

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 1622 of 2022**

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QREX FLEX PVT LIMITED THRO KETAN THAKORBHAI PATEL  
Versus  
UNION OF INDIA

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Appearance:  
MR MIHIR JOSHI, SENIOR COUNSEL WITH MS GARGI R VYAS(7983) for  
the Petitioner(s) No. 1,2  
for the Respondent(s) No. 2,3  
MR DEVANG VYAS(2794) for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA**  
and  
**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 27/01/2022

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1 By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

*"A. This Hon'ble Court be pleased to direct the Hon'ble CESTAT to take up Appeal No.AD/52173/2021 before January 31, 2022, or such period as may be deemed appropriate by this Hon'ble Court;*

*B. In the alternative, this Hon'ble Court be pleased to quash and set aside impugned final findings No.F./ No.7/04/2021 – DGTR dated October 28, 2021 issued by the respondent No.2 and annexed at Annexure – A hereto; and*

*C. Pending admission and final hearing of this petition, this Hon'ble Court be pleased to direct respondent No.1 to issue an appropriate notification so as to extend the period of levy of anti-dumping duty under customs Notification No.38/2021 dated June 30, 2021, until disposal of Appeal No.AD/52173/2021 by the Hon'ble CESTAT or such other time as deemed appropriate by this Hon'ble Court; and*

*D. Ex parte ad interim and / or interim relief in terms of prayer 25*

*(C) be granted; and*

*E. For cost; and*

*F. Such other and further orders as may be considered fit and expedient in the facts of the case be passed.”*

2 We need not delve much into the facts giving rise to this writ litigation as the order passed by this Court dated 25<sup>th</sup> January 2022 makes the picture more than clear as regards the controversy between the parties. The order dated 25<sup>th</sup> January 2022 reads thus:

*“1. Draft amendment allowed. The necessary incorporation shall be carried out at the earliest. One set of the entire amended petition shall be furnished at the earliest to Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the Union.*

*2. We have heard Mr. Mihir Joshi, the learned Senior Counsel assisted by Mr. Veena Kher and Ms. Gargi R. Vyas, the learned counsel appearing for the writ applicants and Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the respondents.*

*3. The subject matter of the present litigation is one relating to the imposition of Anti-dumping duty on the imports of “PVC Flex Films.” It appears that the subject goods originates and is being imported from China in huge quantity and is being dumped in India.*

*4. At the instance of the writ applicants and others engaged in the business of manufacturing of the “PVC Flex Films”, the Union of India thought fit to issue a Notification dated 08.08.2016 imposing Anti-dumping duty on the subject goods for a period of five years.*

*5. The period of five years was to expire on 07.08.2021. Before the expiry of the said period, once again the issue was looked into by the authority concerned and by way of a fresh Notification dated 30.06.2021 extended the levy of the Anti-dumping duty for further period of six months, of course, pending the sunset review. It appears that thereafter, once again on 28.10.2021, a Notification came to be issued drawing the final conclusions and recommendation as under:*

***“M. CONCLUSION***

*104. Having regard to the contentions raised, information provided, submissions made and facts available before the Authority as recorded in these findings and on the basis of the*

*determination of dumping and consequent injury to the domestic industry made hereinabove, the Authority concludes that:*

*a. The volume of imports of subject goods from China PR has declined significantly both in absolute and relative terms. The imports of subject goods from China PR has been less than 1% of the Indian demand and Indian production from 2018-19 onwards.*

*b. The Authority notes that the decline in the performance of the domestic industry, therefore, is not attributable to the dumped imports, as admitted by the domestic industry itself too.*

*c. The reliability and authenticity of the "Report of Special Research and Investment Feasibility Assessment on China Polyvinyl Chloride Flexible Film/Sheet Market 2021-2025" relied upon by the domestic industry to establish the likelihood of continuation/recurrence of injury is suspect because neither the name of the author/ publishing agency which has prepared this report has been mentioned nor is there any reference to the original source of data cited in the report. Therefore, any conclusion with regard to likelihood of continuation/recurrence of dumping and injury cannot be made on the basis of this report.*

*d. Even though there is continued dumping of the subject goods from China PR, the likelihood of continuation/recurrence of injury to the domestic industry in the event of revocation of duty could not be conclusively established due to lack of sufficient independent corroborative evidence.*

*e. Therefore, based on examination of information on record, it is concluded that there is no justification for recommending continuation of anti-dumping duty in the present investigation.*

#### **N. RECOMMENDATION**

*105. In view of above, the Authority considers it appropriate to recommend withdrawal of anti-dumping duty on import of subject goods from the subject country recommended vide Notification No.15/13/2015-DGAD dated 30th June, 2016 and enforced vide Customs Notification No. 42/2016-Customs (ADD) dated 8<sup>th</sup> August 2016 and further extended vide Customs notification No38/2011-Customs (ADD) dated 30th June 2021 till 31st January 2022."*

*6. Thus, it appears that the Designated Authority has now recommended that the Anti-dumping duty on the subject goods should*

*be withdrawn. The writ applicants are aggrieved by such recommendation on the part of the Designated Authority to the Union. Being dissatisfied with the aforesaid conclusion and recommendation, the writ applicants preferred an Appeal before the Appellate Tribunal under Section 9C of the Customs Tariff Act, 1975 being the Appeal No.AD/52173/2021. It appears that the appeal was filed on 23.12.2021 and is pending as on date for listing and adjudication before the Tribunal. It is also pointed out that in order to ensure expeditious hearing of the appeal and the applications for interim relief, a note was filed for urgent listing of the appeal on 13.01.2022. A request was made to constitute a Bench on 17.01.2022. Once again a request was made by filing a memo dated 19.01.2022 for urgent listing of the appeal before the CESTAT.*

*7. Prima facie, it appears that as the Bench is not available, the Tribunal is not in a position to take up the matters for hearing more particularly, the applications seeking interim relief. In the meantime, a further development seems to have taken place in the form of a Notification No.3/2022/Custom-(ADD) dated 24.01.2022. With this Notification every thing comes to an end. Now, there would not be any levy of Anti-dumping duty. The operation of the Notification dated 08.08.2016 was otherwise came to an end on 31.01.2022, but, by way of the aforesaid Notification dated 24.01.2022, it has been brought to an end seven days earlier. It is in such circumstances that the writ applicants had to file a draft amendment which has been allowed today.*

*8. We have a suggestion to be put forward before the learned Additional Solicitor General of India appearing for the Union. Since an Appeal has already been filed before the Tribunal, it will be in the fitness of the things if the Tribunal hears the Appeal and decides the same on its own merits in accordance with law. However, till the time the Tribunal decides, we may stay the operation of the Notification No.3/2022/Custom-(ADD) dated 24.01.2022 for a period of six weeks from today and also extend the operation of the Notification dated 08.08.2016 for a period of six weeks. What is in our mind is that during this period of four weeks, the Tribunal should take up the Appeals and decide them on their own merits in accordance with law.*

*9. To the aforesaid suggestion, Mr. Vyas, submitted that he would like to seek appropriate instruction from the authority concerned in this regard and revert to the Court day after tomorrow.*

*10. There is no problem in keeping this matter day after tomorrow but, the Notification dated 24.01.2022 shall remain stayed from its operation till day after tomorrow. Further orders shall be passed day after tomorrow subject to what Mr. Vyas has to say further in the matter.*



11. *One copy of this order shall be furnished at the earliest to Mr. Vyas, the learned ASG for his onward communication.*

12. *Post this matter for further hearing day after tomorrow i.e. 27.01.2022 on top of the Board.”*

3 Today, when the matter was taken up for further hearing, we inquired with Mr. Devang Vyas, the learned Additional Solicitor General of India as to whether he has received any instructions from his client. Mr. Vyas has provided us with a short note. The note reads thus:

*“Product under consideration or subject goods : PVC Flex Films*

*Subject country: China PR*

*Background of the case:*

*(1) The Designated Authority initiated the original anti-dumping investigation with respect to subject goods originating in or exported from China PR on 1<sup>st</sup> February 2010.*

*(2) Provisional anti-dumping duty was recommended vide Notification No. 14/04/2010DGAD dated 22<sup>nd</sup> June 2010 and was imposed vide Notification No 79/2010-Customs dated 30<sup>th</sup> July 2010.*

*(3) The Designated Authority recommended definitive anti-dumping duty vide Final Findings No. 14/04/2010-DGAD dated 29<sup>th</sup> July 2011 and the same was imposed vide Notification No. 82/2011-Customs dated 25<sup>th</sup> August 2011.*

*(4) First sunset review investigation was initiated vide Notification No. 15/13/2015DGAD dated 27<sup>th</sup> July 2015. The Authority recommended continuation of anti-dumping duty vide final findings dated 30<sup>th</sup> June 2016 and the same was imposed for a period of 5 years by the Central Government vide Notification No. 42/2016Customs (ADD) dated 8<sup>th</sup> August 2016.*

*(5) On the basis the Application submitted by All India Laminated Fabric Manufactures Association, Pioneer Polyleathers Limited, Qrex Flex Private Limited and SRF Limited (hereinafter referred to as the “Applicants” or “domestic industry”), Authority initiated second sunset review vide Notification No. 7/04/2021-DGTR dated 24<sup>th</sup> March 2021.*

*(6) After initiation of the sunset review and pending the completion of the sunset review, the Central Government extended the anti-dumping*

*duty on the imports of the subject goods originating in or exported from subject country up to 31<sup>st</sup> January 2022 vide Notification No. 38/2021-Customs (ADD) dated 30<sup>th</sup> June 2021.*

*(7) The Designated Authority vide Final Findings No. AD (SSR) - 04/2021 dated 28<sup>th</sup> October 2021 recommended withdrawal of anti-dumping duty on import of subject goods from the subject country imposed vide Customs Notification No. 42/2016 Customs (ADD) dated 8<sup>th</sup> August 2016 and as extended vide Customs Notification No. 38/2021-Customs (ADD) dated 30<sup>th</sup> June 2021 till 31<sup>st</sup> January 2022.*

*(8) The Designated Authority vide its Final Findings dated 28.10.2021 recommended withdrawal of anti-dumping duty after detailed investigation and concluded that:*

*a) The volume of imports from subject goods from China PR has declined significantly both in absolute terms and relative terms. 'The imports of subject goods from China PR has been less than 1% of the Indian demand and Indian production from 2018-19 onwards.*

*b) The Authority notes that the decline in the performance of the domestic industry, therefore, is not attributable to the dumped imports.*

*c) The reliability and authenticity of the 'Report of Special Research and Investment Feasibility Assessment on China Polyvinyl Chloride Flexible Film/Sheet Market 2021-2025' relied upon by the domestic industry to establish the likelihood of continuation/recurrence of injury is suspicious because neither the name of the author/publishing agency which has prepared this report has been monitored nor is there any reference to the original source of data cited in the report. Therefore, any conclusion with regard to likelihood of continuation/recurrence of dumping and injury cannot be made on the basis of this report.*

*d) Even though there is continued dumping of the subject goods from China PR, the likelihood of continuation/recurrence of injury to the domestic industry in the event of revocation of duty could not be conclusively established due to lack of sufficient independent corroborative evidence.*

*e) Therefore, based on examination of information on record, it is concluded that there is no justification for recommending continuation of anti-dumping duty in the present investigation.*

*(9) The Ministry of Finance vide Notification No. 3/2022-Customs ADD*

*dated 24<sup>th</sup> January 2022 revoked the anti-dumping duty on PVC Flex Films originating in or exported from China PR and rescinded the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 42/2016-Customs (ADD) dated 8<sup>th</sup> August 2016.*

*(10) There is no requirement to stay Notification No. 3/2022-Customs ADD dated 24<sup>th</sup> January 2022 or extend anti-dumping duty beyond 31<sup>st</sup> January 2022, since there cannot be presumption of injury to domestic industry in absence of anti-dumping duty when detailed investigation by the Designated Authority points towards absence of likelihood of injury. Further, continuation of undue protection would also harm the interest of the downstream industry and the consumers.*

*(11) The expiry of anti-dumping duty also does not preclude the domestic industry from filing a fresh application seeking initiation of investigation on import of subject goods from subject country.”*

4 One copy of the aforesaid note has also been furnished to Mr. Joshi, the learned Senior Counsel appearing for the writ applicants.

5 It appears that the stance of the respondent No.1 is that this Court should not stay the Notification No.3/2022-Customs(ADD) dated 24<sup>th</sup> January 2022 or extend the anti-dumping duty beyond 31<sup>st</sup> January 2022. Mr. Vyas would submit that if the Notification is stayed or the anti-dumping duty is extended beyond 31<sup>st</sup> January 2022, the same may lead to irreparable injury to the downstream industry and the consumers. He would also submit that the decision to do away with the anti-dumping duty would not even otherwise preclude the domestic industry from filing a fresh application seeking initiation of investigation on the import of the subject goods from the subject country.

6 Mr. Joshi, the learned Senior Counsel would submit that if the Tribunal is not in a position to hear the appeals filed by the Association and are not in a position to obtain any interim relief in such appeals just because the Special Bench of the Tribunal is not available, the same may

cause irreparable injury to the members of the Association engaged in the manufacturing of the subject goods. Mr. Joshi once again reiterated his request that the Notification dated 24<sup>th</sup> January 2022 may remain stayed from its operation at least for a period of six weeks, and at the same time, the original Notification imposing the anti-dumping duty dated 8<sup>th</sup> August 2016, as extended by the Notification dated 30<sup>th</sup> June 2021, may also remain in operation for a period of six weeks. According to Mr. Joshi, this arrangement would be quite equitable so as to protect the interest of both the sides. The Association may also get an opportunity of getting their appeals heard before the Tribunal by that time and with an appropriate order that the Tribunal may pass, the Union may also come to know as to where they stand.

7 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view, more particularly, in the peculiar facts and circumstances of the case, that we should continue the stay of the operation of the Notification dated 24<sup>th</sup> January 2022 till a further period of six weeks, and at the same time, also order that the Notification dated 8<sup>th</sup> August 2016, as extended by the Notification dated 30<sup>th</sup> June 2021, shall remain in operation for a period of six weeks. During this interregnum period of six weeks, we expect the Special Bench of the Tribunal to take up the appeals for hearing and dispose them of in accordance with law before the period of six weeks comes to an end. We are of the view that a litigant should not suffer because the Special Bench of the Tribunal is not available. The Tribunal has to make the necessary arrangement for urgent hearing of the appeals one filed by the Association. We are also informed that between 14<sup>th</sup> February 2022 and 18<sup>th</sup> February 2022, the Tribunal is going to have some special sitting. If that be so, then the Tribunal should take up the appeals for hearing and decide them in accordance with law.



8 We dispose of this writ application with a direction that the Notification dated 24<sup>th</sup> January 2022 shall remain stayed from its operation for a period six weeks from today, and at the same time, the operation of the Notification dated 8<sup>th</sup> August 2016, as extended by the Notification dated 30<sup>th</sup> June 2021, shall continue for a period of six weeks. We direct the Tribunal to take up the appeals for hearing filed by the Association at any cost and decide them in accordance with law before the period of six weeks comes to an end. We expect the Union also to ensure that the Tribunal takes up the appeals for hearing and are decided in accordance with law before the expiry of six weeks.

9 One copy of this order shall be furnished at the earliest to Mr. Devang Vyas, the learned Additional Solicitor General of India for its onward communication.

10 We clarify that we have otherwise not gone into the merits of the legality and validity of the recommendations made by the designated authority and also the final Notification that has been issued by the Union. It is for the Tribunal to look into all the relevant aspects of the matter while hearing the appeals.

**(J. B. PARDIWALA, J)**

**(NISHA M. THAKORE, J)**

CHANDRESH