

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II**

Appeal No. C/560/2008 & C/192/2009

(Arising out of Order-in-Original No. 47/08 CC(I)JCH dated 25.04.2008 passed by the Commissioner of Customs (Import), Mumbai-II).

M/s Gera Developments Pvt. Ltd. Commissioner of Customs (Import), JNCH, Sheva	Appellant
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Vs.

Commissioner of Customs (Import), JNCH, Sheva M/s Gera Developments Pvt. Ltd.	Respondent
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Appearance:

Shri V.M. Doiphode, Advocate	for Appellant
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Ms. P. Vinitha Sekhar, Jt. Commissioner (AR)	for Respondent
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CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 12.03.2018

Date of Decision: 11.05.2018

ORDER NO. **A/86331-86332/2018**

Per: Ramesh Nair

The case of the Department is that the assessee imported Glazed/Polished Procelain tiles, which attracts Anti-dumping duty. However, the anti-dumping duty was exempted under Asia Pacific Trade Agreement vide Notification No. 72/2005-Cus dated

22.7.2005 and Notification No. 73/2003-Cus dated 1.5.2003, on the condition that the goods should be manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. of Qingyuan City and exported by M/s New Zhong Yuan Ceramics Import & Export Co. Ltd. of Guangdong, China. Revenue's allegation is that on the goods imported, the brand name 'XNY' was found embossed, and some other goods the brand names like "SANREMO' and 'SANDEBO' have been found embossed on the tiles. On verification on the Internet, it was found that these brands belong to M/s XNY Ceramic Company Ltd., Shinan Road, Nanzhuang Town, Nanhai City, Guangdong, China, who are one of the largest manufacturers of tiles in China. On this basis, Revenue concluded that the goods were not manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. Therefore, the condition of the exemption Notification has been violated, hence, the assessee is liable for payment of anti-dumping duty.

2. Shri V.M. Doiphode, learned Counsel appearing on behalf of the assessee submits that the department has decided the entire case only on the basis of verification carried out on the Internet that the brand name under which the goods were imported are belong to XNY Ceramics Co. Ltd. However, the Revenue could not establish beyond any doubt that the goods were not manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. He submits that it is an admitted fact on record that the band name owner M/s XNY Ceramics Co. Ltd. belonging to the same group where the manufacturer M/s Southern Building Materials and Sanitary Co. Ltd. belongs. He submits that the assessee placed order with a clear condition that the goods to be exported from China should be

manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. and export should be made by M/s New Zhong Yuan Ceramics Import & Export Co. Ltd. In this regard, the said manufacturing company has given a certificate with reference to the sale invoice that the goods supplied to M/s Gera Development Pvt. Ltd. was manufactured by them. A similar certificate was also issued by exporting company M/s New Zhong Yuan Ceramics Import & Export Co. Ltd. of Guangdong. He submits that in all the import documents such as Bill of Lading, certificate of origin, it is clearly mentioned that the goods supplied were produced by M/s Southern Building Materials and Sanitary Co. Ltd. and exported by M/s New Zhong Yuan Ceramics Import & Export Co. Ltd. He submits that with all these authentic evidences, there is no doubt that the goods were manufactured by the specified company i.e. M/s Southern Building Materials and Sanitary Co. Ltd. Therefore, the brand name affixed on the product alone cannot be an evidence that the goods were not manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. He submits that the Revenue has heavily relied on the statement of Shri K.N. Alexender, Sr. Manager of the assessee to the effect that the assessee has accepted the allegation and paid anti-dumping duty, therefore, they cannot agitate at this stage.

3. Ms. P. Vinitha Sekhar, learned Joint Commissioner (AR) appearing on behalf of the Revenue submits that from the verification on internet, it was revealed that brand name under which the goods were imported does not belong to M/s Southern Building Materials and Sanitary Co. Ltd. Therefore, this is sufficient to establish that the said branded goods are not manufactured by

M/s Southern Building Materials and Sanitary Co. Ltd. Hence, they are not entitled for exemption of anti-dumping duty. The appellant admitting the allegation paid the anti-dumping duty and also waived the show-cause notice. Therefore, now they cannot raise the issue on merit before this Tribunal. She placed the reliance on the following judgments: -

(a) *Commissioner of Customs (Import), Mumbai Vs. Asian Hotel Ltd. – 2012 (231) ELT 318 (Tri-Kol).*

4. We have carefully considered the submissions made by both sides. Firstly, on going through the statement of Shri K.M. Alexander, Sr. Manager of Gera Development Pvt. Ltd., the assessee in the present case, we find that Shri Alexander only stated the facts. However, he could not confirm that the goods were not manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. Therefore, from the statement, it cannot be said that the assessee has accepted the allegation of the Revenue.

4.1 Now, coming to the issue that whether the goods were manufactured by M/s Southern Building Materials and Sanitary Co. Ltd., we have perused the various import documents, the same are scanned below: -



清远南方建材卫浴有限公司
SOUTHERN BUILDING MATERIALS AND SANITARY CO. LTD OF QINGYUAN CITY

地址: 清远市清城区源潭镇高新技术开发区陶瓷工业城
Add: Yuantan Twon, Qingcheng District, Qingyuan City, Guangdong China
Tel: 0086-757-85387827 Fax: 0086-757-85387833

TO WHOMSOEVER IT MAY CONCERN

We, M/s. Southern Building Materials & Sanitary Co. Ltd., China, hereby confirm that all materials supplied to M/s Gera Developments Pvt. Ltd., Pune, India, against the below mentioned Invoice & B/L nos. have been manufactured by our company. The details of the supply - container wise - are attached and vetted herewith as per Annexure 1 & Annexure 2.

(a) NZY Invoice no: A0801-0123B dated 23rd January 2008 and shipped against Wan Hai Line B/L no: 0258007025

(b) NZY Invoice no: 0801-0207 dated 5th February 2008 and shipped against Wan Hai Line B/L no: 0258015328

The brand names SANREMO, SANDEBO, XINNAYUE (also known as XNY), and NEW ZHONG YUAN mentioned in the packing lists belong to our company.

In view of the exigency of the material by our client, we were constrained to supply some of the tile without having any embossing on the material. During the period of manufacturing, there was also a problem in mould and due to such operational breakdowns, the embossing during that period did not happen.

Also, because of a quick dispatch the packing of tile was done in white boxes and not in the standard company box, because they were not readily available. Nevertheless, it is hereby confirmed that all these tiles were manufactured by Southern Building Materials & Sanitary Co. Ltd., China only and the same had been suitably mentioned in the form 'A' i.e. Country of Origin Certificate as per Asia Pacific Trade Agreement.





新中源

广东新中源陶瓷进出口有限公司

NEW ZHONG YUAN CERAMICS IMPORT&EXPORT CO., LTD. OF GUANGDONG
Add: Zhongyuan building, Shinan Road, Nanzhuang, Chancheng District of Foshan City Guangdong China.

Tel: 0086 757 5383505 5387828

Fax: 0086 757 5387831

TO WHOMSOEVER IT MAY CONCERN

We, M/s. New Zhong Yuan Ceramic Import & Export Co. Ltd., China, hereby confirm that all materials supplied to M/s Gera Developments Pvt. Ltd., Pune, India, against the below mentioned Invoice & B/L nos. have been manufactured by M/s Southern Building Materials & Sanitary Co. Ltd. The details of the supply are attached and vetted herewith as per Annexure 1 & Annexure 2.

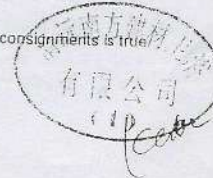
(a) NZY Invoice no: A0801-0123B dated 23rd January 2008 and shipped against Wan Hai Line B/L no: 0258007025

(b) NZY Invoice no: 0801-0207 dated 5th February 2008 and shipped against Wan Hai Line B/L no: 0258015328

The brand names SANREMO, SANDERO, XINNANYUE (Also known as 'XNY') & NEW ZHONG YUAN mentioned in the packing lists Lett. to by M/s Southern Building Materials & Sanitary Co. Ltd

The export of the tiles against the above referred Invoice & B/L nos. and the corresponding declarations are in conformity with the Asia Pacific Trade Agreement (Form A)

We also hereby confirm that the information given in the Form A for the consignments is true



地址: 广东省佛山市禅城区 庄镇石南大道新中源陶瓷营销中心
网址: <http://www.newzhongyuan.com>

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) NEW ZHONG YUAN CERAMICS IMPORT & EXPORT CO., LTD. OF GUANGDONG ZHONGTUAN BUILDING, SHINAN ROAD, NANZHANG, CHANCHENG DISTRICT OF FOSHAN CITY, CHINA			Reference No. 8094400002870192		
2. Goods consigned to (Consignee's name, address, country) GERA DEVELOPMENTS PVT LTD 200 GERA PLAZA, BOAT CLUB ROAD, PUNE 411001, MAHARASHTRA, INDIA			3. For Official use		
4. Means of transport and route ON FEB. 07, 2008 FROM SHEKOU CHINA TO NHAVA SHEVA, INDIA BY SEA					
5. Tariff item number	6. Marks and number of Packages	7. Number and kind of packages/description of goods	8. Origin criteria (see notes overleaf)	9. Gross weight or other quantity	10. Number and date of invoices
69.07	N/M	FIVE THOUSAND FOUR HUNDRED AND SIX (5406) CTNS OF POLISHED PORCELAIN TILES ONLY *** ** HAVING BEEN AUTHORISED IN ACCORDANCE WITH THE CUSTOM TARIFF, DETERMINATION OF ORIGIN OF GOODS UNDER ASIA PACIFIC TRADE AGREEMENT, RULES 2006, THE UNDERSIGNED CERTIFIES THAT THE GOODS DESCRIBED IN THIS INVOICE (CERTIFICATE) HAVE BEEN WHOLLY PRODUCED/MANUFACTURED WITHIN THE TERRITORY PEOPLE'S REPUBLIC OF CHINA WE HEREBY CERTIFY THAT THE GOODS ARE PRODUCED BY M/S SOUTHERN BUILDING MATERIALS AND SANITARY CO. LTD. OF QINGYUAN CITY AND EXPORTED BY M/S NEW ZHONG YUAN CERAMICS IMPORT AND EXPORT CO. LTD. OF GUANGDONG	"A"	270300KGS G.W.	0801-0207 FEB. 05, 2008
11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct, that all the goods were produced in CHINA (Country) and that they comply with the origin requirements specified for these goods in the Asia-Pacific Trade Agreement for goods exported to INDIA (Importing Country) FOSHAN, FEB. 05, 2008			12. Certificate It is hereby certified on the basis of control carried out, that the declaration by the  FOSHAN, FEB. 05, 2008		

ORIGINAL					
1. Goods consigned from (Exporter's business name, address, country) NEW ZHONG YUAN CERAMICS IMPORT AND EXPORT CO., LTD. OF GUANGDONG SHINAN ROAD, NANZHANG TOWN, FOSHAN CITY GUANGDONG, CHINA			Reference No. B084406002870117 CERTIFICATE OF ORIGIN Asia-Pacific Trade Agreement (Combined Declaration and Certificate) Issued in The People's Republic of China (Country)		
2. Goods consigned to (Consignee's name, address, country) GERA DEVELOPMENTS PVT. LTD 200 GERA PLAZA, BOAT CLUB ROAD, PUNE 411001, MAHARASHTRA, INDIA			3. For Official use		
4. Means of transport and route ON/AFTER JAN 23, 2008 FROM SHEKOU, CHINA TO MHAVA SHEVA, INDIA BY SEA					
5. Tariff Item number	6. Marks and number of Packages	7. Number and kind of packages/description of goods	8. Origin criterion (see notes overleaf)	9. Gross weight or other quantity	10. Number and date of invoices
69.07	N/M	GLAZED PORCELAIN TILES NINE THOUSAND FIFTY NINE (9059) CTNS ONLY *** ** HAVING BEEN AUTHORISED IN ACCORDANCE WITH THE CUSTOM TARIFF, DETERMINATION OF ORIGIN OF GOODS UNDER ASIA PACIFIC TRADE AGREEMENT, RULES 2006, THE UNDERSIGNED CERTIFIES THAT THE GOODS DESCRIBED IN THIS INVOICE (CERTIFICATE) HAVE BEEN WHOLLY PRODUCED/MANUFACTURED WITHIN THE TERRITORY PEOPLE'S REPUBLIC OF CHINA WE HEREBY CERTIFY THAT THE GOODS ARE PRODUCED BY M/S SOUTHERN BUILDING MATERIALS AND SANITARY CO. LTD. OF QINGYUAN CITY AND EXPORTED BY M/S NEW ZHONG YUAN CERAMICS IMPORT AND EXPORT CO. LTD. OF GUANGDONG B/L NO. 0258007025	"A"	258412KGS G. W.	A0801-0123B JAN. 23, 2008
11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct, that all the goods were produced in  and that they comply with the requirements specified for these goods in the Asia-Pacific Trade Agreement for goods exported to INDIA (Importing Country) FOSHAN, JAN 23, 2008			12. Certificate It is hereby certified on the basis of control carried out, that the declaration by the Exporter is correct 		

10 Containers
Consignment
(44)
(40)

Gera Developments Pvt. Ltd.
200, Gera Plaza, Boat Club Road Pune 411001

PURCHASE ORDER

TO,
M/s. Winzone International Ltd.
Building.: 109 Argyl Street, Mongko, KOWLLION
HONG KONG-HONG

Attention: Mr. RICKY

Port:- SHEKOU - NHAVASHEVA

PURCHASE ORDER No: PO/GDPL/3753
ISSUE DATE: 13/11/07
Requisition No : PR/GDPL/0286

PROMISED SHIP DATE : As Per Schedule

Notes:
1. Prices are FOB Shekou. Prepay all shipping, inland transportation and Insurance Charges & add to the Invoice
2. Tiles have to be manufactured by Southern Building Materials and Sanitary Co., Ltd. Quingyan City
3. Your charges for supervision of loading, co-ordination with Shipping company/Export Authorities and other incidental expenses will be extra. However these charges will not exceed 6% of FOB cost
4. You will arrange for transfer of FOB value to "New Zhong Yuan Import & Export Co., Ltd" of Guangdong
5. You will arrange for shipment from "New Zhong Yuan Import & Export Co., Ltd" of Guangdong alongwith necessary documents

Payment Terms: 30% Advance.
Balance upon receiving BL Copy

Bill To: GERA DEVELOPMENTS PVT. LTD

Ship and Consign To: SKY VILLAS/DDC
200, Gera Plaza, Boat Club Road, Pune-411014
Attention: ASHRAF KHAN

Shipping Terms: CIF Nhavasheva
Ship Via: Road-ship
Origin: - CHINA

Ref. No.: Purchase Requisition No.
Contact Buyer prior to shipment.

Signature:
By: Kedar Gokhale -Sr. Purchase Manager
Telephone: +91-020- 56282704 / 56282509
Fax: +91-020 - 26695332

Signature:
Approved By: I N Subhram
VP - Purchase & Contracts

SELLER'S ACCEPTANCE

SELLER is required to acknowledge acceptance of this Purchase Order by returning a copy of this page signed by an authorized representative within one week after receipt of this order. The authorized representative must accept and agree to furnish the Goods and Services in full accordance with only terms and conditions stipulated in this Purchase Order.

Signature: [Signature]
Name: [Name]
Date: 13/11/07

Sr.No	Description	Specs	Quantity		Rate (US\$)	Amount
			SQM	PCS		
1	Glazed Porcelain Tiles					FOB, Shekou-China
1	H65222-H6	165 x 165 mm	141.03		\$59.50	\$8,391.29
2	H16712-Y5	75 x 165 mm	257.54		\$47.68	\$12,279.51
3	H33222-KD	600 x 600 mm	4553.28		\$4.34	\$20,867.80

From the above documents, it can be seen that the goods exported by M/s New Zhong Yuan Ceramics Import & Export Co. Ltd. were manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. The Revenue has heavily relied upon the verification of internet, from which it can only be known that brand name embossed on the goods imported are belonging to XinZhong Yuan Ceramics Co. Ltd. i.e. XNY. However, firstly, the Revenue has not made any effort to further investigate that the documents issued by Chinese authority are correct or otherwise. It is also fact on record

that even on the basis of internet, though the brand name belong to a different company i.e. XinZhong Yuan Ceramics Co. Ltd., but the said company also belong to the same group where M/s Southern Building Materials and Sanitary Co. Ltd. belongs. Without any detailed investigation, merely on assumption basis, the Revenue came to the conclusion that the goods were not manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. Here, it is not material that who is the brand owner, but the important factor is that irrespective of brand owned by any person, the goods should be manufactured by M/s Southern Building Materials and Sanitary Co. Ltd., which is not disputed, in our view as per the documentary evidence. The Department could not bring anything on record except the internet verification without any corroboration that the goods have not been manufactured by M/s Southern Building Materials and Sanitary Co. Ltd. Therefore, there is no substance in the allegation of the Revenue.

5. Accordingly, the confiscation and consequential redemption fine of Rs.17 lakhs and penalty of Rs.5 lakhs against the assessee are set aside in respect of Appeal No. C/560/2008 filed by the assessee, on our findings given hereinabove. The Order-in-Original impugned in the Revenue's appeal is upheld and the Revenue's appeal is dismissed. Assessee's appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in Court on 11.05.2018)

(Raju)
Member (Technical)

Sinha

(Ramesh Nair)
Member (Judicial)