

ITEM NO.101[PH]

COURT NO.4

SECTION IIIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 14099/2015
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 18/03/2015
IN WPC NO. 744/2015 PASSED BY THE HIGH COURT OF DELHI AT NEW DELHI)

THE DESIGNATED AUTHORITY & ORS.

PETITIONER(S)

VERSUS

M/S. SANDISK INTERNATIONAL LIMITED & ORS. RESPONDENT(S)
(WITH APPLN.(S) FOR INTERVENTION AND INTERIM RELIEF AND OFFICE
REPORT)

WITH

SLP(C) NO. 14524/2015

(WITH APPLN.(S) FOR INTERVENTION AND INTERIM RELIEF AND OFFICE
REPORT)

Date : 16/02/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For parties:

Mr. Yashank Adhyaru, Sr. Adv.
Ms. Rashmi Malhotra, Adv.
Mr. Rajiv Nanda, Adv.
Mr. R. Balasubramanian, Adv.
Mr. G.S. Makker, Adv.
Mr. B. Krishna Prasad, Adv.

Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Reena Khair, Adv.
Mr. Rajesh Sharma, Adv.
Ms. Rita Jha, Adv.
Ms. Shreya Dhaiya, Adv.
Mr. E. C. Agrawala, Adv.

Mr. V. Lakshmikumaran, Adv.
Mr. Darpan Bhuyan, Adv.
Mr. Ankur Sharma, Adv.
Mr. Abhishek Anand, Adv.
Mr. M. P. Devanath, Adv.

Mr. Sanjay Sharawat, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Applications for intervention are allowed.

Leave granted.

The appeals are allowed in terms of the signed
order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3016 OF 2017
[Arising out of Special Leave Petition
(Civil) No.14099/2015]

THE DESIGNATED AUTHORITY
& ORS. . . . APPELLANTS

VERSUS

M/S. SANDISK INTERNATIONAL LIMITED
& ORS. . . . RESPONDENTS

WITH

CIVIL APPEAL NO.3017 OF 2017
[Arising out of Special Leave Petition
(Civil) No.14524/2015]
[MOSER BAER INDIA LTD.
VERSUS
THE DESIGNATED AUTHORITY AND ORS.]

ORDER

1. Applications for intervention are allowed.
2. Leave granted.

3. We have heard the learned counsels for the parties at considerable length.

4. The challenge in these appeals is against the judgment and order of the Delhi High Court interfering with the final findings dated 19th December, 2014 issued by the Designated Authority under Rule 17 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles And For Determination of Injury) Rules, 1995 (hereafter referred to as "the Rules").

5. Civil Appeal arising out of Special Leave Petition (Civil) No.14099 of 2015 has been filed by the Designated Authority whereas Civil Appeal arising out of Special Leave Petition (Civil) No.14524 of 2015 has been filed by the domestic industry.

6. We have perused the disclosure statement dated 5th December, 2014 issued by the Designated Authority under Rule 16 of the Rules and the correspondences that have been exchanged by and between the parties thereto dated 8th December, 2014, 9th December, 2014 and 12th December, 2014. We have also perused the exhaustive final findings dated 19th December, 2014 of the Designated Authority.

7. From a perusal of the aforesaid materials on record we find that there are seriously disputed questions with regard to the locus of the respondent - M/s Sandisk International Ltd. to file the writ petition before the Delhi High Court and also as to whether the information sought for by the said respondent was actually furnished to it by the Designated Authority in the above communications and orders. Though we would not deem it appropriate to

lay down any inflexible proposition of law that in no case the final findings of the Designated Authority can be subject to challenge under Article 226 of the Constitution of India, we are of the view that in the facts of the present case the High Court was not justified in exercising its writ jurisdiction and in setting aside the final findings of the Designated Authority. Rather, according to us, the High Court should have asked the writ petitioner before it to await the issuance of the final notification under Rule 18 of the Rules and to challenge the same before the appropriate appellate forum under Section 9C of the Customs Tariff Act, 1975 as and when such a notification is issued. In such an eventuality the final findings of the Designated Authority were bound to be considered by the appellate authority which authority would also have been better

equipped to examine such a challenge.

8. In the present case, there is a further/additional development that has taken place during the pendency of the appeals. The final notification under Rule 18 of the Rules has been published on 22nd May, 2015 and the same has been operative since then and duty has been collected on that basis. Though the said notification was published during the pendency of the present appeals without the leave of the Court we are not inclined to go into the legality or even the propriety of the said exercise on the said ground inasmuch as the respondent - M/s Sandisk International Ltd. itself, admittedly, has not approached this Court for interference with the said notification or for orders seeking a restraint on its operation. Neither has any importer, on whom the levy is imposed, come to the Court to seek intervention in

the present proceedings to challenge the notification in question.

9. In the aforesaid circumstances, we are of the view that the respondent - M/s Sandisk International Ltd., subject to its locus, and all other aggrieved parties should be left with the option of challenging the final notification dated 22nd May, 2015 before the appellate authority by means of an appeal under Section 9C of the Customs Tariff Act, 1975. If such an appeal is filed we would request the Appellate Tribunal to consider and dispose of the same as expeditiously as possible. The order of the High Court is set aside and the appeals consequently are allowed. We make it clear that we have expressed no opinion on the merits of the case and it is open for the Appellate Tribunal to consider all aspects of the matter, including the correctness of the

final findings dated 19th December, 2014 issued by the Designated Authority, in the event of a challenge being made before it by an aggrieved party.

.....,J.
(RANJAN GOGOI)

.....,J.
(ASHOK BHUSHAN)

NEW DELHI
FEBRUARY 16, 2017