject countries, on the country and producer wise basis in terms of provisions contained in Rule 17(1)(b) read with Rule 4(d) of the Rules of 1995. Contrary to the said recommendation made by Respondent No.2, the Central Government (CG), by way of its Office Memorandum (OM) dated 11.11.2020[5], chose not to impose any ADD on the said goods.

4. Aggrieved thereby, the Petitioner has approached this Court invoking its extra-ordinary jurisdiction, praying for the following reliefs:

"In view of the above facts and circumstances, the Petitioner most

[3] hereinafter referred to as 'subject good'
[4] hereinafter referred to as 'Final Finding'
[5] hereinafter referred to as 'Impugned OM'

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respectfully prays that this Hon'ble Court may be pleased to:

(a) Declare that Section 9(A)(1) of the Customs Tariff Act, 1975 and Rule 18 of the Anti-dumping Rules are ultra vires Article 14 of the Constitution of India as much as the same grant an unlimited, unguided and unhinged discretion to Respondent No.1; and/or

(b) Issue a Writ, Order or Direction in the nature of Certiorari, thereby quashing the O.MF No. 354/88/2020-TRU dated 11.11.2020 issued by Respondent No. 1 and any other order/decision taken by Respondent No.1, thereby deciding not to implement the recommendations of Respondent No.2, imposing the anti-dumping duties, prescribed vide Final Findings No. F.No. 6/10/2019 dated 12.06.2020; and/or

(c) Grant a writ of mandamus or any other writ or order or direction in the nature thereof directing Respondent No. 1 to implement the recommendations of Respondent No.2 imposing the anti-dumping duties prescribed through Final Findings No. F.No. 6/10/2019 dated 12.06.2020; and/or

(d) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

5. This Court has heard learned counsel representing the parties at length and with their able assistance perused the paper book.

6. Before proceeding to examine the arguments advanced by the parties, we deem it apposite to reproduce the relevant statutory provisions relied upon during the course of submissions, which are as follows:

Constitution of India

51. Promotion of international peace and security.—The State shall endeavour to—

(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another:

xxxx xxxx xxxx xxxx xxxx

246. Subject-matter of laws made by Parliament and by the Legislatures of States.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

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(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2 [in a State] notwithstanding that such matter is a matter enumerated in the State List.

xxxx xxxx xxxx xxxx xxxx

265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.

SEVENTH SCHEDULE

List I—Union List

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

Act of 1975

9A. 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,

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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 anti-dumping duty so imposed is rendered ineffective, it may modify such

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duty to counter the effect of such absorption, 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.

Explanation. For the purposes of this sub-section, "absorption of anti-dumping 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. 1 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 dumping and injury, it may, from time to time, extend the

[(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

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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, in 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-

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section (2) shall, from time to time, be ascertained and determined 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 the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, 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.]

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9C. Appeal. [(1) An appeal against the order of determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted 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.]

[(14) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(IB) Every application made before the Appellate Tribunal,-

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

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(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.]

(2) Every appeal under this section shall be filed within ninety days of the date of order 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.

(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 order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

(5) Every appeal under sub-section (1) shall be heard by a Special Bench 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.]

Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (Agreement of 1994)

Article 6

Evidence

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

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9. The provisions of this Article are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final findings whether affirmative or negative, or from applying provisional or final measures, in accordance with the relevant provisions of this Code.

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Article 9

Imposition and Collection of Anti-Dumping Duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

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9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

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Article 12

Public Notice and Explanation of Determinations

12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

Rules of 1995

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4. Duties of the designated authority.-

(1) It shall be the duty of the designated authority in accordance with these rules –

(d) to recommend to the Central Government -

(i) the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, after considering the principles laid down in the Annexure III to these rules; and

(ii) the date of commencement of such duty;

xxxx xxxx xxxx xxxx xxxx

6. Principles governing investigations.-

(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.

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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 causal link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:

Provided that the Central Government may, in its discretion in

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special circumstances 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 remove the injury where applicable, to the domestic industry after considering the principles laid down in the Annexure III to rules.

(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 volume 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

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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.

(2) In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to sub-rule (3) of rule 17, any anti-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,

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withdraw the provisional duty imposed, if any.

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20. Commencement of duty.-

(1) The anti-dumping duty levied under rule 13 and rule 19 shall take effect from the date of its publication in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1) -

(a) where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty;

(b) in the circumstances referred to in sub-section (3) of section 9A of the Act, the antidumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty:

Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation:

Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking.

Provided also that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied from the date of violation of the undertaking or such date as the Central Government may specify in each case.

SUBMISSION ON BEHALF OF THE PETITIONER:

7. Learned senior counsel representing the Petitioner has made his submissions under two distinct heads, which are as follows:

a. challenge to the vires of Rule 4(1)(d) read with Rules 17 and 18(1) of Rules of 1995 (Impugned Rules);

b. challenge to issuance of OM dated 11.11.2020 by Respondent No.2.

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a. <u>Challenge to the vires of Rule 4(1)(d) read with Rules 17 and 18(1) of the Rules of 1995</u>

8. While raising the challenge against the Impugned Rules, the following submissions have been made:

8.1 It has been argued that the Impugned Rules supplant the scheme of Section 9A of the Act of 1975, which when construed in light of Articles 9.1 and 9.5 of the Agreement of 1994, contemplates a single, integrated exercise culminating in the determination and imposition of ADD, and does not provide for a bifurcated, two-tier structure of recommendation by respondent No.2, followed by an independent acceptance or rejection by the CG. In this regard, it is contended that the Respondent No.2, acts on behalf of the CG and not as an independent agency.

8.2 Further, it has been contended that the Impugned Rules provide for a unilateral decision-making process, and since the exercise undertaken by the CG is quasi-judicial in nature and not legislative, the Impugned OM is subject to the principles of natural justice and Article 14 of the Constitution. Reference in this regard has been made to ***Automative Tyres Manufacturers' Association v Designated Authority***[6] and ***Reliance Industries v Designated Authority***[7]**.**

8.3 It is argued that the exercise undertaken by the CG is violative of following principles, namely, '*the person who hears must decide*' and '*the grant of an effective opportunity of hearing*'

[6] (2011) 2 SCC 258
[7] (2006) 10 SCC 368

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before the final determination. According to the Petitioner, the aforestated principles, stand reinforced by Articles 6.2, 6.9 and 12.2 of the Agreement of 1994 and Rules 6(6) and 16 of the Rules of 1995, which contemplate oral hearing, exchange of submissions, disclosure of essential facts and a reasoned statement of findings and conclusions. On this premise, it has been contended that the exercise undertaken by CG stands in violation of the treaty obligations under the World Trade Organization (WTO).

8.4 It has further been contended that, read as a whole, Rule 17 of Rules of 1995, only deals with the recommendatory power envisaged upon the Respondent No.2, while the final determination rests with the CG through the requisite Gazette Notification. Reliance in this regard has been placed upon ***Saurashtra Chemicals Ltd. v. Union of India & Ors.***[8] .

b. <u>Challenge to issuance of OM dated 11.11.2020 by Respondent No.2</u>

9. While raising specific challenge against the Impugned OM, the following submissions have been made:

9.1 It is contended that the Impugned OM effectively defeats the Petitioner's statutory right of appeal under Section 9C of the Act of 1975, which lies against the final determination of the CG. Reference in this regard has been made to the Order of Supreme Court in ***Saurashtra Chemicals Ltd.*** *(Supra).*

9.2 It is argued that the decision of the CG to not impose

[8] (2009) 17 SCC 529

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ADD, is premised on decline of sufficiency of production of subject goods, owing to closure of one of the three production companies dealing with the production of the said goods, thereby affecting the demand and supply ratio. It is contended that the aforesaid aspect has already been considered by the Respondent No.2, post which the recommendation came to be effectuated and as such the reason of public interest cited by the CG for non-imposition of ADD, is based on the absence of any material produced thereof. Reference in this regard has been made to ***Dai-Ichi Karkaria Ltd. v Union of India and Ors.***[9].

9.3 Against this backdrop, it has been the case of the Petitioner that although recommendations made by the Respondent No.2, are not binding upon the CG, yet the latter cannot second guess such recommendations particularly when the same were issued on the basis of various factual issues considered thereof.

9.4 Replying to the objection raised by the CG with respect to the scope of the present Petition, inasmuch as the issuance of impugned OM is a legislative function, it has been argued that such exercise in not legislative in nature. According to the Petitioner, ADD is neither a tax nor a fiscal levy within the meaning of Article 265 of the Constitution, but a financial barrier under the WTO regime.

9.5 Further, its imposition is argued to be culmination of a quasi-judicial process undertaken by the Respondent No.2 and

[9] (2000) 4 SCC 57

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acted upon by the CG, with the Gazette Notification serving only as the instrument of implementation. Reliance has been placed upon ***Director General of Trade Remedies & Anr. v. Jindal Saw Ltd. & Anr.***[10], the WTO Panel Report dated 06.11.2018, and Articles 51(c) and 253 of the Constitution read with Entries 13 and 14 of List I.

9.6 In the alternative, it has been argued that, even assuming the Impugned OM to be legislative, the same would remain amenable to judicial review on grounds applicable to administrative action, the power being exercised pursuant to statutory discretion. Reliance has been placed upon ***Indian Express Newspapers (Bombay) Ltd. v. Union of India*** **and** ***Bennett Coleman & Co. v. Union of India***[11]**.**

10. *Per contra*, learned counsel representing the Respondents, has made the following submissions:

10.1 Controverting the arguments raised in respect of scheme of Section 9A of the Act of 1975, it has been argued that the said provision is consistent with Article 9.1 of the Agreement of 1994, which gives the importing Member's Authorities, a discretion to either impose or not impose ADD even where all requirements are fulfilled and records only that permissive imposition is desirable and not obligatory. Reliance is placed on **C*ommr. of Customs v. G.M. Exports***[12], and ***Union of India v. Agricas LLP and Ors.***[13].

[10] 2022:DGC:2782:DB
[11] (1985) 1 SCC 641
[12] (2016) 1 SCC 91
[13] 2020 SCC OnLine SC 675

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10.2 On the aforesaid premise, it has been argued that the two-step mechanism adopted thereof, which includes an investigation by the CG under Rules 6, 7, 16 and 17 of the Rule of 1975, followed by discretion of CG exercised under Impugned Provisions, does not derogate from treaty obligations, since Article 9.1 of the Agreement itself vests the ultimate call on the importing Member's authorities, of which the Respondent No.2 and the CG are integral, harmonious parts.

10.3 Reference in this regard has been made to the judgment in ***S&S Enterprise v. Designated Authority and Ors.***[14] and ***Reliance Industries Ltd.*** *(Supra)*, to argue that the purpose of Section 9A of the Act of 1975 is to remedy unfair trade and maintain a level playing field, not blanket protectionism, a purpose presupposing a discretion to weigh domestic-industry interest against the wider public interest.

10.4 The aforestated discretion is argued to be guided and not unstructured, inasmuch as it is anchored to public interest. Reliance in this regard is placed on ***Alembic Ltd. v. Union of India***[15] and ***Eveready Industries Ltd. v. Union of India and Anr.***[16] to argue that the respective High Courts, upheld the exercise of discretionary power by the CG on grounds of public interest.

10.5 Controverting the arguments with respect to the quasi-judicial nature of action by the CG, it has been argued that the

[14] (2005) 3 SCC 337
[15] 2013 (291) ELT 327 (Guj.)
[16] (2019) SCC OnLine Del 7865

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issuance of notification pursuant to the recommendation is legislative/sub-ordinate legislative function. The aforestated, is sought to be substantiated by referring to Section 9(7) of the Act of 1975, which requires the notification to be placed before the Parliament. Against this backdrop, it is argued that since the DA acts for and on behalf of the CG, the quasi-judicial determination at the first stage and the legislative act of notification at the second together form a composite scheme, each stage carrying its own procedural regime.

10.6 It is further argued that since the action of the CG is a legislative action, it is not subject to natural justice, more so when Impugned Provisions are silent on any such requirement and the Petitioner does not dispute a full hearing before the DA.

10.7 On the standard of review, reliance is placed on ***Sales Tax Officer v. Shree Durga Oil Mills***, ***Alembic Ltd.*** *(Supra)*, and ***Kasinka Trading & Anr. v. Union of India & Anr.***, for the wide latitude the Court accords to the executive in economic and fiscal policy, and its reluctance to interfere with government action taken *bona fide* in the public interest.

10.8 It has been argued that if the final findings of Respondent No.2 is positive with respect to imposition of ADD, the CG is not bound by such findings, since the same is merely recommendatory in nature. However, where the Respondent No.2 records a negative finding, CG cannot impose ADD contrary thereto. In such eventuality, Rule 18(4) mandates withdrawal of any provisional

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ADD. Reliance in this regard is placed on ***Designated Authority v. M/s Andhra Petrochemicals Ltd.***[17].

10.9 Lastly, it has been contended that notwithstanding the Respondent No.2's recommendation, the CG refrained from imposing any ADD in furtherance thereof, since the domestic production of subject good was substantially inadequate to meet demand. It is their case that as per Niti Aayog, the imposition of ADD would have affected the demand and supply ratio affecting the growth of downstream user industry, since amongst the three producers of the subject good, only two are surviving in the market. Consequently, taking into account the public interest factor, the CG did not impose any ADD on the subject good.

11. Heard learned counsels representing the parties at length and with their able assistance perused the paper book and the judgements relied upon by the parties.

12. Upon consideration the following issues arise for the determination of this Court:

A. Whether Rule 4(1)(d), Rule 17 and Rule 18(1) of the Rules of 1995, read with Section 9A of the Act of 1975, are *ultra vires* Article 9.1 of the Agreement of 1994, and/or Article 14 of the Constitution?

B. Whether the action of the CG has led to violation of natural justice?

[17] (2020) 10 SCC 209

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C. Scope of the CG's discretion to depart from a positive recommendation by Respondent No.2.

In re: Issue A

13. The principal contention of the Petitioners, while challenging the *vires* of the impugned provisions/rules is premised on the argument that the said provisions also run contrary to the scheme envisaged under Article 9.1 of the Agreement of 1994. It is in this backdrop that we now proceed to examine the Impugned Provisions/Rules in light of Article 9.1.

14. Upon a plain reading of Article 9.1 of the Agreement of 1994, it becomes clear that the said provision does not mandate a single, undivided exercise culminating automatically into the imposition of ADD wherever dumping, injury and a causal link are established. It expressly provides discretion to take decision on whether or not to impose ADD, to the authorities of the importing Member, even in cases where all requirements for imposition are fulfilled.

15. Further, the usage of the term '*desirable*', imposes an understanding that such imposition of ADD is not obligatory, but is rather, discretionary in nature. Notably, the language provided thereunder is also not indicative of a single, undivided exercise culminating automatically in imposition of ADD wherever dumping, injury and causal link are established. When viewed holistically, it reflects a deliberate legislative choice to preserve a measure of discretion even after the substantive pre-requisites for imposing ADD have been established.

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16. The aforesaid interpretation stands reinforced by the architecture of Section 9A (1) of the Act of 1975, which empowers the CG, to impose ADD subject to the statutory ingredients being made out, and nowhere does it use a language to mean that the CG does not exercise the power of DD. Thus, the aforestated provision mirrors the permissive and discretionary formulation under Article 9.1 of the Agreement of 1994 and as such cannot be said to travel beyond or fall short of India's obligations under the international treaty.

17. The Petitioner has contended that Article 9.1 of the Agreement of 1994, contemplates only a single-tier exercise, and as such a bifurcated structure being followed by the CG, namely, recommendation by DA followed by independent discretionary power of CG is impermissible. However, in the view of this Court, the aforestated does not survive scrutiny when the text of the provision is examined in its proper context.

18. As enumerated hereinabove, Article 9.1 refers broadly to '*the authorities of the importing members*' and does not prescribe any precise institutional arrangement through which the said authority must discharge its function. Reference in this regard, may be made to footnote 3 of Article 2.2.1 of the Agreement of 1994, which explicitly provides that, in the context of the agreement, authorities shall be interpreted as meaning authorities at an appropriate senior level.

19. Consequently, in absence of any guiding principle envisaged under the Agreement of 1994 with respect to the process of decision making, a Member State, cannot be refrained from creating a two-tier

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domestic structure with respect to the imposition of ADD. It is of particular significance to note that the functions undertaken by the CG and Respondent No.2, when viewed cumulatively, does not stand in contravention of framework governing anti-dumping measures. Accordingly, the two-tier mechanism adopted under Indian law, cannot by reasons of its institutional separation be characterised as violative of or inconsistent with Article 9.1 of the Agreement of 1994.

20. In this regard, reference is also made to the statutory scheme governing ADD. While Section 9A (1) by way of usage of phrase 'may' vest upon CG a discretionary power to impose ADD, Rule 17 of the Rules of 1995, on the other hand, expressly describes the conclusion drawn by the Respondent No.2 as recommendatory. The aforestated distinction created by legislature is deliberate, giving the final decision-making power of imposition of ADD to the CG, while Respondent No.2 undertakes the specialised technical examination and makes the requisite recommendation under Rule 4 of the Rules of 1995 [Ref: ***M/s Andhra Petrochemicals Ltd.*** *(Supra)*].

21. Viewed in the context of the aforestated, the argument made by the Petitioner that the discretion provided to CG is unguided so as to attract Article 14 of the Constitution, does not merit acceptance. The power so granted is conditioned by Respondent No.2's own findings, the standard of public interest and the purpose of the ADD regime, which is to remedy unfair trade and maintain a level playing field without descending into protectionism [Ref: ***S&S Enterprise*** *(Supra)* and ***Reliance Industries*** *(Supra)*]. Moreover, as recognised in ***R.K.***

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Garg and Ors. v UOI and Ors.[18], the Courts ordinarily accord greater latitude to legislative choices in matters of economic regulation, recognising that such legislation may legitimately employ pragmatic and broadly drawn standards.

22. Therefore, the statutory scheme when assessed as a whole, merely implements the principle envisaged under Article 9.1 of the Agreement of 1994, which grants discretion to the importing Member to determine whether ADD should be imposed. Following the aforesaid principle, Act of 1975 implements that discretion through a structured two-stage process, without offending the Agreement of 1994 or rendering such discretion constitutionally unguided.

23. Accordingly, Impugned Provisions/Rules, cannot be said to be *ultra vires* either Article 9.1 of Agreement of 1994 or Article 14 of the Constitution, rather they establish a coherent institutional framework in which technical determination and policy discretion operate sequentially within the same statutory scheme.

In re: Issue B

24. At the outset, we deem it appropriate to note that the present Petition does not arise on the premise that a notification under Section 9A of the Act of 1975 has been issued by the CG imposing ADD while acting upon the recommendations of the Respondent No.2, rather it is premised upon the fact that CG acted in contravention of such recommendations.

[18] MANU/SC/0074/1981

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25. In this regard, we may note that the Act of 1975 or Rules of 1995, do not prescribe any express procedure to be followed/adopted by the CG in cases alike, where it rejects a positive recommendation made by the Respondent No.2. The aforestated distinction assumes significance while determining the scope of power exercised by the CG, in order to determine whether the non-imposition of ADD, attracts the principle of natural justice or not.

26. As enumerated in the preceeding paragraph, the statutory scheme contemplates two distinct stages, *firstly*, investigation and final findings by the Respondent No.2 under Rule 17 of the Rules of 1995 and *secondly*, discretionary power of the CG to impose ADD. In this regard, it may be pertinent to highlight that the first ladder of investigation and final findings under Rule 17, is quasi-judicial in nature inasmuch as, it requires the Respondent No.2 to adjudicate, upon notice and hearing, a contest between the domestic industry and exporters/importers [Ref: ***Reliance Industries*** *(Supra)*]. Undisputedly, the Petitioner herein had a full hearing at that stage in compliance with the prescribed procedure under the Rules of 1975.

27. Following the aforestated, the second ladder of discretionary power vested upon CG, does not reopen the adjudication made by the Respondent No.2. The latter's findings on dumping, injury, non-injurious price and causal link, in absence of any prescribed procedure is not revisited by the CG and as such attains finality on the technical matrix covered thereunder. However, it is at this stage that one needs to put to scrutiny the power envisaged under Section 9A (1) of the Act of 1975.

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28. Before proceeding further, we must highlight that the reliance placed by the Petitioner upon ***Reliance Industries Ltd.*** *(Supra)*, to characterise the power under Impugned Provisions as quasi-judicial, is misplaced and distinguishable on facts. That case arose from a challenge to the methodology adopted for computing the Non-Injurious Price where anti-dumping duty had in fact been recommended and imposed. It did not concern a situation, as in the present case, where the CG declined to impose the duty despite a final finding and recommendation by the DA.

29. More significantly, the Supreme Court in ***Reliance Industries Ltd.*** *(Supra)* was not called upon to determine, as a specific issue, the nature of the power exercised by the CG under Section 9A of the Act of 1975. The observation on the quasi-judicial character of the notification was rendered incidentally, while repelling the Tribunal's view that such notifications were purely legislative and hence beyond challenge on the grounds urged; it was not preceded by any examination of the text, scheme, or object of Section 9A and Rule 18. Being obiter to a wholly different controversy, that observation cannot constitute the ratio decidendi on the precise question at hand and does not bind this Court on the issue now under consideration.

30. Essentially, the discretionary power conferred under Section 9A confers upon the CG a function that is closer to policy formulation than to adjudication. By its very nature, the exercise of such discretion necessitates consideration of the interests of the public at large, rather than being confined to the commercial interests of the domestic industry. The nature and scope of the power, therefore, partake, in

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substance, of a legislative or quasi-legislative character, particularly having regard to the facts and circumstances of the present case.

31. In this eventuality, the principle of "*person who hears must decide*", is not attracted in the manner contended by the Petitioner. Since neither Section 9A (1) of the Act of 1975 nor Rule 18(1) of the Rules of 1995 prescribe a further oral hearing before the CG. The said aspect is of assumed significance because when the legislature intended an oral hearing to be mandatory, it has expressly provided so, as is evident from insertion of Rule 6(6) of the Rules of 1995, which allows an interested party to submit the relevant information for consideration of Respondent No.2 in writing. In absence of any such statutory requirement, a requirement of a second hearing cannot be read into the Act of 1975 and Rules of 1995.

32. On the appellate architecture provided under Section 9-C of the Act of 1975, which confers a right of appeal to CESTAT, the Petitioners have placed reliance upon ***Saurashtra Chemicals*** *(Supra),* to argue that the Appeal lies against the final determination made by the CG. However, such reliance placed by the Petitioner cannot be accepted inasmuch as this Order arose from the dismissal of special leave petitions in *limine* and its precedential weight under Article 141 of the Constitution is doubtful, in as much as an Order passed of this nature does not amount to declaration of law binding all the Courts [Ref: ***State of U.P. v. Synthetics Ltd.***[19] and ***U.P. State Road Transport Corporation v Omaditya Verma***[20]].

[19] (1991) 4 SCC 139
[20] (2005) 4 SCC 424

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33. In regard to such appellate remedy, it is also necessary to flag a live uncertainty surrounding this very premise. This Court in ***W.P.(C) No.14723/2025*** captioned ***Union of India v Essilorluxottica Asia Pacific PTE Ltd. and Ors***., in view of the amendments made to Section 9(C) of the Act of 1975 by way of Section 134 of the Finance Act, 2023, has been posed with the question as to whether such amendment has been notified and/or brought into force or not. The effect of this question lies directly on the *lis* as to whether the Order of CG notifying, modifying or not notifying ADD shall be amenable to the jurisdiction of CESTAT.

34. Thus, the question whether the amended Section 9-C of the Act of 1975 is presently in force, and consequently whether an appeal against the CG's notification or order lies under that provision, remains *sub judice*. It is in this backdrop that we proceed to examine the Petition on its merits, without resting the outcome on the existence or otherwise of an alternate statutory remedy.

35. Accordingly, in view of the aforesaid, for present purposes, it is sufficient to hold that the second stage exercise by the CG is legislative or quasi-legislative in character and as such it neither amounts to redetermination of Respondent No.2's findings, nor requires a further oral hearing.

<u>In re: Issue C</u>

36. Before proceeding to examine the present issue, we deem it appropriate to reproduce the relevant paragraphs of the Final Findings, forming basis of the present analysis, which are as follows:

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"61. As regards the fact that injury to domestic industry, if any, is on account of ban on single use plastics, it is noted from the records that during the POI, there is no blanket ban on single use plastic in all the states, and any blanket ban on single-use plastic products might have similar impact on the imports also. Therefore, the alleged ban has little relationship with dumping of subject goods, and injury to domestic industry.

62. With regard to the benefit to the Domestic Industry concerning imports of raw material at concessional rates, it is noted that the same has been duly considered in the injury analysis and in the calculation of NIP. Therefore, contention of the other interested parties has been appropriately taken into account.

63. As regards the profitability of the Domestic Industry, it is noted that the Applicants are multi-product companies and to compare profitability of the companies with profitability of the product under consideration is incorrect and also not in line with the jurisprudence available on this subject. Further, the Authority is required to examine the performance of the Domestic Industry in respect to domestic like product and not for the company as a whole. Accordingly, the Authority has analyzed the data for this investigation also. Therefore, the contention of the other interested parties based on total profitability of the company is not correct.

64. As regards the issues of no price undercutting, price underselling, price suppression and depression, it is noted that the same are addressed in the subsequent paragraphs while making injury analysis.

65. Rule 11 read with Annexure-II of the Rules provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, ".... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, 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. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure-II of the Rules. The Authority has taken note of various submissions of the domestic industry and the exporters / importers / traders/ users on injury to the domestic industry and has analyzed the same considering

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the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.

II. Volume Effect of Dumped Imports

i. Assessment of Demand

66. For the purpose of the present investigation, demand or apparent consumption of the subject goods has been defined as the sum of domestic sales of the Applicants and imports from all sources. The demand so assessed is given in the table below:

Particulars	UoM	2015-16	2016-17	2017-18	Jan 18 to Dec 18 (POI)
Imports from Iran	MT	450	886	6267	6440
GPPS	MT	292	795	5873	6350
HIPS	MT	158	91	394	90
Imports from UAE	MT	1162	2417	2639	11630
GPPS	MT	1094	1808	2538	11351
HIPS	MT	68	609	101	279
Imports from USA	MT	322	1780	3550	3501
GPPS	MT	322	1780	3138	3077
HIPS	MT	0	0	412	424
Imports from Malaysia	MT	1889	2891	3652	1903
GPPS	MT	202	526	667	204
HIPS	MT	1687	2365	2985	1699
Imports from Singapore	MT	5915	6315	4922	2974
GPPS	MT	4530	4142	3728	2159
HIPS	MT	1385	2173	1194	815
Imports from Chinese Taipei	MT	7177	5941	5558	3589
GPPS	MT	5991	2962	3612	2461
HIPS	MT	1186	2979	1947	1128
Total Imports from Subject Countries	MT	16915	20230	26588	30037
Imports from Other Countries	MT	4975	3768	3102	2175
Total Imports	MT	21891	23998	29690	32212
Sales of Domestic Industry	MT	***	***	***	***
Trend	Indexed	100	87	93	89
Sales of Other Domestic Producers	MT	***	***	***	***
Trend	Indexed	100	115	116	113
Total Domestic Sales	MT	235225	224343	234021	225475
Trend	Indexed	100	95	99	96
Demand	MT	**257116**	**248341**	**263711**	**257687**
Trend	Indexed	100	97	103	100

67. It is noted from the above table that the demand of the subject goods has marginally increased in the POI as compared to the base

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year.

xxxx xxxx xxxx xxxx xxxx

79. The details of production and capacity utilization are given in the table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Capacity	MT	362000	362000	362000	362000
Trend	Indexed	100	100	100	100
Production	MT	***	***	***	***
Trend	Indexed	100	92	86	83
Capacity Utilization	%	***	***	***	***
Trend	Indexed	100	91	86	83

80. It is noted from above table that the Domestic Industry have sufficient capacity to cater the need of the domestic demand. However, the capacity utilization has gone down significantly during the injury period.

c. Market share:

81. The details of imports, domestic sales and the market share of the domestic industry is as below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Imports from Subject Countries	MT	16915	20230	26588	30037
Imports from Other Countries	MT	4975	3768	3102	2175
Total Imports	MT	21891	23998	29690	32212
Sales of Domestic Industry	MT	***	***	***	***
Sales of Other Domestic Producers	MT	***	***	***	***
Total Domestic Sales	MT	235225	224343	234021	225475
Demand	**MT**	**257116**	**248341**	**263711**	**257687**
Share in Demand					
Imports from Subject Countries	%	6.58%	8.15%	10.08%	11.66%
Imports from Other Countries	%	1.93%	1.52%	1.18%	0.84%
Total Imports	%	8.51%	9.66%	11.26%	12.50%
Domestic Sales	%	91.49%	90.34%	88.74%	87.50%

82. From the above, it is noted that:

a. Imports of the subject goods from the subject countries have

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increased in the POI as compared to the previous years.

b. Market share of the domestic industry has decreased during the period of investigation over the base year despite a stagnant demand over the same period. However, during the same period the market share of the subject goods from subject countries has almost doubled.

d. ***Productivity:***

83. The productivity of the Domestic Industry is given in table below:

Particulars	Unit	2014-15	2015-16	2016-17	POI
Production	MT	***	***	***	***
Production	Indexed	100	92	86	83
Employees	No.	***	***	***	***
Employees	Indexed	100	96	93	87
Productivity/employee	MT/No.	***	***	***	***
Productivity/employee	Indexed	100	95	93	96
Production/Day	MT/Nos	***	***	***	***
Trend	Indexed	100	92	86	83

84. It is noted from the above table that the productivity in terms of total production per employee has declined marginally in the POI as compared to the base year due to lesser laying-off of workforce (100 to 87 indexed) as compared to the comparatively higher decrease in production (100 to 83 indexed). Ceteris paribus, the productivity of the domestic industry has not undergone any significant change during the period of investigation as compared to the base year.

e. ***Inventories:***

85. The inventory of the subject goods is shown in the following table.

Particulars	UoM	2015-16	2016-17	2017-18	POI
Average Inventory	MT	***	***	***	***
Trend	Indexed	100	153	140	93

86. From the above table, it is noted that the inventory has increased consistently during the injury period, except a decline during the POL"

37. Having held that the discretion vested in the CG under Section 9A(1) of the Act of 1975 is, legislative or quasi-legislative in character, it becomes necessary to examine the standard by which the

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exercise of such discretion falls to be tested, more particularly where the CG declines to give effect to a positive recommendation of Respondent No.2.

38. As already noted hereinabove, neither the Act of 1975 nor the Rules of 1995 prescribe any procedure governing such a departure. However, this silence cannot be read as placing the discretion of CG beyond the pale of judicial review altogether, rather, it merely dictates the character of the review that applies.

39. In the view of this Court, the contention of the Petitioner that no material was disclosed by the CG prior to exercising its discretion, if accepted, would amount to importing the language of prejudice attracting the principle of *audi alteram partem,* running contrary to the observations made hereinabove under Issue B.

40. Therefore, since the power exercised by CG has already been characterized as legislative or quasi legislative in nature, the Court must examine such character by way of scrutiny applicable to legislation and economic regulatory measures generally [Ref: ***Indian Express*** *(Supra)*], which are as follows:

i. whether the decision falls within the competence conferred by the parent statute?

ii. whether it is consistent with fundamental rights?

iii. whether it is founded on relevant material bearing a rational nexus to the conclusion reached?

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iv. whether extraneous or irrelevant considerations have entered the decision; and whether it discloses *mala fides*?

41. Tested against this standard, we are unable to accept the Petitioner's challenge raised against the Impugned OM, that the reasoning provided thereunder, has already been considered by the Respondent No.2. However, this Court is not persuaded by the said contention. In this regard, at the cost of repetition, it is noted that Respondent No.2's mandate is limited to examining dumping, injury to the domestic industry, and the causal link between the two.

42. On the contrary, the issues considered by the CG, namely, the interests of downstream users, the availability of alternative sources of supply at competitive prices, and the possibility of the domestic industry becoming a duopoly if competing imports are excluded, are different from the matters examined by Respondent No. 2. Thus, these issues, cannot be said to fall within the same inquiry merely because they may arise from some of the same underlying facts.

43. It may be noted that the reasons cited by the CG to not impose ADD stems from its claim of public interest. In this regard, a reference is made to the findings contained under paragraph nos.79 to 86 of the conclusion, which record that, during the injury period, i.e., April, 2015 to March, 2016, April 2016 to March 2017, April 2017 to December, 2018, the domestic industry's capacity utilisation declined steadily from an indexed 100 to 83, whereas the domestic industry's share in total demand fell consistently from the base year to the period of investigation, while the share of the subject countries were nearly

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doubled. The aforestated trends, as recorded by Respondent No.2 itself, assumed further significance when one of the only three domestic producers of subject goods, ceased operations following a fire.

44. This supervening development, read together with the assessment specifically obtained by the CG from NITI Aayog and other Government agencies regarding the demand-supply impact of the proposed duty, a matter falling outside the mandate of Respondent No.2, furnished the CG with material bearing a rational and direct nexus to its conclusion not to imposed ADD.

45. We are not unmindful that the Respondent No.2, at paragraph nos. 90 to 95 read with paragraph nos.61 to 67 of its conclusion, attributed the decline in the domestic industry's capacity utilisation, market share and profitability to the dumped imports under investigation, a finding which, on first blush, may appear to sit uneasily with the CG now invoking a facet of that same decline as a ground for withholding the recommended remedy. However, on closer examination, the two inquiries are analytically distinct.

46. While the finding of Respondent No.2 addresses the cause of the domestic industry's deterioration during the period of investigation for the purpose of establishing injury attributable to dumping, the assessment by the CG is forward-looking, and addresses whether, given the supervening and materially different fact of an actual reduction in the number of operating domestic producers, continued or increased reliance upon the two remaining producers, unaided by

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competitively priced imports, would leave the downstream industry adequately supplied. The historical decline found to be dumping-induced does not foreclose the CG from independently weighing the future adequacy of supply in light of the change in domestic production base, a matter that Respondent No.2 was never called upon to consider.

47. With respect to the submission that the NITI Aayog assessment was never disclosed to the Petitioner prior to the decision, we have already held, at paragraph no.34 above, that disclosure to the affected party was never the applicable standard at this stage. What falls for examination is whether such material existed and was, in fact, rationally applied by the CG, a question which this Court is entitled to examine on the basis of the record as a whole, including the counter affidavit filed in the present proceedings, and is not confined to the four corners of the Impugned OM. Tested thus, the challenge to the Impugned OM in the present matter fails on merits.

48. Notably, the CG has placed before this Court an explanation with regard to the demand-supply position and the public-interest examination undertaken by it. No *mala fide*, or complete abdication of the statutory function, has been demonstrated. Therefore, this Court expresses no view on the eventual outcome of that exercise, the same being a matter falling squarely within the discretion of CG, which is entitled to the latitude this Court must accord to matters of economic policy. [*Ref:* ***Balco Employees Union (Regd.) v. Union of India***[21] *and* ***R.K. Garg*** *(Supra)*].

[21] (2002) 2 SCC 333

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49. At this stage, it is necessary to observe that the discretion conferred upon the CG under Section 9A(1) of the Act of 1975 is not merely adjudicatory in nature, confined to weighing the competing claims of the domestic industry and the exporters. In declining to impose ADD despite a positive recommendation, the CG acts as custodian of the public interest at large and is required to balance the interests of the domestic industry against those of the downstream user industry and the consuming public. It is this characterisation of the CG's function that anchors the exercise of discretion under Section 9A(1) of the Act of 1975 within a permissible constitutional and statutory framework, and reinforces the conclusion already reached in relation to Issue A above.

CONCLUSION:

50. In view of the foregoing analysis, we do not find any merit either in the challenge to the *vires* of the Impugned Provisions/Rules, or in the challenge to the Impugned OM on merits. The discretion exercised by the CG under Section 9A(1) of the Act of 1975, being legislative or quasi-legislative in character and founded on material bearing a rational nexus with the conclusions reached, does not, on the facts and for the reasons recorded hereinabove, call for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution.

51. Accordingly, having found no merit, the present Petition is dismissed.

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52. Before parting, it may be noted that, on 14.08.2026, along with the present Petition, the Petitions bearing nos. W.P.(C) 16640/2022, W.P.(C) 16647/2022 and W.P.(C) 17186/2022, also came to be reserved for judgment. However, while penning down the present judgment, we found it necessary and appropriate to adjudicate the aforesaid Petitions separately, since they do not concern the similar product, i.e., Polystyrene, which has been the subject matter of the present Petition.

53. Accordingly, the Registry is directed to list these Petitions along with W.P.(C) 9754/2026 captioned ***Indrayani Sales Private Ltd v. Union of India & Anr.*** and connected matter, before the Roster Bench, on the next date of hearing already fixed, i.e., 08.01.2027, for further action and/or directions.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 17, 2026
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