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**GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES**

**NOTIFICATION**

4<sup>th</sup> Floor, Jeevan Tara Building  
5, Parliament Street, New Delhi - 110011  
Dated 2<sup>nd</sup> June, 2015

**FINAL FINDINGS**

**Subject: New Shipper Review (NSR) of the Anti-Dumping duty imposed on imports of Ceramic Glazed Tiles, originating in or exported from China PR, conducted under Rule 22 of the Anti-dumping Rules for determination of individual dumping margin in respect of M/s Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter)**

**No.15/38/2010-DGAD:** Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

**Background of the Case**

2. Whereas, the Designated Authority (hereinafter referred to as the Authority) initiated an anti-dumping investigation concerning imports of Ceramic Glazed Tiles (hereinafter referred to as the subject goods), originating in or exported from China PR (hereinafter referred to as the subject country) vide Notification No.14/16/2008-DGAD dated 17.10.08, on the basis of an application filed by M/s H & R Johnson (India) Ltd. & M/s Kajaria Ceramics Ltd., on behalf of the domestic industry.
3. Whereas, the Authority issued the preliminary findings, recommending imposition of provisional anti-dumping duty on the imports of the subject goods, originating in or exported from the subject country, vide Notification No.14/16/2008-DGAD dated 22nd April, 2009. The provisional anti-dumping duty was imposed by the Central Government vide Notification No.62/2009-Customs dated 15th June, 2009.

4. Whereas, the Authority issued the final findings, recommending imposition of definitive anti-dumping duty vide Notification No. 14/16/2008-DGAD dated 9<sup>th</sup> October, 2009. The definitive anti-dumping duty was imposed by the Central Government vide Notification No.27/2009-Customs dated 2<sup>nd</sup> December, 2009.
5. Whereas, M/s. Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter) (hereinafter referred to as the applicants) filed a substantiated application before the Authority in accordance with Rule 22 of the Anti-dumping Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) in respect of the definitive anti-dumping duty imposed by the Central Government vide Notification No.27/2009-Customs dated 2<sup>nd</sup> December, 2009, concerning imports of the subject goods, originating in or exported from the subject country.
6. Since the application prima facie satisfied the conditions as laid down under Rule 22 of the Rules, the Authority initiated the subject NSR investigation vide Notification No.15/38/2010-DGAD dated 19<sup>th</sup> October, 2011 for determination of individual dumping margin in respect of M/s Gaoyao Marshal Ceramics Co. Ltd. China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter), in respect of the definitive anti-dumping duty imposed by the Central Government vide Notification No.27/2009-Customs dated 2<sup>nd</sup> December, 2009, in pursuance of the recommendations made by the Authority vide final finding Notification No.14/16/2008-DGAD dated 9<sup>th</sup> October, 2009, concerning imports of the subject goods, originating in or exported from the subject country. The period of investigation for the purpose of the present review is 1<sup>st</sup> September, 2011 to 29<sup>th</sup> February 2012 (6 months).
7. Having initiated the subject NSR investigation, the Authority recommended provisional assessment on all exports of Ceramic Glazed Tiles made by M/s. Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd., till this review is completed in accordance with the Rule 22 of the Rules supra and having regard to Notification No.27/2009-Customs dated 2<sup>nd</sup> December, 2009.
8. The Central Government in the Department of Revenue notified the provisional assessment on all exports of the subject goods made by M/s. Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd., China PR till completion of the subject NSR investigation vide Notification No.109/2011-Customs dated 15<sup>th</sup> December, 2011.

9. The original anti-dumping duty expired on 1<sup>st</sup> December, 2014. No application for sunset review was filed by the domestic industry.

**A. PROCEDURE**

10. The procedure described below has been followed with regard to the present investigation:

- i. The Authority issued a public notice dated 19<sup>th</sup> October, 2011, published in the Gazette of India, Extraordinary, initiating the subject NSR anti-dumping investigation.
- ii. The Authority forwarded a copy of the initiation notification to the NSR applicants along with a copy of the exporter's questionnaire and gave them opportunity to make their views known in writing.
- iii. The Authority also forwarded a copy of the initiation notification to the Chinese Embassy in Delhi.
- iv. The Authority forwarded a copy of the initiation notification to the known domestic producers in India and gave them opportunity to make their views known in writing.
- v. In response to the initiation notification, response in the form of Exporters Questionnaire was filed by M/s. Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd., China PR the applicants for NSR.
- vi. Submissions have been made by the applicants and other interested parties during the course of the investigation.
- vii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- viii. Vide letter dated 16<sup>th</sup> April, 2014, M/s TPM Consultants, the authorised representatives of the NSR Applicants in India informed that they are no more representing the petitioners in the present NSR investigation.

- ix. Vide letter of even No. dated 19<sup>th</sup> December, 2014, M/s. Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter) were requested to convey to the Authority their consent and convenience for on the spot verification of the data/information furnished by them during January, 2015. However, the NSR Applicants have not intimated their consent for verification of their data/information submitted to the Authority. Consequently, the said verification could not be conducted by the Authority due to non-cooperation by M/s. Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter).
- x. The Authority held Oral Hearings on 28<sup>th</sup> May, 2012, 21<sup>st</sup> November, 2012 and 5<sup>th</sup> November, 2014 and provided opportunity to the interested parties to make submissions orally, followed by written submissions.
- xi. In terms of Rule 16 of the Rules, disclosure statement was issued to the interested parties vide letter dated 27<sup>th</sup> April, 2015 disclosing the essential facts of the investigation.
- xii. The submissions made by the interested parties during the course of the investigation, considered relevant by the Authority, have been addressed in this finding.
- xiii. Investigation was carried out for the period of investigation (POI) starting from 1<sup>st</sup> September, 2011 to 29<sup>th</sup> February 2012 (Six Months).

## **B. SUBMISSIONS MADE BY THE INTERESTED PARTIES**

11. The following submissions have been made by Gaoyao Marshal Ceramics Co. Ltd.- China PR (producer) and M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter) during the course of the investigation:

- i. The WTO Agreement and Indian Rules allow a producer to seek its own dumping margin subject to satisfaction of the conditions laid down under the Rules that the said producer should not be related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product concerned and should not have exported the product

concerned to India during the period of original investigation. Gaoyao Marshal Ceramics Co. Ltd. - China PR (producer) and Foshan Dihai Trading Development Co. Ltd., China PR (exporter) satisfy the legal requirements for the NSR.

- ii. Gaoyao Marshal has got business license on 1<sup>st</sup> July, 2003 and set-up the plant thereafter. They commenced commercial production with effect from 18<sup>th</sup> December, 2003.
- iii. Gaoyao Marshal has not exported subject goods to India during the period of investigation of original investigation either directly or indirectly through any other company or trading house, etc.
- iv. Both Gaoyao Marshal and Foshan Dihai are privately held companies and there is no role or relationship with any national, provincial and local government. The cost of inputs, required for production of subject goods purchased by the company, substantially reflects market value. Both the companies are operating under market economy conditions and are eligible to be treated as market economy entities.
- v. Both the domestic producers claiming to be domestic industry in the original investigation have themselves imported the subject goods from subject country and cannot be considered as domestic industry.
- vi. Confidentiality has been claimed on the information regarding names of shareholders, amount and percentage of shares held by them in various companies and groups, corporate structure, marketing, selling arrangements etc since such information is highly business sensitive.
- vii. The submission by DI that the new shipper reviews results in circumvention of anti-dumping duties is a baseless allegation. DA has not found even a single case of positive dumping margin for an investigated company so far in the tiles case.
- viii. Sufficient information has been provided by the applicants to the Authority to justify initiation of the present investigations. The initiation of NSR investigation is valid and legal.
- ix. The applicants have undertaken significant exports of the product under consideration during the relevant period.

12. The following submissions were made by the domestic producers during the course of the investigation:

- i. The petition and other response filed by the exporter and the producer are deficient and therefore the proceedings may be terminated.
- ii. The applicant producer and exporter have claimed excessive confidentiality.
- iii. The applicant producer and exporters have failed to demonstrate that 'they are not "related" to producers and exporters'.
- iv. Responses filed by applicants are grossly deficient. They have not placed any reliable evidence of any possibility of exports to India. The applicants are not eligible for MET status.
- v. As per Rule 22 of AD Rules, the applicant has to demonstrate that they are not related to any producer/exporter. Merely stating 'no relationship' during POI does not fulfill the requirement of Rule 22.
- vi. The applicant has submitted that 'applicant companies do not have related companies, which are involved in production and sale of PUC'. It is submitted that the above submission is contrary to the information provided by the applicant himself. As per earlier information, each of the related companies is engaged in production of subject goods. The applicant has not placed factual information before the Designated Authority.
- vii. The NSR provisions are potentially abusive and enable circumvention.
- viii. The applicant exporter is exporting PUC and various other products. If the exporter is purchasing the subject goods from other manufacturers, then the response of the exporter cannot be accepted unless other manufacturers have also given full information of subject goods.

**D. Examination by the Authority**

13. Rule 22 of the Anti Dumping Rules provides as follows –

**22. Margin of dumping, for exporters not originally investigated.**  
*(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported*

*the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.*

*(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:*

*Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.*

14. Article 9.5 of the WTO Agreement states as under –

*9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.*

15. Thus, in terms of the aforesaid Rules and provisions in the WTO Agreement, the Designated Authority is required to review, for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question, who has not exported the subject goods to India during the period of investigation of the earlier anti-dumping investigations concerning imports of the subject goods from the subject country and that the applicant is/are not related to any of the exporters and producers in the exporting country who are subjected to the anti-dumping duty.

16. The subject review was initiated on the basis of the application and information furnished by the applicants for determination of individual dumping margin in respect of M/s Gaoyao Marshal Ceramics Co. Ltd. China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd. (exporter), China PR, in respect of the definitive anti-dumping duty imposed by the Central Government vide Notification No. 27/2009-Customs dated 2<sup>nd</sup> December, 2009, in pursuance of the recommendations made by the Authority vide final finding Notification No.14/16/2008-DGAD dated 9<sup>th</sup> October, 2009, concerning imports of the subject goods, originating in or exported from the subject country and the authority recommended provisional assessment on all exports of Ceramic Glazed Tiles made by M/s. Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd., till this review is completed in accordance with the Rule 22 of the Rules Supra and having regard to Notification No.27/2009-Customs dated 2<sup>nd</sup> December, 2009. Subsequent to the initiation of the investigation, M/s Gaoyao Marshal Ceramics Co. Ltd. China PR (producer) and M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter), filed the questionnaire response in respect of the claimed exports made by them to India during the POI.
17. Subsequently, M/s TPM Consultants, who were representing Gaoyao Marshal Ceramics Co. Ltd. China PR (producer) and Foshan Dihai Trading Development Co. Ltd. (exporter), informed that they are no more representing the said parties.
18. The Authority held an oral hearing on 5th November, 2014 and invited the interested parties to attend. However, none of the interested parties including the applicants and their representatives attended.
19. Vide letter of even No. dated 19<sup>th</sup> December, 2014, the Authority requested Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and Foshan Dihai Trading Development Co. Ltd., China PR (exporter) to provide their consent and convenience for verification of the data/information submitted by them, during January, 2015. However, Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and Foshan Dihai Trading Development Co. Ltd., China PR (exporter) did not provide consent for verification.
20. In view of the non-cooperation of M/s Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and Foshan Dihai Trading Development Co. Ltd., China PR (exporter) for verification of the data/information furnished by them during the course of this investigation, the Authority

is unable to determine the Normal value, Export price and Dumping margin in respect of their exports of the subject goods to India.

21. Under the above stated circumstances, the Authority holds that it may not be appropriate to clear exports of the subject goods made by M/s Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and Foshan Dihai Trading Development Co. Ltd., China PR (exporter) without payment of Anti-Dumping duty.

### **Comments on the Disclosure Statement**

22. No comment was received on the disclosure statement from any of the interested parties.

### **Conclusion and Recommendation:**

23. Based on the facts as stated above and the legal position, the Authority concludes that in view of the non-cooperation by the NSR applicants i.e. M/s Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) and M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter), they cannot be treated as a New Shipper under Rule 22 of the Anti Dumping Rules and are, therefore, not entitled to individual dumping margin. The Authority, therefore, recommends that the exports of the subject goods made by M/s Gaoyao Marshal Ceramics Co. Ltd., China PR (producer) through M/s Foshan Dihai Trading Development Co. Ltd., China PR (exporter), during the period from the date of initiation of the present NSR investigation recommending provisional assessment, may be subjected to levy of Anti-Dumping Duty as imposed earlier on the imports of the subject goods, originating in or exported from China PR, vide Notification No.27/2009-Customs dated 2nd December, 2009
24. An appeal against the orders of the Central Government arising out of this order shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Act.

**(J.K. Dadoo)**  
**Designated Authority**