

**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

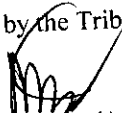
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. AD/A/53557/2016-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/Stay/50074/2016	AD/50084/2016	Robin Resources Sdn Bhd No 1, Jalan Industri 5, Taman Perindustrian Temerloh 28400, MENTAKAB PAHANG MALAYSIA

**Name and Address of
Respondent**

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

3 Advocate(s) / Consultant(s):

**RAVINDRA KUMAR ADV
ANM GLOBAL INC, T-676, MAIN
ROAD GAUTAMPURI,
SHAH DARA, DELHI-110053,
INDIA**

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

4 Additional Party's Name & Address :

**GREENPLY INDUSTRIES
LTD**

**PLOT NO. 68, 3RD FLOOR,
SECTOR 44, GURGAON-
122003, HARYANA**

**MANGALAM TIMBER
PRODUCTS LTD**

**BIRLA BUILDING, 9/1, R.N.
MUKHERJEE ROAD 10TH
FLOOR, KOLKATA-700001,
WEST BENGAL**

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


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. 50084 of 2016 with

Anti Dumping Stay No. 50074 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 Robin Resources

Appellant

Vs.

UOI/DA

Respondent

Appearance:

Mr. Ravindra Kr. Advocate for the Appellants

Sh. Amit Singh, Advocate for the D.A.

Sh. Govind Dixit, DR for Revenue

Ms. Reena Khair, Sh. Rajesh Sharma, Ms. Rita Jha, (Advocates) for the Interested Parties

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. 53557 / 2016

Per: **B. Ravichandran:**

The present appeal is filed by the appellant who is an exporter of Plain Medium Density Fiber Board (subject goods) from Malaysia. The challenge is against final finding dated 17.08.2015 after sunset review by the designated authority, Directorate General of AD. & allied duty, Ministry of Commerce and Industry and Customs Notification No. 48/2015 dated 21.10.2015.

2. The main challenge in the present appeal is that the appellant should have been excluded from the sunset review as in the initial final finding it was recorded that the dumping margin was less than 2% and as such in the sunset review imposition of AD duty on the appellant was not legally tenable.



3. The Ld. Counsel for the Domestic Industry submitted that as per the practice in India, during the sunset review of AD duty, the producer with nil duty is also subjected to investigation and review, and there is no legal infirmity in such action. The dumping margin in such situation is considered as if in the fresh investigation. It was also submitted that non termination of investigation against the appellant in the initial stage was not challenged by them.

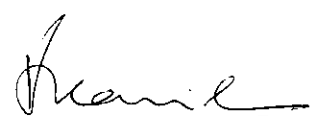
4. The Ld. Counsel for the DA supported the findings of the DA. He also submitted that the DA considered the Appellate Panel Report on Treatment of Exporters with *de-minimis* volume. Consistent with the practice followed by the Indian Authorities, nil rate was fixed in the initial stage by the DA and after sunset review AD duty was imposed based on the analysis of material injury to the DA.

5. Ld. AR supported the findings of the DA and the Customs Notification imposing AD duty.

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

7. The appellant is challenging the imposition of AD duty on the goods exported by them only on the ground that the initial finding of *de-minimis* should have resulted in termination of investigation and there is no justification and imposition of AD duty in sunset review.

8. We find that final finding dated 26.08.2009 of the DA was challenged before this Tribunal. The appeal was decided and reported in 2016 (334) ELT 552 (Tri. Del). The injury analysis was challenged as faulty as un-dumped imports from Robin Resources have been taken into account for purpose of injury determination which is contrary to the WTO Panel Report in the case of EC Salman wherein it has been held that investigations are to be terminated qua, the exporter whose exports are found to be *de-minimis*. The Tribunal after considering the issue held that Annexure-II to the AD Rules read with Rule 14 makes it clear that the volume effect is to be examined in respect of the Country, after cumulative



assessment of imports and not for an individual exporter. The Reliance was placed on para (iii) & (iv) of Annexure II.

9. We note that the DA can consider where an exporter was awarded zero duty in the original investigation and has now found to be dumping which is likely the cause injury to DI, then AD duty can be considered for imposition with reference to dumping margin and injury margin established during the review. We note that the DA followed the requirements of Article 2 & 3 of the ADA and the relevant provisions of AD Rules. We also note that regarding appellants, the DA has examined and reviewed all the aspects of original investigation and in addition examined whether expiry of initial Notification is likely to lead a recurrence of dumping/ injury to the DI. As already noted that this is like a fresh investigation in so far as appellant is concerned and we find no legal infirmity in such action by the DA. We also note that the non-termination of investigation with reference to appellant during first stage has not been challenged by the appellant, they were awarded zero rate of duty on conclusion of such investigation. In the sunset review while considering all the aspects, the DA recommended imposition of AD duty on the imports from the appellant. We also take note the AD duty for other exporters from Malaysia is fixed at US \$ 36.10 per cubic meter, whereas for the appellant the same is fixed at 5.72 US \$. This clearly indicates that the due analysis has been made with various factors having relevance to the dumping of subject goods country-wise and exporter-wise for a fair finding.

10. Based on the above analysis and discussions, we find no merit in the present appeal, and accordingly reject the same. The connected stay application also disposed of.

[Pronounced in open Court on 15-09-2016]

(Justice (Dr.) Satish Chandra)
President

(S. K. Mohanty)
Member (Judicial)

(B. Ravichandran) 14916
Member (Technical)