REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 008309-008310 OF 2017
(ARISING OUT OF SLP (C) NOS. 29268-29269 OF 2014)

UNION OF INDIA AND ANOTHER .....APPELLANT(S)

VERSUS

M/S. KUMHO PETROCHEMICALS
COMPANY LIMITED AND ANOTHER .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 008312 OF 2017
(ARISING OUT OF SLP (C) NO. 28170 OF 2014)

CIVIL APPEAL NO. 008313 OF 2017
(ARISING OUT OF SLP (C) NO. 29364 OF 2014)

CIVIL APPEAL NO. 008314 OF 2017
(ARISING OUT OF SLP (C) NO. 31046 OF 2014)

A N D

CIVIL APPEAL NO. 008311 OF 2017
(ARISING OUT OF SLP (C) NO. 27776 OF 2014)

J U D G M E N T

A.K. SIKRI, J.

On the demand raised by the indigenous industry,

original/ordinary investigation concerning imports of Acrylonitrile Butadiene Rubber (hereinafter referred to as the 'product') was taken up sometime in March 1996 for the purpose of levy of anti-dumping duty on the said import from Korea RP and Germany. The primary finding to this effect came to be published on July 17, 1997 whereby the Designated Authority recommended definitive anti-dumping duty. That resulted into issuance of Notification dated July 30, 1997 by the Central Government whereby anti-dumping duty was imposed under Section 9A of the Customs Tariff Act, 1975 (for short, the 'Act') on the said product. Before the expiry of five years period during which anti-dumping duty remains operative, the first sunset review investigation was initiated by the Authority which recommended continued levy of anti-dumping duty. It resulted into another Notification dated October 10, 2002. As per this Notification, the anti-dumping duty was to remain in force till October 10, 2007. Just before that, on October 08, 2007, second sunset review investigation was initiated by the Authority, which resulted in recommendation dated October 04, 2008 for continued imposition of anti-dumping duty on imports of the product from Koreal RP. On the basis of this recommendation, another Notification dated January 02, 2009 was issued by the

Central Government, which was to remain in force till January 01, 2014. On December 31, 2013, that is one day before the aforesaid Notification was to lapse, third sunset review investigation in respect of duty imposed on the imports of the subject product from Korea RP was initiated. Pursuant to the initiation of the said sunset review investigation, the Central Government issued Notification No. 6/2014-Customs dated January 23, 2014 thereby extending the validity of duty by one year, i.e. up to January 01, 2015, pending investigation. This was done in exercise of powers contained in second proviso to sub-section (5) of Section 9A of the Act. The aforesaid Notification dated January 23, 2014 came to be challenged by filing writ petitions by M/s. Kumho Petrochemicals Company Limited (respondent No.1 herein), who is a purchaser and exporter of the product from Korea RP, as well as by Fairdeal Polychem LLP (an importer of product from Korea RP). The High Court has, vide impugned judgment dated July 11, 2014, decided both the writ petitions. It has partly allowed these writ petitions holding that the order of continuation of anti-dumping duty, made after expiry of the duty period, is bad in law. However, another contention of the two writ petitioners, namely, the initiation of the anti-dumping duty investigation was also bad in law on the

ground that public notice of initiation was not published in the Official Gazette before January 01, 2014, i.e., before the expiry of the anti-dumping duty at the end of five years period, has not been accepted by the High Court. Repelling this argument, it is held by the High Court that public notice of initiation need not be published in the Official Gazette and that public notice is not a pre-requisite for initiation of an investigation, which can be issued within a proximate period of time after its initiation. Union of India and Automotive Manufacturers Association in India felt aggrieved by that part of the judgment whereby extension of anti-dumping duty has been allowed to be bad in law. Their appeals challenge that part of the order. On the other hand, writ petitioners are not satisfied with the outcome of the second issue about the initiation of anti-dumping duty. This part is challenged by these two writ petitioners. M/s. Omnova Solution (Pvt.) Limited is the other appellant which is also a domestic industry and has challenged the orders by filing two writ petitions thereby supporting the stand of Union of India and Manufacturers Association. It is for this reason all these appeals are heard analogously, which we propose to decide by this common judgment.

2) Few dates which are material to appreciate the controversy and

the stand which is taken by the respective parties need to be recapitulated. Since we are concerned with the validity of initiation of the third sunset review as well as Notification dated January 23, 2014 vide which earlier Notification was amended and extended for a period of one year under Section 9A of the Act, we will mention those dates which revolve around the aforesaid controversy.

3) As mentioned above, after the second sunset review, Notification dated January 02, 2009 was issued extending the period of anti-dumping duty for another five years, i.e. till January 01, 2014. On December 31, 2013, a day before the period of the aforesaid Notification was to expire, third sunset review was initiated. However, notification dated December 31, 2013 was made available only on January 06, 2014, i.e. after the expiry of original Notification. Thereafter, Notification dated January 23, 2014 was issued amending the earlier Notification dated January 02, 2009 so as to make it remain in force till January 01, 2015. This power of interim measure, pending review exercise is enshrined in second proviso to Section 9A(5) of the Act.

4) Entire scheme of anti-dumping is contained in Section 9A of the Act which reads as under:

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

Explanation. – For the purposes of this section, –

(a) "margin of dumping" in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means –

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

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

(a) comparable representative price of the like

article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

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

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

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined, -

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

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

(2A) Notwithstanding anything contained in subsection (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under subsection (2), unless specifically made applicable in such notification or such imposition, as

the case may be, shall not apply to articles imported by a hundred per cent. export oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation. – For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanations 2 to sub-section (f) of section 3 of Central Excise Act, 1944.

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

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

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

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

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

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

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

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

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

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

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

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

(8) The provisions of the Customs Act, 1962 and the

> rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act."

5) We are concerned with sub-section (5) of Section 9A of the Act which lays down that anti-dumping duty imposed under the said provision, unless revoked earlier, ceases to have effect on the expiry of five years from the date of such imposition. It means that such a notification has maximum life of 5 years. Thus, in normal course, Notification dated January 02, 2009 would have come to an end on January 01, 2014. However, first proviso to sub-section (1) of Section 9A of the Act empowers the Central Government to extend the period of such imposition for a further period of five years after undertaking a review. Second proviso stipulates that where a review is initiated before the expiry of the aforesaid period of five years, but the Authority has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force for a further period not exceeding one year. This second proviso, thus, is to provide a stopgap arrangement to take care of those contingencies where review exercise, though initiated earlier, could not be concluded during the currency of anti-dumping duty period specified in the

notifications. It is in exercise of this power contained in second proviso to sub-section (5) of Section 9A of the Act that Notification dated January 23, 2014 was issued extending the validity by another year, pending outcome of the sunset review.

6) At this juncture, we shall reproduce relevant texts of Notification dated December 31, 2013 vide which sunset review was initiated, as well as Notification dated January 23, 2014 vide which earlier Notification dated January 02, 2009 was amended by extending its validity by another year:

Notification dated December 31, 2013

"To be published in Part-I Section-I of the Gazette of India Extraordinary

F NO 15/29/2013-DGAD

Government of India
Department of Commerce & Industry

(Directorate General of Anti-Dumping & Allied Duties)

Udyog Bhavan, New Delhi – 110011

Dated the 31st December, 2013

NOTIFICATION

INITIATION

Subject: Sunset Review (SSR) Anti-dumping Investigation concerning imports of Acrylonitrile Butadiene Rubber (NBR), originating in or exported from Korea RP.

xx xx xx

2...Second sunset review investigations were initiated by the Authority on 8th October 2007 and the Authority recommended continued imposition of anti dumping duty on imports of the subject goods from Korea RP vide Notification No. 15/6/2007 dated 4th October 2008 and imposed by Finance vide Custom Notification No. 01/2009-Customs dated 2nd January 2009.

3. Whereas, M/s Omnova Solutions (India) Pvt. Ltd. have now filed a duty substantiated application before the Authority, as the domestic industry of the subject goods in India, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the subject gods, originating in or exported from Korea RP and consequent injury to the domestic industry and have requested for review, continuation and enhancement of the anti-dumping duties imposed on the imports of the subject goods, originating in or exported from Korea RP.

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Initiation of Sunset Review

7. In view of the duly substantiated application filed and in accordance with Section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority hereby initiates a sunset review investigation to review the need for continued imposition of anti dumping duties in force in respect of the subject goods, originating in or exported from the subject country and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry."

Notification dated January 23, 2014

"Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 06/2014-Customs (ADD)

New Delhi, dated the 23rd January, 2014

G.S.R. 48(E). – Whereas, the designated authority vide notification No. 15/29/2013-DGAD dated the 31st December 2013, published in the Gazette of India, Extraordinary, Part I, Section I, dated the 31st December 2013, has initiated review, in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) read with rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, in the matter of continuation of anti-dumping duty on 'Acrylonitrile Butadiene Rubber', originating in, or exported from Korea RP, imposed vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 01/2009-Customs, dated the 2nd January, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide G.S.R. 5(E), dated the 2nd January, 2009, and has requested for extension of anti-dumping duty for a further period of one year, in terms of sub-section (5) of section 9A of the said Customs Tariff Act;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) read with rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 01/2009-Customs, dated the 2nd January, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide G.S.R. 5(E), dated the 2nd January, 2009, namely:

In the said notification, after paragraph 2, the following shall be inserted, namely:-

> "3. Notwithstanding anything contained in paragraph 2, this notification shall remain in force upto and inclusive of the 1st day of January, 2015, with respect to anti-dumping duty on Acrylonitrile Butadiene Rubber originating in, or exported from Korea RP, unless revoked earlier."

[F.No. 354/179/2002-TRU (Pt.V)]
(Raj Kumar Digvijay)
Under Secretary to the Government of India"

7) Having noted the material dates, the relevant text of the Notifications as well as the statutory scheme provided under Section 9A of the Act, we may now formulate the two questions that arise for consideration in these appeals:

(1) After the second sunset review investigation, Notification dated January 02, 2009 was issued extending the anti-dumping duty that was imposed by the initial Notification. This Notification was valid for a period of five years, i.e. up to January 01, 2014. Though, the third sunset review was initiated and notification dated 31st December, 2013 was issued which was before the expiry of five years period, i.e. January 01, 2014, according to the writ petitioners, this Notification proposing the review was made public only on January 06, 2014. As per them, the date of reckoning would, therefore, be publication of the Notification, namely, January 06, 2014, which has to be taken into consideration for setting into motion the sunset review. Since it happened after the expiry of original Notification, the exercise of undertaking sunset review was impermissible. Therefore, the first question is:

Whether the date of December 31, 2013 or it is January 06, 2014, which would be the relevant date for determining initiation of the sunset review?

(2) Amendment Notification dated January 23, 2014, amending Notification dated January 02, 2009 by allowing it to remain in force till January 01, 2015 was issued after the original Notification had expired on January 01, 2014.

The question is: Whether such a Notification issued after the expiry date of the original Notification is without any legal authority and is, therefore, null and void?

8) We now proceed to discuss and answer these questions in seriatim.

QUESTION NO.1

9) It is not in dispute that in terms of Section 9A(5) of the Act, anti-dumping duty is effective for a period not exceeding five years from the date of its imposition. The Government is empowered to revoke the duty imposed even before the expiry of five years. In any case, such a duty admittedly ceases to be operative after five years from the date of imposition. At the same time, the Central Government is empowered to initiate review,

called 'sunset review', and to investigate and decide as to whether it is necessary to continue the levy of anti-dumping duty. As in the case of original Notification imposing such a duty, the Central Government is to satisfy itself that if the period of anti-dumping duty is not extended, it is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The nature of exercise to be undertaken by the Central Government in a 'sunset review' is somewhat different from the initial exercise to determine whether anti-dumping duty is to be levied at all or not. When it comes to review, the focus would be on the issue as to whether withdrawal of anti-dumping duty would lead to continuation or recurrence of dumping as well as injury to the domestic industry. The nature and scope of this exercise is lucidly explained by this Court in ***Reliance Industries*** v. ***Designated Authorities***[1] in the following manner:-

> "38. We are of the opinion that the nature of the proceedings before the DA are quasi-judicial, and it is well settled that a quasi-judicial decision, or even an administrative decision which has civil consequences, must be in accordance with the principles of natural justice, and hence reasons have to be disclosed by the Authority in that decision vide *S.N. Mukherjee* v. *Union of India* [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] .
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> 39. We do not agree with the Tribunal that the notification of the Central Government under Section

1 (2006) 10 SCC 368

> 9-A is a legislative act. In our opinion, it is clearly quasi-judicial. The proceedings before the DA are to determine the *lis* between the domestic industry on the one hand and the importer of foreign goods from the foreign supplier on the other. The determination of the recommendation of the DA and the government notification on its basis is subject to an appeal before CESTAT. This also makes it clear that the proceedings before the DA are quasi-judicial."

10) It is a common case that such a sunset review is to initiate before the expiry of five years period mentioned in the Notification. In the present case, no doubt, the Notification which is passed initiating sunset review is dated December 31, 2013. Though we have reproduced relevant portion of this Notification, a perusal of the entire Notification reveals that it is a detailed Notification running into almost fifteen pages wherein history of original investigation concerned the imports of the product in question from Korea RP and Germany is traced out leading to the findings that were arrived at by the Authority on the basis of which anti-dumping duty was imposed on the subject goods vide Notification dated July 30, 1997. This Notification thereafter deals with the second sunset review which led to passing of further Notification dated January 02, 2009. Thereafter, it mentions that M/s. Omnova Solution (Pvt.) Limited had filed a duly substantiated application on November 11, 2013 before the Authority alleging likelihood of continuation of recurrence of

dumping of the subject goods, originating in or exported from Korea RP, and a consequent injury to the domestic market and requested for another review. The Notification thereafter deals with the situation of domestic industry, product in question and satisfaction of the Authority that a case was made out for initiation of sunset review investigation to review the need for continued imposition of anti-dumping duty in force in respect of the product in question. The Notification thereof calls upon the interested parties to submit relevant information in the prescribed form and manner and furnish their views to the Authority for its consideration. Thus, a detailed exercise was done taking into account all the relevant factors in forming the opinion that the sunset review was desirable.

11) Though the Notification is dated December 31, 2013 and published on the same date, it was sent for distribution to Kitab Mahal Book Store on January 06, 2014. The validity would depend upon the issue as to whether December 31, 2013 is the date of reckoning or it is only January 06, 2014.

12) The High Court has answered the question in favour of the Government and against the writ petitioners on the ground that Section 9A(5) of the Act and its proviso do not mandate a public

notice or a Gazette Notification as a pre-condition for initiation of sunset review investigation. The reference to publication by Official Gazette is, significantly, in Section 9A(1) which talks of imposition of anti-dumping duty.

13) Questioning the aforesaid approach of the High Court, it was argued by the learned counsel for the writ petitioners that this view was contrary to the judgment of this Court in ***B.K. Srinivasan & Ors.*** v. ***State of Karnataka & Ors.***[2] wherein it was held as under:

> "15....Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication..."

14) It was argued that the aforesaid principle was reiterated in the case of ***Union of India & Ors.*** v. ***Ganesh Das Bhojraj***[3]. On the basis of this principle contained in the aforesaid judgments, it was submitted that even if the provisions of the statute, i.e. Section 9A, were silent about the publication of the Notification,

2 (1987) 1 SCC 658
3 (2000) 9 SCC 461

concerned Rules, namely, the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 were to be followed. It was argued that Rule 6(1) of the said Rules required issuance of public notice of initiation of investigation and, thus, having regard to the dicta laid down in the aforesaid judgments prescribing a mode of publication, publication by 'extraordinarily recognised Official Gazette', namely the Official Gazette, had to be resorted to and since it was made available to public only on January 06, 2014, that date has to be treated as the relevant date when the Notification came into force, having regard to the ratio of judgment in ***Union of India*** v. ***Param Industries Ltd.***[4]

15) Rule 6 of the aforesaid Rules deals with principles governing investigations. Sub-rule (11) thereof mentions that whenever Designated Authority has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, it shall issue a public notice underlying its decision and also mention the particulars/information which shall be provided in the said public notice. This Rule thereafter narrates the procedure which is to be followed which includes providing opportunity to the industrial user of the article under

4 2015 (321) ELT 192 (SC)

investigation and the respective consumer organisation in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping/injury where applicable, and casualty. The High Court is right that it is in this specific context that the said Rule mentions about issuance of public notice underlying its decision to initiate the investigation. Rule 23 deals with review, i.e. review to see the need for the continued imposition of anti-dumping duty and *inter alia* mentions that provisions of Rule 6 shall be *mutatis mutandis* applicable in the case of review, meaning thereby the procedure which is mentioned in Rule 6 shall be followed while undertaking review as well. Rule 6, thus, encompasses the principles of natural justice that are to be applied by the Designated Authority while undertaking the exercise of investigations *qua* imposition of dumping duty. Such a purport of Rule 6 of the rules is recognised in the case of ***Automotive Tyre Manufacturers Association*** v. ***Designated Authority & Ors.***[5], namely, the Designated Authority is to conform to the principles of natural justice, as can be seen from the following discussion in the said judgment:

> "82. the elaborate procedure prescribed in Rule 6 of 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said

5 (2011) 2 SCC 258

Rules."

16) First proviso to Section 9A(5) of the Act, when read along with Rule 6 of the Rules, do not lead to the conclusion that the intention to review and extend the anti-dumping duty, in the facts of a given case, have to be necessarily published and made available to all, before the expiry of the original notification. Requirement of Section 9A(5) of the Act is that the sunset review is to be initiated before the expiry of the original period for which the anti-dumping duty prevails. There is no additional requirement of making it public as well, necessarily before the said expiry date.

17) We, thus, agree with the conclusion of the High Court that insofar as requirement of public notice or a Gazette Notification is concerned, no such stipulation is made in Section 9A(5) and its proviso. On the other hand, Section 9A(1), which deals with imposition of anti-dumping duty, specifically refers to such an imposition by way of publication in an Official Gazette. Therefore, as far as initiation of review is concerned, once a decision is taken by the Government on a particular date, that would be the relevant date and not the date on which it is made public.

18) As a result, the appeals filed by the writ petitioners in which the

finding of the High Court on the aforesaid question is challenged, are dismissed as without any merits.

QUESTION NO.2

19) Ms. Pinky Anand, learned Additional Solicitor General, arguing against the aforesaid view taken by the High Court, submitted that once the Central Government decides to hold sunset review and passes an order in this behalf, as was done in the present case vide Notification dated March 31, 2013, it shows that the Central Government is, prima facie, satisfied that there is a justification in the request made by the indigenous industry for continuation of such a duty. Therefore, till this exercise is complete, necessary consequence has to be to continue anti-dumping duty and it is for this reason the second proviso to sub-section (5) of Section 9A of the Act is added in the statute. Otherwise, it was argued, the very purpose of this proviso stands defeated.

20) She submitted that the word 'may' occurring in the said proviso should be read as 'shall'. She also pointed out that in the instant case itself, after the completion of 'sunset review exercise', final notification was issued on September 04, 2015 signifying the

continuation of anti-dumping duty was justified. On that basis, it was argued that there should not be a position of hiatus or vacuum in between, which also justifies the interpretation that the extension under the second proviso is automatic. For this purpose, learned Additional Solicitor General referred to the following discussion in the case of ***Rishiroop Polymers (P) Ltd.*** v. ***Designated Authority and Additional Secretary***[6]:

> "35. After going through the entire record with the assistance of the learned counsel for the parties, we are of the opinion that the contention raised by the appellant is clearly contrary to the facts on record. The Designated Authority in its findings in the Mid-Term Review proceedings has categorically stated that all the factors have been taken into consideration while determining continuance of the anti-dumping duty. That apart, at the time of arguments, we had the advantage of going through the original records/documents (original/confidential file was produced in the Court) which had been placed before the Designated Authority, which shows that along with the information provided in the pro forma, necessary information with respect to all the 14 parameters had been provided by the domestic industry and considered by the Designated Authority, after due corrections. In view of the foregoing consideration, the argument of the appellant that all relevant factors have not been considered has no factual foundation.
>
> 36. Otherwise also, we are of the opinion that the scope of the review inquiry by the Designated Authority is limited to the satisfaction as to whether there is justification for continued imposition of such duty on the information received by it. By its very nature, the review inquiry would be limited to see as to whether the conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is no longer justification for continued imposition of the duty. The inquiry is limited

6 (2006) 4 SCC 303

to the change in the various parameters like the normal value, export price, dumping margin, fixation of non-injury price and injury to domestic industry. The said inquiry has to be limited to the information received with respect to change in the various parameters. The entire purpose of the review inquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffers."

21) The learned Additional Solicitor General also took the aid of Section 24 of the General Clauses Act, 1897. Section 24 which deals with continuation of orders issued under enactments repealed and re-enacted and reads as under:

> "Section 24 - Continuation of orders, etc., issued under enactments repealed and re-enacted:
>
> Where any [Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this Section].

22) She also relied upon the judgment in the case of ***Fibre Boards Private Limited, Bangalore*** v. ***Commissioner of Income Tax, Bangalore***[7]***.***

23) Mr. Basava Prabhu Patil, learned senior advocate appearing for domestic industry manufacturing the product in-question, supported the aforesaid submission of the learned Additional Solicitor General. He referred to Rule 23(b) of the Rules which, according to him, mandates the Designated Authority to initiate sunset review either *suo moto* or upon receipt of a duly substantiated petition. Duly substantiated petition implies that the petition should contain sufficient evidence that the cessation of anti dumping duty is likely to lead to continuation or recurrence of dumping and consequent injury to the domestic industry. In a situation where the Designated Authority has initiated the sunset review investigation based on duly substantiated petition, it follows that the Designated Authority is *prima facie* satisfied that the cessation of anti-dumping duty is likely to lead to dumping and consequent injury to the domestic industry. Under these circumstances, it is imperative that the anti-dumping duty continues to remain in force pending outcome of the review and

7 **(2015) 10 SCC 333**

there is no room for exercise of any discretion by the Finance Ministry under the second proviso to Section 9A(5). If the second proviso conferred a discretionary power, it would mean that the Finance Ministry would have to apply its mind and not act mechanically. However, neither the second proviso to Section 9A(5) nor Rule 23(1B) of the Rules set out any basis or criteria for the Finance Ministry to exercise its discretion at the stage of initiation of a sunset review.

24) He also submitted that the second proviso to Section 9A(5) does not contemplate issuance of a notification or order, as is in the case of an original levy under Section 9A(1), or extension of duty for a further period of 5 years consequent to a review under the first proviso to 9A(5). This position is borne out by the Rules, where in respect of duty imposed consequent to a determination in an original or review investigation, a notification is mandated. The requirement of a notification is found only in Rule 18, and Rule 23(3) read with Rule 18, both of which deal with duties consequent to an investigation. On the other hand, the second proviso to Section 9A(5) provides only that *"that anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year"* and

there is no mention of any affirmative act by the Central Government or the need to issue a notification providing for levy of an anti-dumping duty. Therefore, the proviso does not require any positive act, on the part of the Central Government. It is the Designated Authority, which has not concluded, is sufficient for continuation of the duty for a further period not exceeding one year.

25) On the basis of the aforesaid submissions, plea of Mr. Patil was that the word 'may' has to be read as 'shall' because of the reason that if interpreted otherwise, it would frustrate the objective of the provision, as held in ***N. Nagendra Rao & Co.*** v. ***State of A.P.***[8] (para 3) as well as ***Dinkar Anna Patil and Another*** v. ***State of Maharashtra and Others***[9] (para 26). Mr. Patil also endeavoured to take sustenance from the judgement of this Court in ***Sub-Committee on Judicial Accountability*** v. ***Union of India and Another***[10] wherein this Court held that "the enabling words are construed as compulsory whenever the object of the power is to effectuate the legal right....." He specifically relied upon the discussion contained in paras 85 and 86 which are to the following effect:

8 (1994) 6 SCC 205
9 (1999) 1 SCC 354
10 (1991) 4 SCC 699

> "85. Use of the word 'may' in clause (5) indicates that for the 'procedure for presentation of address' it is an enabling provision and in the absence of the law the general procedure or that resolved by the House may apply but the 'investigation and proof' is to be governed by the enacted law. The word 'may' in clause (5) is no impediment to this view.
>
> 86. On the other hand, if the word 'shall' was used in place of 'may' in clause (5) it would have indicated that it was incumbent on the Parliament to regulate even the procedure for presentation of an address by enacting such a law leaving it no option even in the matter of its procedure after the misbehaviour or incapacity had been investigated and found true:
>
> > "Sometimes, the legislature uses the word 'may' out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed." (See: *State of U.P.* v. *Jogendra Singh* [(1964) 2 SCR 197)."
>
> Indeed, when a provision is intended to effectuate a right — here it is to effectuate a constitutional protection to the Judges under Article 124(4) — even a provision as in Article 124(5) which may otherwise seem merely enabling, becomes mandatory. The exercise of the powers is rendered obligatory. In *Frederic Guilder Julius* v. *Right Rev. the Lord Bishop of Oxford; the Rev. Thomas Thellusson Carter* [(1879-80) 5 AC 214, 244] Lord Blackburn said:
>
> > "… The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right."

26) Without prejudice to the aforesaid contention, Mr. Patil also argued the matter from another perspective as well. He contended that even if such a Notification was necessary, there was no requirement that Notification had to be issued before the

expiry of the period specified in the original notification. According to him, there is no time limit prescribed in the language of the second proviso to Section 9A(5) to issue a Notification to extend the anti-dumping duty for a further period of one year. In the absence of any prescription that such extension of anti-dumping duty must be before expiry of existing anti-dumping duty, the same cannot be imposed. The word "continue" cannot be read to mean "continue without interruption". The word continue can mean both continuation with or without interruption and considering that the Act specifically permits initiation of investigations prior to expiry of duty, it follows that the word "continue" under the Act would include continuation with a break.

27) In support of this contention, he relied upon the decision of a Constitution Bench of this Court in ***Life Insurance Corporation of India*** v. ***Escorts Ltd.***[11] that in the absence of expression such as "prior" or "previous", it cannot be contended that extension ought to have been granted before the expiry of the original period. He submitted that when a statute enacted in the national economic interest comes up for consideration, the traditional norms of statutory interpretation must yield to broader notions of

11 (1986) 1 SCC 264

national interest and that, therefore, the Court has to interpret the statute in tune with the national interest that the statute sought to sub-serve. Para 63 reads as follows:

> "63. We are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) of the Act."

28) Building on the aforesaid edifice, the learned counsel proceeded further to argue that in the instant case, Notification dated January 23, 2014 was in fact issued. According to him, such a Notification is valid and should be treated as effective from January 02, 2014, or else, in any case from January 23, 2014 when a Notification was issued.

29) Mr. V. Lakshmikumaran, Advocate appearing on the other side, attempted to justify the order of the High Court on this aspect with the reasons which the High Court has assigned in support of its conclusion. His argument was that the High Court was right in holding that second proviso to Section 9A(5) was only an enabling provision and there could not be automatic extension of anti-dumping duty simply because the 'sunset review' exercise was initiated by the Government. He further submitted that the word 'may' cannot and should not be read as 'shall' in this case.

He pointed out that same provision, i.e., Section 9A had used the words 'may' and 'shall' at different places. Whereas sub-section (1) contained the expression 'may', sub-section (5) used the expression 'shall', while second proviso was enacted with the stipulation 'may'. Likewise, Rule 23(1B) of the Rules used the expression 'shall'. From this, argument of Mr. Lakshmikumaran was that Legislature was fully conscious as to which provision was to be made mandatory and which provision was directory in nature. He also argued that Section 9A was added in the Act by way of amendment after the Indian Government became signatory to the agreement for implementation of Article VI of GATT, popularly known as 'implementation agreement'. It is in the said implementation agreement, need for review was contemplated in Articles 11.1, 11.2 and 11.3 of the implementation agreement which provisions categorically provided that "the duty may remain in force pending the outcome of such a review" which means it was not obligatory that such a duty has to necessarily remain in force during the period when the sunset review is to be undertaken. Since, the implementation agreement uses the expression 'may' for continuation of duty pending the outcome of sunset review, same expression was used in second proviso to Section 9A(5) of the Act. He also

submitted that second proviso uses the language 'the anti-dumping duty' may continue to remain in force pending the outcome of such a review for a further period not exceeding one year. Laying stress on the words 'for a further period not exceeding one year', he argued that it was not necessary that the duty has to be extended for a full period of one year and such a period can be shorter one as well, i.e., less than a year. This would itself suggest that a Notification is mandated to prescribe the actual period which, in no case, can be more than one year. He also put emphasis on the word 'continue' in the aforesaid expression to argue that it would mean that there should be no discontinuance. Predicated on this, submission of Mr. Lakshmikumaran was that once the period prescribed by the original Notification expires, the right to exercise power under second proviso also comes to an end inasmuch as any notification issued after the expiry, and with a gap, would not be a case of anti-dumping duty 'continues to remain in force'. The learned counsel referred to two judgments in support of his arguments, viz. (i) ***Babu Varghese*** v. ***Bar Council of Kerala***[12] and ***Harivansh Lal Mehra*** v. ***State of Maharashtra***[13].

30) From the scheme of Section 9A of the Act, it becomes clear that

12 (1999) 3 SCC 422
13 (1971) 2 SCC 54

though the Notification for anti-dumping duty is valid for a maximum period of five years, the said period can be extended further with the issuance of fresh notification. For this purpose, it is necessary to initiate the review exercise before the expiry of the original notification, which review is commonly known as 'sunset review'. There may be situations where the sunset review is undertaken but the review exercise is not complete before the expiry of the period of original notification. It is because of the reason that the exercise of sunset review also demands complete procedure to be followed, in consonance with the principles of natural justice that was followed while imposing the anti-dumping duty in the first instance. To put it otherwise, this exercise contemplates hearing the views of all stakeholders by giving them adequate opportunity in this behalf and thereafter arriving at a conclusion that the continuation of the anti-dumping duty is justified, otherwise injury to the domestic industry is likely to continue or reoccur, if the said anti-dumping duty is removed or varied. Since this exercise is likely to take some time and may go beyond the period stipulated in the original notification imposing anti-dumping duty, in order to ensure that there is no vacuum in the interregnum, second proviso to sub-section (5) of Section 9A of the Act empowers the Central Government to continue the

anti-dumping duty for a further period not exceeding one year, pending the outcome of such a review. The question, however, is as to whether this extension to fill the void that may be created during the pendency of the sunset review is exercised is automatic, once the decision is taken to have sunset review of the anti-dumping duty or the continuation of such an anti-dumping duty has to be by a proper notification. As noted above, the High Court has held that second proviso is only an enabling provision and, therefore, power vested in the Central Government under the said proviso has to be specifically exercised, without which the anti-dumping duty cannot continue to remain in force with the lapse of original notification.

31) After giving due consideration to the arguments advanced by the learned counsel for the parties, we are inclined to agree with the High Court that proviso to sub-section (5) of Section 9A of the Act is an enabling provision. That is very clear from the language of the said provision itself. Sub-section (5) of Section 9A gives maximum life of five years to the imposition of anti-dumping duty by issuing a particular notification. Of course, this can be extended by issuing fresh notification. However, the words 'unless revoked earlier' in sub-section (5) clearly indicate that the

period of five years can be curtailed by revoking the imposition of anti-dumping duty earlier. Of course, provision for review is there, as mentioned above, and the Central Government may extend the period if after undertaking the review it forms an opinion that continuation of such an anti-dumping duty is necessary in public interest. When such a notification is issued after review, period of imposition gets extended by another five years. That is the effect of first proviso to sub-section (5) of Section 9A. However, what we intend to emphasise here is that even as per sub-section (5) it is not necessary that in all cases anti-dumping duty shall be imposed for a full period of five years as it can be revoked earlier. Likewise, when a review is initiated but final conclusion is not arrived at and the period of five years stipulated in the original notification expires in the meantime, as per second proviso 'the anti-dumping duty may continue to remain in force'. However, it cannot be said that the duty would automatically get continued after the expiry of five years simply because review exercise is initiated before the expiry of the aforesaid period. It cannot be denied, which was not even disputed before us, that issuance of a notification is necessary for extending the period of anti-dumping duty. Reason is simple. There no duty or tax can be imposed without the authority of 'law'. Here, such a law has to

be in the form of an appropriate notification and in the absence thereof the duty, which is in the form of a tax, cannot be extracted as, otherwise, it would violate the provisions of Article 265 of the Constitution of India. As a fortiorari, it becomes apparent that the Government is to exercise its power to issue a requisite notification. In this hue, the expression 'may' in the second proviso to sub-section (5) has to be read as enabling power which gives discretion to the Central Government to determine as to whether to exercise such a power or not. It, thus, becomes an enabling provision.

32) We are conscious of the fact that once sunset review is initiated, such initiation takes place only after a substantiated application/request is filed by the indigenous industry which is examined and a *prima facie* view is formed by the Central Government to the effect that such a review is necessitated as withdrawal of anti-dumping duty or cessation thereof may be prejudicial to the indigenous industry. Once such an opinion is formed and the sunset review is initiated, in all likelihood the Central Government would make use of second proviso and issue notification for continuing the said anti-dumping duty. At the same time, it cannot be said that without any overt act on the part of the

Central Government, there is an automatic continuation. The learned counsel for respondent rightfully pointed out that the legislature has consciously used the expression 'may' and 'shall' at different places in the same Section, i.e., Section 9A of the Act. In such a scenario, it has to be presumed that different expressions were consciously chosen by the Legislature to be used, and it clearly understood the implications thereof, therefore, when the word 'may' is used in the same Section in contradistinction to the word 'shall' at other places in that very Section, it is difficult to interpret the word 'may' as 'shall'. Therefore, it is difficult to read the word 'may' as 'shall'. Our conclusion gets strengthened when we keep in mind following additional factors:

33) The anti-dumping duty may continue, pending the outcome of the review, for a further period not exceeding one year. Thus, maximum period of one year is prescribed for this purpose which implies that the period can be lesser as well. The Government is, thus, to necessarily form an opinion as to for how much period it wants to continue the anti-dumping duty pending outcome of such a review. Moreover, since the maximum period is one year, if the review exercise is not completed within one year, the effect of that

would be that after the lapse of one year there would not be any anti-dumping duty even if the review is pending. In that eventuality, it is only after the review exercise is complete and the Central Government forms the opinion that the cessation of such a duty is likely to lead to continuation or recurrence of dumping and injury, it would issue a notification extending the period of imposition of duty. Therefore, there may be a situation where even when the power is exercised under second proviso and duty period extended by full one year, the review exercise could not be completed within that period. In that situation, vacuum shall still be created in the interregnum beyond the period of one year and till the review exercise is complete and fresh notification is issued. This situation belies the argument that extension under second proviso is to be treated as automatic to avoid the hiatus or vacuum in between.

34) Judgment in the case of ***Rishiroop Polymers (P) Ltd.*** has no application to the issue which we are dealing with, namely, interpretation of second proviso to sub-section (5) of Section 9A. The said judgment only deals with the nature of review exercise that has to be undertaken and mentions that the entire purpose for the review investigation is not to see whether there is a need

for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffers. In fact, even in the instant case, review exercise was completed much after the expiry of one year from the date when the earlier notification, on completion of five years term, came to an end. Likewise, the reliance on Section 24 of the General Clauses Act, 1897 is also of no consequence. This provision concerns with the orders, etc. which have already been issued under some enactments and in the meantime those enactments are repealed or re-enacted. In those situations, Section 24 of the General Clauses Act provides that such orders and regulations issued under the old Act would remain in force so far as they are not inconsistent with the provisions of the re-enacted Act. Such a provision again has no relevance with the issue which we are dealing with. Since judgment in the case of ***Fibre Boards Private Limited, Bangalore*** concerns with the interpretation of Section 24 of the General Clauses Act, that also would be of no help.

35) With this, we advert to the second facet of the argument, namely whether it was permissible for the Central Government to issue Notification dated January 23, 2014 thereby extending the

validity of duty by one year, i.e. after the period of earlier Notification came to an end on January 01, 2014? If so, whether this Notification would take effect from January 01, 2014 or January 23, 2014?

36) As noticed above, the High Court has held that once the earlier Notification by which anti-dumping duty was extended by five years, i.e. up to January 01, 2014, expired, the Central Government was not empowered to issue any Notification after the said date, namely, on January 23, 2014, inasmuch as there was no Notification in existence the period whereof could be extended. The High Court, in the process, has also held that the Notification extending anti-dumping duty by five years, i.e. up to January 01, 2014 was in the nature of temporary legislation and validity thereof could be extended, in exercise of powers contained in second proviso to sub-section (5) of Section 9A of the Act only before January 01, 2014.

37) We do not find any infirmity in the aforesaid approach of the High Court in interpreting the second proviso to Section 9A(5) of the Act. The High Court has rightly interpreted the aforesaid provision in the light of Article 11.1, 11.2 and 11.3 of the Agreement for Implementation and Article VI of the GATT,

commonly known as 'Implementation Agreement'. These clauses read as under:

> "11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.
>
> 11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.
>
> 11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definite anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiate or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation of recurrence of duping and injury. The duty may remain in force pending the outcome of such a review."

38) Obviously, sub-section (5) of Section 9A is in tune with the aforesaid Articles of Implementation Agreement and is to be interpreted in that hue.

39) India is a signatory to the Marrakesh Agreement establishing the World Trade Organization in 1994. Pursuant to this, it has implemented the Agreement on Implementation of Article VI of the GATT 1994 referred to as the Anti-dumping Agreement (ADA), which is one of the Agreements that forms part of the WTO treaty. In terms of Article 18.4 of the ADA, each Member country is required to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the ADA. As a consequence, Sections 9A, Section 9AA, Section 9B and Section 9C of the Act were enacted.

40) Two things which follow from the reading of the Section 9A(5) of the Act are that not only the continuation of duty is not automatic, such a duty during the period of review has to be imposed before the expiry of the period of five years, which is the life of the Notification imposing anti-dumping duty. Even otherwise, Notification dated January 23, 2014 amends the earlier Notification dated January 02, 2009, which is clear from its language, and has been reproduced above. However, when Notification dated January 02, 2009 itself had lapsed on the expiry of five years, i.e. on January 01, 2014, and was not in existence on January 23, 2014 question of amending a

non-existing Notification does not arise at all. As a sequitur, amendment was to be carried out during the lifetime of the Notification dated January 02, 2009. The High Court, thus, rightly remarked that Notification dated January 02, 2009 was in the nature of temporary legislation and could not be amended after it lapsed.

41) For this reason, plea taken by the Union of India and the domestic industry in their appeals has to fail. Consequently, their appeals are also dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
JUNE 09, 2017

ITEM NO.4 COURT NO.4 SECTIONS XIV

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal(Civil) Nos.29268-29269/2014

(From the judgment and order dated 11/07/2014 in WP(C) No. 1851/2014 and WP No. 1866/2014 passed by the High Court of Delhi at New Delhi)

UNION OF INDIA MINISTRY OF FINANCE
THROUGH SECRETARY AND ANOTHER Petitioner(s)

VERSUS

M/S KUMHO PETROCHEMICALS CO. LTD.
THROUGH ITS MANAGING DIRECTOR AND OTHERS Respondent(s)
WITH
SLP(C) NO. 28170/2014
SLP(C) NO. 29364/2014
SLP(C) NO. 31046/2014
SLP(C) NO. 27776/2014
[HEARD BY HON'BLE A.K. SIKRI AND HON'BLE ASHOK BHUSHAN, JJ.]

Date : 09/06/2017 These petitions were called on for judgment today.

For the Petitioner(s) **Ms. Rashmi Malhotra, Adv.**
For Mr. B.Krishna Prasad, AOR

Mr. V.Lakshmikumaran, Adv.
Mr. S. Seetharaman, Adv.
Mr. Darpan Bhuyan, Adv.
Mr. Ankur Sharma, Adv.
Mr. Bhargava Manstha, Adv.
for Mr. M.P. Devanath, AOR

Mr. E.C. Agrawala, AOR

Mr. Sanjay Sharawat, AOR

For the Respondent(s) **Mr. Abhay Kumar, AOR**

Mr. Sanjay Sharawat, AOR

Mr. E.C. Agrawala, AOR

Mr. Devashish Bharuka, AOR

Mr. V.Lakshmikumaran, Adv.
Mr. S. Seetharaman, Adv.
Mr. Darpan Bhuyan, Adv.
Mr. Ankur Sharma, Adv.
Mr. Bhargava Manstha, Adv.
for Mr. M.P. Devanath, AOR

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

Leave granted.

For the reasons recorded in the Reportable judgment, which is placed on the file, the appeals are dismissed.

(H.S. Parasher)
Court Master

(Parveen Kumar)
AR-cum-PS