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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**W.P.(C) 2632/2017 & CM APPLs 11444/2017, 14560/2017,
18504/2017, 18505/2017**

**HINDUSTAN LEVER LTD. NOW KNOW AS HINDUSTAN
UNILEVER LIMITED** Petitioner

Through: Mr Gopal Jain, Senior Advocate with Ms
Reena Khaur, Mr Rajesh Sharma and Ms Rita Jha,
Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Mr Sanjeev Narula, CGSC with Mr
Abhishek Ghai, Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE CHANDER SHEKHAR

ORDER

16.05.2017

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Dr. S. Muralidhar, J.:

1. The Petitioner, by way of the present writ petition under Article 226 of the Constitution of India seeks to challenge the Final Finding dated 6th March 2017 issued by the Director General of Anti-Dumping and Allied Duties (Respondent No. 4) recommending levy of anti-dumping duty on imports of LAB from Qatar, Iran and China in exercise of the powers under the Customs Tariff Act, 1975 ('CTA') read with the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ('Rules').

2. One of the main planks of challenge to the Final Findings is that the Designated Authority ('DA') (Respondent No.4) acted in gross violation of principles of natural justice as "despite the fact that Respondent No. 4 granted hearing on 2nd March, 2017 to various interested parties in the matter, the same was in complete exclusion to the Petitioner herein." It is not in dispute that against the above Final Findings, the Petitioner has a statutory remedy by way of an appeal under Section 9 C of the CTA before the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT').

3. Mr Gopal Jain, learned Senior Counsel appearing for the Petitioner, was asked whether the Petitioner was precluded in any manner from urging this very ground before the CESTAT. The question was posed in the context of three orders passed by this Court in **Alcatel-Lucent India Ltd. v Designated Authority 2016 (338) ELT 397 (Del.)**; **PTA Users Association v. Union of India 2016 (340) ELT 125 (Del.)** and **Balaji Action Buildwell v. Union of India 2016 (337) ELT 166 (Del.)** where in similar circumstances, this Court declined to entertain a writ petition directly against the Final Finding of the DA without exhausting the remedy by way of an appeal before the CESTAT.

4. By way of a response to the said query, Mr Jain drew the attention of the Court to the decision of the Division Bench (DB) of the Gujarat High Court in **Nirma Ltd. v. Union of India** (judgment dated 23rd February, 2017 in C/SCA/16426/201) where a similar objection to the maintainability of the petition was rejected. The Gujarat High Court quashed the disclosure

statement and consequently the Final Finding of the DA.

5. The Court has examined the aforesaid judgment in ***Nirma Ltd. v. Union of India*** (*supra*) and in particular the following passage on which considerable emphasis was placed by Mr. Jain:

“38.2. Insofar as the maintainability of the petition in view of an alternative statutory remedy of appeal against the notification issued by the Central Government is concerned, the scope of inquiry before the appellate authority would be the notification issued by the Central Government and the final findings on which the same is based. The appellate authority while considering the validity of the notification under Section 18 of the Act, would not go into the validity or otherwise of the disclosure statement issued under rule 16 of the rules. Therefore, insofar as the challenge to the disclosure statement is concerned, as observed by this Court in the interim order dated 13.12.2016, the petitioners do not have any alternative statutory remedy and the only remedy available is by way of a writ petition under Article 226 of the Constitution of India. Besides, the disclosure statement forms the foundation of the final findings and the final notification withdrawing the anti-dumping duty and when the foundation falls, everything construction thereupon also falls. Having regard to the fact that the principal challenge in the petitions is to the disclosure statement, the submission that in view of the notification issued by the Central Government against which there is a statutory remedy available, the court may not exercise its writ jurisdiction under Article 226 of the Constitution of India does not merit acceptance. For the reasons set out in the earlier order dated 13.12.2016, this court does not find any reason to relegate the petitioners to the alternative statutory remedy. In any case, breach of principles of natural justice has always been considered to be an exception to appellate remedies and hence, in view of the above findings recorded by this Court regarding violation of the principles of natural justice at the stage of issuance of the disclosure statement as well as the final

findings, it is not possible to say that these petitions are not maintainable."

6. The Court is unable to be persuaded to agree with the above conclusion reached by the DB of the Gujarat High Court. The reasons that weighed with the Gujarat High Court to conclude that it will not be possible for the party aggrieved to challenge the disclosure statement before the CESTAT is unable to be discerned from the above passage. If the Final Finding can be appealed against before the CESTAT, there is no reason why the CESTAT cannot examine the correctness of the assertions made in the disclosure statement which constitutes the very foundation of the entire exercise leading up to the Final Finding by the DA.

7. The relevant portion of Section 9 C of the CTA reads thus:

"9C. (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 (hereafter referred to as the Appellate Tribunal).

(1A).....

(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) of 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."

8. Given the scope of the appellate power of the CESTAT as spelt out Section 9 C of the CTA, there is nothing to indicate that the CESTAT would be precluded from examining the validity of the disclosure statement issued under Rule 16 of the Rules. It is like saying that an appellate Court which is in exercise of its powers under Section 96 of the Code of Civil Procedure 1908 (CPC) judicially reviewing a decree and judgment in a suit would be precluded from examining the correctness of the assertions made in a plaint or a written statement. In the context of the proceedings before the DA, the disclosure statement would be comparable to a plaint. Consequently, the Court is not persuaded that the grounds urged in the writ petition cannot be urged before the CESTAT. It is not without significance that the Gujarat High Court makes no reference in the above passage in ***Nirma Ltd. v. Union of India*** (*supra*) to Section 9 C of the CTA.

9. The Court is also not persuaded to take a view different from the one it has in ***Alcatel-Lucent India Ltd. v Designated Authority*** (*supra*); ***PTA Users Association v. Union of India*** (*supra*) and ***Balaji Action Buildwell v. Union of India*** (*supra*).

10. The question is not whether this Court can entertain the present writ petition. The question is whether, in the facts and circumstances, it should? The power under Article 226 of the Constitution is an extraordinary one and

should not be exercised in a routine manner especially when the Petitioner has an efficacious and adequate alternative statutory remedy available. Otherwise, the Court would be supplanting the functioning of the statutory appellate authority tasked specifically with reviewing the correctness of the orders of the subordinate statutory authorities. Therefore, while acknowledging that this Court does have the jurisdiction to entertain the writ petition, in the facts and circumstances of the present case the Court finds that no case has been made out to persuade it to exercise its jurisdiction under Article 226 of the Constitution to examine the correctness of the Final Finding of the DA. The Court is of the firm view that every ground urged in the present writ petition can well be urged before the CESTAT.

11. The writ petition and applications are accordingly dismissed. However, this will not preclude the Petitioner from availing the statutory remedy of an appeal before the CESTAT in accordance with law and from urging all the grounds raised here, and any other ground it may have, to challenge the Final Finding of the DA. The Petitioner may request the CESTAT for an expedited hearing of its appeal.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 16, 2017

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