39

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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **16/09/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53402-53407/2016-CU[DB]** dated **07/09/2016**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **9C of the Customs Tariff Act,1975.**

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	AD/Stay/50740/2015	AD/50948/2015	**Obeikan Glass Company** P.o. Box 30083, Yanbu Industrial City KSA SAUDI ARABIA-51000
2	AD/Stay/50741/2015	AD/50949/2015	**Tariq Glass Industries Ltd** 128-j, Model Town LAHORE-PAKISTAN
3	AD/Stay/50742/2015	AD/50950/2015	**Ghani Glass Ltd** 40-l, Model Town LAHORE-PAKISTAN
4	AD/COD/51114/2015	AD/51544/2015	**Saint Gobain Glass India Ltd** World Glass Complex , Plot No A-1, Sipcot Industrial Park, SRIPERUMBUDHUR TAMILNADU-602105
5	AD/COD/51115/2015	AD/51545/2015	**Gold Plus Glass Industry Ltd** Gold Plus House, G-192, Prashant Vihar SOUTH NEW DELHI-110085
6	AD/COD/51116/2015	AD/51546/2015	**Hng Float Glass Ltd** Regd. Office 2, Red Cross Place KOLKATA WEST BENGAL 700001

Name and Address of
Respondent

7 Designated Authority-Designated Authority
Directorate General Of Anti-dumping And
Allied Duties
1. Department Of commerce, Jeevan Tara
Building,4Th Floor, 5,Parliament Street
NEW DELHI 110001,2. UNION OF
INDIA MINISTRY OF FINANCE
SECRETARY - REVENUE
GOVERNMENT OF INDIA NORTH
BLOCK, NEW DELHI.

Other Appellants and Respondents as per Annexure

Copy To

13Advocate(s) / Consultant(s):

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NAGAR NEW DELHI-110017
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**JITENDRA SINGH ADV
F-21, GEETANJALI ENCLAVE,
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14 Additional Party's Name & Address :

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SRIPERUMBUDUR-602106,
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CITY YANBU KINGDOM OF
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MODEL TOWN EXTENSION,
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GOLD PLUS GLASS INDUSTRY LTD
GOLD PLUS HOUSE, G-192,
PRASHANT VIHAR, DELHI-
110085

GUJARAT GUARDIAN LTD(GGL)
MR. ALOK MODI, 4-7C,
DDA SHOPPING CENTRE,
NEW FRIENDS COLONY,
NEW DELHI-110065

TARIQ GLASS INDUSTRIAL LTD
128-J, MODEL TOWN,
LAHORE PAKISTAN

MINISTRY OF COMMERCE AND INDUSTRY, KINGDOM OF SAUDI ARABIA, MINISTRY OF COMMERCE AND INDUSTRY
RIYADH 11162

PAKISTAN HIGH COMMISION INDIA
2/50 G, SHANTIPATH
CHANAKYAPURI, NEW
DELHI-110057, INDIA

SAUDI ARABIAN EMBASSY IN INDIA
2 PASHCHIMI MARG,
VASANT VIHAR, NEW
DELHI-110057, INDIA

EMBASSY OF THE
UNITED ARAB
EMIRATES
12, CHANDRAGUPTA
MARG, CHANAKYAPURI,
NJEW DELHI-110021,
INDIA

10 Bar Association, CESTAT, Delhi
11 Director Publications, Customs, Excise. I.P. Estate, Delhi
12 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
13 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
14 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
15 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
16 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
17 TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070
18 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
19 The ICFAI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
20 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
21 C.D.R. **22** Office Copy **23** Guard File

16/02/16

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 31/08/2016.
DATE OF DECISION : 07/09/2016.

Anti Dumping Stay Application Nos. 50740-50742 of 2015 in Appeal Nos. 50948-50950 of 2015,
Anti Dumping COD Application Nos. 51114-51116 of 2015 in Appeal Nos. 51544-51546 of 2015

M/s Obeikan Glass Company M/s Tariq Glass Industries Ltd. M/s Ghani Glass Ltd. M/s Saint Gobain Glass India Ltd. M/s Gold Plus Glass Industry Ltd. M/s HNG Float Glass Ltd.	]]]]]]	Appellants

versus

Union of India/DA — Respondent

[Arising out of the Notification No. 48/2014-Customs (ADD) dated 11/12/2014 issued by the Ministry of Finance. Final Finding of the Designated Authority No. 14/25/2012-DGAD dated 10/10/2014.]

Appearance

Shri Sitha Raman, Advocate – for M/s Obeikan Glass Co.
Shri Dhruv Gupta, Advocates – for M/s Tariq Glass Inds. Ltd.
Shri Ratheesh Kumar, Advocate – for M/s Ghani Glass Ltd.

S/Shri Sharad Bhansali and Jitendra Singh, Advocates – M/s Saint Gobain, Gold Plus and HNG Float Glass, for the appellants.

S/Shri Amit Singh, Advocate for DA and Govind Dixit, Authorized Representative (DR) – for the Respondent.

For I.P. :

S/Shri Sharad Bhansali and Jitendra Singh, Advocates – Respondent Domestic Industries for 1 – 3.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53402-53407/2016 Dated : 07/09/2016

Per. B. Ravichandran :-

These six appeals are directed against final findings dated 10/10/2014 of the Designated Authority (the DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Customs Notification No. 48/2014 – CUS (ADD) dated 11/12/2014 imposing anti-dumping duty (AD duty) on "clear float glass" (subject goods) imported from Pakistan, Saudi Arabia and UAE.

2. The Indian manufacturers of subject goods (the DI) approached the DA for initiating anti-dumping investigation with reference to import of subject goods from the above-mentioned countries. The DA initiated the investigation and after following the various procedure as set out in Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for Determination of Injury) Rules, 1995 (AD Rules) recommended for imposition of AD duty on import of subject goods. The impugned customs notification was issued for imposing such duty.

3. The learned Counsel for M/s Obeikan Glass Company, a producer/exporter of subject goods from Saudi Arabia, appellant,

contested the final finding of the DA. Though in appeal, the appellant took various grounds, the learned Counsel restricted his arguments mainly on two points.

(a) the data relied upon in arriving at final findings was not made available to the interested parties. It was only in the penultimate stage of investigation, the DA disclosed that it is relying on DGCI&S data. Timely opportunities were thus denied to the appellant which is a violation of Article 6.4 of WTO Anti-Dumping Agreement,

(b) the appellant is entitled to start-up adjustment which was wrongly rejected by the DA. In terms of para 3 (ii) to Annexure – 1 to Rule 8 of AD Rules, the DA should make appropriate adjustments for those non-recurring items of cost which benefits further and/or current production or for circumstances in which costs during the period of investigation are affected by start-up operation. The POI in the present case is 01/10/2011 to 31/12/2012. Appellant started commercial production in July 2011 which is just 3 months prior to POI. As such the cost structure was high on account of huge start-up costs and low capacity utilization. This aspect was not properly taken into account by the DA for arriving at the 'normal value' of local sales.

4. The learned Counsel for M/s Tariq Glass Industries Ltd., producer/exporter of subject goods from Pakistan contested the imposition of AD duty on subject goods from Pakistan. Apart from contesting the finding due to non-disclosure of data during investigation, the learned Counsel stated that the volume of imports from Pakistan is not correctly determined. It is his contention that if done correctly the volumes were less than de

minimis during POI and hence, there is no need for AD duty. Further, it was argued that the DA failed to conduct assessment of negligibility of injury in terms of Rule 14 (e) of AD Rules. The DA failed to recognize that the material injury caused to the DI is not due to imports but due to other factors.

5. The learned Counsel appearing on behalf of the DI (three appellants) also contested the findings of the DA mainly, on two issues :-

(a) the determination of normal value for exporters from Saudi Arabia and UAE is not correct. The Government intervention on pricing of natural gas was not considered in proper perspective ;

(b) the DA has taken on record substantial information and data post public hearing without following principles of natural justice and in violation of Rule 7 of AD Rules.

6. M/s Ghani Glass Limited, another appellant is a producer/exporter of subject goods from Pakistan. We have perused the appeal filed. They have contested the impugned findings on non-disclosure of material facts, lack of objective analysis of injury when the DI has shown improved performance and lack of casual link between import and injury to DI.

7. We have heard the interested parties as above and also perused the appeal papers including written submissions

carefully. The imposition of AD duty on subject goods is under challenge on various grounds. The producer/exporters of foreign country are against imposition whereas the DI is against improper quantification of injury and AD duty. We take up, issue wise, the arguments raised by the appellants. Non-disclosure of relied up on data, especially sourced from DGCI&S is one of the grounds. The reliability of the said data was also questioned. We find that the DA had sent questionnaire to elicit relevant information to various known exporters in subject countries and known importers/users in India. Request was made to DGCI&S to obtain details of imports for POI and proceeding three years. The same was obtained and relied upon. Spot verifications of information provided by DI and producers/exporters were also conducted. We note that the producer/exporters submitted before the DA that it has to examine the data of not only the petitioner companies but also other domestic producers in the market. The DA noted that the petitioner companies constitutes DI and as per rules there is no need to examine the data of supporting companies. The volume effect of dumped imports was analyzed with the help of import data procured from DGCI&S. The appellants main grievance regarding DGCI&S data appears to be on account of inconsistencies and mismatch in the same. The subject goods are classified under Chapter 70 of the Customs Tariff as "glass and glassware". The specific classification is 70051090. However, it is seen that the item has been classified at the time of import under various different headings. The DA proceeded to take data of import of subject goods considering the customs classification as indicative only. He relied on Rule 2 (d) – "like article" during his investigation. We have taken note of analysis made by the DA at para 100 (viii) of the Findings :-

> "100 (viii) As regards the mismatch in the data provided by the petitioner in the petition and the one considered in the disclosure statement, the Authority notes that the data submitted by the petitioner in their petition has been considered after due verification. Further, the Authority notes that while the petitioner has submitted the petition based on the import data sourced from info drive, the Authority has considered the import data collected from DGCI&S".

8. We note that while disclosing the details of import, the particulars of importers are kept confidential. Here, the DA considered the data for subject goods (irrespective of their varying customs classifications at 8 digit level) for analysis. Summary of such data has been made available to the interested parties.

9. The second issue raised by the appellant (Obeikan) is non-consideration of adjustment for start up cost. The DA's observation is as below :-

> "100 (xi) As regards the request of Obeikan for considering adjustment for start up expenses while determining cost of production/sales during POI, the

Authority has examined the issue and found no merit due to the following :

(a) The Authority notes that Obeikan had set up a new float glass plant in 2011. The Company started producing float glass from April, 2011 and declared commercial production on 1st July, 2011. The Company had achieved a capacity utilization of about ***% in POI. The Company has not projected any capacity utilization in the first/second year of operation in the project report. In the absence of such projection, the Authority holds that the capacity utilization achieved by Obeikan is reasonable and, therefore, it could be reasonably considered that the production had stabilized.

(b) The Authority further notes that Obeikan had projected the capacity utilization of ***% in the third year of operations in its Project Report and as against this it, had achieved a capacity utilization of about ***% in 2013. This shows that the production of the company had stabilized during the POI itself and, therefore, it is reasonable to assume that it was not effected by start up operations.

(c) The Authority notes that in the recent case of Plain Gypsum Plaster Boards originating in or exported from China PR, Indonesia, UAE, etc. cited by Obeikan, the concerned producer/exporter had achieved a capacity utilization of ***% as against ***% projected in the Project Report. Since,the capacity utilization achieved by the concerned exporter was almost ***% of the projected capacity, the Authority had considered the adjustment on account of start up cost in that case.

(d) The Authority holds that any new company requires time to market its product and, therefore, in the initial period of operation, it is one of the constraints for achieving optimum capacity utilization. In this connection, the Authority notes that Obeikan started its operations in April, 2011 and the inventories at the end of POI were high as compared to the Inventories at the end of 2013 when Obeikan claims that it had achieved optimum level of capacity utilization. This shows that Obeikan could have increased its production during 2013 when the market had picked up. The Authority, therefore, holds that the contention of Obeikan that its production in POI was affected due to start up operations and it got stabilized only during 2013 is not correct.

(e) The Authority further holds that the reasons for production loss, particularly the non-availability of constant power, relying on DG sets, irregular voltage supply, etc. during POI furnished by Obeikan cannot be considered as due to start up operations as they could be considered as managerial issues.

(f) M/s Obeikan has requested the Authority to consider the production level that they had achieved in 2013 as the optimum level of production, i.e., the production level achieved at the time of 30 months of commercial operation. The Authority holds that the contention of Obeikan that its production was not normal during the POI and it got stabilized only during 2013, i.e., during 19^{th} to 30^{th} month of operation is devoid of merit".

10. On careful consideration, we find that appellant's contest of the above finding is devoid of merit. We were also informed by learned Counsels for DI and DA that such adjustments are made only in exceptional cases with strong and valid reasons. We note

that the appellant's plea on this is only on certain legal provisions without any supporting evidence.

11. Next, we examined the claims of appellant who are producers/exporters from Pakistan – (Tariq Glass/Glain Glass). We note that import data obtained from DGCI&S did not include imports through Wagah Customs Port, which is one of the important trade link with Pakistan. However, it is clear that data provided by the other co-operative exporter from Pakistan has indicated that volume is more than the de minimis level. The DA considered Pakistan as one of the subject countries for injury analysis we find that para (iii) of Annexure II provides for cumulative investigation in case of imports being from more than the country. We also note that one of the co-operating, other exporter (Ghani Glass) from Pakistan had not raised this issue in their appeal. Regarding material injury the DA noted that in spite of increased production and sales during POI, as compared to the base year, the DI's performance has declined in the POI. None of the other opposing interested parties brought out any reason with evidence for the injury suffered by DI due to "other factors". After analyzing all known factors the DA concluded that the injury suffered by the DI is due to dumped imports.

12. We have also considered the issues raised by the DI in their appeals against findings of the DA. It is claimed that producers in Saudi Arabia and UAE enjoy undue advantage regarding energy

price due to Government intervention. Hence, the cost of subject goods cannot be accepted on its face value. However, DI did not provide any data based evidence to this effect. The DA noted this objection and recorded that in terms Section 9A (1) (c) to ascertain normal value questionnaires were sent to known exporters of these countries. Where responses were filed, the DA determined individual dumping margin in respect of those companies. If the domestic sale value is representative and viable for permitting determination of normal values, the same is considered. When the ordinary course of trade test was not satisfied, the cost of production was considered after verification and adding 5% for profit for arriving normal value. The DA has followed the provisions of Rule 6 (8) of AD Rules in cases where producers/exporters not cooperated. The normal value was arrived at based on available facts. We note that the DA determined normal value, export price and dumping margin for each producer/exporter accordingly.

13. Regarding additional information provided during verification visit, we note the disclosure by DA contained all relevant information. Due opportunity has been given to all interested parties to give their comments. These were examined and thereafter final conclusion arrived. No specific instance of denial of information has been brought to our notice. In the name of principles of natural justice we, apparently, cannot create a situation of indefinite cycle of disclosure, comments, counter

comments, further disclosure, again comments etc. We note that the DA followed the procedure set out in the AD Rules and there is no instance of serious procedural breach brought to our notice with evidence.

14. After careful analysis of all the issues raised we find no merit in any of these appeals and accordingly reject the same.

(Order pronounced in the open court on 07/09/2016.)

(Justice Dr. Satish Chandra)
President

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK