**SUPREME COURT OF INDIA**

Automotive Tyre -- Appellant Manufacturers Association

Vs.

The Designated Authority

C.A.No.949 of 2006

(D.K.Jain and H.L.Dattu,JJ.,)

07.01.2011

**JUDGMENT**

**D.K.Jain, J.,**

1. This batch of civil appeals under Section 130E of the Customs Act, 1962 (for short "the Act") arises out of a common judgment and order, dated 9th September 2005, passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal) whereby the appeals filed by the appellants herein, have been dismissed and the levy of anti-dumping duty, imposed under Section 9A of the Customs Tariff Act, 1975 (for short "the Tariff Act") vide Notification 36/2005- Cus dated 27th April 2005 has been affirmed.

2. As common questions of law are involved in all the appeals and even the background facts are identical, these are being disposed of by this common judgment. However, to appreciate the controversy and the rival stands thereon, we shall refer to the facts in Civil Appeal No. 949 of 2006 as illustrative:

> "The appellant in this appeal viz. Automotive Tyre Manufacturers Association (for short "ATMA"), is an association representing domestic tyre manufacturing units, who import Nylon Tyre Cord Fabric (for short "NTCF") from various countries, including China, as one of their basic raw materials for manufacture of tyres. Sometime in 2003, the Association of Synthetic Fibre Industry (for short "ASFI"), respondent No. 3 herein, filed an application under the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles & for Determination of Injury) Rules, 1995 (for short "the 1995 Rules") before the Designated Authority (hereinafter referred to as "the DA") inter-alia, praying for imposition of anti-dumping duty under Section 9A of the Act, on imports of NTCF from China. In their application, ASFI had specifically contended that China being a non-market economy country, normal value of the export price from that country had to be determined as per the principle contemplated in para 7 of Annexure I to the 1995 Rules."

3. Taking cognizance of the application, on 29th October 2003, the DA initiated investigation by issuing notification in terms of Rules 5 and 6 of the 1995 Rules, indicating the period of investigation from 1st April 2002 to 30th June 2003. After conducting investigations, the DA recorded preliminary findings and issued public notice in that behalf on 30th June 2004, vide Notification No. 14/20/2003-DGAD, recommending imposition of provisional anti-dumping duty at the rate of US $ 0. 69 per Kg on NTCF originating in and exported from China. The recommendations made in the preliminary findings were accepted by the Central Government, and provisional anti-dumping duty was, accordingly, imposed vide Notification No. 72/2004-Cus, published on 26th July 2004. It would be of some significance to note here that the 2nd proviso to Rule 13 of the 1995 Rules postulates that the levy of provisional duty, in the first instance, can be for a period of six months, which may be extended by a further period of three months on the request of exporters representing a significant percentage of the trade involved.

4. Being aggrieved, one of the constituent members of ATMA viz. Apollo Tyres Ltd. filed Writ Petition No. SCA/8747/2004 before the Gujarat High Court, challenging the preliminary findings mainly on the ground that the investigation proceedings were in violation of the principles of natural justice and the procedure prescribed by the 1995 Rules. The said writ petition was dismissed by the High Court on 20th July 2004, observing thus: "we do not think it fit to entertain this petition at this stage, when the interested parties including exporters and importers are provided an opportunity to submit their views and are also assured of oral hearing."

5. The DA granted a public hearing to all the parties on 1st September 2004. However, on 1st November 2004, the officer functioning as the DA, who had conducted the investigations in the instant case was transferred, and a new officer took over as the DA. On 6th January 2005, the appellants herein, in particular ATMA and Ningbo Nylon, a Chinese exporter, requested the newly appointed DA to grant a fresh public hearing, before finalizing his report/recommendations.

6. On 12th January 2005, the DA sent the disclosure statement to all the parties concerned. On 17th January 2005, the appellants wrote a letter of protest to the DA, inter alia, contending that their submissions were not examined; the newly appointed DA had failed to grant them a public hearing and some of the new submissions made by the domestic industry formed part of the record.

7. One of the constituent members of ATMA viz. J.K. Industries Ltd. filed a Civil Writ Petition (No.548 of 2005) before the High Court of Rajasthan at Jodhpur challenging the investigation proceedings, preliminary findings and the disclosure statement. On 25th January 2005, the High Court admitted the said writ petition and granted ad- interim stay restraining the DA from issuing final findings in terms of the disclosure statement.

8. Thereafter, on 16th February 2005, the High Court modified the earlier interim stay order dated 25th January 2005 to the extent that the DA was allowed to proceed to record the final findings but the same had to be placed in a sealed cover.

9. On 9th March 2005, the DA issued final findings, vide notification No. 14/20/2003-DGAD, recommending the imposition of anti-dumping duty on NTCF originating from China at the rate of US $ 0.54 per Kg to US $ 0.81 per Kg.

10. AFSI, respondent no. 3 herein, filed SLP (C) No. 6878-6879 of 2005 challenging the orders of the High Court of Rajasthan dated 25th January 2005 and 16th February 2005. This Court granted leave in the said SLP, and set aside the said interim orders.

11. Ultimately, on 21st April, 2005, the High Court of Rajasthan dismissed the writ petition filed by JK Industries Ltd. observing that: "such findings are not reached by the Designated Authority in exercise of any legislative power vested in it for the purpose of deciding any litigatious contentions between the various interests or to adjudicate or to decide upon rights of any party to lis." Aggrieved by the said order, JK Industries preferred SLP (C) 11061 of 2005 before this Court. The said SLP was dismissed on 13 th May 2005 in view of the alternative remedy available to the appellant. The Court, inter alia, observed that:

> "However, we clarify that the following observations made in the impugned judgment by the Division Bench of the High Court- "investigation by the Designated Authority is in aid of legislative function"-shall not come in the way of the hearing by the Appellate Authority of any judicial review sought for thereafter by either party."

12. The Central Government accepted the final findings of the DA, and issued Notification No. 36/2005-Cus dated 27th April 2005 levying anti-dumping duty at different rates varying from US $ 0.54 per Kg to US $ 0.81 per Kg on NTCF w.e.f. 26th July 2004.

13. M/s. Apollo Tyres filed W.P. No. 19896 of 2005 before the High Court of Kerala for quashing the final findings of the DA. The High Court observed that since the petitioners had been represented by ATMA before the DA, ATMA should approach the High Court. Thereafter, ATMA filed W.P. No.20587 of 2005 before the High Court.

14. By a common order dated 12th July 2005, the High Court of Kerala disposed of both the writ petitions, directing the incumbent DA to grant hearing on the issues raised in the writ petition, and issue orders modifying the final findings to the extent required.

15. ASFI filed S.L.P. (C) No. 15704-15705 of 2005 before this Court challenging the said order of the High Court of Kerala. This Court disposed of the SLP vide order dated 12th August 2005, suspending the operation of the judgment of the High Court of Kerala, and directing the parties to pursue the remedy before the Tribunal under Section 9C of the Act.

16. As afore-mentioned, the Tribunal has dismissed the appeals, preferred by ATMA, Apollo Tyres, J.K. Tyres, ASFI and Ningbo Nylon and confirmed the levy of anti-dumping

duty in terms of Notification No. 36/2005-Cus. Dealing with the main grievance of the appellants viz. denial of an opportunity of hearing and thus, violation of the principles of natural justice, the Tribunal has held that: - (i) an anti¬dumping duty has all the characteristics of a tax as it is imposed under statutory power without the tax-payers consent, and its payment is enforced by law, therefore, issuance of the notification by the Central Government in the Official Gazette under Rule 18 of the 1995 Rules read with Section 9A(1) of the Tariff Act imposing anti- dumping duty upon importation of the subject article in India is purely a legislative function; (ii) the process of imposing anti-dumping duty which is legislative in nature does not decide any existing dispute or 'lis' inter-parties; it only determines whether imposition of anti- dumping duty is called for in relation to dumped imports and if so, at what rate, on the basis of the information collected from the exporters-importers and a large number of other interested parties; (iii) there can never be a 'lis' between the State and its citizens in the matter of exercise of legislative power to impose tax as there is no "right-duty" relationship between the Central Government imposing anti-dumping duty under the Tariff Act and the 1995 Rules, and the exporters or importers who are given an opportunity to give information under the Rules and that the principles of natural justice are not applicable to a legislative process for enactment of law and the persons affected have no right to an opportunity to be heard before the enactment; (iv) if, however, the Parliament, in its wisdom, for an impost like the anti- dumping duty, which arises due to and has nexus with the interest of domestic industry, provides a mechanism for taking into consideration the views of those who will be affected and the other interested parties, that will not amount to vesting in them a right to be heard personally, arising as a consequence of the principles of natural justice, against taking legislative action of imposing anti-dumping duty and fixing its rate for the subject article and (v) in cases where investigative procedure leading to determination of the rates of taxes is undertaken by the Parliament, through its agencies, as per its rules of business, there will be absolutely no scope for any judicial tribunal to examine whether any procedural irregularity was committed by not consulting any particular section of the public likely to be adversely affected by such law. This is precisely why legislative enactments are not generally made subject to the principles of natural justice, as doing so may lead to a finding of irregularity of procedure which is prohibited by the constitutional scheme of law making. It is settled law that there is no right to be heard before the making of legislation, whether primary or delegated, unless specifically provided by the Statute.

17. Thus, the Tribunal held that the imposition of anti-dumping duty being legislative in character, the principles of natural justice were not applicable to the proceedings before the DA and, therefore, persons affected had no right to be heard before the imposition of duty.

18. Hence the present appeals. Submissions made on behalf of the appellants:

19. Mr. S.K. Bagaria, learned senior counsel appearing on behalf of ATMA, piloting the arguments on behalf of the appellants, referring to various provisions of the Tariff Act and 1995 Rules strenuously urged that the functions discharged by the DA are quasi-judicial in nature. Relying on the decisions of this Court in *Province of Bombay Vs. Khushaldas S. Advani & Ors.*[1]*; Shri Radheshyam Khare & Anr. Vs. The State of Madhya Pradesh & Ors.*[2]*;*

*Shivji Nathubhai Vs. Union of India & Ors.*[3]*; Shankarlal Aggarwala & Ors. Vs. Shankarlal Poddar & Ors.*[4] *S.K. Bhargava Vs. Collector, Chandigarh & Ors.*[5]*, Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmi Chand & Ors.*[6]*; Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I & Anr.*[7], learned counsel contended 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 and disputed by another, on the basis of some objective standards, and is required by the terms of the statute to act judicially, then such authority discharges quasi-judicial functions. Learned counsel submitted that such attributes are in-built in the scheme of the Tariff Act and the 1995 Rules, in as much as:-(i) there are interested parties, some opposing the levy and some supporting the levy; (ii) there is a lis between these interested parties; (iii) Rule 6(1) of the 1995 Rules mandates that the DA has to issue a public notice to all interested parties, and their responses to the same are elicited; (iv) evidence and information is collected, and the evidence presented by one interested party is made available to the other interested parties in terms of Rule 6; (v) a public hearing is conducted, and all the information presented orally has to be subsequently reduced into writing as per Rule 6(6); (vi) Rule 12 and 17 provide that the DA is required to determine all matters of facts and law by adjudicating on the material placed before the said authority and record reasons leading to the final determination on the existence, degree and effect of dumping and (vii) Section 9C of the Tariff Act contemplates an appeal to the Tribunal on all aspects of the determination by the DA viz. the existence, degree and effect of dumping. Learned counsel then urged that since the said Section provides for a remedy of appeal on all the facets of determination, the Tribunal has no option but to examine all aspects viz. existence, degree and effect of dumping on the basis of the material placed before the DA, in order to confirm, modify or annul the orders appealed against. Commending us to the decision of a Constitution Bench of this Court in *PTC India Limited Vs. Central Electricity Regulatory Commission*[8], learned counsel contended that whenever a particular statute provides for an appeal against the decision of an authority, then orders/decisions of that authority are quasi¬judicial in nature. In order to buttress the argument, learned counsel also commended us to two publications of the Government of India viz. "Anti-Dumping and Anti-Subsidy Measures" and "Anti-Dumping, A Guide" wherein the Government has accepted that the functions of the DA are quasi-judicial in nature. Learned counsel argued that even the procedure adopted by the DA leads to the inescapable conclusion that it discharges quasi-judicial functions in as much as the DA grants all interested persons an opportunity to make oral submissions. Relying on the decision of this Court in *Designated Authority (Anti-Dumping Directorate), Ministry of Commerce Vs. Haldor Topsoe* [9], learned counsel contended that it is a settled practice that if during the course of investigations, the DA conducting the public hearings is transferred, the new DA grants a fresh hearing before making the final order.

20. Learned counsel urged that in light of the observations made by this Court in *Reliance Industries Ltd. Vs. Designated Authority & Ors.*[10] *and J.K. Industries Vs. Union of India* (SLP (C) No.11061 of 2005), it is fallacious to contend that the functions discharged by the DA are legislative in nature. Learned counsel submitted that in *Tata Chemicals Limited (2) Vs. Union of India & Ors.*[11] *and Tata Chemicals Limited Vs. Union of India & Ors.*[12], this Court has also held that an appeal before the Tribunal is maintainable against the determination by the DA together with the Customs Notification. Learned counsel contended that even if the

DA's functions are held to be in exercise of conditional legislation, it would be of the nature as mentioned in the third category of cases highlighted in *State of T.N. Vs. K. Sabanayagam & Anr.*[13] and Godawat Pan Masala Products I. P. Ltd. & Anr. Vs. Union of India & Ors.14, in as much as the levy of duty would depend on the satisfaction of the DA on objective facts placed by one party seeking benefits, and even in such a situation principles of natural justice are required to be complied with.

21. Learned counsel urged that at this stage the respondents cannot be allowed to contend that no prejudice was caused to the appellants due to non-grant of hearing, as the DA did not take this stand either in the disclosure statement or in the final findings. Further, the respondents have not submitted any counter-affidavit in this behalf. Commending us to the decision of this Court in Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.15, learned counsel contended that the validity of an order has to be judged by the reasons mentioned therein, and cannot be supplemented by fresh reasons in the form of affidavits or otherwise. Learned counsel contended that despite several requests, the incumbent DA did not grant hearing to ATMA. Learned counsel complained that after the issuance of disclosure statement, a specific request for personal hearing was made vide letter dated 24th January, 2005 but the DA did not even make a reference to the said request in his final order. According to the learned counsel, non-consideration of the request for hearing by itself has caused grave and serious prejudice to the appellants.

22. Learned counsel asserted that even if it is held that the functions of the DA are administrative in nature, the principles of natural justice would still have to be complied with as the decision of the DA entails far-reaching civil consequences. In support, reliance was placed on the decisions of this Court in Mohinder Singh Gill (supra); *Maneka Gandhi Vs. Union of India & Anr.*[16] *; Sahara India (supra); SBP & Co. Vs. Patel Engineering Ltd. & Anr.*[17] *and C.B. Gautam Vs. Union of India & Ors.*[18].

23. Relying heavily on the decision of a Constitution Bench of this Court in Gullapalli Nageswara Rao & Ors. Vs. Andhra Pradesh State Road Transport Corporation & Anr.19, learned counsel contended that the final determination by the new DA without granting a hearing to the appellants is bad in law in as much as it is well settled that the principles of natural justice mandate that the authority who hears, must also decide. Learned counsel urged that the hearing granted by the new DA to the Advocates of Ningbo Nylon, the Chinese Exporter, is of no consequence in so far as the Indian Tyre Manufacturers were concerned, particularly when the hearing granted to Ningbo Nylon was confined to their offer of price undertaking, which otherwise is a confidential hearing not akin to the public hearing, which was requested by ATMA.

24. In relation to the levy of anti-dumping duty during the interregnum period between 26th January, 2005 to 26th April, 2005, Mr. Bagaria contended that the provisions of the Tariff Act or the Rules made thereunder do not contemplate the power to levy duty retrospectively, save and except as provided in Section 9A(3) of the Tariff Act. Relying on the decisions of this Court in The *Cannanore Spinning and Weaving Mills Ltd. Vs. Collector of Customs and Central Excise, Cochin & Ors.*[20]*; Hukam Chand Etc. Vs. Union of India & Ors.*[21]; *Orissa*

*State Electricity Board & Anr. Vs. Indian Aluminum Co. Ltd.*[22]*; Regional Transport Officer, Chittoor & Ors. Vs. Associated Transport Madras (P) Ltd. & Ors.*[23]*; Mahabir Vegetable Oils (P) Ltd. & Anr. Vs. State of Haryana & Ors.*[24] *and Bakul Cashew Co. & Ors. Vs. Sales Tax Officer, Quilon & Anr.*[25], learned counsel contended that if no power has been conferred upon the delegatee by the parent Act to levy tax or duty retrospectively, the delegatee cannot confer upon itself any such power by making any such Rule nor can it exercise any such power or levy duty or tax retrospectively. Section 9A(3) of the Tariff Act only provides for the levy of duty retrospectively prior to the date of issuance of notification levying provisional duty and the instant case, is therefore, not covered under Section 9A(3). Learned counsel urged that Section 9A (3) makes it manifest that wherever the legislature intended to confer the power to levy duty retrospectively, it has specifically provided for the same.

25. Learned counsel then contended that the submission of the respondents that the levy of anti-dumping duty is in continuation for the period of five years commencing from the levy of provisional duty is contrary to the scheme and provisions of the Tariff Act. It was submitted that it is manifest from the plain language of Section 9A, the charging provision, that the levy of anti-dumping duty is not automatic. Therefore, the continuity of the levy, in terms of the Section itself, is only for the period of notification and nothing more and there could be continuity only when the final notification is issued before the expiry of the provisional duty covered under the provisional notification. However, if the Government allows the period of levy of the provisional duty to expire, and issues the final notification thereafter, there can be no levy during the interregnum period.

26. Emphasising that provisional anti-dumping duty being a short-term measure, which in terms of Rule 13 of the 1995 Rules can remain in force only for a period not exceeding six months, extendable by a further period of three months under the circumstances mentioned in the said Rule, learned counsel pointed out that since in the instant case, there was no such extension, the period for levy of provisional duty expired on 25th January, 2005. Furthermore, in *S&S Enterprise Vs. Designated Authority & Ors.*[26], this Court had observed that the imposition of anti-dumping duty under Section 9A of the Tariff Act, is the result of the General Agreement on Tariff and Trade and, therefore, the levy of provisional duty should be in accordance with Rule 13 of the 1995 Rules and Article 7.4 of the agreement on Tariffs and Trade, 1994 (for short "the WTO Agreement"), which contemplates that the provisional duty shall be limited to as short a period as possible, and, in fact, provides for the outer limit for the imposition of provisional duty.

27. Learned counsel contended that in the instant case, the provisional levy was finalized and validated by paragraph 2 of the final anti-dumping duty notification dated 27th April, 2005, and by virtue of the said paragraph the provisional duty was merely replaced by the final duty. Rule 20(2)(a) of the 1995 Rules uses the expression "where a provisional duty has been levied" and "in absence of provisional duty", thereby making it clear that the final measure merely validates the provisional duty already levied. The use of the said expression also establishes that Rule 20(2)(a) applies only when the provisional duty had in fact been levied, and therefore the said Rule has no application to the interregnum period. This position is also clarified by Rule 21 of the 1995 Rules which provides that if final duty is higher than the

provisional duty already imposed and collected, the differential shall not be collected from the importer, and if it is lower, the differential shall be refunded to the importer, argued the learned counsel. Learned counsel asserted that the scheme of Rules 20 and 21 also makes it clear that no additional liability can be fastened for the periods prior to the date of final levy over and above the provisional duty for the period during which such provisional levy was in force. Learned counsel thus, argued that if Rule 20(2)(a) is construed as conferring any power on the Central Government to levy duty retrospectively, the Rule itself would become ultra vires the Act, and such construction which maintains the validity of the provision should be preferred. Commending us to the decisions of this Court in *State of Madhya Pradesh & Anr. Vs. Dadabhoy's New Chiri Miri Ponri Hill Colliery Co. Pvt. Ltd.*[27] and *Yudhishter Vs. Ashok Kumar*[28], learned counsel submitted that reading down of a legislation to maintain its validity is an accepted principle of law.

28. Learned counsel then submitted that even if it is assumed that the Government has the power to levy anti-dumping duty retrospectively, even then the conditions precedent for making such retrospective levy as mentioned in Rule 17(1)(a) and Rule 20(2)(a), which respectively require the DA, to record: (i) a finding as to whether retrospective levy is called for and if so, the reasons thereof and the date of commencement of such levy and (ii) a specific finding to the effect that the dumped imports would have, in the absence of the provisional duty, led to injury, were not satisfied. Relying on the decision of this Court in Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.298 Mr. Bagaria submitted that when a statutory authority is required to discharge its functions in a particular manner, such functions must be discharged in that manner alone or not at all. Learned counsel urged that Section 9A which is the charging Section must be construed strictly, and when the said Section itself makes the levy of duty contingent upon the existence of notification, there can be no scope for invoking any concept of continuity in the absence of a notification.

29. Learned counsel urged that Section 9A(5) of the Tariff Act does not have any application in the instant case as the anti-dumping duty referred to in that Section is the final duty, and not the provisional duty. The position is also clarified by the first and second proviso to the said sub-Section, in as much as the first proviso refers to the extension of "such imposition" by five years, and such extension can only be in relation to the final levy, while second proviso relates to the extension of final levy for a further period of one year when the review is initiated before the expiry of five years. Learned counsel urged that the fact that the outer time limit of five years is only contemplated in relation to the final duty and not the provisional duty is also evident from Article 11.3 of the WTO Agreement. Learned counsel contended that the outer limit for the levy of provisional duty cannot be set at naught by an alleged theory of continuity.

30. Learned counsel contended that in light of the decision of this Court in *Shenyang Matsushita S. Battery Co. Ltd. Vs. Exide Industries Ltd. & Ors.*[30], the DA is required to construct normal value after sequentially applying the different methods mentioned in paragraph 7 of Annexure I of the 1995 Rules, and only if construction by the first two methods is not possible, reliance can be placed on the third method. Learned counsel contended that in the instant case, the domestic industry had premised their application on

the assumption that normal value can be constructed on the basis of any of the methods, and therefore, it resorted to the last method viz. the price paid or payable in India. This erroneous approach was adopted by the DA in the Initiation Notification dated 29th October, 2003. The appellants objected to the same in their submissions before the DA, and the same was ignored by the DA in its preliminary findings, and thereafter, in the disclosure statement. Learned counsel contended that the method followed by the DA is clearly in violation of the requirements of paragraph 7 of the Annexure I of the 1995 Rules in as much as it did not undertake any selection process for selecting market economy third country, it did not invite any comments and it did not give any opportunity to the parties in that regard.

31. Ms. Meenakshi Arora, learned counsel appearing on behalf of Ningbo Nylon adopting the same line of arguments, submitted that the second hearing granted to Ningbo Nylon by the new DA on 9th March 2005, was only for the purpose of Ningbo Nylon's price undertaking, and the same cannot be equated with the public hearing envisaged under Rule 6(6) of the 1995 Rules, in as much as: (i) Section 9B(1)(c)(iii) makes it clear that the price undertaking is in the nature of an agreement between a specific exporter and the Central Government wherein the exporter agrees to revise its price in a manner that the injurious effect of dumping is eliminated; (ii) confidential information has to be considered to ascertain the injurious effect of dumping and (iii) in terms of Rule 7, the hearing relating to price undertaking is confidential, and the same does not relate to all the aspects of investigation or to all the parties before the DA. Learned counsel thus, urged that even if it is assumed that the second hearing granted to counsel for Ningbo Nylon was in the nature of a public hearing in terms of Rule 6(6), the same cannot be considered as an effective opportunity as it is inconceivable for any counsel to participate in any meaningful discussion unless accompanied by the representative of the concerned exporter. Furthermore, the notice for hearing on 9th March 2005, given on 7th March, 2005 could not be considered as an adequate opportunity keeping in view the time difference between India and China.

**Submissions made on behalf of the Respondents:**

32. Mr. Harin P. Raval, learned Additional Solicitor General, appearing on behalf of the DA, defending the decision of the Tribunal, contended that since the 1995 Rules were in the nature of a "super special legislation", having economic policy overtones, this Court should adopt a policy of judicial deference. Commending us to the decision of this Court in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors.31, learned counsel urged that while interpreting a legislation, the Courts should have regard to both the text and context of the legislation, and in light of the fact that the 1995 Rules contemplate adjustment of India's international trade policy measures, allowing a great deal of leeway in terms of policy operation, any judicial interpretation of the 1995 Rules must accord with this object of these Rules.

33. To start with, learned counsel strenuously urged that the levy of anti- dumping duty as per the procedure laid down in 1995 Rules constitutes a legislative act. Drawing support from the decisions of this Court in *Shri Sitaram Sugar Company Ltd. & Anr. Vs. Union of India & Ors.*[32] *and Dalmia Cement (Bharat) Ltd. & Anr. Vs. Union of India & Ors.*[33], learned

counsel stressed that it is a settled principle that price fixation is a legislative function, and the legislature is competent to delegate its power to its agent and authorize it to adjudicate and arrive at findings of fact, which would be conclusive. Learned counsel pleaded that it is again a settled principle of law that principles of natural justice do not apply in case of legislative acts. In support, reliance was placed on the decisions of this Court in *Ramesh Chandra Kachardas Porwal & Ors. Vs. State of Maharashtra & Ors.*[34]*; Saraswati Industrial Syndicate Ltd. & Ors. Vs. Union of India*[35] *and P.M. Ashwathanarayana Setty & Ors. Vs. State of Karnataka & Ors.*[36.] Moreover, in relation to the cases involving economic regulation, the Courts have usually adopted a policy of deference as was held by this Court in the *The State of Gujarat & Anr. Vs. Shri Ambica Mills Ltd., Ahmedabad & Anr.*[37], asserted the learned counsel. In relation to taxing statutes in particular, larger discretion is accorded in light of their inherent complexity as was held in *Jardine Henderson Limited Vs. Workmen & Anr.*[38] Learned counsel further contended that competence to legislate encompasses the competence to legislate both prospectively and retrospectively as was held in M/s. *Krishnamurthi & Co. Etc. Vs. State of Madras & Anr.*[39] and *Empire Industries Ltd. & Ors. Vs. Union of India & Ors.*[40]. Commending us to the decision of this Court in Haridas Exports (supra), learned counsel urged that since in an anti-dumping proceeding, no interest group other than the domestic producers have full legal standing, it is evident that the said proceedings are not adversarial, judicial or quasi-judicial in nature. However, at a later stage of his arguments, the learned counsel candidly conceded that at best the proceedings before the DA could be considered as administrative in nature.

34. Learned counsel urged that it is also well settled that the principles of natural justice will take their color from the context of the statutory provisions under which the issue is to be adjudicated as has been observed in *The New Prakash Transport Co. Ltd. Vs. The New Suwarna Transport Co. Ltd.*[41] *and Haryana Financial Corporation & Anr. Vs. Kailash Chandra Ahuja*[42]. Learned counsel submitted that the alleged breach of natural justice principles has to be judged in light of the prejudice caused to the party, and public interest, and not merely on technicalities. Learned counsel asserted that in any event in the instant case, the new DA had afforded an opportunity of hearing to the appellants on 7th March, 2005, which they failed to avail of. Learned counsel submitted that at the most the present case may be considered as one in which only a "partial hearing" was granted, and, therefore, in such a situation, the appellants were obliged to establish that some prejudice had been caused to them because of lack of proper oral hearing. In support of the argument, reliance was placed on the decision of this Court in *State Bank of Patiala & Ors. Vs. S.K. Sharma*[43]. Controverting the stand of the appellants that the recommendation of the DA was vitiated because the incumbent DA had not heard the appellants, learned counsel placed heavy reliance on the decision in Ossein and Gelatine Manufacturers' Association of India Vs. Modi Alkalies and Chemicals Limited & Anr.44, wherein despite the fact that hearing was conducted by one authority, and the decision was rendered by another, this Court did not set aside the said decision. Learned counsel emphasised that since in the instant case the appellants have neither established prejudice, nor have they challenged the findings of the DA on injury or in the sunset review, there is no merit in these appeals. Relying on P.M. Aswathanarayana Setty (supra), learned counsel pleaded that having regard to the object of the legislation, this Court should prefer an interpretation that would save the proceedings of

the DA. Distinguishing the decision in PTC India Ltd. (supra), learned counsel submitted that reliance on the said decision by the appellants was misplaced in as much as in the said judgment, the Court itself clarified that its findings shall not be construed as a general principle of law applicable to other enactments and Tribunals. Moreover, the proceedings under Section 62 of the Electricity Act, 2003 are adversarial in nature, and therefore they cannot be likened to an anti-dumping investigation in which the only consideration is fairness in trade. Learned counsel asserted that while the proceedings under the Electricity Act relate to regulation of electricity within the territory of India, anti¬dumping investigations, by their very nature, have an international perspective; the decision of the Commission under Electricity Act is binding whereas the findings of the DA are merely recommendatory; while the interests of various groups have to be examined in proceedings under the Electricity Act, no interest group other than the domestic industry has full legal standing in an anti-dumping investigation and that proceedings under the Electricity Act are held by a court of law, but anti¬dumping investigation is conducted by governmental agencies through administrative procedures.

35. Mr. Krishnan Venugopal, learned senior counsel appearing on behalf of the ASFI contended that the exact scope and ambit of the principles of natural justice, including the nature of hearing to be accorded must be decided keeping in view the nature and object of the Tariff Act and the 1995 Rules, and therefore, the question as to whether the hearing contemplated under the 1995 Rules is oral or by written representation will have an important bearing on the issue as to whether the new DA was required to conduct a fresh public hearing. According to the learned counsel even if the functions of the DA are held to be quasi-judicial in nature, the new DA is not required to hold a fresh public hearing as under Rule 6(6) of the 1995 Rules while interested parties are allowed to present information orally, but the DA can take into consideration only that information which is subsequently reproduced in writing and, therefore, the principles enunciated in Gullapalli (supra) are not applicable in the instant case. In that case, the oral hearing was preceded by written objections and representations, while under the Tariff Act and Rules, the sequence is reversed in as much as in proceedings before the DA, parties present oral information followed by reproduction of that information in writing, argued the learned counsel. Commending us to the decisions in *General Manager, Eastern Railway & Anr. Vs. Jawala Prosad Singh*[45]*; Madhya Pradesh Industries Ltd. Vs. Union of India & Ors.*[46]*; J.A. Naiksatam Vs. Prothonotary & Senior Master, High Court of Bombay & Ors.*[47]*; R Vs. Immigration Appeal Tribunal & Anr.*[48] *and Selvarajan Vs. Race Relations Board*[49], learned counsel contended that as per the prescribed procedure an opportunity to place the relevant information on record in writing is sufficient compliance with the principles of audi alteram partem. To buttress his stand, reliance was placed on the decisions of this Court in *Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey & Ors.*[50]*;* M/s. *Tractoroexport, Moscow Vs. M/s Tarapore & Company & Anr..*[51] *and Jolly George Varghese & Anr. Vs. The Bank of Cochin.*[52]. It was also contended that since Sections 9A to 9C were introduced in the Tariff Act in order to comply with India's WTO obligations, the interpretation of these provisions should be consistent with the provisions of the treaty. It was urged that having submitted written submissions on 10th September, 2004 pursuant to the public hearing on 1st September, 2004, as also the rejoinder, the appellants cannot

complain of violation of the principles of natural justice, more so when the DA had also afforded opportunities to counsel of the appellants on two occasions i.e. 25th January, 2005 and 7th March, 2005, to appear before him but the appellants failed to appear on both the occasions. It was asserted that in any event the principles enunciated in Gullapalli (supra) are not applicable to the instant case, in as much as the role of the DA is merely recommendatory.

36. It was argued that the decision of a two judge Bench in Reliance Industries (supra), relied upon on behalf of the appellants, is per incuriam in light of the decision of the three judge Bench decision in Haridas Exports (supra), which was not even noticed in Reliance Industries (supra).

37. As regards the decision in PTC India (supra), inter-alia, holding that whenever an appeal is provided against an order, the determination becomes quasi-judicial, it was submitted that as the said observations were made in the context of the Electricity Act, which is entirely different in purport and scope from the Tariff Act read with the 1995 Rules, the ratio of the said decision has no bearing on the facts of the present case. Learned counsel stressed that one of the attributes of a quasi¬judicial authority is that it must render a binding decision, and if its decision is merely advisory, deliberative, investigatory or conciliatory in character, which has to be confirmed by another authority before it becomes binding, then such a body is administrative in character, as was observed by this Court in *Union of India Vs. Mohan Lal Capoor.*[53], which is the case here, as the role of the DA is merely recommendatory. In support, reliance was placed on the decision of this Court in Tata Chemicals (2) (supra).

38. Relying on the decisions of this Court in *P. Sambamurthy & Ors. Vs. State of Andhra Pradesh & Anr.*[54]*; Union of India Vs. K.M. Shankarappa*[55] *and B.B. Rajwanshi Vs. State of U.P. & Ors.*[56], learned counsel urged that it is a settled principle of law that the executive cannot sit in judgment over the decision of a quasi-judicial body, and since the Central Government has the power to alter or annul the recommendations of the DA, even logically the DA cannot be held to be a quasi-judicial authority. Learned counsel pleaded that a rigid application of the principles of natural justice in such a situation would defeat the purpose of the administrative enquiry conducted by the DA which is conducted with a view to elicit information from a broad spectrum of interested persons, as was held in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana & Ors.*[57]

39. Learned counsel contended that there are certain peculiar features of the investigation conducted by the DA which make it manifest that the DA is not a quasi-judicial authority. Firstly, in light of the fact that there are numerous interested parties and many competing economic interests are involved in an anti-dumping investigation, it is fallacious to assume that the proceedings are in the nature of a simple lis between two parties. Secondly, the suo motu power invested in the DA to conduct investigations is in furtherance of his policy-making role in the nation's international trade regime. Thirdly, under Rule 7, the DA is required to keep certain information confidential, and this procedure whereby the parties do not know what information is being taken into account by the DA while making the determination is alien to quasi-judicial proceedings. Fourthly, the information collected by

the DA is not required to be sworn on affidavit or otherwise and the witnesses do not testify on oath. Moreover, Rule 6(8) of the 1995 Rules empowers the DA to take into account unverified information, which procedure is inconsistent with the DA being classified as a quasi-judicial authority. Fifthly, the procedure of "sampling" contemplated under Rule 17(3) allows the DA to limit its findings to a reasonable number of interested parties or to articles using a statistically valid sample, and based on this, the DA can fix a country-wise margin of dumping which will apply to all exporters, a procedure unknown to quasi-judicial proceedings.

40. Learned counsel contended that even if it is assumed that the DA discharges quasi-judicial functions and the principles of natural are held to be applicable to the proceedings before it, still it is not sufficient to merely allege breach of natural justice, and actual prejudice must be demonstrated, as was held in Haryana Financial Corporation (supra) and *Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.*[58]. It was asserted that in the present case, the appellants have failed to demonstrate any prejudice to them with reference to any material placed by them before the DA.

41. In response to the challenge against the retrospective levy of anti- dumping duty during the interregnum period between 26th January, 2005 to 27th April, 2005, Mr. Venugopal submitted that in absence of the stay granted by the Rajasthan High Court on 25th January, 2005, the Central Government could have, under the second proviso to Rule 13, extended the provisional duty for a further period of nine months from 25th January, 2005. Learned counsel further urged that under Rule 20(2)(a), the DA after recording a finding of actual injury, was empowered to recommend imposition of anti-dumping duty from the date of the imposition of the provisional duty. Learned counsel submitted that the appellant's contention that Rule 20(2)(b) is ultra vires the Tariff Act as the power to levy anti¬dumping duty retrospectively is found in sub-section (3) of Section 9A of the Tariff Act is misconceived as an anti-dumping investigation always relates to a past period known as the "period of investigation", and therefore, there is no question of retrospectivity.

42. Mr. Venugopal also pleaded that the present appeals had in fact been rendered infructuous as the original final findings by the DA are no longer in existence in view of the fact that a sunset review has been conducted by the DA, pursuant to which the Central Government has revised the levy of duty vide its notification dated 31st March, 2009, which has not been put in issue by the appellants.

43. Mr.C.S. Vaidyanathan, learned senior counsel appearing on behalf of ASFI, urged that the 1995 Rules are a complete code in themselves; Rule 6 provides the framework within which the DA has to operate, and therefore, the applicability of principles of natural justice is limited to those areas that are provided under the 1995 Rules. Learned counsel contended that anti- dumping investigation conducted by the DA is administrative in nature, whereas the imposition of anti-dumping duty is legislative in character. Relying on the decisions of this Court in Keshav Mills (supra); Ramesh Chandra Kachardas Porwal (supra); *Union of India & Anr. Vs. Cynamide India & Anr.*[59]*; Shri Sita Ram Sugar Company Limited & Anr. Vs. Union of India & Ors.*[60]; State Bank of Patiala (supra) and *Viveka Nand Sethi Vs.*

*Chairman, J&K Bank Ltd. & Ors.*[61], learned counsel submitted that there is no straight jacket formula to apply the principles of natural justice, and the effect of the alleged breach of natural justice has to be considered while determining the remedial action. It was asserted that there was no prejudice caused to the appellants due to the alleged breach of natural justice, and therefore, there was no merit in the appellants' claim. It was urged that if this Court were to conclude that there has been a violation of the principles of natural justice, it would be appropriate to remand the matter back to the DA for de novo adjudication from the stage the procedural irregularity had intervened.

44. Commending us to the definition of the term "determination" as contained in the Webster's Dictionary and the Oxford Dictionary, learned counsel submitted that the use of the said term in Section 9C of the Tariff Act, when understood in the context of the 1995 Rules, leads to the incontrovertible conclusion that it is the determination by the DA that is made appealable, and not the notification levying anti-dumping duty. Therefore, it is manifest that the imposition of duty is legislative in nature. Discussion:

45. Before addressing the contentions advanced on behalf of the parties, it will be necessary and expedient to survey the relevant statutory provisions under which the levy, questioned in these appeals, has been imposed. Section 9A of the Tariff Act contemplates levy of anti-dumping duty on dumped articles. It reads as follows:

> "9A. Anti-dumping duty on dumped articles.- (1) Where any article is exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.
>
> Explanation.- For the purposes of this section,- (a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value; (b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, 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 meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
>
> (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the

particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either- (a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6): Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped 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-dump ing duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined:-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and (b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti- dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2) , a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), 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 sub-section, the expression "hundred per cent export- oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of the 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 anti-dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti- dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub- section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty

shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force. (5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition: Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period 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 sub-section (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.

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

(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to the date for determination of rate of duty, 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."

46. Section 9C of the Tariff Act provides for an appeal against the order passed under Section 9A thereof and reads thus: "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 Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal). (IA) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees

(IB) Every application made before the Appellate Tribunal- (a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees. (2) Every appeal under this section shall be filed within ninety days of the date of order under appeal: Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.

47. The 1995 Rules lay down a comprehensive procedure for identification, assessment and collection of anti-dumping duty on dumped articles. The Rules, relevant for these appeals, read as under:

4. Duties of the designated authority.-(1) 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 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, and the date of commencement of such duty; and

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

5. Initiation of investigation.- (1) Except as provided in sub- rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry. (2) An application under sub-rule (1) shall be in the form as

may be specified by the designated authority and the application shall be supported by evidence of –

(a) dumping

(b) injury, where applicable, and

(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub- rule (1) unless –

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding - (i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application. (4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3). (5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

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.

7. Confidential information- (1) Notwithstanding anything contained in sub¬rules (2), (3)and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17,the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non- confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information.

10. Determination of normal value, export price and margin of dumping. - An article shall be considered as being dumped if it is exported from a country or territory to India at a price less than its normal value and in such circumstances the designated authority shall determine the normal value, export price and the margin of dumping taking into account, inter alia, the principles laid down in Annexure I to these rules.

11. Determination of injury. - (1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India. (2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if- (i) there is a concentration of dumped imports into an isolated market, and (ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

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.

16. Disclosure of information. - The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.

17. Final findings. - (1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding – (a) as to, -

"(i) the export price, normal value and the margin of dumping of the said article;

(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;

(iii) a casual link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy: Provided that the Central Government may, in its discretion in special circumstances extend further the aforesaid period of one year by six months: Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year,

(b) recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry.

(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding-

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) Considerations relevant to the injury determination; and

(v) the main reasons leading to the determination. (3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation: Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned :

Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are

so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

(4) The designated authority shall issue a public notice recording its final findings.

20. Commencement of duty. - (1) The anti-dumping duty levied under rule 13 and rule 18 shall take effect from the date of its publication in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1)- (a) where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty;

(b) in the circumstances referred to in sub-section (3) of section 9A of the Act, the anti-dumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty: Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation:

Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking. Provided also that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied from the date of violation of the undertaking or such date as the Central Government may specify in each case.

21. Refund of duty. - (1) If the anti-dumping duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.

(2) If, the anti-dumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

(3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer."

48. 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 9A of 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.

49. 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 & Ors. Vs. Union of India & Ors.*[62], 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.

50. The first leading case decided by this Court on the point was Khushaldas S. Advani (supra). 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 quasijudicial act provided the authority is required by the statute to act judicially."

51. In *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmi Chand & Ors.*[63], a Constitution Bench of this Court had observed that: "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 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."

52. 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 (supra), 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. 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. 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.

53. 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. 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 & Ors.*[64]). 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. 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." 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 9C of 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. 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.

54. Having come to the conclusion that the DA is entrusted with a quasi-judicial function, the next question for consideration is whether or not the decision of the DA dated 9th March 2005, returning the final findings in terms of Rule 17 of the 1995 Rules is in breach of the principles of natural justice, resulting in vitiating the subject notification under Rule 18 of the said Rules?

55. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak (supra), it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

56. In Mohinder Singh Gill (supra), upon consideration of several cases, Krishna Iyer, J. in his inimitable style observed thus:

> "48. Once we understand the soul of the rule as fairplay in action -- and it is so -- we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more -- but nothing less. The

'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self- defeating or plainly contrary to the common sense of the situation."

57. In *Swadeshi Cotton Mills Vs. Union of India*[65], R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus:

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle--as distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post- decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(Emphasis supplied by us)

58. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The

principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (See: *Union of India Vs. Col. J.N. Sinha & Anr.*[66].)

59. In light of the aforenoted legal position and 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 Rules. In so far as the instant case is concerned, though it was sought to be pleaded on behalf of the respondents that the incumbent DA had issued a common notice to the Advocates for ATMA and Ningbo Nylon, for oral hearing on 9th March 2005, however, there is no document on record indicating that pursuant to ATMA's letter dated 24th January 2005, notice for oral hearing was issued to them by the incumbent DA. Moreover, the alleged opportunity of oral hearing on 9th March, 2005, being in relation to the price undertaking offer by Ningbo Nylon, cannot be likened to a public hearing contemplated under Rule 6(6) of the 1995 Rules. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli (supra), if one person hears and other decides, then personal hearing becomes an empty formality. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly.

60. For the view we have taken above, we deem it unnecessary to deal with the other contentions urged on behalf of the parties on the merits of the levy.

61. This brings us to the question of relief. In view of our finding that the recommendation of the DA stands vitiated on account of non-compliance with the basic principle of audi alteram partem, the appeals must succeed. However, the question for consideration is whether the appellants will be entitled to the refund of the duty already paid and collected. It is trite law that in the case of indirect taxes like central excise duties and customs duties, the

tax collected by the State without the authority of law, shall not be refunded to the petitioner unless he alleges and establishes that he has himself borne the burden of the said duty and that he has not passed on the burden of duty to a third party. In such a situation, the doctrine of unjust enrichment comes into play. On the doctrine of unjust enrichment, in *Mafatlal Industries Ltd. & Ors. Vs. Union of India & Ors.*[67], a decision by a bench comprising of nine learned Judges of this Court, B.P. Jeevan Reddy, J., speaking for the majority, had observed thus:

> "The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched."

62. In the instant case, the DA, during the Sunset Review (Notification No.14/20/2008-DGAD dated 31st March, 2009) had recorded a clear finding to the effect that the Chinese exporters had been underselling below the non- injurious price to the tune of 25-20% during the period of investigation. It is, therefore, manifest that the burden of anti-dumping duty had been absorbed by the exporters. The said finding of fact attained finality in as much as it had not been assailed by any of the interested parties. In light of the fact that the importers viz. ATMA and its constituent members have passed on the burden of the levy to third person(s), it follows that members of ATMA cannot claim refund of the anti-dumping duty levied in terms of the Notification No.36/2005-Cus. In any event, ATMA and its constituent members have neither pleaded nor adduced any evidence to show that they had not passed on the burden of the duty to any other person.

63. In any case, we are of the opinion that the appellants cannot claim refund of duty already levied in as much as they have not specifically challenged the findings of the sunset review, and therefore, the findings in relation to the existence of dumped imports, material injury to domestic industry and causal link between dumped imports and material injury to domestic industry remain unchallenged. In that view of the matter, particularly when the existence of dumping has not been put in issue, we are of the opinion that refund of the duty to any of the appellants would be inconsistent with the object and scheme of the Tariff Act and the 1995 Rules.

64. In the result, the appeals are allowed to the extent mentioned above; the decision of the Tribunal is set aside and Notification No.36/2005-Cus., dated 27th April 2005, is quashed. However, considering the facts and circumstances of the case, the parties are left to bear their own costs.

[1]*AIR 1950 SC 0222*
[2]*AIR 1959 SCR 1440*
[3]*AIR 1960 SC 0606*

[4]*AIR 1965 SC 0507*
[5]*(1998) 5 SCC 0170*
[6]*(1963) Supp. 1 S.C.R. 0242*
[7]*(2008) 14 SCC 0151*
*8 (2010) 4 SCC 0603*
[9]*(2000) 6 SCC 0626*
[10]*(2006) 10 SCC 0368*
[11]*(2008) 17 SCC 0180*
[12]*(2007) 15 SCC 0596*
[13]*(1998) 1 SCC 0318*
[14]*(2004) 7 SCC 0068*
[15]*(1978) 1 SCC 0405*
[16]*(1978) 1 SCC 0248*
[17]*(2005) 8 SCC 0618*
[18]*(1993) 1 SCC 0078*
[19]*AIR 1958 SC 0308*
[20]*(1969) 3 SCC 0221*
[21]*(1972) 2 SCC 0601*
[22]*(1975) 2 SCC 0431*
[23] *(1980) 4 SCC 0597*
[24]*(2006) 3 SCC 0620*
[25]*(1986) 2 SCC 0365*
[26]*(2005) 3 SCC 0337*
[27]*(1972) 1 SCC 0298*
[28]*(1987) 1 SCC 0204*
[29]*(2003) 2 SCC 0111*
[30]*(2005) 3 SCC 0039*
[31]*(1987) 1 SCC 0424*
[32]*(1990) 3 SCC 0223*
[33]*(1996) 10 SCC 0104*
[34]*(1981) 2 SCC 0722*
[35] *(1974) 2 SCC 0630*
[36] *(1989) Supp (1) SCC 0696*
[37]*(1974) 4 SCC 0656*
[38]*(1962) Supp. 3 SCR 0582*
[39]*(1973) 1 SCC 0075*
[40]*(1985) 3 SCC 0314*
[41]*AIR 1957 SC 0232*
[42]*(2008) 9 SCC 0031*
[43]*(1996) 3 SCC 0364*
[44]*(1989) 4 SCC 0264*
[45]*(1970) 1 SCC 0103*
[46]*(1966) 1 SCR 0466*
[47]*(2004) 8 SCC 0653*
[48]*(1988) 2 All ER 0065*
[49]*(1976) 1 All ER 0012*
[50]*(1984) 2 SCC 0534*
[51]*(1969) 3 SCC 0562*
[52]*(1980) 2 SCC 0360*
[53]*(1973) 2 SCC 0836*
[54]*(1987) 1 SCC 0362*
[55]*(2001) 1 SCC 0582*
[56]*(1988) 2 SCC 0415*
[57]*(1964) 5 SCR 0294*
[58]*(1993) 4 SCC 0727*
[59]*(1987) 2 SCC 0720*

[60]*(1990) 3 SCC 0223*
[61]*(2005) 5 SCC 0337*
[62]*(1969) 2 SCC 0262*
[63]*(1963) Supp (1) SCR 0242*
[64]*(2005) 3 SCC 0337*
[65]*(1981) 1 SCC 0664*
[66]*(1970) 2 SCC 0458*
[67]*(1997) 5 SCC 0536*