# NAVIGATING THE AFTERMATH: A CLOSER LOOK AT THE IMPLICATIONS OF SECTION 9C AMENDMENT

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## ABSTRACT

*The research paper plunges into the latest retrospective amendment introduced by the Finance Bill, 2023 to Section 9C of the Customs Tariff Act, 1975, and its profound impact on the appellate jurisdiction of the Customs Excise and Service Tax Appellate Tribunal ("**CESTAT**") concerning anti-dumping measures. The amendment revolves around the term, "order of determination," engendering bewilderment about whether it encompasses solely the findings of the Director General of Trade Remedial Measures ("**DGTR**") or also encompasses the government's decision not to impose anti-dumping duties. The paper evaluates the two-step process of anti-dumping measures: DGTR's investigation and the Department of Revenue's imposition of duties. It scrutinizes the historical context, legislative intent, and*

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*judicial interpretations of this issue. The paper dedicates considerable effort to dissecting the effects of the amendment on the appellate jurisdiction of CESTAT, its repercussions for domestic industries, and the delicate equilibrium India maintains between fulfilling its international obligations under the Anti-Dumping Agreement ("**ADA**") while exercising its sovereign right to enact domestic legislation. Intriguingly, despite potential conflicts between the amendment and the ADA, the paper posits that the amendment might find validation due to the inherent principle that domestic laws hold precedence over international commitments. The avenues left for aggrieved parties to challenge the amendment encompass seeking judicial review based on procedural irregularity and irrationality within the Act. The paper concludes by acknowledging that the true consequences of the amendment will unfold through practical cases and the evolving legal landscape.*

***Keywords:*** *Anti-Dumping and Judicial Review, CESTAT and Anti-Dumping, Anti-Dumping Agreement and Indian Obligations, Anti-Dumping and Custom Tariff Act, Role of DGTR in Anti-Dumping.*

# I. INTRODUCTION

The recent retrospective amendment proposed by the Finance Bill, 2023 to Section 9C of the Customs Tariff Act, 1975[1] ("**The Act**") has heightened the confusion pertaining to the appellate jurisdiction of the CESTAT with regard to anti-dumping measures. Much controversy is centered around the term "*order of determination*" in Section 9C[2] of the Act and whether this term only includes the findings of the DGTR or also includes the decision of the Union Government to not impose anti-dumping duties.

The imposition of anti-dumping measures is a two-pronged process: the investigation conducted by the DGTR under the aegis of the Ministry of Commerce and the imposition of anti-dumping duties by the Department of Revenue under the Ministry of Finance ("**MoF**") through an official gazette notification based on the findings of DGTR. The origin of DGTR can be traced back to two sections of the Act, i.e., Section 9A (6) and Section 9B (2), which provides the Central Government with the power to frame rules to identify articles liable for anti-dumping duties. For all intents and purposes, the DGTR is a delegated branch of the Central Government. Further, an appeal against an *order of determinations or review* regarding the existence of any unlawful trade practices lies to CESTAT.

The courts have consistently clarified through various judgments[3] that the Central Government's decision not to impose anti-dumping duties will come under the term, *order of determination or review.* Since the right to challenge the final finding only arises after the Central Government imposes the anti-dumping duties, until that imposition is made, there is no dispute to be resolved through adjudication. Against

[1]The Customs Tariff Act, 1975 (51 of 1975) s 9C.
[2]ibid.
[3]*Saurashtra Chemicals Ltd. v Union of India* (2000) ECR 764 (SC); *Jindal Poly Film Ltd. v DesignatedAuthority* (2018) 362 ELT 994 (Del).

this backdrop, the amendment to Section 9C of the Act puts CESTAT and the Union Government in a jurisdictional face-off.

To this end, the authors delve into the intricate framework of anti-dumping measures in India, commencing with an exploration of their origins and the role of the DGTR. The scope of appeal against anti-dumping duty determinations is examined, followed by a nuanced analysis of the discretionary powers granted to the Central Government under Section 9C of the Act and the requirement for reasoned judgments. The implications of recent amendments to Section 9C are carefully assessed, and the compliance of India's anti-dumping regime with its international obligations under the World Trade Organization ("**WTO**") is rigorously evaluated. Finally, the remedies available to aggrieved parties are comprehensively outlined, empowering readers to navigate the complexities of this multifaceted subject.

## II. BACKGROUND

The framework of anti-dumping measures in India originated from *Article VI of GATT,*1994, also known as the Anti-Dumping Agreement ("**ADA**").[4] The ADA provides a uniform international framework for imposing anti-dumping duties for signatories. It is clear from the bare reading of Article 18.4 that the signatory governments have an ultimate obligation to align their domestic law with ADA and devise proper procedures to implement anti-dumping duties in line with the procedure established in ADA.[5] Additionally, Article 16.5 of Article VI puts an obligation on signatory governments to notify the WTO Committee as to which of their authority is competent to initiate and conduct an investigation pertaining to anti-dumping in the signatory country.[6] Further, Article 13 of the same agreement puts an utmost duty on the signatory governments to incorporate provisions in their

[4]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (15 April 1994) 1867 UNTS 190.
[5]ibid art 18.4 at 166 .
[6]ibid art 16.5 at 164.

domestic laws for *judicial review of any administrative action* pertaining to anti-dumping measures.[7] Thus, these articles from Article VI of GATT, 1994 of the WTO frameworks provide the necessary foundation for the Act and the Rules framed thereunder, i.e., Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ("**Anti-Dumping Rules**").

On this pretext, Section 9C (1) of the Act provides the ailing party a remedy to appeal against any order or determination regarding the existence, degree, and effect of anti-dumping duties. Section 9C (1) reads as follows, "*An appeal against the order of* ***determination or review*** *thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (hereinafter referred to as the Appellate Tribunal)*."[8]

However, before the recent revision in Section 9C (1) of the Act, there had been substantial debate on the words *order of determination or review* in the past few years.[9] History shows that between 1995 and 2020, the MoF largely approved DGTR's recommendations, with the exception of a few cases, such as Penicillin-G and Newsprint, when the MoF opted not to enforce the measure despite a positive recommendation from the DGTR.[10] Arguably, these two instances were not abided by MoF on the ground of larger public interest, taking into account the nature of the subject matter.[11] On the contrary, the

[7]ibid art 13 at 162.
[8]The Customs Tariff Act, 1975 (51 of 1975) s 9C.
[9]Tarun Jaint, 'To Appeal or Not to Appeal? A Curious Case of Anti-Dumping Duties not Levied' (*SCC Online*, 15 June 2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4076878>.
[10]Vishal Dutta, 'Alembic challenges finbin over Penicillin-G imports' *The Economics Times* (26 September 2011) < https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/alembic-challenges-finmin-over-penicillin-g-imports/articleshow/10010394.cms?from=mdr>.
[11]ibid.

current trend has been very disconcerting since, between 2020 and 2022, the MoF not only rejected the majority of the DGTR's recommendations, but also rescinded the majority of trade corrective measures on commodities.[12]

In this context, it is crucial to note the statutory framework governing such decisions. While the MoF's previous rejection was grounded in the public interest mandate under Section 9A of the Act,[13] the recent spate of rejections lacks a clear justification since the rejections of the recommendations by the DGTR are almost invariably without giving any reason.[14] This drastic shift in the Government's attitude set the stage for the rapid use of Section 9C to appeal the MoF's decisions, which, in turn, brought forth the apparent loophole in Section 9C that has remained dormant thus far, namely, *does the MoF's decision to not impose Anti-dumping duties despite the positive recommendation of the DGTR also fall under the Ambit of Sec 9C of the Act?*

## III. NATURE OF DGTR VIS-À-VIS CENTRAL GOVERNMENT

The authors would like to make some prefatory observations vis-à-vis the designated authority and Central Government before moving further with the discussion. Section 9A[15] of the Act empowers the Central Government to impose anti-dumping duties via a notification in the official Gazette. Although the expression, *Designated Authority* is nowhere mentioned in the Act, both the terms *designated authority* as well as *Central government* are used in the Rules.

[12]Urvashi Kaul, 'Centre is All for Self-reliance; What Explains Strong Rejection of Anti-Dumping Duties?' *The Federal* (25 June 2023) <https://thefederal.com/category/business/india-to-be-3rd-largest-economy-in-3-years-gdp-to-hit-5-trillion-dollar-fm-108071?infinitescroll=1>.
[13]The Customs Tariff Act, 1975 (51 of 1975) s 9A.
[14]ibid at s 12.
[15]The Customs Tariff Act, 1975 (51 of 1975) s 9A.

The term Central government is defined in section 3(8) of the General Clauses Act, 1897,[16] as per which Central Government means *the President* in relation to anything done or to be done after the commencement of the Constitution. According to Article 77(3)[17] of the Constitution of India, the President is authorized to allocate the business of the Government of India among different Ministries for more convenient transactions of business. Thus, the expression Central Government in the Act refers to the *Ministry of Finance*.

By using both terms, the Rules differentiate between the *Central Government* and *Designated Authority*. However, the authority is nothing more than the part and parcel of the Central Government. The differentiation is just to ensure clarity with regard to the two-tier system.[18] Furthermore, as recognized by the Apex Court in the *Reliance Industries* case,[19] the nature of the DGTR and the Central Government is quasi-judicial when it comes to proceedings under the Act and Rules.

## IV. SCOPE OF APPEAL

Before mapping down the further considerations, it is pertinent to understand whether the appeal under Section 9C can be filed against the Designated Authority's recommendation or the Central Government's imposition of anti-dumping duties. The Supreme Court of India attempted to resolve the issue in *Saurashtra's* verdict,[20] stating, "*It is perfectly clear now that the order of the Designated Authority is purely recommendatory. The appeal that lies is against the determination, and that determination has to be made by the Central Government*."

[16]The General Clauses Act, 1897 (10 of 1897) s 3(8).
[17]The Constitution of India, 1950 art 77(3).
[18]*Jindal Polyfilms Ltd v Designated Authority & Anr (2018) 362 ELT 994 (Del).*
[19]*Reliance Industries Ltd v Designated Authority* (2006) 10 SCC 368.
[20]*Saurashtra Chemicals Ltd. v Union of India* (2000) ECR 764 (SC).

Additionally, Section 9A of the Act states that "*The Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping.*" This means that the Government may impose any duty that does not exceed the margin of dumping as determined by the DGTR. This further implies that the Government may impose zero duty, i.e., no duty at all. Therefore, the notification of the Government will determine whether anti-dumping duties on a particular country will be imposed or not, and if they are, then what would be the degree of the duties. Hence, an appeal against the mere recommendation of the DGTR would serve no practical purpose.

However, to the dismay of domestic industries, in the recent Budget Bill, 2023, the Central Government amended Section 9C[21] by adding an explanation and negated the *Saurashtra* Judgement[22]. The explanation read, "*For the purposes of this section, 'determination' or 'review' means the determination or review done in such a manner as may be specified in the rules made under sections 8B, 9, 9A, and 9B.*"

It is worth noting that the Rules outlined in Sections 8B, 9, and 9A call for the DGTR to perform a *determination* or *review.* As a result, the explanation seeks to clarify that an appeal may only be filed against the DGTR's *determination* or *review.* In other words, the revisions attempt to indicate that no appeal may be filed against the decision of the MoF as the MoF merely considers (rather than determines) the application of measures.

[21]The Customs Tariff Act, 1975 (51 of 1975) s 9C.
[22]*Saurashtra Chemicals Ltd. v Union of India* (2000) ECR 764 (SC).

## V. DISCRETIONARY POWER AND REASONED JUDGMENT

Section 9A[23] of the Act specifies that the *Central Government may, by notification in the Official Gazette, impose an anti-dumping duty*. By using the word may, this clause provides the Central Government the discretion to impose or not to impose anti-dumping duties. The question now is whether this discretion is absolute. Can this discretion be exercised based on personal whims? As it should be, the answer is negative. Whenever a discretionary power is granted, it should be exercised, keeping in mind the relevant considerations and the purpose for which the discretion is exercised. Compliance with natural justice principles is essential even when the use of power is entirely committed to the subjective satisfaction of the administrative authority, especially when the decision has civil consequences.[24] One of the fundamental aspects of natural justice is providing a reasoned judgment or speaking order, as held by the Apex Court in *S.N. Mukherjee v. Union of India*[25] that the duty to record reasons should govern the decisions of a quasi-judicial or an administrative authority, regardless of whether the decision is subject to appeal, modification, or judicial review. Although the reasons do not have to be as thorough as a Court's decision, they must be clear and evident to show that the authority has given due consideration to the problem. The requirement that the Government should record reasons for its decisions is an important check on its discretionary powers. It helps in discerning whether the discretion is exercised on relevant or extraneous considerations. When the Government has to explain its reasoning, it is more likely to make decisions that are well- considered and defensible.

[23]The Customs Tariff Act, 1975 (51 of 1975) s 9A.
[24]*SN Mukherjee v Union of India* (1990) 4 SCC 594.
[25]ibid.

Thus, while exercising discretion under Section 9A of the Act and Rule 18, the government must keep in mind the objective behind the Anti-Dumping Act and Rules, as well as the fact that the designated authority has arrived at the conclusion after a comprehensive procedure and after hearing all the interested parties. Therefore, to the extent possible, deviations from the DG's findings without any reasonable justification should also be avoided.

## VI. IMPLICATIONS OF THE AMENDMENT

Before delving into the implications of the amendment on the CESTAT, it is crucial to understand the legislative intention behind the introduction of tribunals in India in the first place. Tribunals were not originally part of the Indian Constitution, but were subsequently added by the 42nd Constitutional Amendment in accordance with the recommendations of the *Swaran Singh Committee*[26] in the form of Articles 323A[27] and 323B[28]. Both provisions 323A and 323B vest the Parliament with the authority to establish two sorts of tribunals, *administrative tribunals and tribunals for other matters*. Broadly speaking, the legislative intent behind the incorporation of two distinct provisions for two different types of tribunals reflects a broader goal of separating certain types of disputes from the regular judicial system and entrusting them with specialized bodies with exceptional expertise in certain specific areas of law. The intent was to streamline the adjudication process for the better administration of justice with greater efficiency, thereby reducing the burden on regular courts. It is quite evident that the most important component of a tribunal is the prompt resolution of matters.

[26]'The Tribunal System in India' (*PRS Legislative Research*) <https://prsindia.org/billtrack/prs-products/the-tribunal-system-in-india-3750> accessed 17 June 2023.
[27]The Constitution of India, 1950 art 323A.
[28]The Constitution of India, 1950 art 323B.

Now, having dug out the core objective behind the establishment of tribunals and addressed the legislative context behind the incorporation of tribunals into the Indian judicial system, the authors have a solid base to explore the implications of the Amendment on the Tribunal as well as domestic industries. With regard to the nature of the amendment vis-à-vis CESTAT and domestic industry, the implications can be discussed under the following heads:

### *A. When there are negative findings from DGTR*

If the DGTR issues negative findings, the legislation itself will serve as legal validation without the requirement for approval by the MoF.[29] On the surface, the party who feels wronged in this case has the remedy to ask the Tribunal to review the DGTR's decision, but this course of action will serve no practical purpose- The MoF will still have the option to choose not to issue anti-dumping duties even if the Tribunal reverses the DGTR's findings. To be more specific, the Tribunal would only overturn the DGTR findings which have no practical bearing on the MoF decision, as the DGTR findings are simply recommendatory in nature. In light of this, even if the Tribunal overturns the DGTR's findings, the harmed party has no recourse against the MoF's decision. On the other hand, when there are positive findings from the DGTR, the Central Government imposes anti-dumping duty, following the findings.

### *B. When there are positive findings from DGTR, the Central Government imposes anti-dumping duty, following the findings*

Even if the positive findings of the DGTR are sanctioned by the MoF, the explanation to Section 9C[30] only gives the aggrieved party an option to challenge the findings of the DGTR on which the decision of the MoF is based, not the decision of the MOF itself. Then, does it stand

[29] *Jindal Polyfilms Ltd v Designated Authority & Anr (2018) 362 ELT 994 (Del).*
[30] The Customs Tariff Act, 1975 (51 of 1975) s 9C.

to reason that the MoF can continue to levy anti-dumping duties even if the Tribunal overturns the findings? The answer to this is, *yes*. This is because Section 9C[31] of the Act provides for an appeal against a determination and review of matters listed in the Section. Prior to the amendment, there was no clarity regarding the terms, *determination and review*. So, it was generally interpreted by the Tribunal as the decision of the MoF. However, with the introduction of an explanation in the aforementioned provision, the definition of *determination or review* in Section 9C (1) must be derived from Rules made under Sections 8B,[32] 9,[33] 9A,[34] and 9B.[35] So, as per the explanation, the definition of *determination or review* must necessarily be drawn from the Anti-Dumping Rules made under the above-stated sections, i.e., *determination and review* done by the DGTR regarding anti-dumping duty.

Furthermore, the implication of the amendment does not end there, but renders the explanation and Sections 8B, 9, 9A, and 9B diametrically opposed. All of these provisions place a responsibility on the government to conduct some investigation before imposing tariffs on exporting nations, and this obligation to investigate unfair trade practices is handled by the DGTR till the induction of the amendment. However, if the government continues to apply taxes on exporting nations even after the Tribunal overturns the DGTR's conclusions, then the government must conduct all of the necessary investigations again to back up its decision to maintain tariffs on exporting countries. In this situation, again, the role of the Tribunal became redundant to the effect that it would not be able to provide an effective remedy to the aggrieved party.

[31]ibid.
[32]The Customs Tariff Act, 1975 (51 of 1975) s 8B.
[33]ibid at s 9.
[34]ibid at s 9A.
[35]ibid at s 9B.

### *C. When there are positive findings from DGTR and the Central Government refuses to impose an anti-dumping duty contrary to the findings*

Let us use an illustration to better understand this situation. Consider the following scenario: The DGTR determines that the export from country X is below the normal value and recommends the imposition of the duties; however, the central government rejects the recommendation and does not impose anti-dumping duties in accordance with Section 9A. As seen, the domestic industry would object to the Central Government's decision not to impose duties and would most likely support the designated authority's recommendation. However, according to the amendment, the domestic industry can only appeal against the determination by the designated authority, which would serve no practical purpose in the above situation, and it would have no right to appeal against the notification by the Government, which would significantly affect the domestic industry. Thus, as per the amendment, the domestic industry would be left with no recourse but to file a petition in the High Court.

## VII. DOES THIS AMENDMENT COMPLY WITH INTERNATIONAL OBLIGATIONS?

Article 51(c)[36] of the Indian Constitution states unequivocally that India's legislative policies must strive to *promote international law and treaty obligations* in organizing people's interactions with one another. However, Article 51 (c)[37] is in the nature of Directive Principles of State Policies and has no enforceable value within the meaning of Articles 32[38] and 226[39] of the Constitution. Despite the non-

[36]The Constitution of India, 1950 art 51(C).
[37]ibid.
[38]The Constitution of India, 1950 art 32.
[39]The Constitution of India, 1950 art 226.

enforceability of Article 51 (c), it clearly indicates the intention of the framers of the Constitution to incorporate international law and treaty obligation within the domestic sphere. In this context, it is necessary to dig out *whether the induction of explanation to Section 9C of the Act complies with Indian obligations under the ADA, and if it does not, then does this make the explanation invalid?*

With regard to the compliance of the Indian obligations under the ADA, Article 13 of Article VI categorically states that "*Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11*."[40]

Hence, as per Article 13,[41] the review must be of administrative actions originating from the *final determination and review of determinations*. However, the present explanation in Section 9C[42] only provides for judicial review of the findings of the DGTR, but not the administrative actions originating from it, i.e., imposition of dumping duties by the government. Furthermore, as stated in Article 12 of the ADA,[43] it is the responsibility of the signatory government to provide a report that clearly outlines the findings and relevant evidence analysed by the investigating authority. This report serves as the basis for their decision to impose or refrain from imposing dumping duties. Earlier, this responsibility was assigned to the DGTR. However, by implicitly removing the DGTR from the role, the amendment gives authority to the MoF to impose or abstain from imposing dumping duties without adequately backing their decision with relevant data.

[40]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (15 April 1994) 1867 UNTS 190 ART 13 at 162.
[41]ibid.
[42]The Customs Tariff Act, 1975 (51 of 1975) s 9C.
[43]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (15 April 1994) 1867 UNTS 190 at 161, 162.

In clear terms, the explanation in Section 9C[44] does not comply with the Indian obligations under the ADA. Now, this brings us to the second part of the question, i.e., *does this non-compliance amount to invalidation of the explanation in light of Indian obligations under ADA?* On the international front, the primary consequence of the foregoing violation would be that India could be subject to dispute settlement proceedings under the WTO by signatories. The WTO's Dispute Settlement Body ("**DSB**"), a quasi-judicial body, holds the authority to adjudicate disputes between WTO members. In the event that the DSB determines a country is in violation of the ADA, it has the power to recommend corrective actions to the non-complying nation. Failure to comply with these recommendations can lead to the DSB authorizing other WTO members to take retaliatory measures, such as imposing tariffs on imports originating from the non-compliant country.[45] However, it is important to note that even if the DSB determines that the explanation to Section 9C is not complying with the ADA, the DSP cannot force India to repeal it.

On the national front, it is necessary to look into some landmark judgments to better understand the consequences of this non-compliance. In the leading judgment, *Gramophone Co of India v. Birendra Bahadur Pandey*,[46] the Supreme Court opined that "*the comity of nations requires that the rules of international law may be accommodated in the national law even without express legislative sanctions, provided they do not run in conflict with the acts of Parliament. The doctrine of incorporation also recognizes the position that the rules of international law are incorporated into the nation's law and considered to be part of national law unless they are in conflict with an act of Parliament*." However, the same court in *Commr. Of*

[44]The Customs Tariff Act, 1975 (51 of 1975) s 9C.
[45]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (15 April 1994) 1867 UNTS 190.
[46]*Gramophone Company of India Ltd v Birendra Bahadur Pandey & Ors* (1984) SCR (2) 664.

*Customs v. G.M. Exports* opined that, in a situation "*where India is a signatory to the treaty and enacted a statute in light of the obligation of the treaty, then, in case there is a difference between the language of the statute and the corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty*."[47]

So, does it mean that the explanation to Section 9C stands invalid in view of the *G.M. Exports* judgement? In the opinion of the authors, this does not necessarily happen, as it is crucial to remember that the Supreme Court's interpretation of *G.M. Exports*, as stated above, did not render the legal principles outlined in the *Gramophone* Judgment invalid; rather, it is cited as an authority in *G.M. Exports*. In this pretext, what could explain the varied interpretation of the Supreme Court in two different cases with regard to international treaty obligations?

The varied explanation of the Supreme Court can be explained through the common thread between these two cases, i.e., the *ADM Jabalpur* Case.[48] It was noted in the *ADM Jabalpur v. Shivkant Shukla* case that "*it is equally well established is the rule of construction that if there be a conflict between the municipal law on one side and the international law or the provisions of any treaty obligations on the other, the courts will give effect to municipal law. If, however, two constructions of the municipal law are possible, the court should lean in favor of adopting such construction as would make the provisions of the municipal law in harmony with the international law or treaty obligations*"[49] The conspectus of the aforementioned authorities suggests that international treaty obligations may supersede domestic law in the following conditions:

[47] *Commr of Customs v GM Exports* (2016) 1 SCC 91.
[48] *ADM Jabalpur v Shivkant Shukla* AIR 1976 SC 1207.
[49] ibid.

1. So long the international obligations are not directly in conflict with a Parliamentary Act[50] or
2. As intended to interpret in the *G.M. Export* in view of *ADM Jabalpur*, have a favorable harmonious construction in light of domestic laws, i.e., if there are two possible interpretations of the domestic law, then it must be construed in light of international law or international treaty obligation.[51]

Taking note of the above two propositions, the explanation to Section 9C places the Customs Tariff Act, an Act of Parliament, in direct conflict with the ADA. So, in this case, it is reasonable to expect that the former, which is an Act of Parliament by nature, will prevail over the latter. However, it remains to be seen how the Supreme Court of India interprets Section 9C of the Act.

## VIII. REMEDIES TO THE AGGRIEVED PARTIES

Now, the primary question that arises from the current discussion is what remedy the aggrieved party is left with against the negative implications of the explanation. It is quite clear through *Sarvepalli Ramaiah v. The District Collector, Chittoor District* that administrative decisions can be legally challenged in court under Article 226 of the Indian Constitution on grounds such as perversity, patent illegality, irrationality, lack of decision-making authority, and procedural irregularity.[52] In light of these grounds, the recent decision of the government to impose or not to impose dumping duties without giving due regard to the findings of DGTR can be challenged in the court of law on two grounds, namely, *procedural irregularity within sections*

[50] *Commr of Customs v GM Exports* (2016) 1 SCC 91.
[51] *ADM Jabalpur v Shivkant Shukla* AIR 1976 SC 1207.
[52] *Sarvepalli Ramaiah (D) Tr.Lrs v District Collector, Chittoor District* (2019) 4 SCC 500.

*8B,9,9A, and 9B w.r.t the implication of the explanation* and *irrationality within the Act vis-à-vis administrative actions.*

### *A. Procedural irregularity within sections 8B, 9, 9A, and 9B w.r.t the implication of the explanation*

In *Council for Civil Service Unions v. Minister for the Civil Service*,[53] Lord Diplock was the first to recognize procedural irregularity as a ground for judicial review of administrative action. According to him, this ground of appeal includes "*failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision*" or "*failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice*."[54]

Similarly, the amendment to Section 9C introduces procedural irregularities concerning the obligations of the government within the Act and empowers the government to defy the procedure established in the Act. Sections 8B, 9, 9A, and 9B, as previously indicated, put critical requirements on the government to conduct an inquiry before imposing anti-dumping penalties on the exporting nation. The presence of an explanation in section 9 suggests that the government has inherent power to reject the established procedure specified in sections 8B, 9, 9A, and 9B. Additionally, the explanation violates basic rules of natural justice by exempting the government from the scrutiny of CESTAT.

### *B. Irrationality within the Act vis-à-vis administrative actions*

Irrationality as a ground of judicial review was introduced by Lord Greene in *Associated Provincial Picture House v. Wednesbury*, which eventually came to be known as the "Wednesbury test" to evaluate the

[53]*Council for Civil Service Unions v Minister for the Civil Service* (1985) AC 374.
[54]ibid.

"irrationality" of an administrative decision.[55] In *Council for Civil Service Unions* case,[56] Lord Diplock reaffirmed this test, holding that judicial review is permissible when "*a decision is so outrageous in defiance of logic or acceptance of moral standards that no sensible person applying their mind to the question to be decided could have arrived at it.*" Adopting this test, the Indian courts also evaluated the irrationality of administrative action in various cases.[57]

The inclusion of an explanation within Section 9C introduced an element of irrationality into the Act with regard to the discretion provided to the Central Government to impose anti-dumping duties. The explanation implicitly immunes the government from the appellate jurisdiction under Section 9C since CESTAT would want the government to substantiate its decision with some material to back its administrative action to impose or not to impose anti-dumping duties. Contrary to the principles of *Wednesbury*, the explanation provided unrestricted power to the Central Government to impose or not impose anti-dumping duties without providing any reason or rationale for its decision.

## IX. CONCLUSION

In a momentous turn of events, the recent amendment to Section 9C of the Customs Act of 1975 has resulted in significant changes in the realm of judicial review. By confining the purview of judicial scrutiny exclusively to the findings of the designated authority while exempting the MoF from direct accountability, this amendment sparks a thought-provoking discourse on the boundaries of governmental immunity. The affected parties' ability to appeal under the amendment is restricted to disputing the determination made by the designated body, which has no practical significance if the Central Government refuses to

[55] *Associated Provincial Picture House v Wednesbury Corporation* (1948) 1 KB 223.
[56] *Council for Civil Service Unions v Minister for the Civil Service* (1985) AC 374.
[57] *Bhagat Ram v State of H.P.* (1983) 2 SCC 442; *Ranjit Thakur v Union of India* (1987) 4 SCC 611; *Union of India v G Ganayutham* (1997) 7 SCC 463.

implement the suggested duties. This places the party in question at a significant disadvantage since they are virtually precluded from appealing against the decision that would have the greatest impact on them. As the aggrieved parties find themselves compelled to seek redress through the corridors of the High Courts and the Supreme Court, the cherished role of the CESAT hangs in the balance. This not only adds to the burden and cost for the affected party, but also raises concerns about the efficacy and efficiency of the customs review process.

Despite the fact that the amendment appears to be at odds with India's obligations under the Anti-Dumping Agreement, it is important to recognize that in case of conflict, an Act of Parliament will take precedence over the latter, considering its inherent nature. Thus, as the legal landscape evolves and cases unfold under the revised framework, the practical implications and ramifications of this amendment will become clearer. Indeed, only time will tell the true consequences of the amendment to Section 9C of the Customs Tariff Act, 1975.