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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: **26/09/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53558/2016-CU[DB]** dated **15/09/2016**

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/COD/51305/2016, | AD/52357/2016 | **GREENPLY INDUSTRIES LTD**<br>PLOT NO. 68, 3RD FLOOR,<br>SECTOR 44<br>GURGAON<br>HARYANA-122003 |

**Name and Address of Respondent**

2

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.

**Copy To**

3Advocate(s) / Consultant(s):

**Rajesh Sharma (Advocate)**
**TPM CONSULTANTS, K-3/A**
**SAKET,**
**NEW DELHI-110017**

**4** Additional Party's Name & Address :
**5** Bar Association, CESTAT, Delhi
**6** Director Publications, Customs, Excise. I.P. Estate, Delhi
**7** M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
**8** Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

**9** Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
**10** LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
**11** TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070
**12** Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
**13** The ICFAI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
**14** MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

**15** C.D.R. **16** Office Copy **17** Guard File

27/09/16

**Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)**

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing : 06.09.2016
Date of decision: 15.09.2016

**Anti Dumping Appeal No. 52357 of 2016 with**
**Anti Dumping COD No. 51305 of 2016**
(Arising out of Final Finding No. 15/28/2013-DGAD dated 17.08.2015 issued vide Customs Notification No. 48/2015-Customs(ADD) dated 21.10.2015 issued by the Ministry of Finance, Department of Revenue).

M/s Greenply Industries Ltd. Appellant

Vs.

UOI & Ors. Respondent

**Appearance:**
Ms. Reena Khair, Sh. Rajesh Sharma, Ms. Rita Jha, Ms. Aastha Gupta & Ms. Shreya Dahiya (Advocates) for the Appellants
Sh. Amit Singh, Advocate for the D.A.
Sh. Govind Dixit, DR for Revenue
Sh. M. S. Pothal Advocates for the interested party

**Coram:**
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order Nos. 53558 / **2016**

Per: **B. Ravichandran**:

The appeal is against final findings dated 17.08.2015 in sunset review of AD duty imposed on imports of Plain Medium Density Fibre Board (subject goods) originating in or exported from China PR, Malaysia, New Zealand, Thailand and Sri Lanka. The appellant is a domestic manufacturer of subject goods. While they are, in general, supporting the imposition of AD duty they are challenging the quantification of rate of such duty.

2. Before proceeding with the main appeal, we note that there is a delay 287 days in filing this appeal and the appellant is praying for condonation of such delay in filing the main appeal and for a decisions on merit.

3. The Ld. Counsel for the appellant submitted that the definitive AD duty was imposed on the subject goods vide Notification No. 116/2009-Cus ADD dated

08.10.2009 for a period of 5 years. Sunset review investigation was initiated on 18.02.2014. Upon completion of such review Customs Notification 48/2015-Cus ADD dated 21.10.2015 imposing AD duty for a period of 5 years was issued. The appeal sought legal opinion on the said proceedings. They were also part of another investigation relating to main product imported from different countries. Many of the contentions raised by the appellant was accepted by the DA on the said proceedings. Finally, the appellant approached the counsel on 18.07.2016 and the first draft appeal was prepared by the end of July 2018 and finally the appeal was filed on 03.08.2016, this resulting in delay of 287 days.

4. The Ld. Counsel for the DA as well as the Ld. AR for Revenue opposed the application for condonation of delay as the appellant has no bonafide grounds for such delay. The lax attitude of the appellant cannot be viewed leniently and such a huge delay in filing appeal cannot be condoned.

5. We have considered the submissions of all the sides and note the grounds mentioned for delay are not substantial and convincing. However, considering the larger issue of merit of the case, if any, requires decision in the interest of justice, we are inclined to condone the delay of the appeal for a decision on merit as a special case.

6. On the merit of the case, the Ld. Counsel for the appellant has only 3 main points to submit.

a) The advertising expenses of the DA have not been considered while calculating the NIP which resulted in improper conclusion on NIP and this affected the injury margin and consequently the quantum of AD duty.

b) During sunset review the data relating to Merbok, Sri Lanka Ltd has not been properly dealt with. The claim of the Government of Sri Lanka regarding the bonafidiness of accounting followed by Merbok has been accepted without due verification by the DA.

c) The area based exemption given to some parts of India is of temporary nature and should not be considered for arriving at the injury margin etc. during investigation.

7. The Ld. Counsel appearing on behalf of Merbok, Sri Lanka submitted that the DA had many ~~long~~ rounds of discussions and verification of the accounts of Merbok. After such verification only, the costing of normal value were arrived at. There is no infirmity on such finding. He also said that the DI has submitted different data at different time during the course of investigation and as such they have no locus to question the veracity of verification made by DA.

8. The Ld. Counsel for the DA submitted that the advertising and sales promotion expenses have been taken into consideration by the DA while arriving at NIP for DI. He submitted the confidential calculation sheet in this regard to support his argument.

9. The Ld. AR for the Revenue supported the findings of the DA and Customs Notification.

10. We have examined the appeal records and considered the arguments of all the interested parties as above and also perused the written submissions. Regarding non inclusion of advertising expenses for NIP calculation, we find that the claim of the appellant is incorrect. We have perused the confidential calculation of non-injurious price submitted by the counsel for the DA. We note that under the Administrative heads, advertising and sales promotion expenses have been fully allowed as claimed by the appellant. On this, we find no merit in the argument of the appellant.

11. Regarding costing data of Merbok, we find that the DA has verified the data submitted and had discussions on various points before arriving at his conclusion. Spot verification is not always required. Regarding area based exemption being time bound, we note that the DA has to consider the material facts relevant to the

period. The future possibility of continuing exemption or termination of such exemption cannot be predicted and factored into while arriving at the findings on material injury for DI. The relevant facts available in record have been examined to draw conclusion.

12. Considering the above discussion, we find the issues raised by the appellant have no merit to warrant interference with the impugned findings. Accordingly the appeal is rejected.

[Pronounced in open Court on 15.09.2016 ]

(Justice (Dr.) Satish Chandra)
President

(S. K. Mohanty)
Member (Judicial)

(B. Ravichandran) 12.9.16.
Member (Technical)

Neha