Reserved on : 16.03.2018

Delivered on : 16.04.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.1156 of 2018
and W.M.P.Nos.1436 to 1438 of 2018

M/s.Shapoorji Pallonji Infrastructure Capital Co Ltd.,
"SREYAS VIRAT" No.14, First Floor,
Third Cross Road, Raja Annamalaipuram,
Chennai – 600 028
rep by Authorized Signatory K.Venkat Rao .. Petitioner

Vs.

1.Union of India
Through Secretary, Ministry of Finance North Block,
New Delhi – 110 001.

2.The Director General,
Directorate General of Safeguards,
Customs and Central Excise,
2nd Floor, Bhai Veer Singh Sahitya Sadan,
New Delhi – 110 001. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in the impugned preliminary finding notice bearing Reference F.No.22011/68/2017 dated 05.01.2018 issued by the 2nd respondent and quash the same as illegal, arbitrary, without

authority of law and in contravention of the Customs Tariff Act, 1975 read with the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and also unconstitutional being *inter alia* in violation of the principles of natural justice.

For Petitioner : Mr.Sujit Ghosh
for Mr.Arun Karthik Mohan

For Respondents : Mr.G.Rajagopalan, Additional Solicitor General
assisted by Mr.A.P.Srinivas,
Senior Standing Counsel (R1)

Mr.B.Rabu Manohar,
Senior Panel Counsel (R2)

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari calling for the records in the impugned preliminary findings notice dated 05.01.2018 issued by the 2nd respondent and to quash the same as illegal, arbitrary, without authority of law and in contravention of the Customs Tariff Act, 1975 read with the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and also unconstitutional being *inter alia* in violation of the principles of natural justice.

2.The brief case of the petitioner is as follows:

(i)According the petitioner, the present Writ Petition has been filed challenging the correctness and legality of the notice dated 05.01.2018 issued by the 2nd respondent providing the preliminary findings in relation to

the investigation for imposition of a Safeguard Duty on import of Solar Cells whether or not assembled in Modules or panels and thereby, recommending the provisional Safeguard Duty at the rate of 70% advalorem. On the basis of that the 2nd respondent has recorded its preliminary findings without permitting the petitioner to make submissions, which were specifically called for from the petitioner and other similarly interested parties (i.e.) importers and exports of Solar Cells and Modules into India.

(ii)Further according to the petitioner, inasmuch as the preliminary finding notice has been issued is in clear breach of the fundamental principles of natural justice, which mandate a hearing or at the very least a consideration of the petitioner's representations, the petitioner is challenging the same by way of this Writ Petition. Further according to the petitioner, such denial of natural justice has been committed by the 2nd respondent despite clear direction given by them, in the impugned initiation notification, to all interested parties to submit their representation within a sharp time line of 30 days.

(iii)Further, the recommendations made in the preliminary findings notice, recommending exemption of Safeguard Duty on clearance made from SEZ to DTA, is without any authority and thus bad in law. Further, the

preliminary findings notice, which fails to establish irreparable damage justifying such preliminary findings, also suffers from the vice of being arbitrary and thus violative of Article 14 of the Constitution of India.

3.The brief case of the respondents is as follows:

(i)According to the respondents, the Writ Petition filed by the petitioner is premature and should be dismissed *in-limine*. The 2nd respondent has merely issued recommendations, which in terms of Rule 4(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, has been submitted to the Central Government. The recommendations have been issued to the Standing Board of Safeguards, chaired by the Commerce Secretary, Government of India. Therefore, the petitioner cannot be aggrieved at the present juncture, when only recommendation is made and Safeguard Duty has neither been determined nor imposed by the Government.

(ii)The petitioner cannot be an interested party, while a party could be interested in an investigation in terms of Trade Notice dated 06.09.1997 issued by the 2nd respondent, the said party is required to register itself as an interested party within 15 days from the date of publication of the Notice of Initiation. The step of registration is critical for timely completion

of an investigation, since, Rule 11 of the Safeguard Rules mandates the 2nd respondent to complete the investigation within 8 months from the date of initiation of an investigation. Following the Trade Notice, the 2nd respondent in paragraph-12 of the Notice of Initiation, directed the parties, who wish to be considered as an interested party to submit a request to this effect to the Director General (Safeguards) within 15 days from the date of the notice. However, the petitioner failed to submit any such letter within the period of 15 days, which is liberally interested to apply to 15 working days, thereby giving the interested parties the benefit of the holidays arising in this period. Therefore, according to the respondents, the petitioner is not an interested party and has no *locus standi* in the matter.

(iii)The petitioner filed a letter dated 12.01.2018, well past the deadline of 15 days i.e. by 10.01.2018, requesting for registration as an interested party, without explaining the delay or requesting for extension of time. Subsequently, the petitioner, on its own volition, filed detailed questionnaire response and submissions on 19.01.2018, without registering itself as an interested party within the prescribed time limit. The present Writ Petition was filed on 17.01.2018 and even in the belated letter dated 12.01.2018, the petitioner never requested for a personal hearing. The petitioner, for the first time, prayed for personal hearing in its submission

dated 19.01.2018 (i.e.) after filing of the present Writ Petition. There is no requirement in law to grant a personal hearing at the stage of making a recommendation as per preliminary findings.

(iv)Section 8B of the Customs Tariff Act, 1975 and Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, have been framed to enforce the WTO Agreement on Safeguards. Article 11.1(a) of the Agreement on Safeguards mandates that a WTO Member cannot take emergency action unless such action conforms to the provisions of Article XIX of GATT 1994 read with the Agreement on Safeguards.

(v)In the case of critical circumstances, action can be taken without prior consultation, in such case, the petitioner has misconstrued the provisions of para 2 of Article XIX. As per Rule 9 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, may record preliminary findings regarding serious injury or threat of serious injury. The Director General (Safeguards) acted accordingly and the preliminary findings was recorded and issued on 05.01.2018. The final findings are yet to be issued and when issuing, these will take into consideration all the submissions made by the interested

parties within a period of 30 days from the date of NOI and the submissions made during the public hearing to be held.

(vi)The Customs Tariff (Identification and Assessment Safeguard Duty) Rules, 1997, do not bar the Director General (Safeguards) from giving a preliminary findings at any point of time after issuance of NOI. The Director General (Safeguards) has only issued a preliminary findings, recommending provisional Safeguard Duty. The final findings are yet to be issued by the Director General (Safeguards) in the present case and can be issued only after following due process. The final findings are yet to be issued after detailed investigation and following due process including considering the views of all the interested parties.

(vii)Further, the respondents submitted that opportunities will be given to all the interested parties, as per Rule 6(5) of the Customs Tariff (Identification and Assessment Safeguard Duty) Rules, 1997, during the investigations, to furnish information and evidences before the final determination. On the basis of the submissions and rejoinders filed by the Domestic Industry and other interested parties during the public hearing, the final findings for confirmation or rejection of Safeguard Duty may be recommended. As in the case of present preliminary findings, the final

findings would be only a recommendation. Subject to the three exceptions, the Safeguard Duty is not applied on imports made by an SEZ under Section 8B(2A). In these circumstances, the respondents prayed for dismissal of the Writ Petition.

4.Heard Mr.Sujit Ghosh, learned counsel appearing for Mr.Arun Karthik Mohan learned counsel on record for the petitioner, Mr.G.Rajagopalan, learned Additional Solicitor General appearing for Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the 1st respondent and Mr.B.Rabu Manohar, learned Senior Panel Counsel appearing for the 2nd respondent.

5.The learned counsel appearing for the petitioner submitted that the impugned proceedings are in violation of the principles of natural justice, inasmuch as the 2nd respondent issued the Notice of Initiation of a Safeguard investigation dated 19.12.2017 and granted 30 days time from the date of the said Notice to all the interested parties to make their views known on the subject issue. Further, the learned counsel submitted that prior to the expiry of the period of 30 days, the impugned preliminary findings have been rendered, which is contrary to the provisions of Rule 6 of the said Rules and therefore, the petitioner who is an interested party is

entitled to be heard in the matter and without hearing the petitioner and other interested parties, the impugned findings could not have been passed.

5.1.In support of his contentions, the learned counsel for the petitioner relied upon the following judgments:

(i)(1970) 3 Supreme Court Cases 400 [Maganbhai Ishwarbhai Patel etc Vs. Union of India and another] wherein the Hon'ble Supreme Court held as follows:

> "...
>
> 21.Before the hearing commenced we questioned each petitioner as to the foundation of his claim. We discovered that most of the petitioners had no real or apparent stake in the areas now declared to be Pakistan territory. These persons claim that they had and still have the fundamental rights guaranteed to them by Article 19 (1)(d), (e) and (f), that is to say, the right to travel, to reside or settle down, or to acquire, and hold property in these areas. None of them has so far made any move in this direction but their apprehension is that they will be deprived of these rights in the future. This, in our judgment, is too tenuous a right to be noticed by the Court in administering the law and still less in enforcing fundamental rights. When we communicated our view at an earlier hearing, some more petitioners came forward. Mr.Madhu Limaye puts

forward the supporting plea that he had attempted to penetrate this area to reconnoiter possibilities for settlement, but was turned back. In this way he claims that he had attempted to exercise his fundamental rights and they were infringed. Another party claims to have had a lease of grass lands some ten years ago in this area and he is now to be deprived of the rights to obtain a similar lease. Lastly, one of the parties puts forward the plea that he lives in the adjoining territory and thus has interest in the territories proposed to be ceded to Pakistan. These petitioners too have very slender rights, if at all. The only person who can claim deprivation of fundamental rights is Mr.Madhu Limaye, although in his case also the connection was temporary and almost ephemeral. However, we decided to hear him and as we were to decide the question we heard supplementary arguments from the others also to have as much assistance as possible. But we are not to be taken as establishing a precedent for this Court which declines to issue a writ of mandamus except at the instance of a party whose fundamental rights are directly and substantially invaded or are in imminent danger of being so invaded. From this point of view we would have been justified in dismissing all petitions except perhaps that of Mr.Madhu Limaye. We may now proceed to the consideration of the rival contentions."

(ii)(1978) 1 Supreme Court Cases 248 [Mrs.Maneka Gandhi Vs. Union of India and another] wherein the Constitutional Bench of the

Hon'ble Supreme Court held as follows:

"...

8.The question immediately arises : does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the test of this requirement ? Is it 'right or fair or just' ? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of *audi alteram partem*. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the *audi alteram partem* rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in *Cooper v. Wandswort Board of Works [(1863) 14 CBNS 180 . (1861-73) All ER Rep Ext 1554].*

"A long course of decisions, beginning with

Dr.Bentley's case and ending with some very recent cases, establish that, although there are no positive works in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature".

The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, *nemo judex in causa sua* and *audi alteram partem*. We are not concerned here with the former, since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the *audi alteram partem* rule. Can it be imported in the procedure for impounding a passport ?

...

Thus, the soul of natural justice is 'fair-play in action' and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that 'fair-play in action' demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning, M.R. in these terms in *Schmidt v. Secretary of State for Home Affairs [(1969) 2 CH D 149 : (1969) 1 all ER 904]* - where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being

heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand.

...

The net effect of these and other decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted.

...

12.This Court, speaking through Hegde, J., in *A.K.Kraipak*'s case, quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add:

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it ... Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice One fails to see why those rules should be made inapplicable, to administrative enquiries. Often times it is

not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi- judicial enquiry. As observed by this Court in *Suresh Koshy George v. The University of Kerala [(1969) 1 SCR 317]* the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principles of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case."

This view was reiterated and re-affirmed in a subsequent decision of this Court in *D.F.O., South Kheri v. Ram Sanehi Singh [(1971) 3 SCC 864].* The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

(iii)(1981) 1 Supreme Court Cases 664 [Swadeshi Cotton Mills Vs. Union of India] wherein the Apex Court held as follows:

"...

80.The third reason for our forbearance to imply the exclusion of the *audi alteram partem* rule from the language of Section 18-AA(1)(a) is, that although the power thereunder is of a drastic nature and the consequences of a take-over are far-reaching and its effect on the rights and interests of the owner of the undertaking is grave and deprivatory, yet the Act does not make any provision giving a full right of a remedial hearing equitable to a full right of appeal, at the post-decisional stage."

(iv)(1984) 2 Supreme Court Cases 534 [Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and others] wherein the Hon'ble Supreme Court of India held as follows:

"...

5.There can be no question that nations must march with the international community and the municipal law must respect rules of international law even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the

sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, *unless they are in conflict with an Act of Parliament*. Comity of nations or no, municipal law must prevail in case of conflict. National courts cannot say yes if Parliament has said no to a principle of international law. National courts will endorse international law but not if it conflicts will national law. National courts being organs of the national State and not organs of international law must perforce apply national law if international law conflicts with it. But the courts are under an obligation within legitimate limits, to so interpret the municipal statute as to avoid confrontation with the comity of nations or the well established principles of international law. But if conflict is inevitable, the latter must yield."

(v)(1992) 1 Supreme Court Cases 719 [Dalpat Kumar and another Vs. Prahlad Singh and others] wherein the Apex Court held as follows:

"...

5.Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The

existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound

judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

(vi)(1998) 8 Supreme Court Cases 1 [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others] wherein the Hon'ble Supreme Court held as follows:

"...

15.Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case -law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(vii)(2004) 6 Supreme Court Cases 254 [Kusum Ingots & Alloys Ltd. Vs. Union of India and another] wherein the Apex Court held as follows:

> "...
>
> 15.In *Aligarh Muslim University Vs. Vinay Engg. Enterprises (P) Ltd. [(1994) 4 SCC 710]* this Court lamented:
>
> > "2.We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable.""

(viii)2008 (226) E.L.T. 16 (S.C.) [Union of India Vs. Inter Continental (India)] wherein the Hon'ble Supreme Court held as follows:

"...

5.The High Court by the impugned order has accepted the writ petition by holding that the Central Board of Excise and Customs could not, by issuing a circular subsequent to the issuance of the notification, add a new condition thereby restricting the scope of the exemption notification. It was held that the impugned Circular No.40/2001-Cus., dated 13-7-2001 being contrary to the Notification No.17/2001-Cus., dated 1st March, 2001 could not be sustained as it cannot override the said notification. In para 16, the High Court observed as under:

"In relation to entry at Sr.No.29 no condition is prescribed. Similarly, no condition is prescribed in relation to entry at Sr.No.34 of even in entry No.28. If the Notification No.17 has not provided for any condition, in our opinion, subsequent circular cannot impose such a condition as the same would tantamount to rewriting Notification No.17 or in other words legislating by circular, which is not permissible in law. As can be seen from the relevant provisions with special reference to Section 25 read with Section 159 of the Act, a notification under Section 25 of the Act requires publication in the official gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in the Notification

No.17 it would not be permissible to permit revenue to impose such condition by way of circular. If the revenue is allowed to undertake such an exercise, the requirement of publication in official gazette and laying a notification before such House of the Parliament would become nugatory and such a course of action is not envisaged by the Act. It would give licence to the executive to bypass/override the legislature and cannot be countenanced."

6.We entirely agree with the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down."

(ix)(2011) 2 Supreme Court Cases 258 [Automotive Tyre Manufacturers Association Vs. Designated Authority and others] wherein the Apex Court held as follows:

"...

63.

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 organizations 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 causality.

(6) The designated authority may allow an interested party or its representative to present 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.

....

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.

...

64.Thus, the first and foremost question for adjudication is the nature of proceedings before the DA appointed by the Central Government under Rule 3 of the 1995 Rules for conducting investigations for the purpose of levy of anti-dumping duty in terms of Section 9-Aof the Act. To put it differently, the question is whether the decision of the DA is legislative, administrative or quasi-judicial in character? However, for the purpose of the present case, we shall confine our discussion only to the question as to whether the function of the DA is administrative or quasi-judicial in character as Mr. Rawal, learned counsel appearing for the DA had finally conceded before us that it is not legislative in nature.

65.More often than not, it is not easy to draw a line demarcating an administrative decision from a quasi-judicial decision. Nevertheless, the aim of both a quasi-judicial function as well as an administrative function is to arrive at a just decision. In *A.K. Kraipak Vs. Union of India [(1969) 2 SCC 262]* this Court had observed that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power, regard must be had to:

(i)the nature of the power conferred;

(ii)the person or persons on whom it is conferred;

(iii)the framework of the law conferring that power;

(iv)the consequences ensuing from the exercise of that power and

(v)the manner in which that power is expected to be exercised.

66.The first leading case decided by this Court on the point was *Khushaldas S. Advani [AIR 1950 SC 222]*. In that case, while dealing with the question whether the governmental function of requisitioning property under Section 3 of the Bombay Land Requisition Ordinance, 1947 was an administrative or quasi-judicial function, Das J. (as His Lordship then was), while concurring with the majority, in his separate judgment, upon reference to a long line of cases expressing divergent views, deduced the following principles, which could be applied for determining the question posed in para 48 supra:

"(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the

authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

67.In *Jaswant Sugar Mills Ltd. Vs. Lakshmi Chand [AIR 1963 SC 677 : 1963 SUPP (1) SCR 242]* , a Constitution Bench of this Court had observed that:

"11. ...Often the line of distinction between decisions judicial and administrative is thin: but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact: it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial: it is the duty to act judicially which invests it with that character. ...

...

13.To make a decision or an act judicial, the following criteria must be satisfied:

(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and

(3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact."

68.Having examined the scheme of the Tariff Act read with the 1995 Rules on the touchstone of the aforenoted principles, particularly the first principle enunciated in *Khushaldas S. Advani [AIR 1950 SC 222]*, we have no hesitation in coming to the conclusion that this is an obvious case where the DA exercises quasi-judicial functions and is bound to act judicially. A cursory look at the relevant Rules would show that the DA determines the rights and obligations of the `interested parties' by applying objective standards based on the material/information/evidence presented by the exporters, foreign producers and other `interested parties' by

applying the procedure and principles laid down in the 1995 Rules.

69.Rule 5 of the 1995 Rules provides that the DA shall initiate an investigation so as to determine the existence, degree and effect of any alleged dumping upon the receipt of a written application by or on behalf of the domestic industry; sub-rule (4) thereof empowers the DA to initiate an investigation suo motu on the basis of information received from the Commissioner of Customs or from any other source.

70.When the DA has decided to initiate an investigation, Rule 6 requires that a public notice shall be issued to all the interested parties as mentioned in Rule 2(c) of the 1995 Rules, as also to industrial users of the product, and to the representatives of the consumer organizations in cases when the product is commonly sold at the retail level. It is manifest that while determining the existence, degree and effect of the alleged dumping, the DA determines a `lis' between persons supporting the levy of duty and those opposing the said levy.

71.Further, it is also clear from the scheme of the Tariff Act and the 1995 Rules that the determination of existence, effect and degree of alleged dumping is on the basis of criteria mentioned in the Tariff Act and 1995 Rules, and an anti-dumping duty cannot be levied unless, on the basis of the investigation, it is established that there is: (i) existence of dumped imports; (ii) material injury to the domestic industry and, (iii) a causal link between the dumped imports and the injury.

72.Rule 10 of the said Rules lays down the criteria for the determination of the normal value, export price and margin of dumping, while Rule 11 deals with the determination of injury which according to Annexure II to the 1995 Rules is based on positive evidence and involves an objective examination of both: (a) the volume 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. (See: S&S Enterprise Vs. Designated Authority [(2005) 3 SCC 337]). It is evident that the determination of injury is premised on an objective examination of the material submitted by the parties. Moreover, under Rule 6(7) of the 1995 Rules, the DA is required to make available the evidence presented to it by one party to other interested parties, participating in the investigation.

73.It is also pertinent to note that Rule 12 of the 1995 Rules which deals with the preliminary findings, explicitly provides that such findings 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."

74.A similar stipulation is found in relation to the final findings recorded by the DA under Rule 17(2) of the 1995 Rules. Above all,Section 9-Cof the Tariff Act provides for an appeal to the Tribunal against the order of determination or review thereof regarding the existence, degree and effect of

dumping in relation to imports of any article, which order, obviously has to be based on the determination and findings of the DA.

75.The cumulative effect of all these factors leads us to an irresistible conclusion that the DA performs quasi-judicial functions under the Tariff Act read with the 1995 Rules."

(x)2012 (281) E.L.T. 321 (Mad.) [Nirma Limited Vs. Saint Gobain Glass India Ltd.] wherein a Division Bench of this Court has held as follows:

"...

19.On an overall reading of the entire papers, including the impugned order of the learned Judge, the following three points are to be answered in this appeals:

(i) the maintainability of the writ petition filed by M/s.Saint Gobain Glass India Limited;

(ii) the construction of the term "domestic industry" as per Rule 2(b) of the Rules, which has undergone various amendments, as to whether by the amendment dated 27.2.2010, the discretionary power of the Designated Authority in respect of the domestic producers is taken away; and

(iii) as to whether the finding of the learned Judge in respect of M/s.DCW Limited, which is forming part of Alkali Manufacturers Association of India, being a domestic producer, even though admittedly having 4% of the production, could be presumed to have 100%

production so as to enable it have a jurisdiction to make representation to the Designated Authority, is correct in law.

Point - (i)

20.Regarding the first issue in respect of the maintainability aspect of the writ petition in W.P.No.23515 of 2011, the learned Judge in the impugned order has held that inasmuch as the very jurisdiction of the Designated Authority in initiating proceedings is challenged in the writ petition, it cannot be held that the writ petition is not maintainable.

21.Even though it has been the contention of the members of Alkali Manufacturers Association of India that at the stage of preliminary finding there is no finality and unless and until the Government of India ultimately passes order imposing the levy and thereafter gives final finding a writ petition is not maintainable, and there is an appellate remedy available, as correctly held by the learned Judge, mere existence of an alternative remedy cannot be said to be an absolute bar for the High Court for entertaining a writ petition under Article 226 of the Constitution of India. In the decision rendered by the Supreme Court in *Union of India v. Tantia Construction (P) Ltd., (2011) 5 SCC 697*, the Supreme Court after analyzing the various decisions about the maintainability of the writ petition in the presence of an alternative remedy, has held that alternative remedy is a rule of discretion and not a matter of compulsion. The operative portion of the said decision is as follows:

"33. Apart from the above, even on the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

34. We endorse the view of the High Court that notwithstanding the provisions relating to the arbitration clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the writ petition and also on its merits."

22.Moreover, against the preliminary finding it cannot be said that there is an effective remedy available as per Section 9C of the Act. The power of imposing anti-dumping duty on dumped articles emanates from Section 9A of the Act

which contemplates that when any article is exported by an exporter or producer to India from any country at less than its normal value, on such importation in India, the Government of India is entitled by notification to impose anti-dumping duty not exceeding the margin of dumping in relation to the article.

23.While Section 9B of the Act contemplates certain circumstances wherein no such levy can be imposed, Section 9C of the Act provides an appeal to the Customs Excise and Service Tax Appellate Tribunal constituted under Section 129 of the Customs Act, 1962 against the order of determination or review regarding the existence, degree and effect of any subsidy or dumping in relation to import. Section 9C of the Act is as follows:

> "**Section 9C. Appeal.** (1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereafter referred to as the Appellate Tribunal).
>
> (1A)An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.
>
> (1B) 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

(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 order thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-section (1), (2), (5) and (6) or section 129C of the Customs Act, 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.

(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."

24.It is in accordance with the powers conferred under Section 9A(6) of the Act, which confers a rule making power to the Central Government in order to ascertain and determine the manner in which the article liable for any anti-

dumping duty is to be identified or the manner in which the export price and the normal value of, and the margin of dumping in relation to such article is to be determined for assessment and collection of such anti-dumping duty, the Central Government has framed the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 by notification issued on 1-1-1995.

25. Apart from the definition of the word "domestic industry", which has been defined under Rule 2(b) of the Rules, which will be subsequently dealt by us, at this stage regarding the decision of the maintainability of the writ petition and the availability of the alternative remedy of appeal, suffice it to refer to some of the provisions of the Rules. Rule 3 of the Rules enables the Central Government to appoint Designated Authority, whose duties are mentioned in Rule 4 of the Rules, which is as follows:

"**Rule 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 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;

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

26.A reading of the said Rule makes it ample clear that it vests a power on the Designated Authority to investigate, identify and submit its finding provisional or otherwise, to the Central Government as to the normal value and injury, apart from recommending to the Central Government about the amount of anti-dumping duty and the date of commencement of such duty.

27.The Designated Authority, after preliminary investigation, has to record a preliminary finding regarding the export price, normal value and the margin of dumping and also record further finding regarding the injury to the domestic industry with detailed information for the preliminary determination on dumping and injury and such preliminary finding is to be issued by way of a public notice by

the Designated Authority, as it is seen in Rule 12 of the Rules, which is as follows:

"**Rule 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."

28.It is thereafter on the basis of the preliminary finding, which was the subject matter of challenge of W.P.No.23515 of 2011, the Central Government imposes levy of provisional duty and thereafter, on further investigation, the Designated Authority gives a final finding and it is in the final finding, as it is seen under Rule 17 of the Rules, a determination is made in the form of recommendation by the Designated Authority and thereafter, the Central Government issues levy within a period of three months of the date of publication of final findings by the Designated Authority, as it is seen in Rule 18 of the Rules which is as follows:

> "**Rule 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, withdraw the provisional duty imposed, if any."

29. On a reading of Section 9C of the Act, elicited above, it is clear that an appeal lies only after the determination, which comes only after the final finding given by the Designated Authority under Rule 17 of the Rules and levy of duty by the Central Government under Rule 18 of the Rules, and therefore, it is clear that from the preliminary finding, which is impugned in the writ petition, it cannot be said that there is an alternative remedy of appeal available.

30. The said view of ours is fortified by a Division Bench decision of the Gujarat High Court in *Meghani Organics Ltd. v. Union of India, 2011 (267) E.L.T. 440 (Guj.)*, wherein the Division Bench has also taken a stand that a preliminary finding given by the Designated Authority is recommendatory in nature and appeal would not be tenable under Section 9C of the Act against the said preliminary finding, with the operative portion as follows:

"16. This leads to an another issue as to whether an appeal lies to C.E.S.T.A.T. against levy of provisional anti-dumping duty, and if yes, whether this Court should entertain the present petition when an alternative remedy in the form of an appeal is available to the petitioners. In support of this contention, Mr. Joshi relied on the decision of this Court in *Surfaces Plus v. Union of India - 2004 (173) ELT 127 (Guj.)* wherein, while

considering an issue as to whether an appeal lies against preliminary finding, the Court held that against preliminary finding, which is of a recommendatory nature, an appeal would not be tenable under Section 9C of the Act. The preliminary finding which is of a recommendatory nature is required to be considered by the Central Government under Rule 13 for the purpose of deciding the question of imposing provisional anti-dumping duty and the Central Government is required to issue notification for imposing anti-dumping duty. Such notification of imposing duty has not been issued so far by the Central Government. On the basis of these observations, the submission of Mr. Joshi is that since the Central Government has already issued notification in June, 2009, the petitioners could avail an alternative remedy of filing appeal before C.E.S.T.A.T. We are not much impressed by this argument. Section 9C deals with appeal which says that an appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the customs, Excise and Service Tax Appellate Tribunal constituted under Section 129 of the Customs Act, 1962. Section 9A(2) of the Act states that 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. Thus, the provisional anti-dumping duty is levied pending determination and appeal lies only on determination. Moreover, Rule 17 of the Rules deals with final finding. It says that 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 therefore and date of commencement of such retrospective levy. This exercise is yet to be undertaken by the Designated Authority. Hence, no appeal lies against the levy of provisional anti-dumping duty and this Court is well within its power to entertain this petition since there being no alternative remedy available to the petitioners despite the fact that they are being saddled with the liability of provisional anti-dumping duty."

31. In any event, all the respective counsel have mainly focussed their attention on the merits of the case about the definition of the term "domestic industry", which is the crux of the issue, and therefore we do not want to differ from the finding of the learned Judge regarding the maintainability of the writ petition. Accordingly, we hold that the writ petition against the preliminary finding published by the Designated Authority is maintainable, especially when the writ petitioner has chosen to raise the point of jurisdiction. The said point is answered accordingly."

(xi)2002 (149) E.L.T. 45 (Raj.) [Rajasthan Textile Mills Association Vs. Dir. General of Anti-Dumping] wherein the Division Bench of Rajasthan High Court held as follows:

"...

"**Rule 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."

After receipt of the preliminary findings, the Central Government may, on the basis of the preliminary finding of the Designated Authority, levy a provisional duty not exceeding the margin of dumping under Rule 13.

....

18.Mr. N.M. Lodha, learned Senior Central Government Standing Counsel has raised number of preliminary objections with respect to maintainability of the writ petition. The objection is as to non-maintainability of the joint writ petition in disregard to Rule 375(4) of the Rajasthan High Court Rules. Another objection pertains to latches i.e. delay in filing the writ petition. The third objection pertains to conduct. It is submitted that the instant writ petition has been filed at the instance of M/s. Madura Coats Limited having failed before the Karnataka High Court. It is vehemently argued that the writ petition is premature inasmuch as so far as the first writ petition is concerned, only a decision has been taken to

initiate investigation. In the second writ petition, the challenge is to preliminary finding, which is recommendatory in nature. It is submitted that the investigation is still in progress and the final finding is yet to be recorded-under Rule 17. The last objection is that the petitioner has a remedy by way of appeal before the CEGAT under Section 9C of the Act of 1975.

19.Mr. K. Venugopal learned counsel appearing for the domestic industry has supported preliminary objections. It is submitted that the preliminary finding of the Designated Authority is in the nature of recommendation to the Central Government. It is for the Central Government to accept or not to accept the finding. It is submitted that levy of provisional duty under Rule 13 of the Rules of 1995 is the legislative activity intended to protect the domestic PSF industries and any judicial interference with the process of such levy will disturb the time schedule provided under the Rules and may also cause irreparable damage to the domestic PSF industry. It is also submitted by Mr. Venugopal that since the levy of excise duty provisional or final is on the exporter, as such, the user industry has no locus to maintain the writ petition challenging the initiation notification or the preliminary finding. Mr. Venugopal has placed reliance on a decision of the Apex Court in *Saurashtra Chemicals Ltd.* v. *Union of India* reported in *2000 (118) E.L.T. 305 (S.C.)*. The brief order of the Apex Court is extracted as follows:—

> "We see no reason whatsoever to entertain these special leave petitions. It is perfectly clear now that we have

seen the provisions of the Act that the order of the Designation Authority is purely recommendatory. The appeal that lies is against the determination and that determination has to be made by the Central Government. For this reason, we decline to exercise jurisdiction under Article 136 of the Constitution of India and dismiss the special leave petitions."

20. Learned counsel has also relied on an unreported decision of the Delhi High Court dated 7.8.97 rendered in the case of *The Indian Express Newspaper* v. *Union of India*. In the said case, the preliminary finding on anti dumping investigation concerning imports of newspaper prints was challenged. The maintainability of the writ petition was objected on the similar grounds. The Court held thus—

"We are not impressed by the several submission so forcefully advanced by the learned counsel for the petitioners. (In our opinion, the petitions are pre-mature. The petitioners are at liberty to raise their contentions whatever they may be before the Designated Authority who is still seized of the investigation and is admittedly holding a hearing today. Inspite of the preliminary finding having been submitted to the Central Govt, imposition of duty, whether provisional or otherwise, would not follow as a matter of course or routine.) The Central Government may or may not impose duty. If the Central Government may decide on favour of imposing duty, whether provisional or otherwise, the petitioners would have the remedy

available to them under the law. It cannot be lost signt of that the imposition of provisional duty is guided by the paramount consideration of protecting the domestic newsprint industry and eliminating dumping. Tampering with the process midway, may delay the imposition of provisional duty, which if warranted otherwise would itself amount to causing an injury not capable of being repaired at all."

21. Learned counsel has also invited our attention to the order of the Karnataka High Court dated 4th December, 2001 rendered in *Madura Coats Limited* v. *Directorate General* "Writ Petition Nos. 41593 to 41596/2001, wherein the learned judge held that the High Court will normally not disturb the finding of Designated Authority. The learned Judge having looked into the finding of the Designated Authority with respect to the impugned initiation notification, observed as follows:

"The designated authority in its order dated 15.10.2001, commencing from para 59 onwards states, that the applicants have a standing to file an application and further says in its order, that based on the confidential and non-confidential evidence produced before it, the matter requires to be examined. This opinion requires to be aframed by the designated authority based on the evidence made available and produced before it by the applicants. This Court normally in exercise of its judicial review would disturb the opinion of the designated authority or the Central Government. This Court only

looks into whether the opinion formed by the designated authority is in consonance with the provisions of the Act and the Rules framed thereunder. This Court also will not interfere with the opinion formed by the designated authority or the Central Government unless that opinion is either wholly arbitrary or unreasonable or no reasonable person would come to such a conclusion or if it is in violation of statutory provisions. In my opinion, in the instant case, the designated authority rightly and correctly understanding the scope of Secs. 9A and 9B and also Rule 5(1) to 5(5) of the Rules, has initiated investigation proceedings on the application filed by the domestic industries. *In my opinion, the designated authority has not committed any error and has not violated any of the statutory provisions, which calls for my interference.*"

22.Dr.Abhishek Manu Singhvi, Senior Advocate appearing for the petitioners, submitted that the High Court has power to issue in a fit case a writ prohibiting executive quasi judicial authority from acting without jurisdiction. It is argued that a statutory authority cannot enlarge the scope on jurisdictional fact. It is contended that when the jurisdiction of the authority depends upon a preliminary finding of fact, the High Court can independently determine upon its independent judgment as to whether the finding is correct or not. In support of the submission, he has relied upon number of decisions of the Apex Court.

*23.*In *Bengal Immunity Company* v. *State of Bihar*, reported in AIR 1955 SC 661, the writ petition was filed under Article 226 of the Constitution challenging the notice issued under Section 13 of the Bihar Sales Tax Act by the Superintendent, Commercial Taxes calling upon the Company to apply for registration and to submit returns showing its turnover for the specified period. The reason for issuing the notice as recited in the notice was that on information which had come to his possession the Superintendent was satisfied that the Company was liable to pay tax but had nevertheless wilfully failed to apply for registration under the Act. The writ petition was dismissed by the High Court on the ground of it being premature and it was observed that the petitioner should have responded to the notice instead of rushing to the court. The Apex Court did not agree with the view expressed by the High Court. It was observed that the High Court ignored the fact that the notice called upon the Company to forthwith get it registered as a dealer and to submit a return and to deposit the tax in a treasury, shall place upon it considerable hardship, harassment and liability. The Court observed thus:

> "It is, therefore, not reasonable to expect the person served with such an order or notice to ignore it on the ground that it is illegal, for he can only do so at his own risk and peril. This Court has said in the last mentioned case that a person placed in such a situation has the right to be told definitely by the proper legal authority exactly where he stands and what he may or may not do."

*24.*In *Calcutta Discount Co. Ltd.* v. *Income tax Officer* reported in AIR 1961 SC 372, the Company applied to the High Court for issuing a writ under Article 226 of the Constitution quashing the notice issued under Section 34 of the Income Tax Act on the ground that the amendment to the said provision was not retrospective and, as such, the assessment for a particular year, has became barred. The writ petition was dismissed by the High Court. It was contended before the Supreme Court that the notice was without jurisdiction inasmuch as the condition precedent for the assumption of jurisdiction under Sec. 34 of the Act was not satisfied. The Court observed that the High Court has power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction more particularly in a case where such an action is likely to subject a person to lengthy proceedings and unnecessary harassment. The Court observed, thus:

> "When the Constitution confers on the High Courts the power to give relief, it becomes the duty of the Courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case, we can find no reason for which relief should be refused."

25.The Apex Court in *Raja Anand Brahma Shah* v. *The State of Uttar Pradesh* reported in AIR 1967 SC 1081, has observed as follows:

> "It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a

proceeding of writ of certiorari to determine, upon its independent judgment, whether or not that finding of fact is correct."

26.In *Vatticherukuru Village Panchayat* v. *Nori Venkatarama Deekshithulu* reported in 1991 Supp (2) SCC 228, the Court observed that the jurisdiction of a tribunal created under statute may depend upon fulfilment of some condition precedent or upon existence of some particular fact. The Court further observed that a tribunal cannot by a wrong decision with regard to collateral fact, give itself a jurisdiction, which it would not otherwise have had.

27.Dealing with the question of alternate remedy, the Apex Court in *Raja Anand's case* (supra) held that the existence of alternate remedy is always not a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction or continuing such action. It is not necessary to trace all the judgments on the point involved. Suffice it to refer the decision of the Apex Court in *Whirlpool Corporation* v. *Registrar of Trade Marks* reported in JT 1998 (7) SC 243, wherein the Court on review of almost all the cases on the point, reiterated three well established exceptions wherein writ jurisdiction does not operate bar, inspite of existence of statutory remedy. The Court held thus:

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective

and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

28.In *Rohtas Industries Ltd.* v. *S.D.Agarwal* reported in AIR 1969 SC 707, the appointment of Inspector to investigate the affairs of the Company and to report thereon under Section 237(b) came up for consideration. Before appointment of inspector under Sec. 237(b) by the Central Government, certain pre-conditions were also required to be satisfied as provided under Section 235. On examining the provisions of Section 235 and 236, the Court found that the investigation required was of serious nature. The writ petition was opposed by the Government on the ground that the report of the Inspector being of recommendatory nature, was not binding. Further finding of the Inspector being finding of fact, no interference was called for by the High Court in exercise of powers under Article 226 of the Constitution of India. The High Court dismissed the writ petition holding that the opinion formed by the Central Government under Section 237(b) of the Companies Act is not open to judicial review being conclusive. The Apex Court observed that an investigation should not be

ordered except on satisfactory grounds as the appointment of inspector is likely to receive much less publicity as a result of which the reputation and prospects of the Company may be adversely affected.

29.Similarly in the case of *Barium Chemicals Ltd.* v. *Company Law Board* reported in AIR 1967 SC 295 dealing with the provisions of Section 237(b), the Apex Court observed that though the power under Sec. 237(b) is discretionary but the first requirement for its existence is the honest formation of the opinion that the investigation is necessary. The Court further observed that—

> "the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusion of certain definiteness."

30.Thus, in *Barium Chemical's case* (supra), the Court arrived at the conclusion that the existence of circumstances suggesting that the Company's business was being conducted as

laid down in sub-clause (i) or the persons mentioned in sub-clause (ii) were guilty of fraud or misfeasance or other misconduct towards the Company or towards any of its member was the condition precedent for the Government to form the required opinion. The Court further observed that if the existence of those conditions is challenged, the Courts are entitled to examine whether those circumstances were existing when the order was made. There are series of decisions on the point for our guidance but it is neither necessary nor desirable to traverse all the cases, as broad principles which govern the decision with respect to the preliminary objections can be conveniently culled out. There can be no doubt that following the normal rule, the finding of the Designated Authority initiating investigation and recording of preliminary finding does not call for interference in a petition under Article 226 of the Constitution, more particularly looking to the object and the nature of the proceedings, it would not be proper to tamper with the investigation midway, except in three contingencies referred-to above. Under the Scheme of the Rules of 1995, the Designated Authority acquires jurisdiction to initiate investigation only on satisfaction that there exists evidence in the application with regard to dumping, material injury and causal link. At this stage i.e. under Rule 5, the Designated Authority is required to examine the accuracy and adequacy of evidence produced in the application. Thus, in a case where there is a challenge to the initiation of investigation on the ground of jurisdictional error, the petition under Article 226 of me Constitution of India is maintainable.

However, a writ Court entertaining a petition challenging the initiation notification will not be holding a roving enquiry but will confine to the existence of evidence provided in the application i.e. filing of valid application by the domestic industry and satisfaction of the Designated Authority as to sufficiency of evidence in the application with regard to dumping, material injury and causal link.

31.As far as the challenge to preliminary finding is concerned, it being recommendatory in nature, the normal rule is that no interference should be made by a writ Court under Article 226 of the Constitution. However, as the Rule 6 provides an opportunity to the industrial users as well as interested parties or its representatives to present an information relevant to the investigation, the limited interference is called for to satisfy if the preliminary finding has been recorded after following the statutory provision. It is of-course true that it is for the Central Government to levy or not to levy a provisional duty on the basis of the preliminary finding but as laid down by the Apex Court in *Raja Anand Brahma Shah's case* (supra) that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled in a proceeding of writ of certiorari to determine upon its independent judgment whether or not that finding of fact is correct. Once an anti-dumping duty is levied, though it may be provisional, it may adversely affect the trade or business of the parties like the petitioner. Though, there is provision for refund of anti-dumping duty but that in itself is not sufficient as the injury

which may be caused to a trade or business, cannot be compensated by refund of the amount recovered as duty on anti-dumping.

32.As regards the alternate remedy, it is well established that the High Court would not normally exercise its jurisdiction except in a case where there' has been a violation of the principles of natural justice or where the order or the proceedings are wholly without jurisdiction.

33.As regards the locus, suffice is to say that the petitioner industry falls within the definition of the interested party. They are entitled to present the information during investigation under Rule 6. The consequence of levy of anti-dumping duty either on the basis of the preliminary finding or the final finding, may inflict injury to the interested party. Though, the preliminary and final finding are only recommendatory in nature and it is for the Central Government to accept or not to accept but still such findings are bound to influence the decision making process. The possibility of provisional levy being used by indigenous manufacturer to hike the price or the artificial increase in price making the article uncompetitive, adversely affecting the competitiveness of the interested party or industrial user, can not be ruled out. In addition to the conflicting interest of the parties, the consequence may cause large injury to rest of the citizenry. It will be travesty of justice, if in such a matter of serious consequence, even limited judicial review is refused, on the ground of writ petition being premature or existence of alternate remedy or locus. There can be no harm, if the writ

Court keeping in mind urgency of the matter spares some time in the larger public interest and grants limited judicial review."

6.Countering the submissions made by the learned counsel for the petitioner, Mr.G.Rajagopalan, learned Additional Solicitor General submitted that in the present case, after initiation of enquiry under Section 8B(1), the Director General (Safeguards), on 05.01.2018, have recorded certain preliminary findings and forwarded the same to the Government. The recommendations issued by the 2nd respondent have been submitted to the Standing Board of Safeguards chaired by the Commerce Secretary and at this juncture, there is no cause of action for the filing of the Writ Petition. Further, the learned Additional Solicitor General submitted that the Government has not so far imposed any provisional duty, therefore, the question of maintaining the Writ Petition at this stage does not arise. Further, the learned Additional Solicitor General submitted that the preliminary findings are only recommendatory in nature and there is no cause of action for maintaining the Writ Petition. Further, the learned Additional Solicitor General submitted that there cannot be any investigation within investigation and if the said process is adopted, the entire Local Industry will be affected and the provisions of Section 8B(2) will be defeated. The reference to the subjective satisfaction to impose

provisional duty is a statutory function and the fact that the Government may have to act reasonably and fairly does not mean in every case principles of natural justice must be followed.

6.1.In support of his contentions, the learned Additional Advocate General relied upon the following judgments:

(i)(1978) 1 Supreme Court Cases 248 [Mrs.Maneka Gandhi Vs. Union of India and another] wherein the Constitutional Bench of the Hon'ble Supreme Court held as follows:

> "...
>
> 183.I may at this stage refer to the stand taken by the learned Attorney-General on this question. According to him, on a true construction, the rule *audi alteram partem* is not excluded in ordinary cases and that the correct position is laid down by the Bombay High Court in the case of *Minoo Maneckshaw v. Union of India [(1974) 76 Bom LR 788].* The view taken by Tulzapurkar, J. is that the rule of *audi alteram partem* is not excluded in making an order under Section 10(3)(c) of the Act. But the Attorney General in making the concession submitted that the rule will not apply when special circumstances exist such as need for taking prompt action due to the urgency of the situation or where the grant of opportunity would defeat the very object for which the action of impounding is to be taken. This position is supported by the decision of Privy Council in *De Verteuil v. Knaggs [(1918) AC*

557] wherein it was stated "it must, however, be borne in mind that there may be special circumstances which would satisfy a Governor, acting in good faith, to take action even if be did not give an opportunity to the person affected to make any relevant statement, or to correct or controvert any relevant statement brought forward to his prejudice." This extra-ordinary step can be taken by the passport authority for impounding or revoking a passport when he apprehends that the passport holder may leave the country and as such prompt action is essential. These observations would justify the authority to impound the passport without notice but before any final order is passed the rule of *audi alteram partem* would apply and the holder of the passport will have to be beard. I am satisfied that the petitioner's claim that she has a right to be heard before a final order under Section 10(3)(c) is passed is made out. In this view the question as to whether Section 10(3) (c) is ultra vires or not does not arise."

(ii)2000 (118) E.L.T. 305 (S.C.) [Saurashtra Chemicals Ltd. Vs. Union of India] wherein the Hon'ble Supreme Court held as follows:

"We see no reason whatsoever to entertain these special leave petitions. It is perfectly clear now that we have seen the provisions of the Act that the order of the Designated Authority is purely recommendatory. The appeal that lies is against the determination and that determination has to be made by the Central Government. For this reason,

we decline to exercise jurisdiction under Article 136 of the Constitution of India and dismiss the special leave petitions."

(iii)2000 (118) E.L.T. 310 (S.C.) [United Phosphorous Ltd. Vs. Director General (Safeguards)] wherein the Hon'ble Supreme Court held as follows:

"We decline to invoke the jurisdiction under Article 136 of the Constitution in regard to what is only a recommendation. This, in our view, should also have governed the writ petition filed by the petitioners.

The special leave petition is dismissed."

(iv)2009 (111) DRJ 237 (DB) [Saint-Gobain Glass India Ltd. & Anr. Vs. Union of India & Ors.] wherein the Division Bench of the Delhi High Court held as follows:

"...

21.6.In our opinion, the scope for interference in matters which have huge economic impact is very narrow. As a matter of fact, actions instituted in courts such as the instant writ petitions have portents of derailing decisions-which could have a cascading impact and inflict resultant damage not only on the domestic industry in issue but even on industries which are vertically integrated to the said domestic industry, as also on their employees and industrial labour, which perhaps at times Courts cannot monetarily quantify. Therefore, the Court in our view, should be slow in entertaining such petitions.

However, we make it clear that we are not to be understood as saying that in no case can writ petitions be entertained. Writ Petitions in such cases ought to be entertained in our view, when there is either a complete lack of jurisdiction or a palpable error so grave which requires imminent interference by a writ court."

(v)2012 SCC Online Mad 5302 [Outokumpu Stainless Vs. Union of India] wherein this Court held as follows:

"...

15.From reading of the pleadings stated above, it is clear that Anti-Dumping duty is payable when the concerned goods are cleared through the Chennai Port i.e., assessment of duties upon clearnace of the subject goods exported by the petitioner takes place at Chennai. So, the issue is 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. It certainly does not constitute cause of action. An anticipatory event will not give cause of action. A cause of action must exist and it is a condition precedent before initiation. By no means, the above factor constitute material, essential or integral part of cause of action. It is also pertinent to note that the petitioner is a Non-Resident Company and represented by its Power of Attorney holder, who resides at New Delhi. The second respondent office, who passed the impugned order is also situated at New Delhi. It is also stated that in the export

questionnaire, the petitioner had given its address for communication at New Delhi. Moreover, the appellate authority is also in Delhi. Taking into consideration the principles enunciated in the judgments of the Supreme Court in the case of *(i) Alchemist Ltd and another Vs. State Bank of Sikkim and (ii) Kussum Ingots Alloys Ltd. Vs. Union of India (UOI) (cited Supra)*, this Court is of the view that no cause of action had arisen within the territorial jurisdiction of this Court to entertain the writ petitions. Therefore, the writ petitions are not maintainable. Hence, it is not necessary for this Court to adjudicate the other contentions advanced by the petitioner."

(vi)2015 (324) E.L.T. 209 (S.C.) [Commissioner of Customs, Bangalore Vs. G.M.Exports and others] wherein the Supreme Court held as follows:

"...

23 (4).In a situation in which India is a signatory nation to an interested treaty, and a statute is made to enforce a treaty obligation, and if there be any difference between the language of such statute and a corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty. This is for the reason that in such cases what is sought to be achieved by the international treaty is a uniform international code of law which is to be applied by the courts of all the signatory nations in a manner that leads to the same result in all the signatory nations."

7.On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, the petitioner is registered in Mumbai and it imports through Maharashtra Ports. Though the petitioner has not made any imports in Tamil Nadu and according to them, they are likely to import in the month of September 2018. The respondents contended that since the petitioner has no office at Chennai, the Writ Petition is not maintainable for want of jurisdiction. However, the learned counsel for the petitioner submitted that the petitioner is having an office at "SREYAS VIRAT" No.14, First Floor, Third Cross Road, Raja Annamalaipuram, Chennai – 600 028 and therefore, it cannot be contended that this Court has no jurisdiction to entertain the Writ Petition. The petitioner has also established that they are having their office at Chennai. Further, the respondents were not in a position to establish that the petitioner is not having any office at Chennai. Therefore, it cannot be stated that this Court is not having jurisdiction to entertain the present Writ Petition. Hence, I am of the considered view that the Writ Petition filed by the petitioner is maintainable before this Court.

8.Section 8B of the Customs Tariff Act, empowers the Central Government to impose Safeguard Duty. The imposition of duty vests with the Central Government and not with the 2nd respondent.

9.It is also pertinent to note that the Central Government has not so far imposed any provisional duty. Rule 10 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, provides that the Central Government may impose a provisional duty on the basis of a preliminary finding.

10.In the case on hand, after initiation of the enquiry under Section 8B(1), the 2nd respondent, by the impugned notice dated 05.01.2018, have recorded certain preliminary findings and forwarded the same to the Government. The recommendations issued by the 2nd respondent has been submitted to the Standing Board of Safeguards, chaired by the Commerce Secretary. Further the respondents contended that the preliminary findings are only recommendatory in nature and there is no cause of action, therefore, the Writ Petition filed by the petitioner is premature in nature. In the judgment reported in ***2012 (281) E.L.T. 321 (Mad.) [Nirma Limited Vs. Saint Gobain Glass India Ltd.***], the issue was that when an alternative remedy against the preliminary findings is available to the petitioner,

whether such alternative remedy is a bar for filing of Writ Petition by the petitioner. That apart, the Writ Petition was filed after the duty was imposed by the Government.

11.Section 8B(1) deals with imposition of Safeguard Duty and it contemplates an enquiry into the matter. The 2nd respondent issued a notice dated 19.12.2017 for the purpose of enquiry under Section 8B(1), wherein he had called upon all the interested parties to make their views known within a period of 30 days from the date of Notice. Any other party who wishes to be considered as an interested party may submit a request to this effect to the 2nd respondent within 15 days from the date of the Notice. From the above, it is clear that the enquiry under Section 8B(1) is not an advisory litigation, but the Government is only taking the views of the interested parties before imposing duty. The respondents have also contended that "duty" is nothing but "tax" and there is no need for any compliance of natural justice before imposing tax, which is a legislative function.

12.On a reading of Section 8B(1) and 8B(2), it is clear that the provisions does not contemplate taking of the views from any party and it is based on the subjective satisfaction of the Central Government and the

preliminary findings given by the 2nd respondent will only constitute a material, based on which the provisional duty is imposed. The respondents themselves have stated that the duty of the 2nd respondent, with regard to the provisional Safeguard Duty as well as the definite Safeguard Duty, is only recommendatory and is not binding on the Central Government.

13.In the judgment reported in ***(2011) 2 Supreme Court Cases 258 [Automotive Tyre Manufacturers Association Vs. Designated Authority and others]***, the case arose after the final determination of Anti-Dumping Duty and the Central Government imposed Anti-Dumping Duty based on the recommendations. Though the 2nd respondent could be treated as a quasi-judicial Authority for the main adjudication, while recording the provisional recommendation, it is not required to hear any party. However, the 2nd respondent has to act in accordance with law. As rightly contended by the learned Additional Solicitor General, there cannot be any investigation within an investigation and if such process is adopted, the entire purpose of Section 8B(2) will be defeated. That apart, till the filing of the Writ Petition, the petitioner has not sought for any opportunity for personal hearing before the 2nd respondent.

14.The ratio laid down in the judgments reported in ***2000 (118) E.L.T. 305 (S.C.) [Saurashtra Chemicals Ltd. Vs. Union of India]*** and ***2000 (118) E.L.T. 310 (S.C.) [United Phosphorous Ltd. Vs. Director General (Safeguards)]*** squarely applies to the present case. In both the judgments, the Apex Court held that when the order of the Designated Authority is purely recommendatory, the same cannot be interfered with by the Apex Court. The ratio laid down by the Apex Court in ***2015 (324) E.L.T. 209 (S.C.) [Commissioner of Customs, Bangalore Vs. G.M.Exports and others]*** is also applicable to the facts and circumstances of the present case.

15.Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel for the petitioner, since the facts and circumstances of the present case are totally different, the same are not applicable.

16.The scope of interference, in matters, which have huge economic impact, is very narrow. As a matter of fact, actions instituted in courts such as the instant Writ Petition have portents of derailing decisions, which could have a cascading impact and inflict resultant damage, not only on the Domestic Industry in issue, but even on industries, which are vertically

integrated to the Domestic Industry, as also on their employees and industrial labour, which perhaps at times courts cannot monetarily quantify.

17.By the impugned notice dated 05.01.2018, the 2nd respondent had made certain preliminary findings and forwarded the same to the Government. Further, in the impugned proceedings dated 05.01.2018, the 2nd respondent has stated that a public hearing will be held in due course before making a final determination, for which the date will be informed separately. In these circumstances, no prejudice would be caused to the petitioner for the reason that they will be given opportunity to make their submission before the Authority on the issues involved in the matter.

18.Therefore, I am of the considered view that at the time of making a final determination, the petitioner's views should be obtained and an opportunity of personal hearing should be given to them to make their submissions. The authorities should decide the matter on merits and in accordance with law, after considering the submissions to be made by the petitioner, at the time of making final determination.

19.With these observations, I do not find any reason to interfere with the impugned preliminary findings notice dated 05.01.2018. The Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
Speaking order
va

16.04.2018

To

1.The Secretary,
Union of India,
Ministry of Finance North Block,
New Delhi – 110 001.

2.The Director General,
Directorate General of Safeguards,
Customs and Central Excise,
2nd Floor, Bhai Veer Singh Sahitya Sadan,
New Delhi – 110 001.

M. DURAISWAMY,J.

va

Order made in
W.P.No.1156 of 2018
and W.M.P.Nos.1436 to 1438 of 2018

16.04.2018