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REGISTERED / AD

FAX : 011-26108426

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

Dated: **14/09/2016**

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. **AD/A/53381-53383/2016-CU[DB]** dated **06/09/2016**

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/51404/2015	AD/52141/2015	**Graphite India Ltd** 31, Chorwrngee Road, KOLKATA W.B.-700016
2	AD/COD/51405/2015	AD/52142/2015	**Heg Ltd** Bhilwara Towers, A-12, Sector-1 NOIDA UP-201301
3	AD/Stay/51455/2015	AD/52310/2015	**Steel Authority Of India Ltd** Ispat Bhawan, Lodi Road NEW DELHI -110003
			Name and Address of Respondent
4			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
7 Advocate(s) / Consultant(s):

Pawan Shree Agrwal, Advocate
B-9, SAGAR APARTMENTS,
6, TILAK MARG,
NEW DELHI,

JITENDRA SINGH ADV
F-21, GEETANJALI ENCLAVE,
NEW DELHI,

Pawan Shree Agrwal, Advocate
B-9, SAGAR APARTMENTS,
6, TILAK MARG,
NEW DELHI

8 Additional Party's Name & Address :

HEG LTD
BHILWARA TOWERS, A-12
SECTOR-1, NOIDA- 201301

GRAPHITE INDIA LTD
31, CHORWRINGEE ROAD,
KOLKATA-700016

KAIFENG CARBON CO. LTD
PINGMEI SHENMA GROUP
BIANCUN, EAST SUBURBS,
KAIFENG-475002 KAIFENG,
CHINA

PINGDINGSHAN SANJI
CARBON CO LTD
CHANGFANG VILLAGE,
JIAODIAN TOWN, XINHUA
DISTRICT, PINGDINGSHAN CITY,
HENAN CHINA

FANGDA CARBON NEW
MATERIAL CO LTD
NO.227, HAISHIWAN TOWN,
HONGGU DISTRICT, LANZHOU,
GANSU PROVINCE, CHINA

FUSHUN ORIENTAL CARBON
CO LTD
LANSHAN INDUSTRIAL ZONE
CITY FUSHUN STATE LIAONING

SINOSTEEL ENGINEERING AND
TECHNOLOGY CO LTD
NO.9 HEPING STREET, CHANGYI
DISTRICT JILIN, JLN 132002, CHINA

JILIN CARBON IMPORT AND EXPORT CO LTD
NO.9 HEPING STREET, JILING CITY, CHINA

SICHAUN GUANGHAN SHINDA CARBON CO LTD
XIWAI TOWNSHIP, GUANGHAN CITY, SICHAUN PROVINCE, CHINA

NANTONG YANGZI CARBON CO LTD
208 XISHI STREET ZANGZHA NANTONG, JIANG, CHINA

LIAOYANG CARBON CO LTD
NO. 688 LIURPU ECONOMIC, DISTRICT LIAOYANG LIAONING, CHINA

LINGHAI HONGFENG CARBON PRODUCTS CO LTD
GANGWAN, DALIAN, LIAONING, CHINA

CIMM DONGHAI ADVANCED CARBON CO LTD
F17, CHENGDA BUILDING, NO.71 RENMIN ROAD, ZHONGSHAN DISTRICT, DALIAN, CHINA

FUSHUN CARBON CO LTD
47 WEST SECTION HEPING ROAD, WANGHUA DISTRICT, FUSHUN, LIAONING, CHINA

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

20 C.D.R. 21 Office Copy 22 Guard File

15/09/16
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: 31/08/2016
Date of decision: 06.09.2016

AD/COD/51404/2015 & 51405/2015 in
AD/52141-52142/2015 & AD/Stay/51455/2015 in AD/52310/2015

(Arising out of common Notification No.04/2015-C (ADD) dated 13.2.2015 issued by the Ministry of Finance & Final Findings No.14/02/2013-DGAD dated 19.11.2014 of the Designated Authority]

M/s Graphite India Ltd. Appellant
M/s.HEG Ltd.
M/s.Steel Authority of India Ltd.

Vs.

Union of India/DA Respondent

Appearance:

For App.: Shri Sharad Bhansali, Advocate in AD/52141-52142/2015
Shri Jitendra Singh, Advocate in AD/52141-52142/2015
Ms. Meenakshi Arora, Sr. Advocate in AD/52310/2015
Shri Akash Garg, Advocate in AD/52310/2013

For Resp.:Shri Amit Singh, Advocate for DA.
Shri Govind Dixit, DR for Revenue

For I. Party: Ms.Meenakshi Arora, Sr. Advocate in AD/52141-52142/2015
Shri Akash Garg, Advocate in AD/52141-52142/2015
Shri Sharad Bhansali, Advocate in AD/52310/2015
Shri Jintendra Singh, Advocate in AD/52310/2015

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53381 - 53383/2016

Per B.Ravichandran:-

These three appeals are directed against the same Final Findings dated 19.11.2014 of the Designed Authority (the DA), Directorate General of Anti-dumping and Allied Duties, Ministry of Commerce and Industry and notification no.4/2015 dated 13.02.2015 of Ministry of Finance.

2. Before proceeding to the appeals on merit, we have considered the two miscellaneous applications filed by two of the appellants (M/s.Graphite India Ltd. and M/s.HEG Ltd) for condonation of delay in filing their appeals. The delay of 4 days in filing appeal has been satisfactorily explained by the ld. Counsel for the appellants. Accordingly, we condone the delay and admit the appeals for consideration on merit.

3. Ld. Counsel for the appellants 1 & 2 representing domestic industry (DI) submitted that they are engaged in the manufacture of graphite electrodes of all diameters (subject goods). They approached the DA with an application under Rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury), Rules, 1995 (AD Rules) for initiating anti-dumping investigation into import of subject goods originating in or exported from China PR. The DA initiated such investigation on 20.05.2013 and after following the procedure set out in AD Rules issued Final Findings dated 19.11.2014. The AD duty was imposed by Customs notification no.4/2015 Cus (ADD) dated 13.02.2015. These two appellants are partially aggrieved by the above outcome and filed these appeals.

4. The grounds of appeals can be summarized as below:

a) The DA has not taken into consideration certain submissions of DI. Excessive confidentiality has been accepted in the proceedings. Additional documents of exporters are taken on record without following the procedure.

b) The producers/exporters provided incomplete and belated information.

c) The normal value and export price has not been properly arrived at by the DA. The constructed normal value of most efficient plant gives distorted picture of dumping margin.

d) The data provided by individual producers/exporters in China have not been analyzed in proper perspective.

5. The main thrust of argument by the ld. Counsel for DI is that the normal value has not been properly arrived at to fix correct dumping margin.

6. Ld. Counsel for the third appellant (M/s.Steel Authority of India), who is a consumer industry of subject goods, contested the imposition of AD duty on the ground that the DA acted on the basis of data of DGCI which was not made available to them to defend their case during investigation. The "normal value" has not been arrived at properly. Only select 5 producers' data/parameters were considered.

7. Ld. Counsel submitted that the Findings are vitiated both on procedure and on principles of natural justice. In 2009, in sunset review, no injury was found. However, for subsequent period April, 2009 to March, 2012, injury was found only on the basis of marginal reduction of price by DI.

8. Ld. Counsel for DA supported the Findings as proper and legal. He submitted that AD Rules provide for DA to rely on other sources for data and information. Sampling is also a permitted methodology when large number of exporters are involved. None of the interested parties objected to the methodology adopted in such analysis even post disclosure.

9. Ld. AR for Revenue supported the arguments of ld. Counsel for DA.

10. We have heard all the parties and perused appeal records including written submissions.

11. The Domestic Industries are aggrieved partially against the impugned findings to the extent that the AD duty should have been higher. We have perused the various submissions on behalf of the DI. It is pertinent to note that the DI after publication of notification imposing AD duty on the subject goods was satisfied and no appeal was preferred. However, when the consumer of subject goods filed appeal challenging the imposition of AD duty, the DI also filed these appeals. This much has been admitted in their application for COD. We find that the argument of the DA against the impugned findings are mostly generic in nature with no specific data based objection . They have contested the findings on various vague assertions like excessive confidentiality for providing data, non-consideration of certain points raised by DI, certain error in data analysis. We have carefully perused the impugned findings by the DA. Each one of the points raised by the interested party has been examined by the DA, who recorded his comments and decisions in respect of the views expressed by them. We find that while determining the export price from China, the DA conducted on site verifications in four units. The DA circulated the report of verification. The export price of sampled exporting producers and their exporters have been done after detailed analysis. It is also pertinent to note that there is no claim for individual normal value for any exporter from China. The normal value constructed for all exporters in China has been compared with ex-works net export price to arrive at the dumping margin for various exporters. The DA also examined the dumping margin for the goods sampled exporters. Articles 6.10 of the Agreement on Anti-dumping provides that in cases where the number of exporters, producers involved

is so large as to make such a determination impracticable, the authorities may limit their examination to reasonable number of interested parties.

12. Regarding excessive confidentiality, there is no specific instance brought to our notice, which will have adverse impact on the rights of any of the interested parties. We note that the Domestic Industry as well as the importer/consumer were given ample opportunity to defend their case in terms of AD Rules. The procedure set out therein has been followed by the DA. We note that in para 88 and 89 of the Final Findings, views of DI and other interested parties have been elaborately listed. Thereafter, the DA examined the various issues and recorded his findings. We note that there is nothing in the present appeals to warrant interference with the findings of the DA. The impact of import of subject goods on the Domestic Industry has been considered with reference to the state of industry, production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping in accordance with the standards prescribed in Annexure-II of AD Rules. We also note that wherever the errors in data computation in respect of a few injury parameters were pointed out, the same has been corrected in the Final Findings.

13. We also note that the DA examined the data provided by the interested parties and also obtained from DGCI. We find that while DGCI data is also considered but the Final Finding is based on the analysis of large number of parameters as stipulated under Annexure-II of AD Rules. We note that before Final Findings, the DA has made disclosure statements and all the interested parties have furnished their comments, which were also examined and Final Findings were arrived at.

14. After careful consideration, we find that the points raised in the present appeal are not supported with material evidence and are devoid of merit. On careful perusal of the Final Findings, we find no reason to interfere with the same.

15. Accordingly, the appeals are dismissed.

(Pronounced on 06.09.2016).

(Justice (Dr.) Satish Chandra)
President

(Archana Wadhwa)
Member (Judicial)

CKP

(B. Ravichandran) 2/9/16.
Member (Technical)