



**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**Before:**

**The Hon'ble Justice Om Narayan Rai**

**WPA 26130 of 2025**

**Equate Petrochemical Company K.S.C.C.**

**Vs.**

**Directorate General of Trade Remedies (DGRT) & Anr.**

For the Petitioner	: Mr. J. P. Khaitan, Sr. Adv. Mr. Rishi Raju, Adv. Ms. Shreya Mundra, Adv. Mr. Sarthak Yadav, Adv. Mr. Rohan Aloor, Adv.
For the Respondent Nos. 1 & 2	: Mr. Asoke Kumar Chakraborty, Ld. ASGI Mr. Vipul Kundalia, Sr. Adv. Mr. Kumar Jyoti Tewari, Sr. Adv. Mr. Dibashis Basu, Adv. Mr. Arun Bandyopadhyay, Adv.
For the Respondent No. 3	: Mr. Anirban Ray, Sr. Adv. Mr. V. V. V. Sastry, Adv. Mr. Anirudh Goyal, Adv. Mr. Utkarsh Srivastava, Adv. Ms. Shilpa Balani, Adv. Mr. Vishal Agarwal, Adv. Ms. T. Sinha, Adv.
Hearing Concluded on	: 18.12.2025
Judgment on	: 22.12.2025

**Om Narayan Rai, J.:-**

1. This writ petition assails the Final Findings rendered by the Directorate General of Trade Remedies (hereafter "the Designated Authority") on September 23, 2025 under the Customs Tariff Act, 1975 and Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped



Articles and for Determination of Injury) Rules, 1995 (hereafter "the said Rules) framed thereunder.

**2.** The impugned Final Findings reveal that the same have been rendered by the Designated Authority upon conducting an investigation based on an application filed before it by the Chemicals and Petrochemicals Manufacturers Association of India (i.e. the respondent no. 3 herein) requesting for initiation of an anti-dumping investigation concerning imports of Mono Ethylene Glycol (hereafter the "subject goods") originating in or exported from the State of Kuwait, the Kingdom of Saudi Arabia and the Republic of Singapore. It further reveals that the data pertaining to injury information was provided by Reliance Industries Limited (the respondent no. 4 herein).

#### **FACTS OF THE CASE:-**

**3.** A brief factual foundation of the writ petition may first be noticed:-

- a.** The petitioner is a company incorporated under the laws of the State of Kuwait. It is aggrieved by the Final Findings rendered by the Designated Authority whereby the Designated Authority has recommended imposition of anti-dumping duty on imports of subject goods from the subject countries which includes Kuwait.
- b.** The petitioner asserts that the impugned determination by the Designated Authority has been done pursuant to an application filed by the respondent no.3 and the same is based on the date provided by the respondent no.4 alone. It has been alleged that the Designated Authority has conducted a unilateral analysis treating the respondent no.4 as the sole domestic producer and has ignored information related to other known domestic producers.



- c. It has been alleged that the investigation leading to the impugned determination is the third in series with the first two having ended without imposition of anti-dumping duty. While one of the earlier investigations that was initiated on December 9, 2019 got terminated on November 20, 2020 upon the request of the respondent no. 4, the later investigation which was initiated by the Designated Authority on June 28, 2021 ended with a determination by the Designated Authority on October 27, 2022 observing that there was no requirement for imposition of anti-dumping duty.
- d. The writ petition further avers that such Final Findings were subjected to appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereafter “CESTAT”) as well as at the Hon’ble High Court of Delhi whereupon both the forums remanded the matter back to the Designated Authority for fresh investigation. However, the second investigation got terminated on November 27, 2024 upon a request for withdrawal made by the respondent no. 4.
- e. It has been then stated that by a notification dated September 27, 2024, the Designated Authority invited comments from the petitioner and other participants regarding the scope of the products to be covered under the investigation and the Product Control Numbers.
- f. The writ petition then proceeds with the details of the several stages of the investigation in which the petitioner participated *inter alia* by submitting questionnaire responses; responses pertaining to cost verification and sales verification and also by attending oral hearing during which the parties were called upon to submit their respective written submission



and rejoinders. It is the petitioner's case that the petitioner submitted detailed replies to the clarification sought for by the Designated Authority and also participated in the desk verification exercise conducted by the Designated Authority and answered the various queries raised by the Designated Authority.

- g.** The petition indicates that a second oral hearing was also conducted by the Designated Authority on June 04, 2025 since the incumbent in the seat of the Designated Authority had changed and that the petitioner duly participated in the said hearing as well. Thereafter upon being called upon by the Designated Authority, the petitioner submitted additional clarification/information/data.
- h.** Thereafter the Designated Authority issued the disclosure statement under Rule 16 of the said Rules on September 10, 2025.
- i.** The petitioner registered its objection thereto by contending that that disclosure statement was based on such undisclosed information/workings relied upon by the Designated Authority that was at variance with the data provided by the petitioner and verified by the Designated Authority.
- j.** The petitioner, therefore, made a written request dated September 10, 2025 to the Designated Authority to provide the actual cost of production of the petitioner as determined by the said authority; the methodology adopted for calculating such costs of production and the changes made to the workings submitted by the petitioner.
- k.** The Designated Authority responded by a communication dated September 10, 2025 by only providing the actual figures of landed values,



export prices, total costs of production and normal values. The petitioner has alleged that the cost and normal value figures disclosed by the Designated Authority was materially and substantially different from the data provided by the petitioner.

1. On receipt of such communication from the Designated Authority the petitioner requested the said Authority once again to provide the calculations and methodologies it had relied upon for determining the figures indicated in the disclosure statement but the Designated Authority did not respond thereto. The petitioner followed up by another communication dated September 11, 2025 and also requested for a personal hearing. However, the same was to no avail. Ultimately on September 17, 2025 the petitioner filed its detailed comments on the disclosure statement thereby objecting to the methodology adopted and the conclusion reached by the Designated Authority.
- m. The Designated Authority thereafter issued the Final Findings on September 23, 2025 thereby recommending imposition of anti-dumping duty on imports of the subject goods, originating in or exported from the subject countries. Hence the writ petition.

#### **PRELIMINARY OBJECTIONS ON BEHALF OF THE RESPONDENTS:-**

4. At the outset, a preliminary objection as regards the maintainability of the writ petition was taken by the respondents.
5. Mr. Dibash Basu, learned Advocate representing the respondent nos. 1 and 2 (i.e. the Designated Authority and the Union of India), submitted that this Court lacks territorial jurisdiction to adjudicate the writ petition. Inviting the



attention of this Court to the array of the respondents as mentioned in the cause title of the petition, it was submitted that none of them had their offices within the territorial jurisdiction of this Court.

**6.** Paragraph 41 of the writ petition at page 54 thereof was then placed to submit that the petitioner has invoked the jurisdiction of this Court on the petitioner's unfounded assumption that part of cause of action has arisen within the jurisdiction of this Court since levying of anti-dumping duties on the basis of the impugned recommendation of the Designated Authority would in effect "*disincentivize*" the petitioner's "*actual and potential customers located in Kolkata from engaging in business with the petitioner thereby hampering the petitioner's ability to conduct business within the territorial jurisdiction of this Hon'ble Court*". It was indicated that in support of its aforesaid contention the petitioner has sought to rely on its business data with one entity named IVL Dhunseri Petrochem Industries Private Limited.

**7.** Reliance was placed in a judgment in the case of ***Union of India & Ors. vs. Adani Exports Ltd. & Anr.***<sup>1</sup> cited on behalf of the respondent no. 1 in support of the contention that mere adverse effect on the petitioner's business within the territorial jurisdiction of West Bengal would not give rise to any cause of action in the facts of the present case. In support of the contention that this Court should not exercise jurisdiction since no part cause of action has arisen within the territory of West Bengal, reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of ***Oil And Natural Gas Commission vs. Utpal Kumar Basu & Ors.***<sup>2</sup>.

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<sup>1</sup> (2002) 1 SCC 567

<sup>2</sup> (1994) 4 SCC 711



**8. A judgment in the case of *Union of India vs. Essilorluxottica Asia Pacific PTE Ltd. & Ors.*<sup>3</sup>**

**PTE Ltd. & Ors.**<sup>3</sup>, passed by the Hon'ble High Court of Delhi, was cited for the proposition that the Final Findings of the Designated Authority are assailable before CESTAT in terms of Section 9C of the Customs Tariff Act, 1975.

**9.** Mr. Salve, learned Senior Advocate appearing for the respondent no. 4 also elaborated on the objection as regards territorial jurisdiction of this Court to entertain the present writ petition. It was submitted by Mr. Salve that the petitioner who had approached this Court is a foreign company incorporated under the laws of State of Kuwait.

**10.** Referring to paragraph 41 of the writ petition, it was submitted that the petitioner has confounded cause of action with causation. It was submitted that what is required for this Court to exercise jurisdiction in terms of Article 226(2) of the Constitution of India is arising of cause of action or part thereof within the territory of West Bengal and not causation of injury within the territory of West Bengal. Mr. Salve also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Adani Exports Ltd.** (supra) and submitted that in terms of the ratio of the said judgment only such facts which have been pleaded, which have nexus or relevance with the *lis* that is involved in the case are said to give rise to a cause of action and facts which have no relevance or bearing with the *lis* do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. It was submitted that in the case at hand the order impugned is one which has been passed by an authority situated at Delhi and the communication between the petitioner and

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<sup>3</sup> W.P.(C) 14723 of 2025, decided on September 22, 2025



the petitioner's Counsel have been exchanged from places beyond the territory of West Bengal.

- 11.** It was submitted that the Final Findings are just in nature of recommendation of the Designated Authority to the Government of India. The Government of India may or may not accept the Final Findings. It was submitted that the Final Findings *per se* did not give rise to any cause of action. Mr. Salve further submitted that the subject matter of challenge in the present writ petition is the Final Findings and in order to sustain a challenge to such Final Finding none of the pleadings made in writ petition or for that matter in paragraph 41 in support of the assertion that a part of cause of action has arisen within the territorial jurisdiction of this Court would be required to be proved.
- 12.** It was further submitted that the petitioner is an exporter and not an importer and that the petitioner would be able to export only if somebody is ready to import in India. In such view of the matter, the petitioner's assertion that the petitioner's business would be hampered is mere imagination of injury and not a real apprehension.
- 13.** It was further submitted that imposition of anti-dumping duty, if any, would be on the importer and not on the petitioner, and in such view of the matter, the petitioner could not be said to have any cause of action or to be a person aggrieved.
- 14.** Mr. Salve next submitted that in any event, the petitioner had a complete remedy on facts and law before the Appellate Tribunal under Section 9C of the Customs Tariff Act, 1975 (i.e. CESTAT) and that there was no reason for this Court to intervene at the stage of issuance of Final Findings.



15. In order to demonstrate that there was no violation of the principles of natural justice, Mr. Salve invited the attention of this Court to paragraphs 159 and 160 of the Final Findings and sought to demonstrate that the petitioner had refused to provide copy of each Feedstock Supply agreement with KPC to substantiate its claimed purchase price on the ground of confidentiality. It was submitted that since the petitioner had not cooperated with the Designated Authority by supplying the information sought for by the Designated Authority, the Designated Authority was left with no option but to proceed on the basis of the information already available with the Designated Authority. It was submitted by Mr. Salve that the Final Findings of the Designated Authority were in the nature of a best judgment assessment which is permitted by Rule 6(8) of the Rules.

16. Inviting the attention of this Court to the workings of the Designated Authority in the general disclosure, Mr. Salve submitted that paragraphs 36 and 37 thereof would clearly reveal that the Designated Authority had laid bare the essential facts on the basis whereof conclusion was reached. Mr. Salve further submitted that when the petitioners themselves did not provide the requisite information and material asked for by the Designated Authority, the petitioner was not entitled to criticize the Designated Authority for not having disclosed the methodology or basis of calculation.

17. It was further submitted that at any cost the question as to whether the material which the petitioner alleges not to have been supplied to it or essential or not or as to whether the methodology or basis of calculation etc. as supplied by the Designated Authority satisfy the test of "essential facts" in terms of Rule



16 of the Rules can be very well decided by CESTAT and for such purpose the writ jurisdiction should not be invoked.

**18.** Attention of this Court was then invited to the definition of the domestic industry under Rule 2(b) and interested party under Rule 2(c) of the said Rules. This Court was taken through the various provisions of Rule 6 of the said Rules and it was sought to be demonstrated that during the investigation interested parties (which would include the petitioners as an exporter) and domestic industries which would include (the respondent nos. 3 and 4) have been permitted to be treated differently. While stressing on the use of the expressions "shall" in case of domestic industries and "may" in case of interested parties, it was argued that while it is mandatory on the part of the Designated Authority to provide opportunity to the domestic industries to furnish information which is relevant to the investigation such mandate is not there insofar as interested parties are concerned. Relying on Rule 6(8) of the said Rules, it was submitted that where an interested party refuses or does not provide necessary information within a reasonable period, the Designated Authority would be justified in recording its findings on the basis of the facts available to him. The Court was taken to the various paragraphs in the writ petition in a bid to demonstrate that of canon of natural justice have been duly complied with.

**19.** Mr. Salve also placed Rules 4, 5, 7, 11 and 16 of the said Rules and submitted that the Designated Authority has acted within the four corners of the said Rules and has rendered the Final Findings strictly in accordance with law upon affording the petitioner an opportunity of being heard and after supplying



all the essential facts. Mr. Salve further submitted that there was no jurisdictional error that could persuade this Court to exercise its writ jurisdiction in the facts of the present case.

**20.** Mr. Ray, learned Senior Advocate appearing for the respondent no. 3 reiterated the points urged by Mr. Basu on behalf of the respondent nos. 1 and 2 and Mr. Salve on behalf of the respondent no. 4. He additionally submitted that since the petitioner is a foreign entity the protection of Article 14 of the Constitution of India may not be available to the petitioner. He relied on the judgment of the Hon'ble Supreme Court in the case of ***State of Goa vs. Summit Online Trade Solutions Private Limited & Ors.***<sup>4</sup> and submitted that determination of the question as to whether the facts pleaded in the writ petition constituted a part of cause of action for attracting Article 226 of the Constitution of India would require an enquiry as to the fact that the facts pleaded constituted a material, essential or integral part of the cause of action. It was further submitted that the essence of ***Kusum Ingots & Alloys Ltd. vs Union of India & Anr.***<sup>5</sup> which was also noticed by the Hon'ble Supreme Court in the case of ***State of Goa*** (supra) was that if a slender part of cause of action arose within the jurisdiction of a High Court the concept of *forum conveniens* must be applied by the High Court.

**21.** Reliance was also placed on a judgment of the Hon'ble Supreme Court in the case of ***Rikhab Chand Jain vs. Union of India & Ors.***<sup>6</sup> for the proposition that when the governing statute provides for a multi layered remedy to be availed of by any person aggrieved and the same is a complete code in itself,

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<sup>4</sup> (2023) 7 SCC 791

<sup>5</sup> (2004) 6 SCC 254

<sup>6</sup> 2025 INSC 1337



the High Court should allow the parties to approach the forum designated by the statute and should be loath to intervene by exercising jurisdiction under Article 226 of the Constitution of India.

**SUBMISSIONS ON BAHALF OF THE PETITIONER IN REPLY:-**

**22.** Mr. Khaitan, learned Senior Advocate appearing for the petitioner submitted that the instant writ petition is based on an apprehension of injury which could be caused to the petitioner upon a notification being published/issued by the Government of India accepting the recommendation based on the Final Findings rendered by the Designated Authority. In support of his contention that apprehension could give rise to a cause of action, he relied on the judgment of the Hon'ble Supreme Court in the case of ***Adi Saiva Sivachariyargal Nala Sangam & Ors. vs. Government of Tamil Nadu & Another***<sup>7</sup>. It was submitted that in terms of the said judgment, a person was not required to await actual prejudice and adverse effect and consequence. In order to institute a writ proceeding and that an apprehension of harm can very well furnish a cause of action for moving the Court.

**23.** Mr. Khaitan, relied on a Coordinate Bench judgment of the Court in the case of ***Eastern India Edible Oil Manufacturers' Association & Anr. vs. Union of India & Ors.***<sup>8</sup> in support of his contention that if the petitioner suffers injury within the zone of the petitioner's business the same would give rise to a cause of action. It was submitted that in the case at hand if anti-dumping duty is imposed on the importer the import may not import the goods of the petitioner because of the imposition of duty and that would then injure the petitioner's

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<sup>7</sup>( 2016) 2 SCC 725

<sup>8</sup> 2004 SCC OnLine Cal 325



business within West Bengal. It was submitted, such apprehension gave rise to a cause of action within the territory of West Bengal and as such this Court should entertain the writ petition.

24. Mr. Khaitan then relied on a judgment of the Hon'ble Delhi High Court in the case of ***Designated Authority & Ors. vs. Sandisk International Limited & Ors.***<sup>9</sup> in support of his contention that Final Findings of the Designated Authority can very well be challenged under Article 226 of the Constitution of India and that availability of alternative remedy before CESTAT would not be a good ground to repel the petitioner's request to entertain the writ petition.

25. Mr. Khaitan then set forth to demonstrate that in the case at hand there was total violation of principles of natural justice and Rule 16 of the said Rules. It was submitted that since the Designated Authority had acted arbitrarily in not providing the essential facts, which the Designated Authority was obliged to provide in terms of Rule 16 of the said Rules, the existence of appellate remedy should not deter this Court from exercising its writ jurisdiction. Mr. Khaitan invited the attention of this Court to the unamended provisions for Section 9C of the Customs Tariff Act, 1975 and submitted that earlier an appeal was available only against the order of determination or Rule thereof before the CESTAT. It was then submitted that the said provision (Section 9C) of the said Act of 1975 was subsequently amended by Finance Act, 2023 whereby the expression "order of determination" got substituted by the expression "determination" in Section 9C of the said Act of 1975 thereby making the Final Findings of the Designated Authority appealable before Appellate Tribunal. It was submitted that Section 134 of the Finance Act, 2023 has not been notified

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<sup>9</sup> (2018) 13 SCC 402



and as such the amended Section 9C of the said Act of 1975 has not yet taken effect. Referring to the judgment of the Delhi High Court in the case of **Essilorluxottica Asia Pacific PTE Ltd.** (supra) it was submitted that a challenge to the order of CESTAT which apparently ruled on the issue as to whether the amended section 9C has taken effect of not is pending adjudication before the Hon'ble High Court at Delhi.

**26.** Mr. Khaitan invited the attention of this Court to the Rules in order to demonstrate manner in which the Designated Authority is required to conduct investigation and to render its final findings. Mr. Khaitan referred to a chart presented at page 20 of the writ petition and submitted that the cost and normal value figures disclosed by the Designated Authority were absolutely different from the figures provided by the petitioner and verified by the Designated Authority. He stressed that while the dumping margin based on the data filed by the petitioner and verified by the Designated Authority was negative the same has been astronomically raised to 40% to 50% in the disclosure statement made by the Designated Authority. It was submitted that methodology for arriving at such anti-dumping such dumping margin of 50% was never supplied to the petitioner by the Designated Authority. Referring to the observation made by the Designated Authority in paragraph 159 of the impugned Final Finding, Mr. Khaitan referred to the petitioner's response dated June 06, 2025 and submitted that the petitioner had provided the detailed price mechanism for ethylene purchase made by the petitioner.

**27.** Referring to the section pertaining to dumping margin at paragraph G.3.2 of the disclosure statement, it was submitted by Mr. Khaitan that although a dumping margin table has been provided by the Designated Authority under



the said section, the same would reveal that there is no criticism of anything that was submitted by the petitioner and there is no disclosure of any material or data that was used to arrive at the dumping margin of 40% to 50% as against a negative dumping margin arrived at by the petitioner.

28. It was further submitted by Mr. Khaitan that the petitioner did not shy away from furnishing any information that was sought for by the Designated Authority. Referring to a communication dated July 17, 2025 it was submitted that the petitioner had brought it to the notice of the Designated Authority that all details had already been placed on record along with sample invoice as part of the petitioner's previous verification files submitted on June 6, 2025 and that the same were also include in the format of Appendix - 10.
29. That all the clarification and information that was sought for by the respondent Designated Authority was supplied to the said authority however request was made to verify the information onsite or online as earlier. It was submitted that there was no refusal to supply information as alleged by the Designated Authority. Relying on the provision of Rule 16(2) of the said Rules, it was submitted by Mr. Khaitan that essential facts would include the mechanism of arrival at conclusion. It was further submitted that from the order impugned and from the Final Findings, all the information that has been used by the Designated Authority for arriving at the dumping margin is not discernible.
30. It was then submitted that although in paragraph 160 of the Final Findings the Designated Authority has held that the authority had allocated cost based on the information available on the records for the investigation for



determining cost of production, the information based on which such cost allocation was made that has not been disclosed.

31. It was then submitted by Mr. Khaitan that best judgment assessment cannot be done arbitrarily. In support of such contention he relied on a judgment of the Hon'ble Supreme Court in the case of ***Dhakeswari Cotton Mills Limited vs. Commissioner of Income Tax, West Bengal***<sup>10</sup>. It was submitted by Mr. Khaitan that it was incumbent on the part of the Designated Authority to disclose to the petitioner the information that the said authority had utilised for the purpose of arriving at the conclusion that had been presented in the writ petition.
32. A judgment in the case of ***Nirma Limited vs. Union of India & Ors.***<sup>11</sup> rendered by the Hon'ble High Court at Gujarat was relied on to contend that all the information which are relied on by the Designated Authority, to the extent the same is not protected by Rule 7 of the Rules is in the nature of necessary information and should be disclosed to the respective parties to enable them to comment on the same.
33. A judgment of the Hon'ble Supreme Court in the case of ***Reliance Industries Limited vs. Designated Authority & Ors.***<sup>12</sup> was relied on to contend that proceeding before the Designated Authority is to determine the *lis* between the domestic industry on the one hand and the importer violation comes from the supplier of the other and in such cases Designated Authority took supply of relevant information to the person to whom such information relates.

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<sup>10</sup> (1954) 2 SCC 602

<sup>11</sup> 2017 SCC OnLine Guj 2526

<sup>12</sup> (2006) 10 SCC 368



### **REJOINDER BY THE RESPONDENTS:-**

**34.** Mr. Salve, learned Senior Advocate appearing on behalf of the Respondent No.4 re-joined by submitting that the case of the petitioner lay in the zone of speculation. He reiterated that since the petitioner is an exporter its exports would land at a place where a buyer chooses to get them. In such view of the matter the petitioner's exports may or may not land within the territory of West Bengal.

**35.** He placed the judgment in the case of ***Adani Exports Ltd.*** (supra) and submitted that for this Court to entertain the instant petition the dispute or at least an integral part thereof must have arisen within the territorial jurisdiction of this Court. It was submitted that since in the case at hand the situation is not so, this Court lacks territorial jurisdiction.

**36.** Mr. Salve, stressed that the Final Findings of the designated authority could not be impeached by the petitioner on the ground of non-disclosure of alleged material when the petitioner had not supplied information sought for by the said authority. In order to buttress his contention that the designated authority is justified in resorting to best judgment assessment, he relied on a judgment of the Hon'ble Supreme Court in the case of ***Designated Authority vs. Haldor Topsoe A/s.***<sup>13</sup>

**37.** He took a serious exception to the placement of redacted versions of the communications between the petitioner and the designated authority before Court. Referring to Rule 7 of the Rules, it was submitted that the same was not applicable to pleadings in Court. In support of his contention that for the purpose of resorting to a "closed material procedure" a prior order of Court to

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<sup>13</sup> (2000) 6 SCC 626



the effect was necessary, he relied on a judgment of the Supreme Court of United Kingdom in the case of ***Al Rawi and Others vs. The Security Service and Others***<sup>14</sup>.

38. He reiterated the opening submissions made by him and asserted that this Court should not entertain the writ petition.
39. The learned Additional Solicitor General assisted by Mr. Tewari, learned Senior Advocate invited the attention of this Court to Sections 36 and 41 of the Specific Relief Act, 1963 and submitted that the petitioner was not entitled to any order from this Court inasmuch as the petitioner has misrepresented the facts before this Court.
40. Referring to the supplementary affidavit filed by the petitioner, it was submitted that the same could not be relied on inasmuch as the same related to alleged business transactions between the petitioner and IVL Dhunseri Petrochem Industries Pvt. Ltd. after the issuance of the Final Findings by the designated authority.
41. It was then submitted that the writ petition entails highly disputed questions of facts and that this Court should not entertain the same in the wake of availability of alternative remedy of appeal. It was submitted that this Court should not intervene inasmuch as the petitioner has an equally efficacious alternative remedy before CESTAT. In support of such submission, a judgment of the Hon'ble Bombay High Court in the case of ***Expanded Polymer Systems Pvt. Ltd. vs. Designated Authority, Directorate General of Trade***

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<sup>14</sup> (2011) UKSC 34



**Remedies, Department of Commerce and Industry, Government of India**

**& Ors.**<sup>15</sup> was relied on.

**42.** It was then submitted that the writ petition was itself pre-mature inasmuch as no notification accepting the Final Findings and imposing anti-dumping duty had yet been issued.

**43.** This Court was taken through the various paragraphs of the writ petition to demonstrate that no part of cause of action could be said to have arisen within the territorial jurisdiction of this Court on the basis of pleadings made in the writ petition. A judgment of the Hon'ble Division Bench of this Court in the case of **Essar Oil and Gas Exploration and Production Ltd. vs. The District Magistrate, Shahdara (NCT of Delhi) & Ors.**<sup>16</sup> was relied on for the proposition that Article 226(2) of the Constitution of India can be invoked only when material, essential or integral part of cause of action arise within the territorial jurisdiction of the Court.

**44.** Relying on a judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar Sonkar vs. Union of India & Ors.**<sup>17</sup> it was contended that principles of natural justice cannot be applied in vacuum and that the same are not required to be complied with compliance therewith will lead to an empty formality on such proposition.

**45.** Another judgment in the case of **Automotive Tyre Manufacturers Association vs. Designated Authority & Ors.**<sup>18</sup> was relied on to demonstrate that Courts intervene in matters like the one at hand only when the

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<sup>15</sup> 2021 (1) TMI 1305

<sup>16</sup> MAT 112 of 2024, decided on May 24, 2024

<sup>17</sup> (2007) 4 SCC 54

<sup>18</sup> (2011) 2 SCC 258



Designated Authority has proceeded without affording any opportunity of hearing to the affected persons.

**46.** Mr. Ray, learned Senior Advocate appearing for the respondent no. 3 reiterated his earlier submissions and submitted that the petitioner has not been able to demonstrate that any part of cause of action has arisen within the territorial jurisdiction of this Court. Relying on the judgment of ***Rikhab Chand Jain*** (supra) it was submitted that this Court should not entertain the petition when there is a multilayered remedial mechanism prescribed in the statute.

**47.** A chart detailing the communications exchanged between the petitioner and the designated authority at Delhi was also handed up to Court to demonstrate that every part of cause of action arose at Delhi at that all canons of the applicable law including principles of natural justice were complied with by the designated authority. It was also submitted that the petitioner being a foreign entity is not entitled to invoke writ jurisdiction of this Court.

#### **SURREJOINDER BY THE PETITIONER:-**

**48.** Mr. Khaitan, learned Senior Advocate appearing for the petitioner submitted that the writ petition is not pre-mature inasmuch as the same complains of injury resulting from breach of duty on the part of the designated authority. It was submitted that apprehension of injury gives rise to a cause of action at the place where the injury occurs.

**49.** He submitted that cause of action cannot be only construed narrowly inasmuch as it has a restricted as well as a wider meaning. It was submitted that in the case at hand cause of action should be said to have arisen at the



place where effect is given to the order impugned. He justified the redactions by relying on Rule 7(1) of the Rules.

50. He submitted that the supplementary affidavit was used to bring on record document to show consistent business transaction with IVL Dhunseri within the territorial jurisdiction of this Court.
51. He distinguished the judgments cited by the respondents and submitted that the same were rendered in the peculiar facts of the case and were not applicable to the case at hand.

#### **ANALYSIS AND DECISION:-**

52. Of the two principal preliminary objections raised by the respondents, the one concerning territorial jurisdiction requires prior consideration. It is only if this Court rules on its territorial jurisdiction affirmatively that it would be required to debate and determine as to whether or not discretion should be exercised to entertain the writ petition notwithstanding availability of alternative statutory remedy.
53. Before analysing the case at hand for the purpose of ascertaining as to whether this Court has territorial jurisdiction to entertain the writ petition or not, the guiding principles laid down by the Hon'ble Supreme Court which need to be applied while undertaking such ascertainment may be noticed.
54. In the case of ***Oil And Natural Gas Commission*** (supra) the Hon'ble Supreme Court has held that in order to entertain a writ petition, the Court must be satisfied on the basis of the averments made in the petition that the cause of action therefor has either wholly or in part arisen within its territorial jurisdiction. ***Oil And Natural Gas Commission*** (supra) was considered by the



Hon'ble Supreme Court in the case of **Adani Exports Ltd.** (supra) and the Hon'ble Supreme Court ultimately held as follows:-

*“15. Article 226(2) of the Constitution of India which speaks of the territorial jurisdiction of the High Court reads:*

*“226. (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”*

*16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu* [(1994) 4 SCC 711] (SCC at p. 713) wherein it was held:*

*“Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression ‘cause of action’ means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial.”*

*17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso*



*facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."*

**55.** It will be evident from the above that firstly, the Hon'ble Supreme Court reiterated that satisfaction as regards arising of cause of action (whether in full or in part) within the territorial jurisdiction of a High Court must be derived by the High Court on the basis of the averments/pleadings in the writ petition. Secondly, the Hon'ble Supreme Court clarified that every fact pleaded in the writ petition would not *ipso facto* lead to the conclusion that such fact gave rise to a cause of action unless such fact has nexus or relevance with the *lis* that is involved in the case.

**56.** The Hon'ble Supreme Court reaffirmed the same proposition once again in the case of ***Kusum Ingots & Alloys Ltd.*** (supra) in the following words:-

*"18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court."*

**57.** In the recent past in the case of ***State of Goa*** (supra), the Hon'ble Supreme Court has restated the "guiding tests" for determining whether the facts pleaded in a writ petition constitute a part of cause of action sufficient enough to attract clause (2) of Article 226 of the Constitution. Paragraphs 15 to 17 of the judgment are apposite to the context. The same read thus:-

*"15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The*



constitutional mandate of clause (2) is that the “cause of action”, referred to therein, must at least arise in part within the territories in relation to which the High Court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.

**16.** The expression “cause of action” has not been defined in the Constitution. However, the classic definition of “cause of action” given by Lord Brett in *Cooke v. Gill* [*Cooke v. Gill*, (1873) LR 8 CP 107] that “cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such “cause of action” is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.

**17.** Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that; at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.”

- 58.** The petitioner’s case is therefore required to be examined in the light of the guiding principles laid down by the Hon’ble Supreme Court.
- 59.** The pointed question which is to be answered is - whether in the in the light of the facts pleaded in the present case, the petitioner’s apprehension that its business within the territorial jurisdiction of this Court might be hampered if a notification is issued based on the impugned recommendation of the Designated Authority would constitute a part of cause of action?



**60.** The pleadings in the writ petition need to be noticed first.

**61.** Paragraph 1 of the writ petition introduces the petitioner to the Court. Paragraph 2 contains introductory statements as regards the respondent nos. 1 and 2. It may be noted that the respondent nos. 3 and 4 were added subsequent to the filing of the writ petition. Paragraphs 3, 5, 29, 32, 33 and 34 criticise the decision-making process adopted by the Designated Authority as well as the order impugned. Paragraph 4 asserts that the respondent nos. 1 and 2 are Article 12 authorities. Paragraphs 6 to 8 contain averments relating the earlier two investigations conducted by the Designated Authority. Paragraphs 9 to 31 contain pleadings regarding the petitioner's participation in the latest investigation conducted by the Designated Authority, the exchange of communications between the petitioner and the Designated Authority, issuance of disclosure statement by the designated authority, the Designated Authority's failure *inter alia* to provide calculations, methodologies, workings, adjustments etc. employed by the Designated Authority in reaching at the figures of Dumping Margin per MT and Dumping Margin percentage despite requests made by the petitioner and ultimately the issuance of the Final Findings by the Designated Authority.

**62.** Specific pleadings in support of the petitioner's assertion that this Court has territorial jurisdiction to entertain the writ petition can be found in paragraph 41 of the writ petition. The same are as follows:-

*"41. Your Petitioner states this Hon'ble Court has held that a cause of action arises within the territorial jurisdiction of a Court where an impugned order is implemented. Your Petitioner highlights that bona fide customers of MEG located in Kolkata procure your Petitioner's exports via Haldia port. Indeed, in FY 2021-2022, 19,526 MT of Your Petitioner's exports of MEG were purchased by IVL Dhunseri Petrochem Industries Private Limited, a customer in Kolkata. However, the imposition of anti-dumping duties*



*would require such customers to pay a significant additional duty of \$102/MT for a period of 5 years upon imposition at Haldia port, a duty that is not payable for domestic procedures of MEG. In essence, the effect of Respondent No. 1's recommendation are to disincentivize your Petitioner's actual and potential customers located in Kolkata from engaging in business with your Petitioner, thereby hampering your Petitioner's ability to conduct business within the territorial jurisdiction of this Hon'ble Court. Indeed, IVL Dhunseri Petrochem Industries Private Limited has also challenged the Impugned Final Findings before this Hon'ble Court. Thus, the facts of the instant case warrant instant interference by this Hon'ble Court to prevent the grave loss, injury and prejudice that would be caused to your Petitioner upon the levy of anti-dumping duties on the basis of Respondent No. 1's erroneous recommendations."*

**63.** The pleadings in the few preceding paragraphs are also required to be noticed:-

*"37. Your Petitioner states that the Hon'ble courts have repeatedly held that a writ under Article 226 lies where an order is patently perverse and violative of natural justice. Your Petitioner further states that this Hon'ble Court has previously held that a writ under Article 226 may be entertained by a Court if the impugned act takes effect within the territorial jurisdiction of such a Court.*

*38. Your Petitioner also states that the Impugned Final Findings have also been challenged before this Hon'ble Court, vide a writ petition filed by IVL Dhunseri Petrochem Industries Private Limited, a consumer of MEG. To avoid multiplicity of proceedings across various fora on the same subject matter (i.e. challenging the impugned Final Findings), your Petitioner is also approaching this Hon'ble Court for the consideration of this Petition along with other proceedings on the same subject matter."*

**64.** In the writ petition, there is no mention of the petitioner's business engagements with entities in West Bengal anywhere else except paragraph 41. The entire legal action is directed against the alleged arbitrariness and alleged illegality committed by the Designated Authority in rendering the Final Findings. The challenge thereto is essentially based on the four-fold grounds of violation of Rule 16 of the said Rules (which also corresponds to violation of principles of natural justice), arbitrariness, non-application of mind and perversity. Indeed, as many as thirty-eight grounds have been taken in the writ



petition to prop the challenge to the Final Findings of the Designated Authority, but they essentially criticise the Final Findings on the same four counts, albeit in a different and more expansive tone. Paragraphs 3, 5, 29, 32, 33 and 34 of the writ petition would also reveal that the criticism of the Final Findings is focused on the said four points only.

**65.** It is the petitioner's case that essential facts which would include workings, calculations and methodology used by the Designated Authority in determining the dumping margin have not been supplied to the petitioner. It has also been alleged that the Designated Authority has conducted a highly selective injury analysis that lacks comprehensive engagement with the points raised by the petitioner and other interested parties during investigation. It has been asserted that the Designated Authority has acted arbitrarily by disregarding the petitioner's costs and relying on its own costs without furnishing the basis, material and information used therefor.

**66.** On the basis of such pleadings the petitioner has principally prayed for the issuance of a writ of mandamus commanding the respondents to recall and rescind the impugned final findings.

**67.** In order to get the desired relief, the petitioner would have to prove only those facts and grounds based on which the Final Findings have been assailed by the petitioner. For example, in the case at hand the petitioner will have to prove that the workings, calculations etc., which have allegedly not been supplied to it by the Designated Authority, constitute essential facts and non-supply thereof is violative of the provisions of Rule 16 of the said Rules. Likewise, the petitioner would be required to prove that there has been



violation of the principles of natural justice and fair play in the Designated Authority relying on undisclosed data.

**68.** In such a fact situation, can it be said that the pleading that the petitioner's business would be adversely affected if a notification imposing anti-dumping duty upon accepting the impugned recommendation and the final findings of the designated authority is issued by the Union Government is a relevant fact for the purpose of granting relief to the petitioner? The answer has to be in the negative.

**69.** It is the infringement of a right that gives rise to a cause. In an action based on such cause, the suitor/litigant would get a favourable judgment only if the litigant proves all such facts that are relevant for establishing the right and the infringement thereof if such facts are traversed by the respondent. Such proof would be necessary to entitle the litigant to the relief claimed. The complaint in the case at hand pertains to infringement of principles of natural justice and the petitioner's right to fair hearing, right to fair procedure, right against arbitrariness etc. (i.e. the several facets of Article 14 of the Constitution of India). Therefore, in the present case, the petitioner is only required to prove that it has been deprived of such right. The Hon'ble Supreme Court has, in the cases referred to hereinabove, categorically held that the fact pleaded must be integral part of the cause of action and must be relevant to the grant of relief claimed. To wit, a fact is considered to be an integral part of cause of action if it is essential to the dispute. In the case at hand where the dispute relates to the violation of the petitioner's right to non-arbitrary and fair treatment by the Designated Authority, the adverse effect on the petitioner's business cannot be said to be an integral part of the cause of action. Similarly, a fact can be said



to be essential or integral part of cause of action if upon removal thereof, the claim would not survive at all. In the case at hand nothing would turn if the petitioner's assertion that it has business engagements with entities in West Bengal or that its business in West Bengal will be hampered is removed from the pleadings since the challenge to the final findings is not premised on that at all. In fact paragraph 18 of **Adani Exports Ltd.** (supra) points out to an exactly similar situation. The same is extracted hereinbelow:

**18.** *As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants. (Emphasis supplied)*

**70.** The present case would not even require the aforesaid examination to be undertaken inasmuch as here the petitioner has approached this Court on the basis of an apprehension that it's business within the territory of West Bengal would suffer adversely if a notification is issued by the Union Government thereby imposing anti-dumping duty upon accepting the recommendation of the Designated Authority. The *lis* before this Court, as already indicated hereinabove, is only with regard to the violation of the petitioner's right to fair treatment and fair adjudication based on the provisions of Article 14 of the



Constitution of India and not with regard to the petitioner's apprehension of loss of business in West Bengal. In such view of the matter, the petitioner's apprehension cannot form the basis of the present writ petition in West Bengal.

71. Since this Court lacks territorial jurisdiction to entertain the writ petition, the judgment of the Hon'ble Supreme Court in the case of ***Adi Saiva Sivachariyargal Nala Sangam*** (supra) cannot come to the aid of the petitioner.
72. Mr. Khaitan relied on the judgment of the ***Eastern India Edible Oil Manufacturers Association*** (supra) wherein it has been held that upon goods illegally cleared by the customs authority in Bihar entering into zone of the business of the petitioner before the Court of West Bengal, cause of action arose in favour of the petitioner before this Court within West Bengal. The said judgment was rendered in the context of a case where the petitioners had approached this Court alleging discrimination against them inasmuch as certain goods which had been procured by certain persons at 30% lesser price were being sold in West Bengal to the disadvantage of the petitioners before this Court who had purchased the same goods at a higher price. The alleged discrimination hampering the business of the petitioners had thus taken place in West Bengal. It was in such factual background that the said judgment was rendered. In the case at hand the challenge mounted to the Final Findings of the adjudicating authority is premised on non-consideration of the petitioner's data, non-supply of essential facts and non-supply of the basis or material for or arriving at the dumping margin to the petitioner and other like grounds that together construct a case of arbitrariness and violation of right to fair



treatment. In order to prove these facts, it would not be required for the petitioner to prove that the petitioner's business in West Bengal would be hampered upon imposition of anti-dumping duty. The said judgment is therefore of no avail to the petitioner.

**73.** For all the reasons aforesaid this Court is unable to entertain the present writ petition on the ground of lack of territorial jurisdiction. Since this Court is not entertaining the writ petition on the ground of lack of territorial jurisdiction, the arguments pertaining to availability of alternative remedy, violation of principles of natural justice and other points raised by the parties and the judgments cited in support thereof are not being dealt with.

**74.** WPA 26130 of 2025 therefore, stands dismissed. No costs.

**75.** Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

**(Om Narayan Rai, J.)**