

AD/Misc/51707,51710,51713,51742,51716 and 51719/2016
 AD/COD/51706,51709, 51712,51744, 51715,51 51718/2016
 AD/Stay/51708,51711, 51714, 51743, 51717 & 51720/2016
 AD/52959,52960,52961,53043, 52962-52963/2016

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
 NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:12.01.2017

Date of Decision:25.01.2017

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(Arising out of Notification no.24/2016-Customs (ADD) dated 7.6.2016 issued by
 the Central Government based on Final Findings of the Designated Authority
 No.15/25/2011-DGAD dated 28.03.2016]

M/s.Heyuan Romantic Ceramics Co.Ltd.
 M/s.Foshan Beyond Import and Export Co.Ltd.
 M/s.Thai Impex Malaysia SDN BHD (Exporter)
 M/s.Fosan Shansui Romantic Ceramics Co.Ltd.
 M/sAshique Exports Pvt. Ltd.(Importer)
 Thai Impex Pvt. Ltd. (Importer)

Appellants

Vs.

DA/MOF

Respondent

Appearance:

For App. : Ms. V. Pramila, Advocate
 For Resp. : Shri Amit Singh, Advocate for DA.
 Shri Govind Dixit, DR for Revenue.

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

Final Order No.50478-50483/2017 /Dated:25.01.2017

Per B. Ravichandran:

This bunch of six appeals are directed against final finding dated
 28.03.2016 of Designated Authority (DA), Directorate General of Anti Dumping

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and Allied Duties, Ministry of Commerce and Industry under Rule 22 of the Anti Dumping Rules. The New Shipper Review in terms of the said rules was with reference to Anti Dumping duty imposed on the import of vitrified/Porcelain tiles from China PR under Notification No.73 of 2003/Cus ADD dated 1.5.2003 and Notification No.82/2008-CUS ADD dated 27.06.2008. The Period of Investigation (POI) was 1.5.2012 to 31.10.2012. After conclusion of the investigation, the DA concluded that the applicant cannot be treated as New Shipper under Rule 22 of the AD Rules and are, therefore, not entitled to individual dumping margin. Accordingly, the DA recommended the import of the subject goods be subjected to levy of AD duty as imposed earlier on the imports of subject goods originating in or exported from China PR until the date of validity of the said duty notified vide Notification No.82/2008-Cus ADD dated 27.06.2008. Based on the finding, notification no.24/2016-CUS ADD dated 7.6.2016 was issued by the Ministry of Finance ordering final assessment on the payment of AD duty in terms of notification no.82/2008-Cus ADD dated 27.06.2008.

2. The appellants herein are aggrieved by the final findings by the DA and the customs notification referred to above.

3. Ld. Counsel appearing for the appellants submitted that a misc. applications for condonation of delay have been filed along with each one of these appeals. In respect of appeal filed by M/s. Foshan Shansui Romantic Ceramics Co. Ltd, there is a delay of two days in filing the appeal. They have dispatched the appeal papers by speed post on 2.9.2016. However, the Registry has received it only on 9.9.2016

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resulting in delay of 2 days. In respect of each of other 5 appeals, the delay of 64 days is mainly on account of the fact that initially a single combined appeal was filed on behalf of the five appellants. On being pointed out by the Registry, separate appeals were filed resulting in the delay. Ld. Counsel prayed for condonation of delay atleast in filing of these appeals. Having examined the reasons, we allow the misc. applications and admit the appeals for a decision on merit.

4. On merits of the appeal, ld. Counsel submitted as below:-

- (a) The DA failed to appreciate the relevant submissions made by the applicants and passed summary orders without any appreciation of full facts. In fact, the AD duty was discontinued with no second sunset review carried out by the DA. As such, the conclusion for levy of AD duty on the applicants is devoid of merit.
- (b) No proper investigation or verification was done by the DA. As he failed to examine the relevant factors for arriving at the margin of dumping. The DA did not adhere to the time limits for completing the investigations and thereby violated the provisions of AD Rules. The application for New Shipper Review was filed on 19.04.2012. The final finding was issued by the DA on 28.03.2016. It is clear that investigation started in May, 2012 stood completed only in March, 2016. No reason for abnormal delay has been recorded by the DA. Rule 17(1) of the AD Rules stipulates that the DA should determine on the dumping of any goods within one year of initiation of investigation. The Central Government may grant extension of another six months. No special circumstances have been mentioned in the impugned final findings. The appellants cooperated with the DA and hence, the abnormal delay has vitiated the final findings of the DA.

5. Ld. Counsel for the DA submitted that the present appeals are without merit and are legally not sustainable. He drew our attention to specific paragraphs of the

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final findings of the DA to reiterate that all the required procedures have been followed by the DA without deviation. There is no statutory time limit for investigation to be completed under Rule 22. In fact, the delay in final findings happened because of repeated correspondence by the DA with the appellants. The appellants for New Shipper Review were not cooperating in the subject proceedings. During the process of investigation, oral hearing was granted on 5.11.2014. None of the applicants attended the same and neither they submitted any written note and they did not peruse the matter diligently. They did not cooperate for on the spot verification of the facility. Finally, the DA issued the disclosure statement on 7.5.2015. Subsequently, due to change of the DA another opportunity of oral hearing was granted on 27.08.2015. The appellants appeared and made their submissions. After such hearing, the appellants also agreed for on the spot verification of the data. The same was duly carried out and second disclosure statement issued on 16.03.2016. The DA has fully examined all the documents presented for verification. The reference to second sunset review is not relevant to the present case. The AD duty imposed and continued based on first sunset review was valid upto June, 2013. The finding of the Authority for second sunset review has no impact for the impugned period of AD duty relevant to the appellants. The provisional assessment period for AD duty payment by the appellant is from 10.07.2012 to 26.06.2013. As such, there is no merit in the plea made by the appellant in this regard.

6. Ld. AR appearing for the Revenue supported the findings of the DA.

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7. We have heard all the parties as above and perused the appeal records including the written submissions.

8. The appellants herein sought New Shipper Review and fixation of individual dumping margin in terms of Rule 22 of AD Rules. In this connection, we have closely examined the final findings recorded by DA.

9. We note that the DA has examined the status of the appellants for a claim of New Shipper Review under the said Rules. It is seen that the appellant No.1 and 2, who are related producers were not new players in the business but were actually in existence, in different names, earlier. The on the spot verification conducted by the DA revealed the said fact. In fact appellant No.2, though declared to have been set up in 2009, was in fact, in existence from 2001. This fact was not disclosed in the declaration filed by the appellant. Similarly, it was also recorded that these Producers have a much wider relationship network than what was declared by them. This puts the whole claim and basis of New Shipper Review under jeopardy. Further, the appellant No.3 is actually exporter of subject goods and realised export proceeds directly from the Indian buyers. There is no supporting evidence to their sale transaction with appellant no.4.

10. After careful consideration of the relationship and commercial transaction, the DA concluded that it will not be appropriate to clear the subject goods made by the applicants without payment of AD duty.

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11. We also note that Rule 22 did not provide for any time schedule for completion of New Shipper Review. In the present case, though there is considerable delay in issuing the final findings, the backgrounds and circumstance for such delay has been explained by the DA. First of all, the appellant refused for on the spot verification. It was only after the issuance of First disclosure statement, they have consented for such verification. Later, change of DA necessitated a second oral hearing. The appellants did not participate in the first oral hearing. We note that the appellants did not diligently follow up their application for review. They did not appear for oral hearing when the case was posted and did not submit any brief in support of their case. It is only after the second oral hearing, further progress could be made in the investigation. Regarding the reasons for not finding merit in New Shipping Review by the DA, we have specifically examined the observations of DA in paras-25 to 27 of the final findings. We find that the appellants herein did not have supporting facts to counter the findings recorded by the DA. We also note that the appellants did not make full and complete declaration regarding their period of existence and relationship among themselves. There are several related companies involved in production and sale of subject goods from China, PR. In the absence of full and complete disclosure and transparent cooperation, it will not be possible for the DA to agree with the plea of the appellant for a New Shipper Review or individual dumping margin. We note that absence of the second sunset review or termination of AD duty on the subject goods is of no direct relevance to the material period

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relevant to the present cases. The provisional AD duty, which was later confirmed is for the period 10.07.2012 to 26.06.2013 only. During that time, AD duty was in force pursuant to first sunset review.

12. On careful consideration of the grounds of appeal, we find no reason to interfere with the findings of the DA. Accordingly, the appeals are dismissed. The misc. applications and the applications for stay filled in respect of these appeals are also disposed of.

[Order pronounced on 25.01.2017]

[Justice Dr. Satish Chandra]
President

[S.K. Mohanty]
Member (Judicial)

[B. Ravichandran]
Member (Technical)

Ckp.