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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21st February, 2023
Date of decision: 23rd March, 2023

\+ **W.P.(C) 8381/2016 and CMAPPL. 34681/2016**

UNION OF INDIA.....Petitioner

Through: Mr Ajay Digpaul, CGSC alongwith Mr. Kamal R. Digpaul and Ms. Swati Kwatra, Advocates.

versus

ARVIND M KAPOOR AND ANR .....Respondents

Through: Mr. Ankur Sharma Advocate for R-1 (M: 9958317818).
Mr. Rajesh Sharma, Advocate (M-9560872227)

AND

\+ **W.P.(C) 2603/2017**

INDIAN SYNTHETICS RUBBER PRIVATE LIMITED AND ANR .....Petitioners

Through: Mr. Rajesh Sharma, Advocate.

versus

CENTRAL PUBLIC INFORMATION OFFICE AND ORS .....Respondents

Through: Mr. Vivekanand Mishra, Senior Panel Counsel, UOI (M- 9811429926).
Mr. Ankur Sharma, Advocate for R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. These are two writ petitions filed by –

   - Union of India, i.e., the Petitioner in ***W.P.(C) 8381/2016***, and;
   - M/s Indian Synthetics Rubber Private Ltd. (ISRPL), and Reliance Industries Pvt. Ltd. Petitioners in ***W.P.(C) 2603/2017.***

2. In the present petitions, challenge is raised to the order of the Central Information Commission *(hereinafter 'CIC')* dated 29th July, 2016 passed in ***File No. CIOC/KY/A/2016/000980*** titled ***Shri Arvind M. Kapoor v. The Director & CPIO, Ministry of Commerce & Industry***. The CIC, by way of the impugned order, directed the Directorate General of Anti-Dumping and Allied Duties to provide the information sought by the RTI Applicant- Mr. Arvind M. Kapoor.

Factual Background

3. The Petitioners in ***W.P.(C) 2603/2017*** jointly filed an application *(for clarity it is referred to as `Complaint')* before the Designated Authority, Directorate General of Anti-Dumping and Allied Duties *(hereinafter 'DA')*. The said complaint was filed for initiating investigation *qua* imports of Styrine Butadine Rubber *(hereinafter 'SBR')* of 1500 and 1700 series originating in or exporting from European Union, Korea RP and Thailand. Pursuant to the said complaint, the DA vide notification No.14/10/2015-DGAD dated 14th January, 2016 initiated an anti-dumping investigation.

4. Almost immediately after the investigation was initiated, the RTI Applicant - Mr. Arvind M. Kapoor filed an application dated 29th January, 2016 under the Right to Information Act, 2005 *(hereinafter 'RTI Act')* seeking information *qua* seven issues in relation to initiation of anti-dumping investigation concerning imports of SBR from European Union, Korea RP and Thailand. The seven issues in respect of which information was sought by the RTI Applicant is as under:

> *"(1) Kindly provide with the date when the application was jointly filed by M/s. Indian Synthetic Rubber Pvt. Ltd. and Reliance Industries Limited (hereinafter referred as 'applicants') before the*

Designated Authority in respect of the matter under reference;

(2) Kindly provide us with a copy of the non-confidential version of the application filed by the applicants in this matter;

(3)** When was the decision to initiate the Anti-dumping Investigation for levy of Anti dumping duties on the product taken by the Director General of Anti Dumping (DGAD);* ***and also provide us a with a photo copy of the Note Sheet put up for approval by DGAD;

(4) When were the relevant foreign governments viz. European Union, Korea RP, and Thailand intimated of the Anti-dumping investigation initiated; and kindly provide us a with a copy of the intimation;

(5) When the known exporters were intimated about the Anti-dumping investigation, and If yes, kindly provide us with a copy of the intimation.

(6) Whether said Notification was sent to Govt. Press for printing and publication?

(7) When was it printed and published?"

5. The CPIO, vide reply dated 11th February, 2016 informed the RTI Applicant that the notification concerning the initiation of anti-dumping investigation is available on the website of Department of Commerce. The reply of the CPIO is as under:

"With reference to your RTI application dated 29.1.2016, this is to inform that the notification concerning initiation of the relevant anti-dumping investigation is available in the Department of Commerce website at http://commerce.nic.in/traderemedies/adcasesinindia.asp?id=2.

2. In case you are not satisfied with this reply, you may prefer an appeal before appellate Authority at the following address:

Shri AK Gautam, Pr. Adviser (Cost)

Directorate General of Anti-dumping & Allied Duties
4th Floor, Jeevan Tara, Building, Parliament Street,

New Delhi-110001."

6. Thereafter, the CPIO, vide another reply dated 31st March, 2016 provided the following information to the RTI Applicant:

> *"With reference to your RTI application dated 29.01.2016, the reply to the respective questions are as follows:*
> *"1. The application (Revised) was filed by M/s Indian Synethic Rubber Pvt Ltd. and Reliance Industries Ltd. on 7.12.2015.*
> *2. Soft copy of the Non-Confidential petition is available in CD-Rom is enclosed herewith.*
> ***3.** The investigation was initiated on 16.01.2016.* ***Note sheet being confidential, cannot be provided.***
> *4. The copy of the initiation notification was sent to the embassies/representatives of the subject countries in India on 03.02.2016 (Copy of the letter is enclosed)*
> *5. The known exporters were intimated about the initiation of the investigation on 03.02.2016 (Copy of the letter is enclosed)*
> *6. Yes, the initiation notification was sent to the Govt. of India Press for Gazette Notification.*
> *7. The initiation notification was published on 16.01.2016."*

7. Thus, apart from the note sheet which was sought, almost all the information sought was provided by the CPIO to the RTI Applicant. Aggrieved by the non-supply of all the information as sought in the RTI application, the Applicant preferred an appeal dated 11th April, 2016 to the First Appellate Authority. The First Appellate Authority (FAA) vide reply dated 3rd June, 2016 intimated that the note sheet sought by him comprised of confidential information that cannot be summarised into non-confidential

version. *Qua* the other non-confidential information, the reply stated that if the RTI Applicant is an interested party as per the Anti-Dumping Rules, it may verify the public file of the concerned case. The reply of the FAA dated 3rd June, 2016 reads as under:

> "*Please refer to your appeal dated 11.4.2016 under RTI Act against CPIO's reply dated 31.3.2016. It is stated that note sheet contains confidential information and it cannot be summarised into non-confidential version. As regards the other non-confidential information sought by you, if you are an interested party as per the Anti-dumping Rules, you may verify the Public File of the concerned case.*"

8. Being dissatisfied with the reply given by the FAA, the RTI Applicant preferred second appeal under Section 19(3) of the RTI Act to the CIC. Vide the impugned order, the CIC has directed the Directorate General of Anti-Dumping and Allied Duties to provide the information, including the note sheet to the RTI Applicant. The relevant portion of the impugned order reads as under:

> *"**DECISION***
> *It would be seen here that the appellant, vide his RTI Application dated 29.01.2016, sought information from the respondents on 7 issues. Respondents vide their response dated 11.02.2016 & 31.03.2016 provided the required information to the appellant. Being aggrieved by the aforesaid response, FA was filed by the appellant on 22.02.2016 before the FAA, who could not take up the same for its disposal for the reasons best known to him. Hence, a Second Appeal before this Commission.*
> *2. It is pertinent to mention here that the CPIO, vide his response dated 11.02.2016 denied the required*

information to the appellant by stating that the information is already available in Public Domain i.e. http://commerce.nic.in. However, CPIO vide his another response dated 31.03.2016, provided the required information to the appellant against issues no.2, 4, 5, 6 & 7. Further, CPIO failed to provide the information to the appellant against issue no.1 & second part of issue no.3 i.e. portion of note sheet of the file (pertaining to M/s Indian Synthetic Rubber Pvt. Ltd.) put up for approval by DGAD.

3. On being queried by the Commission to Sh. Rajv Arora, Additional DG(FT), as to what are the reasons for not providing the required information, against issue no. 1 & 3, to the appellant on his RTI application dated 29.01.2016. On this very aspect, it is submitted by him that he wants to claim exemption in providing the required noting portion to the appellant against second part of issue no.3. On this, the Commissioner asked him to produce the relevant File for kind perusal. At this, is submitted by Sh. Rajiv Arora, Additional DG(FT), that he has not brought the relevant file and seeks some time in this regard. Thus, the matter was kept back for four hours and taken back again at 1500 hrs for further hearing of the case accordingly.

4. At this time, Sh. Rajiv Arora, Additional DG(FT), came before the Commission with the relevant file but was not inclined to show the relevant Noting Portion (against which he wanted to claim exemption) of the file to the Commissioner. At this, Commission asked him to pin-point the Note-Sheet or the exact portion against which he wants to claim exemption. On this very aspect, Sh. Rajiv Arora, again failed to highlight any portion of the Note Sheet. Furthermore, on repeated request, Sh. Rajiv Arora, handed over the relevant file to the Commissioner for the kind perusal of the Commissioner. The Commissioner has perused

thoroughly the Noting Portion of the file and finds that there is nothing, which can be exempted under the provisions of the RTI Act 2005.

5. By virtue of the above, the Commission feels that Sh. Rajiv Arora, Additional DG(FT), tried his level best to mislead the Commission and came here without preparation of the case. Therefore, the Commission warned him to come before the Commission with full preparation of the case to oppose second appeal, on behalf of respondents in future, otherwise Commission would be left with no option but to ban his appearance before the Commission to meet the end of justice.

6. The Commission heard the submissions made by Sh. Darpan Bhuyan, Learned Advocate as well as respondents at length. The Commission also perused the case-file thoroughly, specifically, nature of issues raised by the appellant in his RTI application dated 29.01.2016, respondent's response dated 11.02.2016, & 31.03.2016, made available on record and also the grounds of memorandum of second appeal.

7. The Commission is of the considered view that the appellant has been deprived by the respondents deliberately from having the benefits of the RTI Act 2005, even after lapse of more than seven months period. Thus, the respondents have defeated the very purpose of the RTI Act 2005 for which it was legislated by August Parliament of India. As such, the Commission feels that appellant's second appeal deserves to be allowed partly against issues no 1 & second part of issue no 3 i.e., portion of note sheet of the file (pertaining to M/s Indian Synthetic Rubber Pvt Ltd.). Therefore, it is allowed accordingly.

8. In view of the above, the respondents are hereby directed to provide the complete & categorical information, against issues no. 1 & second part of issue no. 3 i.e. photocopy of the note sheet of the file

> ***(pertaining to M/s Indian Synthetic Rubber Pvt Ltd) in accordance to the comment if sought, from M/s Indian Synthetic Rubber Pvt. Ltd to the appellant, in accordance with the provisions of RTI Act 2005, within 30 days from the date of receipt of this order under intimation to this Commission.*** *If need be, Section 5(4) of the RTI Act 2005 may also be invoked in the matter. The Appeal is disposed of accordingly*
> ”

9. The Petitioners, i.e., the Union of India, ISRPL, and Reliance Industries Pvt. Ltd. seek quashing of the impugned order by way of the present two petitions.

10. Vide order dated 23rd September, 2016, this Court in ***W.P.(C) 8281/2016*** passed an interim order staying the operation of the CIC's order in the following terms:

> *Till the next date of hearing, the operation of the order dated 29.07.2016 insofar as it relates to supply of information relating to second part of issue No.3, i.e., supply of portion of the note sheet of the file pertaining to M/s. Indian Synthetic Rubber Private Limited be disclosed, is stayed.*

Submissions

11. Mr. Digpaul, ld. CGSC appearing for the Union of India submits that the only objection of the Petitioners is in respect of disclosure of the photocopy of the note sheet which contains confidential information of the complainants. According to Mr. Digpaul and Mr. Rajesh Sharma, ld. Counsels, the RTI Applicant is an importer of goods from various foreign countries and has participated in the enquiry and the proceedings for imposition of the anti-dumping duty before the DA. Though the note sheet and the basis of the decision to initiate anti-dumping investigation is not

disclosed, the findings are published by way of a public notice which is issued under Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 *(hereinafter 'Anti-Dumping Rules')*. The initiation of investigation is publicised by means of a public notice issued under Rule 7. The said initiation leads to various persons being issued a notice for objecting to the imposition of anti-dumping duty. Preliminary findings are issued after determining the nature of the injury caused, if any. The final findings are then issued under Rule 17 of the Anti-Dumping Rules. The final findings are also published in the official gazette.

12. These Rules have a proper scheme as to how confidentiality has to be maintained in respect of the information received from the complainants under Rule 7 and this cannot be the subject matter of RTI proceedings. It is the submission of the ld. Counsel for the Petitioners that the RTI Applicant could have obtained the information sought in the RTI application from the Anti-Dumping Authority and in any event, if information cannot be obtained from the Anti-Dumping Authority, the RTI Act cannot be used to obtain the said information.

13. It is the submission of ld. Counsels for the Petitioners that the information that is sought by the RTI Applicant is confidential in nature and, specifically, it is third party information given to the DA for the purpose of anti-dumping investigation. Reliance is placed upon Rule 7, as per which two versions of information are filed by the complainant, namely, confidential and non-confidential versions. The confidential version is not liable to be disclosed to third parties except in the form of a non-confidential summary.

14. Mr. Rajesh Sharma, ld. Counsel appearing for one of the complainants reiterates this stand and submits that the sensitive data of competitors including the Complainants, has been included in the complaint which was filed. The initiation notice has the required information which led to the issuance of the public notice. The domestic industry consisting of two companies i.e., M/s ISRPL and M/s Reliance Industries Limited which had jointly filed the complaint. He submits that a perusal of the initiation notice itself would show that there are various figures and facts which are sensitive in nature and at the stage of initiation of investigation, it is merely the *prima facie* satisfaction of the DA which is required. Since under Rule 5, it is only the *prima facie* view which is taken by the DA, it cannot be held that the entire data has to be disclosed. Reliance is placed upon Rule 5 to argue that the DA cannot initiate investigation without examining necessary data which is filed by the complainant including the injury and the link between the dumped imports and the alleged injury. The degree of support required for the domestic industry would also have to be analyzed in a *prima facie* manner.

15. It is submitted by Mr. Rajesh Sharma, ld. Counsel that in the present case, the complainants had filed confidential and non-confidential versions of the complaint. If the RTI Applicant so wish to obtain the confidential information, the correct process would have been to approach the Anti-Dumping Authority. Imposition of anti-dumping duty which took place in this matter after the issuance of the public notice and receiving various other inputs from other industry players, was upheld right till the Supreme Court. Thus, at this stage, the disclosure of the confidential information could severely impact the domestic industry. The findings relating to imposition of

anti-dumping duty having attained finality, the RTI mechanism cannot be used for obtaining sensitive commercial data and confidential information concerning direct competitors of the RTI Applicant.

16. It is the submission of the Petitioners that this data which is contained in the confidential version of the information as also in the note sheet, which led to the initiation of the enquiry, if disclosed, could have a bearing on the complainants' business interest and commercial competitiveness.

17. On the other hand, Mr. Ankur Sharma, ld. Counsel appearing for the RTI Applicant submits that the note-sheet, which is being sought, is the basis of the investigation which was commenced and the RTI Applicant and the industry is entitled to know the basis of initiation of the anti-dumping investigation. He further submits that if there is any confidential information in the same, the same can be redacted by the Anti-Dumping Authority. The manner in which final findings are published in confidential and non-confidential versions, can also be adopted even for the initial order under Rules 5 & 6 initiating the investigation. He submits that the public notice which is issued, is like a show cause notice as to why the anti-dumping duty ought not to be imposed. However, the said notice does not give the basis on which the initiation of investigation takes place. The Authority being a *quasi*-judicial authority, the said basis of the decision ought to be made available to the public, inasmuch as the failure to make the same available would lead to a situation where the principles of natural justice would be breached. It is under these circumstances that the RTI Applicant sought the information under the RTI Act.

18. Mr. Sharma, ld. Counsel for the RTI Applicant relies upon the judgment of the Supreme Court in ***Union of India & Anr. v. Meghmani***

Organics, (2016) 10 SCC 28 to argue that the scheme of confidentiality under Rule 7 of the Anti-Dumping Rules has already been pronounced upon by the Supreme Court and the onus is on the complainant to show as to what portion of the complaint is confidential. Thus, there cannot be any presumption that the basis of the decision is confidential. Ld. Counsel further relies upon the judgment of the ld. Division Bench of this Court in ***Kesoram Ryon v. The Designated Authority [W.P(C) 146/2017, date of decision 8th November, 2017]*** as per which the imposition of anti-dumping duty is a two-step process i.e., that initially, there has to be a *prima facie* satisfaction and thereafter the issuance of public notice has to be done. He submits that the *prima facie* satisfaction being a satisfaction which is *quasi*-judicial in nature, the reasons cannot be kept away from the concerned parties. Even the final decision is always published, though in redacted form. Therefore, in a similar manner, even the *prima facie* decision of the DA ought to be published after redacting the sensitive data.

19. In rejoinder submissions, Mr. Ajay Digpaul, ld. CGSC has drawn the attention of the Court to paragraph 30 of judgment of the Supreme Court in ***Meghmani Organics (supra)*** to argue that the Supreme Court recognizes the position that confidential information can be a part of DA's findings as also the files which are maintained. It is his further submission that the Supreme Court also clearly holds that precautions have to be taken not to disclose sensitive information.

Analysis

20. The present writ petitions raise important issues concerning the interplay of anti-dumping proceedings under the Customs Tariff Act, 1975 and Anti-Dumping Rules with the Right to Information Act, 2005. During

the 1990s, when global trade saw extensive expansion, apprehensions were expressed by nations in respect of exports of goods and products from countries at prices lower than their domestic prices into importing countries. The concept of exporting goods into the international market at lower prices came to be known as **'Dumping'**.

21. The General Agreement on Tariffs and Trade (GATT), which dealt with issues of dumping under Article VI, recognised the right of countries to bring in anti-dumping frameworks to deal with issues relating to dumping. Article VI of GATT reads as under:

> *"**Article VI***
>
> *Anti-dumping and Countervailing Duties*
>
> *1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another*
>
> *(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,*
>
> *(b) in the absence of such domestic price, is less than either*
>
> *(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or*
>
> *(ii) the cost of production of the product in*

the country of origin plus a reasonable addition for selling cost and profit.

*Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.**

2. ***In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product.*** *For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.*

*3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise.**

4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to antidumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting

party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. (a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

*(b) The CONTRACTING PARTIES may waive the requirement of sub-paragraph (a) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The CONTRACTING PARTIES shall waive the requirements of sub-paragraph (a) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.**

(c) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (b) of this paragraph without the prior approval of the CONTRACTING PARTIES; Provided that such action shall be reported

> *immediately to the CONTRACTING PARTIES and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove.*
>
> *7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:*
>
> *(a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and*
>
> *(b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties."*

22. Thereafter, the Agreement on Implementation of Article VI of the General Agreement of Tariffs and Trade 1994 *(hereinafter 'Anti-Dumping Agreement')* was agreed upon by a significant number of countries in the world.

23. The international regime dealing with anti-dumping has been considered by the Supreme Court in the judgment of ***Meghmani Organics Ltd. (supra).*** The relevant excerpt from the judgment reads as under:

> *"The Central Government framed and notified the Rules on 1.1.1995 in exercise of powers conferred by sub-section (6) of Section 9-A and sub- section (2) of Section 9-B of the Act. There is no dispute that the Rules are based largely upon an International Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (for brevity "GATT 1994"). Under this Agreement all the members including India concurred on the broad principles for applying anti-dumping measures only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigation in accordance with the provisions of the Agreement. Let us take a bird's eye–view of its relevant Articles. Article V of the Agreement contains provisions for initiation of investigation and its completion in respect of an alleged dumping. The initiation has to be generally upon a written application by or on behalf of the domestic industry. In special circumstances the DA may initiate an investigation even without a written application provided it has sufficient evidence of dumping. A time limit of one year to eighteen months is prescribed for concluding the investigation. Article VI deals with "Evidence" which is generally to be made known to all interested parties except where the information is confidential."*

24. The provisions of the Anti-Dumping Agreement, while laying down the broad framework and principles to be followed during the process of imposing anti-dumping duties, recognised the confidential nature of the information that could be dealt with in such investigations and, thus, Article 6 of the Anti-Dumping Agreement provides as under:

> *"6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities*

for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. ***Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties.*** *There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.*

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.5 ***Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it****.*

6.5.1 The authorities shall require interested parties providing confidential information

to furnish non-confidential summaries thereof. *These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.* ***In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.***

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 *In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members.* ***Subject to the requirement to protect confidential information, the authorities shall***

> ***make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.***
>
> *6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph."*

25. A perusal of the above provision of the Anti-Dumping Agreement would show that countries were conscious of the need to preserve confidentiality of the information disclosed during proceedings relating to anti-dumping duties. Authorities are permitted to treat the information, which could be commercially sensitive, as confidential and the same is not to be disclosed to any third party, without permission of the party providing the information. The above provisions, in fact, recognised the concept of confidential documents and information on the one hand and non-confidential summary on the other hand. The latter is meant to ensure that requisite information is still provided to third parties to comply with the principles of natural justice while maintaining confidentiality of specific information. The ultimate discretion under the Anti-Dumping Agreement is to be vested in the authority concerned to decide as to whether any information is to be disclosed or not.

26. In the spirit of the provisions of the Anti-Dumping Agreement, the Anti-Dumping Rules, 1995 were enacted in exercise of the power conferred

under the Customs Tariff Act, 1975. The scheme of the Anti-Dumping Rules is broadly aligned with the international framework. The said Rules came into force on 1st January, 1995. The scheme of the Anti-Dumping Rules is that as per Rule 5, a written complaint can be filed on behalf of the domestic industry, as defined in Rule 2(b), to the effect that injury is being caused to the domestic industry by furnishing evidence of dumping. The Anti-Dumping Rules require a link between the dumped imports and the alleged injury to be established. As per Rule 6(1), the Designated Authority *(hereinafter 'DA'),* after examining the complaint and upon recording its satisfaction in terms of Rule 6 is to issue a public notice specifying the following facts included in 6(1)(i) to 6(1)(vi):

> *"(i) the name of the exporting country or countries and the article involved;*
> *(ii) the date of initiation of the investigation;*
> ***(iii) <u>the basis on which dumping is alleged in the application;</u>***
> ***(iv) <u>a summary of the factors on which the allegation of injury is based</u>,***
> *(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."*

27. As per Rule 6(2) and (3), copies of the public notice and the complaint are forwarded to governments of exporting countries and known exporters of the article alleged to have been dumped. While the public notice is also forwarded by the DA to other interested parties, the said parties have to make request in writing to get a copy of the complaint as per proviso to Rule 6(3).

28. Rules 6(4)-(8) prescribe the manner in which all the concerned parties

have to be heard, prior to the DA recording its findings. After hearing parties and recording findings the DA makes recommendations to the Central Government. For the purposes of the present case, Rule 7 of the Anti-Dumping Rules would be relevant as it deals with the issue of confidential information. The said Rule is set out below:

> *"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 authorisation 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 authorise its disclosure in a generalised or summary form, it may disregard such information."*

29. A perusal of Rule 7 above would show that if any information is provided by any party to the DA on a confidential basis, upon the said Authority being satisfied of the same being confidential, the said

information is not to be disclosed to any party, without authorization of the party providing such information. Further, in order to ensure that the crux of the said information is still made available to the concerned stakeholders, a non-confidential summary can be provided. Moreover, if the party providing the information contends that the said information is not susceptible of summary, then such party has to provide a statement of reasons as to why summarisation of the information is not possible. Under Rule 7(3), the authority has the final say on deciding as to whether the request of confidentiality is warranted or not.

30. In the present case, the anti-dumping investigation was initiated at the instance of ISRPL and Reliance Industry Ltd. i.e., the Petitioners in ***W.P.(C) 2603/2017***. The said two companies filed a complaint before the Anti-Dumping Authority with respect to alleged dumping of SBR of 1500 and 1700 series originating in or exported from European Union, Korea RP, and Thailand, and resultant injury to the domestic industry. Shri Virender Kapoor, the RTI Applicant was a party to the anti-dumping investigation. He participated in the said investigations which finally led to the imposition of anti-dumping duty vide notification no. 14/10/2015-DGAD dated 12th July 2017.

31. The concerned official from the Directorate General of Anti-Dumping and Allied Duties had handed over the original file of the DA in the matter along with a chart indicating the information which is claimed to be confidential and the corresponding noting number, upon being requested by the Court, to highlight the fact that the information which was given by the domestic industry and the note sheets which were prepared, which led to the initiation of investigation, consists of various sensitive business information

of the complainants.

32. In the complaint filed by the Complainants various details relating to the following aspects are contained:

i) Capacity utilization;

ii) Installed capacity of, specifically, the two complainants;

iv) Dumping margins in other countries such as European Union, Korea RP and Thailand including the net export prices;

v) Sales of the two complainants;

vi) Data relating to price undercutting and percentage;

vii) Tables which consist of the price suppression data, price underselling, installed capacity, production, utilization of capacity and domestic sales of both the entities;

viii) Tables dealing with profits, return on investment and cash flow, opening and closing stock and average stock for various years, productivity particulars, productivity per employee as also the wages and finally the injury margin and injury margin percentage;

ix) Imposition of customs duties in various jurisdictions;

x) The cost of raw materials;

xi) Investments made by the Petitioners;

xii) Details of commercial production, Petitioners' market share, and the manner in which injury is caused.

33. Initially, a public notice was issued on 14th January, 2016. The initiation notification notes that the known exporters, the Government of the subject country, the importers and users in India, known to be concerned with SBR, were asked to submit relevant information. The notice further

notes that in terms of Rule 6(7), any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

34. Final Findings were issued vide notification dated 12th July, 2017 which sets out in details the manner in which the DA proceeded in the said complaint. Notices were issued and questionnaires were sent to various exporters who participated in the proceedings. Stakeholders such as the European Commission (Director General for Trade), Government of Korea RP, and various industry organizations offered comments and submissions. Insofar as confidentiality is concerned, the following paragraphs of the order constituting the final findings of the authority are relevant:

> "o. ***The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by all interested parties.*** *The public file was inspected by a number of interested parties a number of times interested parties, who requested inspection and copies of the documents from the public file, were provided with the same.*
>
> *p.* ***Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. The Authority accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis, which was made available through public file.*****"**

35. The DA finally recommended the imposition of anti-dumping duty. The matter was carried in appeal to the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) which, vide decision dated 12th March, 2018, in ***Anti-Dumping Appeal No. 51809/2017*** titled ***M/s Trinseo Europe GMBH v. Union of India*** dismissed the appeal. In the said order passed by the CESTAT, the issue of confidentiality is dealt with in the following manner:

> "*19. Regarding excessive confidentiality and denial of principles of natural justice by the DA, we note that the DA has followed the established procedure and the provisions contained in AD Rules and Annexure thereto during the course of investigation. There is no serious deviation in such principles calling for intervention by the Tribunal* "

36. While the anti-dumping proceedings were ongoing, the RTI Applicant filed the application under the RTI Act on 29th January, 2016 seeking, *inter alia*, a copy of the non-confidential version of the complaint filed by RIL and ISRPL as also the note sheet put up for approval by the Anti-Dumping Authority.

37. The CPIO vide reply dated 31st March, 2016 provided the information sought by the RTI Applicant. However, the note sheet was not provided on the ground that it was confidential. The CIC vide the impugned order has directed the disclosure of information at serial number 1 and second part of serial number 3 i.e., the photocopy of the note sheet of the Anti-Dumping Authority. The Union of India and the complainants before the Anti-Dumping Authority have, thus, challenged these directions of the CIC. The only issue that has been urged before this Court is in respect of disclosure of the note sheet.

38. The submission on behalf of the Petitioners is that if any information is to be sought, the RTI Applicant ought to have approached the Anti-Dumping Authority under Rule 7 of the Anti-Dumping Rules and not under the RTI Act. On the other hand, the legal issue raised by ld. counsel for the RTI Applicant is that the RTI Act would prevail over the Anti-Dumping Rules and the Anti-Dumping Authority is under a legal obligation to provide the information sought by the RTI Applicant. Thus, the request of the RTI Applicant seeking the note sheet of the Directorate General of Anti-Dumping hinges upon the determination of the question as to whether the Anti-Dumping Authority is obliged to provide information under the RTI Act when there is a complete framework governing, *inter alia*, supply of information in anti-dumping proceedings in the form of Anti-Dumping Rules.

39. Section 22 of the RTI Act provides that the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, or in any instrument having effect by virtue of any other law. Section 22 of the RTI Act reads as under:

> *"22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

40. Thus, the Court needs to examine whether the Anti-Dumping Rules are 'inconsistent' with the provisions of the RTI Act. The legal issue in the context of specific Rules framed by various authorities in respect of disclosure of information, in different contexts, has been subject matter of at

least two decisions. In the case of ***Registrar of Supreme Court of India v. R.S. Misra***[1], a ld. Single Judge of this Court was dealing with a request for information under the RTI Act in the context of Supreme Court Rules, 1966/2013 framed by the Supreme Court. In the said decision, the Court considered the framework of the said Rules framed under Article 145 of the Constitution of India, 1950. In the said judgment, the Court drew a distinction between the administrative functioning and the judicial functioning of the Supreme Court. The Court in that context observed as under:

> *62.* ***Also, the judicial functioning of the Supreme Court of India is separate/independent from its administrative functioning. In the opinion of this Court, the RTI Act cannot be resorted to in case the information relates to judicial functions, which can be challenged by way of an appeal or revision or review or by any other legal proceeding.***
> *XXX*
> *72. This Court is also of the opinion that the SCR does not make sense unless they are read as indicating that, save when permitted under the Rules, documents on the Court file are not intended to be inspected or copied. That is the necessary corollary of the Rules granting only a limited right to inspect and take copies. The Chancery Division in 394 Dobson and Another Vs. Hastings and Others, MANU/UKCH/0026/1991 : [1992] Ch. 394 has held as under:-*
>
> > *"This is a committal application with an unusual background. It concerns the unauthorised inspection of a document on a court file, and the subsequent publication of information obtained from that inspection. The respondents are Mr. Max Hastings, the editor of "The Daily Telegraph", Miss Antonia Feuchtwanger, a journalist employed by "The Daily Telegraph", and the Daily Telegraph Plc. On 31*

[1] *W.P.(C) 3530/2011, date of decision 21st November, 2017*

August and 3 September 1991 articles written by Miss. Feuchtwanger appeared in "The Daily Telegraph" newspaper. Both articles referred to a report submitted to the High Court by Mr. Burns, deputy official receiver, in proceedings brought by the official receiver.....

With that introduction I turn first to the legal framework: the provisions in the rules of court relating to inspection of documents on the file maintained by the court for disqualification proceedings. Unfortunately, the history of this matter has been clouded a little by some confusion about which of two sets of rules is applicable to inspection of documents filed in disqualification proceedings: the Rules of the Supreme Court, or the Insolvency Rules. Indeed, one of the issues before me concerns which of these two sets is the relevant set.

The upshot of all this is that the relevant rules regarding inspection of the court file in the present case are the Rules of the Supreme Court. Under R.S.C., Ord. 63 rr. 4 and 4A any person, on payment of the prescribed fee, was entitled to search for, inspect and take a copy of the originating summons. The official receiver's report could be inspected and copied with the leave of the court, which might be granted on an ex parte application. The provision in the Insolvency Rules, for the inspection of the court file by a creditor of the company to which the insolvency proceedings relate, had and has no application.

Inspection of documents on the court file otherwise than in accordance with the rules.

The Rules of the Supreme Court do not expressly prohibit inspection and taking copies of documents otherwise than in accordance with the rules. What the rules do is to require parties to proceedings to file certain documents in the court office. Ord. 63 r. 4 provides that of the documents which must be filed, some are to be open to general inspection. Other

documents may be inspected with the leave of the court. Rule 4 provides further that this requirement is not to prevent parties to proceedings from inspecting or obtaining copies of documents on the file. In my view these provisions do not make sense unless they are read as indicating that, save when permitted under the rules, documents on the court file are not intended to be inspected or copied. That is the necessary corollary of the rules granting only a limited right to inspect and take copies. In other words, a court file is not a publicly available register. It is a file maintained by the court for the proper conduct of proceedings. Access to that file is restricted. Non-parties have a right of access to the extent, provided in the rules. The scheme of the rules is that, by being filed, documents do not become available for inspection or copying save to the extent that access to specified documents or classes of documents is granted either generally under the rules or by leave of the court in a particular case.

The purpose underlying this restriction presumably is that if and when affidavits and other documents are used in open court, their contents will become generally available, but until then the filing of documents in court, as required by the court rules for the purpose of litigation, shall not of itself render generally available what otherwise would not be. Many documents filed in court never see the light of day in open court. For example, when proceedings are disposed of by agreement before trial. In that event, speaking generally, the parties are permitted to keep from the public gaze documents such as affidavits produced in preparation for a hearing which did not take place. Likewise with affidavits produced for interlocutory applications which are disposed of in chamber. Again, there are certain, very limited, classes of proceedings, such as those relating to minors, which are normally not heard in open court. Much of the object sought to be achieved by a hearing in camera in

> *these cases would be at serious risk of prejudice if full affidavits were openly available once filed.*
>
> *73.* ***Consequently, the SCR would be applicable with regard to the judicial functioning of the Supreme Court; whereas for the administrative functioning of the Supreme Court, the RTI Act would be applicable and information could be provided under it. The dissemination of information under the SCR is a part of judicial function, exercise of which cannot be taken away by any statute. It is settled legal position that the legislature is not competent to take away the judicial powers of the court by statutory prohibition. The legislature cannot make law to deprive the courts of their legitimate judicial functions conferred under the procedure established by law****.*
> *74. Also, the RTI Act does not provide for an appeal against a Supreme Court judgment/order that has attained finality. It is clarified that queries under the RTI Act would be maintainable to elicit information like how many leaves a Hon'ble Judge takes or with regard to administrative decision an Hon'ble Judge takes; but no query shall lie with regard to a judicial decision/function.*

41. This judgment was considered by the Supreme Court in ***Chief Information Commissioner v. High Court of Gujarat & Anr.***[2]. The said case also involved interplay between the RTI Act and Rules framed by the Gujarat High Court. The findings of the Supreme Court in the said judgment are as under:

> *"13. We have carefully considered the contentions and perused the impugned judgment and materials on record. The following points arise for consideration in this appeal:-*
>
> *(i) Whether Rule 151 of the Gujarat High Court Rules, 1993 stipulating that for providing copy of documents to the third parties, they are required to file*

[2] *C.A.1966-1967/2020, decided on 4th March, 2020.*

an affidavit stating the reasons for seeking certified copies, suffers from any inconsistency with the provisions of RTI Act?

(ii) ***When there are two machineries to provide information/certified copies – one under the High Court Rules and another under the RTI Act, in the absence of any inconsistency in the High Court Rules, whether the provisions of RTI Act can be resorted to for obtaining certified copy/information****?*

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25. Information under the categories (a), (b) and (c) and other information on the judicial side can be accessed/certified copies of documents and orders could be obtained by the parties to the proceedings in terms of the High Court Rules and the parties to the proceedings are entitled to the same. So far as the third parties are concerned, as of right, they are not entitled to access the information/obtain the certified copies of documents, orders and other proceedings. As per rules framed by the High Court, a third party can obtain the certified copies of the documents, orders or judgments or can have access to the information only by filing an application/affidavit and by stating the reason for which the information/copies of documents or orders are required. ***Insofar as on the administrative side i.e. categories (d), (e) and (f), one can have access to the information or copies of the documents could be obtained under the rules framed by the various High Courts or under the rules framed by the High Court under the RTI Act.*** *Insofar as the disclosure of information as to the assets of the Judges held by the Chief Justice of the High Court, the same is now covered by the judgment of the Constitution Bench reported in Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agrawal 2019 (16) SCALE 40.*

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27. Rule 151 of the Gujarat High Court Rules, 1993

requires a third-party applicant seeking copies of documents in any civil or criminal proceedings to file an application/affidavit stating the reasons for which those documents are required. As such, the High Court Rules do not obstruct a third party from obtaining copies of documents in any court proceedings or any document on the judicial side. It is not as if the information is denied or refused to the applicant. All that is required to be done is to apply for the certified copies with application/affidavit stating the reasons for seeking the information. ***The reason insisting upon the third party for stating the grounds for obtaining certified copies is to satisfy the court that the information is sought for bona fide reasons or to effectuate public interest. The information is held by the High Court as a trustee for the litigants in order to adjudicate upon the matter and administer justice. The same cannot be permitted by the third party to have access to such personal information of the parties or information given by the Government in the proceedings. Lest, there would be misuse of process of court and the information and it would reach unmanageable levels. If the High Court Rules framed under Article 225 provide a mechanism for invoking the said right in a particular manner, the said mechanism should be preserved and followed. The said mechanism cannot be abandoned or discontinued merely because the general law – RTI Act has been enacted.***

28. As discussed earlier, the object of the RTI Act itself recognizes the need to protect the institutional interest and also to make optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The procedure to obtain certified copies under the High Court Rules is not cumbersome and the procedure is very simple – filing of an application/affidavit alongwith the requisite court fee stating the reasons for seeking the

information. The information held by the High Court on the judicial side are the "personal information" of the litigants like title cases and family court matters, etc. Under the guise of seeking information under the RTI Act, the process of the court is not to be abused and information not to be misused.

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33. Sub-section (2) of Section 4 of the RTI Act provides that every public authority to take steps to provide as much information suo motu to the public at regular intervals through various means of communications including internet, so that the public have minimum resort to the use of the RTI Act to obtain information. Suo motu disclosure of information on important aspects of working of a public authority is therefore, an essential component of information regime. The judgments and orders passed by the High Courts are all available in the website of the respective High Courts and any person can have access to these judgments and orders. Likewise, the status of the pending cases and the orders passed by the High Courts in exercise of its power Under Section (sic Article) 235 of the Constitution of India i.e. control over the subordinate courts like transfers, postings and promotions are also made available in the website. ***In order to maintain the confidentiality of the documents and other information pertaining to the litigants to the proceedings and to maintain proper balance, Rules of the High Court insist upon the third party to file an application/affidavit to obtain information/certified copies of the documents, lest such application would reach unmanageable proportions apart from the misuse of such information.***

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3. We summarise our conclusion:-

(i) Rule 151 of the Gujarat High Court Rules stipulating a third party to have access to the

> *information/obtaining the certified copies of the documents or orders requires to file an application/affidavit stating the reasons for seeking the information, is not inconsistent with the provisions of the RTI Act, but merely lays down a different procedure as the practice or payment of fees, etc. for obtaining information. In the absence of inherent inconsistency between the provisions of the RTI Act and other law, overriding effect of RTI Act would not apply.*
>
> *(ii)* ***The information to be accessed/certified copies on the judicial side to be obtained through the mechanism provided under the High Court Rules, the provisions of the RTI Act shall not be resorted to.****"*

42. A perusal of the above two decisions shows that the Rules which are made by specific authorities to deal with information provided by parties on the judicial side cannot *per se* be held to be inconsistent with the provisions of the RTI Act. Moreover, the Supreme Court has specifically held that on the judicial side the information is held by courts as a trustee for litigants in order to adjudicate upon the matter and the same cannot be permitted to be accessed by third parties. A proper balance is to be maintained in order to ensure the confidentiality of documents and other information pertaining to the litigants to the proceedings.

43. In the case at hand, it is the submission of the RTI Applicant itself that the Anti-Dumping Authority is acting as a *quasi*-judicial body when dealing with the complaint of the complainant in respect of dumping. This Court has no doubt in holding that the information that has been supplied by the Complainants has been given in the course of adjudication, in the

capacity of a litigant. Thus, the information has been received by the Anti-Dumping Authority which now forms part of the record in discharge of its judicial/*quasi*-judicial function.

44. While the RTI Act promotes greater transparency and access to information, the same cannot be held to be an inviolable rule. There are specialised fields which are governed by specifically enacted Rules and Statutory frameworks so as to balance the interest of disclosure with the larger public interest relating to that field. Anti-dumping duty is one such field, which is governed by the Customs Tariff Act, 1975 and the Anti-Dumping Rules framed thereunder. The said Rules are a consequence of provisions of GATT and the Anti-Dumping Agreement, which also recognize the sensitivity of information disclosed under anti-dumping proceedings.

45. The level of recognition accorded to preserving confidentiality of such information in the larger interest of global trade, countries involved, entities from different countries who could be exporters, importers and other stakeholders, cannot be ignored and deserves to be protected and recognized. The RTI Act itself has various exemptions under Section 8, which recognizes that the disclosure of information may affect the stakeholders, the strategic and economic interest of the country and in that case such information is exempted from disclosure. In numerous judgments, the Supreme Court has observed that RTI Act seeks to strike a balance between transparency and public interests including preservation of confidentiality of sensitive information. The Supreme Court in ***Central Public Information Officer, Supreme Court of India vs. Subhash Chandra Agarwal (2020)5SCC481*** observed as under:

36. ***If one's right to know is absolute, then the same may invade another's right to privacy and breach confidentiality, and, therefore, the former right has to be harmonised with the need for personal privacy, confidentiality of information and effective governance.*** *The RTI Act captures this interplay of the competing rights under Clause (j) to Section 8(1) and Section 11. While Clause (j) to Section 8(1) refers to personal information as distinct from information relating to public activity or interest and seeks to exempt disclosure of such information, as well as such information which, if disclosed, would cause unwarranted invasion of privacy of an individual, unless public interest warrants its disclosure, Section 11 exempts the disclosure of 'information or record...which relates to or has been supplied by a third party and has been treated as confidential by that third party'. By differently wording and inditing the challenge that privacy and confidentiality throw to information rights, the RTI Act also recognises the interconnectedness, yet distinctiveness between the breach of confidentiality and invasion of privacy, as the former is broader than the latter, as will be noticed below.*

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70. ***Most jurists would accept that absolute transparency in all facets of government is neither feasible nor desirable, for there are several limitations on complete disclosure of governmental information, especially in matters relating to national security, diplomatic relations, internal security or sensitive diplomatic correspondence.*** *There is also a need to accept and trust the government's decision-makers, which they have to also earn, when they plead that confidentiality in their meetings and exchange of views is needed to have a free flow of views on sensitive, vexatious and pestilent issues in which there can be divergent views. This is, however, not to state*

> *that there are no dangers in maintaining secrecy even on aspects that relate to national security, diplomatic relations, internal security or sensitive diplomatic correspondence. Confidentiality may have some bearing and importance in ensuring honest and fair appraisals, though it could work the other way around also and, therefore,* ***what should be disclosed would depend on authentic enquiry relating to the public interest, that is, whether the right to access and the right to know outweighs the possible public interest in protecting privacy or outweighs the harm and injury to third parties when the information relates to such third parties or the information is confidential in nature****.*

46. Thus, none can claim an absolute right to get a certain piece of information, and the nature of the information that is sought would be material. The specific note sheet that has been sought by the RTI Applicant is the note sheet relating to initiation of anti-dumping investigation. From a bare perusal of the original file produced before the Court, it is evident that the note sheet contains various portions of information which may be confidential to the Complainants. The Anti-Dumping Agreement entered into amongst countries, post GATT, recognises the sensitivity and the competitive advantage that can be gained by third parties if confidential data is disclosed. For 'good cause' the said information can be refused to be disclosed. A perusal of the note sheet sought would also show that the disclosure of the same under the RTI Act, especially in a case where the RTI Applicant was a party to the anti-dumping investigations and is a competitor of the Petitioners could cause serious prejudice and adversely affect various sections of the domestic industry.

47. The Court is also not impressed by the argument of the RTI Applicant

that denial of providing information under the RTI Act would lead to breach of principles of natural justice. The parties to an anti-dumping proceeding ought to take recourse to the Rules and Regulations provided in respect of that nature of proceedings. When the Anti-Dumping Rules themselves provide an exception to disclosure in view of the nature of the proceedings, the Court cannot allow the RTI Applicant to bypass the said barrier. Moreover, Mr. Ankur Sharma, ld. Counsel for the RTI has himself brought to the attention of this Court the judgment of the Supreme Court in ***Meghmani Organics (supra)*** wherein the Court has interpreted Rule 7 of the Anti-Dumping Rules. The relevant portion of the said judgment is as under:

> *"22. We are in respectful agreement with the above view and also with the submission that the source of power in the DA to treat an information as confidential must be within the confines of Rule 7. The ordinary meaning of the words used in this Rule are clear and hence there is no requirement to depart from the golden Rule of interpretation i.e., the Rule of Literal Construction. If the submission advanced on behalf of Union of India and DA are accepted, one will have to adopt a purposive liberal interpretation so as to enlarge the scope of this Rule. That does not appear to be the intention of the statute makers nor it is warranted by the context.* ***The effect of Rule 7 is clear. It permits an exception to the principles of natural justice. In such a situation, even if there had been some ambiguity and requirement of resorting to interpretation, the proper course would be to adopt a construction which would least offend our sense of justice,*** *as discussed and enunciated in the cases of Simms v. Registrar of Probates (1900) AC 323, Madhav Rao Jivaji Rao Scindia v. Union of India MANU/SC/0050/1970 : (1971) 1 SCC 85 and Union of*

India v. B.S. Agarwal MANU/SC/1369/1997 : (1997) 8 SCC 89. ***It will be useful to remember that when two competing public interests are involved, like in the present case, one is to supply all relevant informations to the parties concerned and the other not to disclose informations which are held to be confidential, the proper course of action would be to lean in favour of the construction "that is least restrictive of individual's rights", as propounded in Inland Revenue Commissioner v. Rossminster Ltd. (1980) 1 All ER 80. However, in our view, as already indicated, there are no ambiguities in Rule 7 to require departure from the Rule of Literal Construction.***

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25. In the light of facts and submissions noted earlier as well as conclusions already recorded at various places, we are of the considered view that the question referred for our answer can be answered in a very straight forward manner by holding that Reliance Industries case did not go into the details of the relevant Rules including Rule 7 but the observations made therein in respect of Rule of confidentiality as spelt out in Rule 7 of the Rules does not diminish the scope of Rule 7 as provided. The reasons or findings cannot be equated with the information supplied by a party claiming confidentiality in respect thereto. ***Hence, Rule 7 does not empower the DA to claim any confidentiality in respect of reasons for its finding given against a party.*** *The law laid down in respect of Rule of confidentiality in Sterlite Industries case also has our respectful concurrence. But at the same time, we reiterate that the Reliance Industries case does not adversely affect or run counter to the law spelt out in Sterlite Industries case.* ***We may only explain here that while dealing with objections or the case of the concerned parties, the DA must not disclose the information which are already held by him to be***

> ***confidential by duly accepting such a claim of any of the parties providing the information.*** *While taking precautions not to disclose the sensitive confidential informations,* ***the DA can, by adopting a sensible approach indicate reasons on major issues so that parties may in general terms have the knowledge as to why their case or objection has not been accepted in preference to a rival claim. But in the garb of unclaimed confidentiality, the DA cannot shirk from its responsibility to act fairly in its quasi-judicial role and refuse to indicate reasons for its findings****. The DA will do well to remember not to treat any information as confidential unless a claim of confidentiality has been made by any of the parties supplying the information.*** *In cases where it is not possible to accept a claim of confidentiality, Rule 7 hardly leaves any option with the DA but to ignore such confidential information if it is of the view that the information is really not confidential and still the concerned party does not agree to its being made public. In such a situation the information cannot be made public but has to be simply ignored and treated as non est."*

48. In the context of anti-dumping proceedings and information disclosed therein, the DA has to undertake a detailed enquiry into issues such as 'competitive advantage', 'business sensitivity', 'productivity particulars', 'cost of raw materials', 'investments made', 'sales', 'market share' *etc.* The DA also has to examine whether there is good cause for disclosure. The DA can also get non-confidential summaries prepared for the purpose of disclosure. All this exercise is to be undertaken by the DA having expertise in the matter.

49. In contrast, the authorities under the RTI Act, the CPIO, PIO, First Appellate Authority and the CIC would not have the requisite expertise or

wherewithal to comment upon or assess the impact of disclosure of confidential information submitted or obtained in anti-dumping proceedings. Anti-dumping proceedings by their very nature are proceedings which have national and international dimensions and also have an impact on the country's economy. The proceedings involve dealing with business sensitive and confidential information relating to a particular industry. It also involves assessment of trade relations between India and various other countries as can be seen from the public notice and the final order in the present case. Submissions were called from a large number of foreign companies including from Korea RP, Singapore, USA, Czech Republic, Poland, Germany, Thailand as also from global players such as the European Union, governments, and international industry associations. The entire purpose of having a complete and self-sufficient scheme for disclosure of confidential information under the Anti-Dumping Rules would be defeated if persons who are participating in anti-dumping investigation are permitted to tangentially seek information under the RTI Act.

50. In the present case, this Court is of the opinion that the imposition of anti-dumping duty and confidential information disclosed in such proceedings would have a significant impact on the economic interest and trade relations of India, as also would constitute information received by the authority in confidence, which cannot be subjected to disclosure. Section 11 of the RTI Act itself recognizes the intention to protect the information received from third parties. This principle is also the very basis of Rule 7 of the Anti-Dumping Rules, which requires specific authorization of the party providing the information. Thus, in effect, there is no inconsistency between the provisions of the RTI Act and the Anti-Dumping Rules. Thus, this case

would be clearly governed by the said two decisions by this Court in ***R.S.Misra (supra)*** and the Supreme Court in ***CIC v. High Court of Gujarat (supra)*** set out above. If any party, especially one who has already participated in the anti-dumping investigation, requires any information, the same would have to be governed and dealt with under the Anti-Dumping Rules, including Rule 7, and the said procedure cannot be bypassed by seeking resort to the provisions of RTI Act. The Anti-Dumping Authority is vested with specialised knowledge relating to the trade as also the exclusive knowledge in respect of anti-dumping proceedings. Such knowledge would enable the said Authority to take a considered decision as to whether the particular information is to be disclosed or not. Such expertise does not vest with the CPIO/PIO or other authorities under the RTI Act.

51. Under these circumstances, the writ petitions, along with all pending application, if any, are allowed and the order of the CIC is set aside.

52. The remedies of the RTI Applicant under the Anti-Dumping Rules, if any, are left open.

PRATHIBA M. SINGH
JUDGE

MARCH 23, 2023/*dk/sk*