CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 85145 of 2020

(Arising out of Order-in-Appeal No. 1253 (Gr.-III)/2019 (JNCH)/Appeal-II dated 11.09.2019 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II)

Assistant Commissioner of Customs **Appellant**
Nhava Sheva-V
JNPT Custom House,
Nhava Sheva, Dist. Raigad 400 707.

Vs.

M/s. Strata Geosystems (I) Pvt. Ltd. **Respondent**
S. No. 234/1, 2/p1, Village Daheli,
Tal.: Umbergaon, Gujarat 396 105.

<u>Appearance:</u>

Shri Ashwini Kumar, Additional Commissioner and Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representatives, for the Appellant
Shri Prakash Shah with Shri Mihir Mehta, Advocates, for the Respondent

<u>CORAM:</u>

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 23.09.2022
Date of Decision: 19.10.2022

FINAL ORDER NO. A/85968/2022

PER: SANJIV SRIVASTAVA

This appeal filed by the revenue is directed against the Order-in-Appeal No 1253 (Gr.-III)/2019 (JNCH)/Appeal-II dated 11.09.2019 of the Commissioner of Customs (Appeals), JNCH, Nhava Sheva. By the impugned order, Commissioner (Appeals) allowed the appeal filed by the Respondent before setting aside the order-in-original No 264/2019-20/DC/NS-III/CAC/JNCH dated 30.07.201 of the Deputy Commissioner of Customs, Group III (NS-III), JNCH, Nhava Sheva, holding as follows:

"(i) I hold that the assessment of the Bills of Entry No. 3743636 dated 20.06.2019, 3820929 dated 26.06.2019 and 3917222 dated 03.07.2019 after levying ADD @ 528 USD/ MT in terms of Notification No 35/2018-Customs (ADD) dated 09.07.2018, serial No 6.

14. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/ or against the person concerned or any other person, if found involved, under the provisions of the Customs Act, 1962 and/ or any other law for the time being in force in India."

2.1 Respondent had filed three Bills of Entry detailed in table below, for the clearance of goods imported from M /s. Oriental Textile (Holding) Limited, Taiwan where country of origin and country of export was declared as China.

			Amount in Rs
Sr No	Bill of Entry	Description of Goods	Declared Assessable Value
1	3743636 dated 20.06.2019	Polyester High Tenacity Filament Yarn (FM 1010-0 1000D/192F)	25,76,692/-
2	3820929 dated 26.06.2019		25,80,357/-
3	3917222 dated 03.07.2019		25,80,357/-

2.2 Respondent has while filing the B/E's claimed the benefit of S No 5 of the Notification No 35/2016- Customs (ADD) dated 09.07.2018. However vide order in original the benefit as claimed by the Appellant was denied and they were assessed to Anti Dumping Duty as per S No 6 of the said notification.

2.3 Respondents filed the appeal before Commissioner (Appeals) which has been allowed as per the impugned order.

2.4 Aggrieved by the impugned order revenue has preferred this appeal stating following grounds:

- Respondent has in the B/E's filed on the basis of M/s Oriental Textile (Holding) Limited, Taiwan declaring country of origin and country of export was declared as China,
- As per Notification No. 35/ 2018 Customs (ADD) dated 09.07.2018 anti-dumping duty @ USD528 / MT is applicable on import of impugned goods where country of origin and/ or country of export is China.
- As per the final findings of the Directorate General of Anti-Dumping and Allied Duties dated 24.05.2018 regarding import of impugned goods originating in or exported from

China PR under heading G2 (vi) only M / s. Oriental Industries (Suzhou) Limited (OTIZ) and M/ s. Oriental Textiles (Holding) Limited China PR (OTTI) was considered for determination of Export Price for Producers and Exporters.

- Only specified Producers/ Exporters are covered under Serial No. 1 to 5 of the Notification No. 35/ 2018 as discussed under heading "G2: Determination of Export Price for producers and exporters in China PR" of the DGAD Finding Notification dated 24.05.2018 and any other combination where the country of origin and country of export is China appears to be covered under Serial No. 6 of the Notification No. 35/2018 where ADD @ USD528 / MT is applicable.
- In the Final Findings Nil ADD has been specified under serial no. 5, where country of origin and country of export is China, producer is Oriental Industries (Suzhou) Limited and exporter is M/ s. Oriental Textiles (Holding) Limited. In view of heading G2 (vi) of the Final Findings, it appears that producer referred is M/s. Oriental Industries (Suzhou) Limited, China and exporter as M/S. Oriental Textiles (Holding) Limited, China only and no other sister concern / affiliates / subsidiary of M/s. Oriental Textiles (Holding) Limited, China is covered under serial No. 5 of the ADD Notification,
- Therefore In respect of these bills of entry filed where exporter is M/s. Oriental Textiles (Holding) Limited, Taiwan ADD @ USD 528/ MTS is leviable under serial No. 6 of this Notification.

3.1 We have heard Shri Ashwini Kumar, Additional commissioner with Shri S K Hatangadi, Assistant Commissioner, Authorized Representatives for the revenue and Shri Prakash Shah with Shri Mihir Mehta, Advocates for the Respondent

3.2 3.3 Arguing for the revenue learned Authorized Representative submits as follows:

GSR. (E) - Whereas, in the matter of : High Tenacity Polyester yarn" (HTPY) (herein after referred to as the subject goods) falling under the Tariff heading 5402 20 90 of the First Schedule to the Customs tariff Act, 1975 (51 of 1975) (herein after referred as the Customs Tariff Act), originating in, or exported from China PR (herein after referred to as subject country), and imported into India, the Designated Authority in its final findings, published in the Gazette of India, Extraordinary, Part I, section 1, vide notification No.6/12/2017-DGAD dated 24th may 2018 has come to the conclusion that- ibid.

4. When the final findings of the designated authority i.e. Directorate General of Anti Dumping Duty vide notification No.6/12/2017-DGAD dated 24th may 2018 has given its conclusions and clearly and mentioned in the said table G2. (vi) para 65-66 as follows :

Sr. No. 5:- The Country of Origin at column no 4 is China PR, Country of Export at column no 5 is China PR, at column no 6 producer; Oriental industrial (Suzhou) Ltd and column no 7 Exporter : Oriental Textile (Holding), Amount duty: Nil Unit: MT/USD.

Whereas, in Sr. No. 6; it clearly specifies in Column No. 6 & 7, any combination other than Sr. No. 1 to Sr No 5. Amount of duty: 528 Unit MT/USD.

5. Further in the final findings of (DGADD) dated. 24.05.2018, which is the integral part of Notification 35/2018 dated 09.07.2018 wrt: Anti dumping investigation concerning imports of " High Tenacity Polyester Yarn "is to be exported from China PR" in Para (vi) Export price for Oriental industries (Suzhou) Limited (OTIZ) & M/s Oriental Textiles (Holding) Ltd. China PR (OTIT) is mentioned in para 65.

6. Further (vii) para 67 talks about no other producer/exporter from China PR has responded to the authority is the present investigation & para G3 (68) talks about producers/ exporters in China PR only.

7. All along the final findings of the DGADD dated 24.05.2018 has spoken about producers/

exporters of China PR and specific companies with names. The notification no. 35/2018 dated 09.07.2018 has been issued with the relevant final findings of DGADD dated 24.05.2018 which cannot be over looked as the preamble of Notification No. 35/2018 dated

09.07.2018 itself speaks about the investigation conducted and the conclusions.

8. It is crystal clear that notification no 35/2018-Cus. (Add.) dated 24.05.2018 has mentioned specific names in Sr. No. 5 as producer: OTIZ, Exporter: OTIT, whereas is Sr. No. 6 it has said any other producer/ exporter than Sr. No. 5 from the Bill of Entry and facts on record it is clear that the said exporter in this subject case pertains to Oriental textile Holding, Taiwan & not China PR, which is itself falls in Sr. No 6 and hence not eligible for the nil rate of ADD. The DGADD final findings are the genesis of Notification No. 35/2018- Cus ADD dated 24.05.2018 and the same is explicitly mentioned in the first paragraph itself.

9. The contention of the learned commissioner appeals is not in sync with final findings which is the part of the said Notification No. 35/2018 dated 09.07.2018.

3.3 Arguing for the respondent learned counsel submits:

- Anti-Dumping Duty levied is always country of export and producer/ supplier specific. The country of export is relevant but not the location of the exporter.
- Impugned goods imported by the Respondent was manufactured/ produced by Oriental Industries (Suzhou) Ltd. and Exported from China PR by Oriental Textiles (Holding) Ltd.
- The only dispute is that benefit of Sr. No. 5 of the Table to the said Notification is not available since the invoices are issued by Oriental Textiles (Holding) Ltd., from Taiwan.
- As per Revenue the entry at Sr. No. 5 will not apply as Exporter Oriental Textiles (Holding) Ltd., is not located in China PR, since invoices are not issued from China PR but from Taiwan.
- This view of the revenue is contrary to the decision in case Borax Morarji Limited v/s. Designated Authority reported in 2007 (215) ELT 33.
- Notification seeks to impose the Anti-Dumping Duty on the goods described in column (3) of the Table, falling in heading / sub-heading of Tariff Item of the First Schedule to the Customs Tariff Act, 1985, as specified in column (2), originating in the countries as specified in column (4) and

exported from the countries as specified, corresponding entry in column (5), produced by the producer specified in corresponding entry in column (6) and exported by the exporter as specified in corresponding entry in column (7).

- Revenue cannot go beyond the Notification and read "China PR" into column (7).
- Both the columns (6) and (7) of the Table of the said Notification only specify the name of the Producer and Exporter without their location. The columns (4) and (5) specify the country of origin and export being China PR.
- Once it is not disputed that the goods are produced and exported from China PR, by the Producer and Exporter, as mentioned in columns (4) and (5), the Taiwan office of Exporter issued invoices is totally irrelevant.
- Thus, whenever Government of India wanted to specify the location of Exporter it is so specifically mentioned in the Notification, as is evident from Notification No 18/2017_Cus (ADD) dated 12.05.2017 and Notification No 19/2017-Cus (ADD) dated 12.05.2017
- In the absence of any location of the Exporter mentioned in the Notification, the assessment of Anti-Dumping Duty under Sr. No. 6 of the Table to the said Notification is clearly unsustainable in law.
- Without prejudice, once the said Notification is clear and unambiguous, reliance placed upon paragraph G.2 (vi) of the Final Findings dated 24 May 2018 of the Learned Additional Secretary and Designated Authority to hold that the Yarn imported by the Appellant is covered by Sr. No. 6 of the Table in the said Notification is untenable in law.
- The reliance placed on paragraphs 65 and 66 of Section G.2 (vi) of the Final Finding dated 24 May 2018 is completely misplaced.
- In paragraph 65, the Learned Designated Authority has accepted weighted average export price of Oriental Industries (Suzhou) Ltd. through Oriental Textile (Holdings) Ltd. China PR.
- Vide paragraph 66, the Learned Designated Authority was pleased to reject the claim of Oriental Industries (Suzhou)

Ltd., to consider it as a producer cum export in the duty table.

- Neither paragraph 65 of 66 suggests that the Exporter has to issue invoices from China PR to be qualified for assessment under sr. no. 5 of the Table to the said Notification.
- Even the dumping margin table below paragraph 68, does not specify the location of Oriental Textile (Holding) Limited. In fact, the dumping margin table for Zheijian Guxiandao Industrial Fibre Company Limited specifies location.
- the Ld. Commissioner (Appeals) after considering the aforesaid submission of the Respondent, has given the following clear findings in these regards in para 6.3, 6.5 and 6.7 of the impugned order.
- The appeal filed by the revenue needs to be dismissed.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments on appeal.

4.3 The issue in respect of the jurisdiction of this bench to hear the appeal in respect of levy of Anti Dumping Duty has been decided by the Anti Dumping Bench of tribunal in case of Kothari Filaments [2005 (188) ELT 159 9T-Del)] stating as follows:

"2. This appeal has been filed against the order dated 19-11-2004 of the Commissioner (Appeals) disposing of the appeal which was preferred against the assessment order passed by the Deputy Commissioner on 2-7-2004.

3. It is clear from the record that this is not an appeal under Section 9C of the Customs Tariff Act, 1975 since no order of determination regarding existence, degree and effect of dumping in relation to import of any article is challenged in the appeal. An appeal under Section 9C would lie against an order of determination or review thereof regarding existence, degree and effect of any subsidy or dumping in relation to import of any article. The learned Counsel states before us that this is not an appeal challenging existence, degree or effect of dumping. He makes it clear that the appellant does not want, directly or indirectly, to challenge the imposition of the anti-dumping duty *under the Final Findings of the designated authority or under the Notification issued by the Central Government imposing such duty. He submitted that due to some misunderstanding, the order records as if the learned Counsel had objected to the jurisdiction on the ground that the appeal would lie under Section 9C of the Customs Tariff Act, 1975.*

4. It is clear to us that this appeal is not an appeal under Section 9C of the Customs Tariff Act, 1975 and it is an appeal of the nature which would fall under Section 9A(8) of the Act. Therefore, the provisions of Customs Act, 1962 and rules and regulations made thereunder relating to appeals, etc., would apply in relation to such anti-dumping duty leviable under Section 9A of the Customs Tariff Act."

4.2 While deciding the appeal by impugned order, Commissioner (Appeals) has observed as follows:

"6.2 At the outset, I find that there is no dispute on the fact that the goods i.e. "High Tenacity Polyester Yarns" imported by the appellant are not covered under the scope of Notification No. 35/2018-Customs (ADD) dated 09.07.2018. The only dispute is whether the same are covered under Sr. No. 5 or 6 of the Notification. From careful perusal of Sr. No. 5 of the above Table, it is evident that to qualify the goods under this Sr. No., the goods should require to fulfill the following conditions:

1. *Country of origin of the goods should be China PR.*
2. *The goods must be exported from China PR.*
3. *The producer/manufacturer of the goods should be Oriental Industrial (Suzhou) Ltd.*
4. *The goods should be exported by Oriental Textile (Holding) Ltd.*

6.3 Admittedly the goods are of China PR origin. There is no dispute on the fact that these goods are exported from China PR. The relevant Bills of Lading show Port of Loading as Shanghai (China PR). There is also no dispute on the facts that these goods are manufactured/ produced by Oriental Industrial (Suzhou) Ltd. The Commercial Invoices have clear mention of the name of manufacturer as Oriental Industrial (Suzhou) Ltd. As per Bills of Lading, Oriental Industrial (Suzhou) Ltd. is the shipper of goods also. The exporter of these goods is Oriental

Textile (Holding) Ltd. Therefore, all the conditions required for the seeds to be covered under Sr. No.5 are met in the case. The original authority has also found in Para 11 of the impugned order that the Directorate General of Anti-Dumping Duties. in final findings Nis APD has been specified under Sr. No. 5, where country of origin and country of export is China, producer is Oriental Industrial (Suzhou) Ltd. and exporter is M/s Oriental Textiles (Holding) Limited. However, by relying the heading G2(vi) of the final findings dated 24.05.2018, of the Directorate General of Anti-Dumping Duties in the matter of anti-dumping duty investigation concerning imports of "High Tenacity Polyester Yarns" originating in or exported from China PR, the original authority has held that producer referred is M/s Oriental Industrial (Suzhou) Ltd. and exporter as M/s Oriental Textiles (Holding) Limited China only and no other sister concern/affiliates/subsidiary of M/s Oriental Textiles (Holding) Limited, China is covered under serial no. 5 of the ADD Notification and since the goods exported from Oriental Textile (Holding) Ltd., Taiwan, the adjudicating authority ordered for levy of Anti-Dumping duty @ US $ 528/MT under serial no. 6 of the Notification No. 35/2018-Customs (ADD) Date 09/07/2018.

6.4 …….

6.5 Column 7 of Sr. No. 5 of the Table of the Notification No. 35/2018-Customs (ADD) dated 09.07.2018 mentions only the name of exporter i.e. Oriental Textile (Holding) Ltd. There is no mention of the location of the exporter. Therefore, construing that to avail exemption under Sr. No. 5 of the Notification, the Exporter should be of China PR is not correct. There is no ambiguity in the said Notification therefore the original authority should have not gone beyond the Notification. Even otherwise, I find that the Table produced in concluding Para 128 of the above Final Findings dated 24.05.2018 recommending the anti-dumping duty has also not mentioned the location of the exporter Oriental Textile (Holding) Ltd.

6.6 find that the appellant placed his reliance on case law of Borax Morarji Limited v. Designated Authority (2007 (215) ELT 33] wherein Hon'ble CESTAT has held that:

……

6.7 Thus, non-mention of location of the Exporter, in the Notification cannot be read as the location of exporter as China PR to deny the benefit of Nil anti-dumping duty available to the appellant under Sr. No. 5 of the Notification. Nowadays a person can export the goods from a country without himself remaining physically present there. Therefore, in the era of globalisation, location of the exporter is irrelevant and in case of non-mention of location in the Anti-dumping duty Notification, the same cannot be construed as exporting country only. The appellant has also submitted copy of two ADD Notifications No. 18/2017-Cus. (ADD) dated 12.05.2017 and 19/2017Cus. (ADD) dated 12.05.2017 which are showing the location of exporter with its name. It shows that whenever the Government has intention to levy Anti-Dumping Duty based on Exporter location specific, the same is mentioned in Notification itself.

7. In view of the above, in the absence of location of the exporter M/s Oriental Textile (Holding) Ltd. in the Notification No. 35/2018-Customs (ADD) dated 09.07.2018, the benefit of Nil Anti Dumping Duty available to the appellant under Sr. No. 5 is not deniable.

8. Since, all the required conditions applicable for Sr. No. 5 of the Notification are met in the case, the impugned Order-in-Original No. 264/2019-20/DC/NS-III/CAC/JNCH dated 30.07.2019 denying the benefit of Nil Anti-Dumping Duty is set aside and accordingly I allow the Appeal No. 1169/2019 filed by the appellant M/s. Strata Geosystems (I) Pvt. Ltd."

4.4 The issue in the present case is in respect of the entries in the Notification No 35/2018-Cus (ADD) dated 09.07.2018, relevant extracts of which are reproduced below:

G.S.R. (E). –Whereas, in the matter of 'High Tenacity Polyester Yarn(HTPY)'(hereinafter referred to as the subject goods)falling under tariff item 5402 20 90of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)(hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR(hereinafter referred to as subject country), and imported into India, the Designated Authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide *notification No. 6/12/2017-DGAD dated 24th May, 2018 has come to the conclusion that –*

(i) the subject goods have been exported to India from the subject country below its normal value, resulting in dumping;

(ii) the domestic industry has suffered material injury due to dumping of the product under consideration from the subject country;

(iii) the material injury has been caused by the dumped imports of the subject goods from subject country; and

has recommended imposition of definitive anti-dumping duty on imports of the subject goods, originating in, or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under heading/sub heading/tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2),originating in the countries as specified in the corresponding entry in column (4), and exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7) and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (8), in the unit as specified in the corresponding entry in column (9)of the said Table, namely:-

S.No	*Heading / Sub*	*Description of*	*Country of*	*Country of*	*Producer*	*Exporter*	*Amount of*	*Unit*

	heading / Tariff item	Goods	origin	export			duty	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	5402.2090	High Tenacity Polyester Yarns excluding yarns having denier below 1000 and above 6000, Twisted yarns, Coloured yarns, Adhesive Activated yarns with denier higher than 1000 and Yarn with HMLS properties.	China PR	China PR	Hyosung Chemical Fiber (Jiaxing) Co., Ltd.	Hyosung Corporation	NIL	MT/US$
2					1)Zhejiang Guxiandao Industrial Fiber Co., Ltd. 2)Zhejiang Guxiandao Polyester Dope Dyed Yarn Co., Ltd	Zhejiang Guxiandao Indsutrial Fibre Co., Ltd.	174	
3					Jiangsu Hengli Chemical Fiber Co., Ltd.	Jiangsu Hengli Chemical Fiber Co., Ltd.	234	
4					1) Zhejiang Unifull Industrial Fibre Co., Ltd. 2) Huzhou Unifull Industrial Fibre Limited	Zhejiang Unifull Industrial Fibre Co., Ltd.	316	

5					*Oriental Industrial (Suzhou) Ltd.*	*Oriental Textile (Holding) Ltd.*	*Nil*	
6					*Any combination other than S.No. 1 to 5*		*528*	

4.5 It is settled principle in law that the Notifications need to be construed strictly without any addition or subtractions in the language and the words used in the notification. It is quite evident that in the Column 6 and 7, the location of the producer and exporter has not been specified by the authorities issuing the notification whereas in column 4 the country of origin of the goods have been specified as China PR and the Country of export has been specified as China PR. Thus by strictly construing the notification in literal manner, it is quite evident that if the impugned goods satisfy the condition specified in column 4, 5, 6 & 7 the anti dumping duty as specified in the in the column 8 will be leviable.

4.6 The facts which are not in dispute are as follows:

- the country of origin of the impugned goods is China PR;
- the country of export is China PR;
- the producer of the goods is Oriental Industrial (Suzhou) Ltd.
- the exporter of the goods is Oriental Textile (Holding) Ltd.

In para 11 in the order in original adjudicating authority has recorded following findings:

"11. I find that in the Final Findings Nil ADD has been specified under Sl No 5, where the country of origin & country of export is China, Producer is Oriental Industries (Suzhou) Limited and exporter is M/s Oriental Textile (Holding) Limited. ***In view of heading G2 (vi) of the Final Findings, it appears that producer referred is M/s Oriental Industries (Suzhou) Limited, China and exporter is M/s***

Oriental Textile (Holding) Limited, China *only and no other sister concern/ affiliates/ subsidiary of M/s Oriental Textile (Holding) Limited, China is covered under Sl No 5 of the ADD Notification.*

To analyze the contention of the adjudicating authority by referring to the final Findings dated 24th may 2018 of the designated authority we reproduced the relevant excerpt from the same:

"G.2 Determination of Export Prices for producers and exporter in China PR.

(i) to (v) …

(vi) Export Price for Oriental Industries (Suzhou) Limited (OTIZ) and exporter is M/s Oriental Textile (Holding) Limited, China PR (OTTI)

*65. From the response filed by OTIZ and OTTI, Authority notes OTIZ has exported the subject goods through OTTI. It was also noted by the Authority that OTIZ has exported some sample export shipments by Air. Authority has not taken into consideration these sample transactions for the purpose of calculation of export price. Adjustments were claimed on account of inland freight, port handling expense, ocean freight, ocean insurance and credit expense. The same have been allowed, after due verification. Accordingly, the weighted average export price has been determined for OTIZ through OTTI as *** US$/MT.*

66. In this regard, the Authority deems it appropriate to address the submission by Oriental Industries (Suzhou) Ltd. regarding its direct exports. The claim put forward by Oriental Industries (Suzhou) Ltd. is not correct. The Authority notes that Oriental Industries (Suzhou) Ltd. has one transaction which has been exported directly by it, rather than through the trade channel. However, the same is not a commercial sale but rather a case of supply of sample. The same has been clearly admitted by Oriental Industries (Suzhou) Ltd. in its response. As noted above, all transactions pertaining to supplies of sample have been excluded from consideration, as these are not sales in the ordinary course of trade. Accordingly, we reject Oriental Industries (Suzhou) Ltd.'s *request to consider it a producer cum exporter in the duty table.*

(vii) Export Price for all other producers/exporters from China PR

*67. The Authority notes that no other producer/exporter from China PR has responded to the Authority in the present investigation. For all the non cooperative producers/exporters in China PR, the Authority has determined export price as *** US$/MT based on the responses of the cooperative producers / exporters.*

G.3 Determination of Dumping Margin for producers and exporters in China PR

68. The export price to India has been compared with the normal value to determine the dumping margin. The dumping margin analysis has been done PCN wise. The dumping margin during the POI for all the exporters/producers from the subject country has been determined as shown in the Dumping Margin Table below.

Country	*Producer*	*Exporter*	*Normal Value US$/MT*	*Net Export Price US$/MT*	*Dumping Margin US$/MT*	*Dumping Margin %*	*Dumping Margin (Range %)*
China PR	*Hyosung Chemical Fiber (Jiaxing) Co., Ltd.*	*Hyosung Corporation*	***	***	***	***	*Negative*
China PR	*1)Zhejiang Guxiandao Industrial Fiber Co., Ltd. 2)Zhejiang Guxiandao Polyester Dope*	*Zhejiang Guxiandao Indsutrial Fibre Co., Ltd. China PR*	***	***	***	***	*15-25*

	Dyed Yarn Co., Ltd						
China PR	*Jiangsu Hengli Chemical Fiber Co., Ltd.*	*Jiangsu Hengli Chemical Fiber Co., Ltd.*	***	***	***	***	*20-30*
China PR	*1) Zhejiang Unifull Industrial Fibre Co., Ltd. 2) Huzhou Unifull Industrial Fibre Limited*	*Zhejiang Unifull Industrial Fibre Co., Ltd.*	***	***	***	***	*25-35*
China PR	*Oriental Industrial (Suzhou) Ltd.*	*Oriental Textile (Holding) Ltd.*	***	***	***	***	*Negative*
China PR	*Any other combination*	*Any other combination*	***	***	***	***	*45-55"*

In para 66 Designated Authority has specifically recorded that Oriental Industrial (Suzhou) Ltd but exporting the goods through its trade channel. The undisputed finding recorded in the said paragraph does not exclude the exports made by the Oriental Industrial (Suzhou) Ltd., through its trade channel viz Oriental Textile (Holding) Ltd. Taiwan.

From the table in para 68, also we find that in case where the designated Authority intended to specify the country of the exporter they have done so. In the second row the country of the exporter has been stated, *"Zhejiang Guxiandao Indsutrial Fibre Co., Ltd. China PR".* Thus in view of the this table we are of the view that designated authority has specifically in respect of Oriental Textile (Holding) Ltd., hence we do not find much merits in the contentions raised by the appellant revenue by referring to this "Final Findings".

4.7 We took the note of the Notification No 18/2017-Cus (ADD) dated 12.05.2017 and Notification No 19/2017-Cus (ADD) dated 12.05.2017 referred by the counsel for the respondent wherein the country of the exporter has been specifically mentioned in the column (7) of the Notification.

4.8 In our considered opinion we do not agree with the contention of revenue that goods exported by Oriental Textile (Holding) Ltd. Taiwan, which have country of origin China PR, Country of export as China PR and are produced by Oriental Industrial (Suzhou) Ltd., will have to be levied to anti dumping duty as specified at Sl No 5 of the Notification No 35/2018-Cus (ADD).

4.9 Similar view has been expressed by the tribunal in the case *Borax Morarji Limited v. Designated Authority [2007 (215) ELT 33] by observing as follows:*

3.*Admittedly, the producer ETI Maden of Turkey did not export the product itself, but the product was exported from Turkey to India through Boro Chemi International Pvt. Ltd., Singapore. The subject goods, which were exported did not reach India via Singapore, but were directly exported from Turkey to India. Obviously, therefore, the exports were made from Turkey, even though the exporter Boro Chemi International Pvt. Ltd., who was the Area Agent of the producer for Asia was located in Singapore. Even where an exporter is located outside the country of export, he would remain competent to export the goods from the country of export and merely, because he operates from some other country, the export cannot be said to have been made from that other country where the office of the exporter may be located. Even by operating from country other than the country of export, a person can export goods from the country of export and his physical presence in the country of export will not be necessary to effect the exports that he makes from the exporting country, subject of course to the municipal laws of that country.*

10.1*Admittedly, the goods were exported from Turkey to India and it is not as if that the goods were sent to Singapore for being exported to India. A copy of the sales contract between the producer ETI Turkey and Boro Chemi International,* *Singapore indicated the price and the quantity of goods which were to be exported by Boro Chemi Singapore, having purchased them from the producer. It was Boro Chemi International, Singapore, who sold the goods to the Indian customers by exporting them from Turkey to India. Merely because the exporter Boro Chemi International was in Singapore, it cannot be said that the goods were not exported from Turkey to India. It is obvious that a person can export goods from a country without himself remaining physically present there. The export invoice of ETI Turkey was for shipping the goods from Turkey to India. In respect of the same shipment from Turkey to India, Boro Chemi International Singapore had issued another invoice at a higher price on the Indian customer. Thus, when the goods were exported from Turkey to India by Boro Chemi International Singapore, there was "export price" available for these goods. The designated authority, therefore, rightly held, in paragraph 16 of the final findings, that the export price to India was reflected in the invoices issued by Boro Chemi International, Singapore on the Indian customers. Since the export price was available, there was no question of determining any constructed export price, as sought to be contended on behalf of the appellant-domestic industry.*

4.10 In view of the above we do not find any infirmity in the impugned order.

5. The appeal filed by the revenue is dismissed.

(Order pronounced in the open court on 19.10.2022)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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