

**MINISTRY OF COMMERCE AND INDUSTRY
(DEPARTMENT OF COMMERCE)
(DIRECTORATE GENERAL OF ANTI-DUMPING AND
ALLIED DUTIES)**

**NEW SHIPPER REVIEW NOTIFICATION
FINAL FINDINGS**

New Delhi, the 30th June 2004

Subject: New Shipper Review of Anti-Dumping duty imposed on imports of Vitrified/Porcelain Tiles requested by M/s. Nanhai Shagyuan Oulin Construction Co. Ltd., China PR (Producer) and M/s. Prestige General Trading, Dubai, UAE (Exporter) .

No. 15/2/2003-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof,

A. PROCEDURE:-

1. The procedure described below has been followed:

- i. The Designated Authority initiated New Shipper Review of anti-dumping duty imposed on Vitrified/porcelain Tiles produced by M/s. Nanhai Shagyuan Oulin Construction Co., Ltd., China PR and exported by M/s. Prestige General Trading, UAE prescribed under Rule 22 of the rules supra, vide notification No. 15/2/2003-DGAD, dated the 23rd May 2003.
- ii. The New Shipper Review was initiated vide notification No. 15/2/2003-DGAD, dated the 23rd May 2003 in the matter of import of Vitrified/porcelain tiles falling under Chapter 69 of the Customs Tariff Act, 1975 originating in or exported from China PR where the Designated Authority vide its Final Findings No 37/1/2001 published in the Gazette of India Extraordinary, Part I Section I, dated the 4th February 2003 had come to the conclusion that;
 - a. The export price of Vitrified/porcelain tiles from UAE and China PR is below its normal value during the period of investigation;
 - b. The Indian industry has suffered material injury;

- c. The injury has been caused cumulatively by the imports from subject countries;
- iii. The Central Government imposed antidumping duty vide Notification No. 73/2003-Customs, dated 1st May 2003, in the original investigation on vitrified and porcelain tiles, other than vitrified industrial tiles, falling under Chapter 69 of Customs Tariff Act, with effect from the date of imposition of the provisional anti dumping duty i.e., 2nd May 2002.
- iv. As stated above M/s. Nanhai Shagyuan Oulin Construction Co. Ltd., China PR (Producer) with M/s Prestige General Trading, Dubai, UAE (Exporter), had requested for a review in terms of Rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping duty on dumped articles and for Determination of Injury) Rules 1995 in respect of exports being made with respect to the Final Findings Notification No. 37/1/2001-DGAD dated the 4th February 2003 published in the Gazette of India, Extraordinary, Part I, Section I, the Authority initiated the review on 23rd May 2003 and recommended provisional assessment of all exports of Vitrified/porcelain Tiles falling under chapter 69 of Gazette schedule to the Customs Tariff Act, 1975 made by M/s. Nanhai Shagyuan Oulin Construction Co. Ltd., China PR (Producer) through M/s Prestige General Trading, Dubai, UAE (Exporter), as fixed definitive duty mentioned in Col. No. 3 till the completion of the review.
- v. Ministry of Finance issued Notification No. 98/2003-Customs, dated 1st July 2003, which inter-alia provided that pending the outcome of the review by the Designated Authority, vitrified/porcelain tiles, other than vitrified industrial tiles, falling under Chapter 69 of the Customs Tariff Act produced by M/s Nanhai, Shagyuan Oulin Construction Co., Ltd., China PR and exported by M/s. Prestige General Trading, UAE would be subjected to provisional assessment till the review was completed.
- vi. Further, in exercise of the powers conferred under sub-rule (2) of the Rule 22 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 findings of the Designated Authority, and its notification no.73/2003-Customs dated 1st May 2003 decided that pending the outcome of the said reviews by the Designated Authority, no anti dumping duty shall be levied on exports of Vitrified/porcelain Tiles manufactured by M/s. Nanhai Shagyuan Oulin Construction Co., Ltd., China PR and exported by M/s. Prestige General Trading, UAE when imported into India & further provided that Vitrified/porcelain Tiles produced by M/s. Nanhai Shagyuan Oulin Construction Co., Ltd., China PR and exported by M/s. Prestige General Trading, UAE when imported into India shall be subjected to provisional assessment and a guarantee for the amount of duty calculated at the rate as

- mentioned in Col. No. 3 on imports of Vitrified/porcelain Tiles vide notification no73/2003-Customs, dated 1st May 2003.
- vii. The Authority received a request to initiate a 'new Shipper' review of notification no 37/1/2001 dated 4th February, 2003 from the Chinese producer M/s. Nanhai Shagyuan Oulin Construction Co. Ltd., China PR. This company declared that they are not related to any of the exporters/producers in China PR subject to the anti dumping measures in force with regard to the product concerned. Furthermore, it declared that have not exported the product concerned during the original period of investigation. The Authority prima-facie examined the evidence submitted by the Chinese producer concerned and considered sufficient to justify the initiation of a review in accordance with the provisions of the Rule 22 of Anti-dumping Rules.
 - viii. The product under consideration covered by the current review is the same as in the original investigation, i.e. '*Vitrified/Porcelain Tiles*'.
 - ix. The authority sent exporters questionnaire. The exporter filed the questionnaire. The authority sought and verified all information it deemed necessary for the purpose of determination of dumping. The Authority conducted verification of the data furnished by M/s. Nanhai Shagyuan Oulin Construction Co. Ltd., China PR (Producer), M/s. Prestige General Trading, Dubai, UAE (Exporter) and M/s. Nitco Tiles Ltd., (importer).
 - x. The period of investigation in this new shipper investigation is for 12 months i.e,1st July 2002 to 30th June 2003 for dumping determination.
 - xi. The authority officially intimated the authorities of the exporting country of the initiation of the New Shipper Review and gave opportunity to all the interested parties concerned to make their views known in writing within 40 days from the expiry of the POI (i.e., 1st July 2002 to 30th June 2003). Subsequently the Authority also provided opportunity to all interested parties to present their views verbally, in a public hearing held 17th February 2004. All the interested parties expressed their views verbally were requested to file written submissions of the views expressed.
 - xii. The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.
 - xiii. In accordance with Rule 16 of the anti dumping Rules supra, the essential facts/basis considered for these findings were disclosed on 28/5/2004 to interested parties responded in this investigation and comments received on the same have been duly considered in these findings at appropriate places.
 - xiv. **** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

B. Product Under Consideration and Like Article:-

2. The Authority decided to continue with the description of product under consideration as Vitrified/Porcelain tiles as determined in the original case. There is no argument on the product under consideration and like article by any of the interested parties. The Authority notes that the Vitrified/porcelain Tiles produced by the domestic industry is 'like article' to Vitrified/porcelain Tiles being imported from the subject country within the meaning of the Rules. In view of the foregoing the Authority holds that product under consideration in the present investigations is the same as considered in the original investigation i.e., "Vitrified/Porcelain Tiles", classifiable under Chapter 69 of the Custom Tariff Act.

C. Views expressed at/after initiation and their examination

C-I. Views of Domestic Industry

3. The issues raised by the domestic industry have been summarized below;

- i. The response filed by the exporter and the producer are deficient and therefore the proceedings may be terminated.
- ii. The Designated Authority has received the information from the exporter M/s. Prestige General Trading, UAE first time on 27.1.2004 and subsequently revised on 11.2.2004. The exporter has not approached the Authority directly or indirectly prior to the date mentioned above. The information filed by the said exporter cannot be taken cognizance of at this late stage of investigation when they did not even file the application for the review.
- iii. Prestige did not come forward to make an application for the New Shipper review makes the entire initiation incorrect and bad in law.
- iv. The Designated Authority erred in treating Prestige as a new and independent exporter and in granting exemption to them when they did not have any applications or information on record from or about the said exporter.
- v. Responses filed by Prestige are grossly deficient and need to be thoroughly investigated. The examination of the responses of Prestige reveals the following:
 - a. The said documents are without any date.
 - b. None of the documents bear the signature of the sole proprietor.
 - c. Name of the sole proprietor has been kept confidential.
 - d. Copy of the commercial licensee not provided in the non-confidential version.
 - e. Prestige has not supplied their Balance Sheet, Profit and Loss Account or the Trading Account as required in the prescribed questionnaire.

- f. The covering letter, authorization letter and verification letter have the signature of the investor, Mr. Ashish Shah. No authorization letter has been given by the proprietor.
 - g. Each document mentions that the same has been issued by the investor. The Designated Authority has taken on record these documents at this late stage without even examining the prima facie validity of the same.
 - h. The present letter head of the exporter is entirely different from the used for signing of purchase contract which bears the logo of Prestige. The letter head used for the purchase order and the letter head used for sending the exporter questionnaire bear different Post Box and Telephone nos.
 - i. The net result is that Prestige was exempted from payment of anti-dumping duties without their making any request or identifying its credentials. In fact, until the exemption from anti-dumping duties, Prestige did not make an application nor did it authorize any person to seek exemption on their behalf. The authorized representative of Nanhai also did not make any claim till the issue of customs notification that they were representing Prestige as well. Yet, the Central Government on the recommendations of the Designated anti-dumping duties Authority exempted Prestige from the purview of anti-dumping duties.
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- vi. M/s. Prestige, UAE has made a declaration that it has no borrowings from any Bank or any other entity. However, all the documents has been signed by the Manager having a seal indicating signature of the investor.
 - vii. The Post Box No./Tel. No. and FAX No. appearing on the letter head of Prestige is also the Post Box No./Tel. No. for the other companies, therefore the declaration that they are not related to companies in other countries including India appears to be misleading.
 - viii. The non-filing of an application/declaration by Prestige would establish that the initiation of new shipper review itself is bad in law and unsustainable as the same is contrary to the requirement led down in Rule 22.
 - ix. In the facts of this case Rule 22 has been invoked for a combination of Nanhai (Producer) and Prestige (Exporter) and therefore it was incumbent upon both the producer and the exporter to have made the necessary application and declarations, follow the prescribed procedure and provide all the required information. Since, this has not been done prior to the initiation, the condition precedent was not satisfied.
 - x. M/s Prestige General Trading, UAE has made a false and misleading declaration to the office of Designated Authority that they are not involved in any manufacturing activity. M/s Prestige General Trading, UAE has been involved in manufacturing activities since the year 1992 and holds to be the

leading manufacturer of undergarments in the U.A.E. and is also engaged in exporting the same to various countries.

- xi. The Designated Authority would be in a position to determine individual dumping margin only if the exporter makes application/declarations, follows the prescribed procedure and provides all the required information. Similarly, in case of a producer-exporter combination, the Designated Authority would be in a position to determine the individual dumping margin only if both the producer as well as the exporter make the necessary application/declarations, follow the prescribed procedure and provide all the required information strictly as per prescribed form and format.
- xii. The response does not have any signature of the company's authorized representative. In terms of the prescribed format, the response has to be signed and certified by the Chief Executive or the Director of the company or their Authorized Representative. These requirements must be fulfilled particularly in view of the fact that both the producer as well as the exporter has not been forthright in providing full and complete information as required under the Rules.
- xiii. The Designated Authority has to satisfy itself and examine the evidence produced by the Exporter or the Producer that they are not related to any of the Exporters or the Producers in the exporting country which are subject to the anti-dumping duty. It is submitted that this investigation ought to have been carried out even more carefully when the Producer is in one country and the Exporter is in another country and the margin of dumping fixed under a Notification is different for each country. This investigation is critical when the margin of dumping fixed under a Notification is different for each country because at the stage of the application, the Designated Authority will not be able to ascertain as to what level of anti-dumping margin ought to be imposed i.e., which of the margins originally imposed should be retained for the individual producer or exporter.
- xiv. The issues raised by the domestic industry with regard to Exporter Questionnaire response filed by M/s. Nanhai Shagyuan Oulin Construction Co., Ltd., China PR have been summarized below;
 - a. The revised response does not have any verification certificate. The response does not have any signature of the Company's authorized representative.
 - b. Month-wise total sales quantity and net sales revenues for the period of investigation.
 - c. Investment details have not been provided as required in response to Question No. D-1 in the format prescribed therein.
 - d. The Co. has not appraised the Designated Authority about the costing system followed by them.

- e. Information on production process has not been provided even to the Designated Authority.
 - f. No information has been provided with regard to the relationship and arrangement for materials purchase.
 - g. There is no indication of any interest or financial cost in Appendix A or in 8 A, B and C.
 - h. No explanation has been provided to the DA with regard to basis of apportionment in response to Q. No. G.1.(J)
 - i. No information has been provided for capacity, opening stock and closing stock.
 - j. The Co. has not fulfilled its obligation by provided the Balance Sheet and other financial statement for the period of investigation.
 - k. Investment details have not been provided as required in response to Question No. D.1 in the format prescribed therein. In fact, Nanhai has itself admitted that they are separate figures for the product under consideration is not available. Kind attention is invited to Appendix 7 on page 31 wherein Nanhai makes a categorical statement that "The Company maintains separate records for its Porcelain Tiles, the product under consideration. The allocation or apportionment of expenditure is therefore not applicable." The two positions are therefore totally contrary to each other and appear to have been made to mislead the Hon'ble Designated Authority.
 - l. No information has been provided regarding investments in response to Question No. E 9. It is submitted that the company is under an obligation to apprise the Designated Authority of all the costing systems they follow. It is obvious that the company has deliberately withheld most pertinent information regarding standard/budget costs, direct and indirect cost centres, activity conducted at each centre, methodology used to allocate and apportion costs among different cost centres and system of accounting of by-products, wastage, scrap, damaged or sub-standard goods etc. It is surprising that how the company can claim separate dumping margin when they are not having any system to reflect the true cost of the product under consideration. It is also clear that the costs stated by the company are not as per Chinese GAAP, even though an unsubstantiated claim has been made by them.
- xv. Appendix 2 of Nanhai's response states that there are 77 transactions whereas in their response, Prestige has claimed that there were 72 transactions during the period of investigation.
- xvi. Appendix 3 is grossly incomplete apparently even in the confidential version. Most of the columns have been left blank. No month-wise information has been provided as required in response to Q. No. B.9.

- xvii. Appendix 5 and 6 have been left blank. We are not sure whether any information has been provided to the Designated Authority or not. The Hon'ble Designated Authority may please clarify this urgently.
- xviii. It is clear from the questionnaire response that Nanhai produces other types of tiles as well. It has not been clarified as to how the fixed overheads are being apportioned to different types and sizes of tiles.
- xix. Nanhai has combined Appendices 8, 8A, B and C which is totally irregular. Appendix 8 is required to be given for the period of investigation and for the previous year which has not been done. No information has been given for the Installed Capacity. Further, the company has on its own changed the format.
- xx. As regards Appendices 8A, B and C, it is submitted that the same have been given for only size i.e., 600 X 600, which is again irregular and misleading. Here, again the company has on its own changed the format without giving any reason whatsoever. It may also be submitted that Appendices 8, 8A, B and C have not been certified by a practicing Accountant, as required in the prescribed format.

C-II. Views of M/s. Nanhai Shangyuan Oulian Construction Porcelain Co Ltd., China PR (producer)

- i. The Company was established on 15th December, 2000. The Business License certificate shows that the Company was incorporated on 15th December, 2000 as a Limited Liability Company. The Company follows the calendar year as its financial year. The name of the Company is now changed to Foshan Chanchang Oulian Construction Porcelain Ltd., with effect from 10th May 2004. There was no production or sale of vitrified tiles from the date of incorporation i.e., 15th December, 2000 to the year ended 31st December, 2001. An existing ceramic line was converted into a vitrified line in April 2002. Thus, till December 2001 the Company had not even produced vitrified tiles and hence it is established that vitrified tiles had not been exported to India during the original period of investigation i.e., 1st April, 2000 to 31st March, 2001. From April 2002, the company started producing vitrified tiles also using assembly lines of the same existing production facilities.
- ii. M/s Nanhai, Shangyuan Oulian Construction Porcelain Co Ltd is a limited Liability company. The shareholders of the company are not related to any other company engaged in the production and sale of the subject goods, either in China or in any other country.
- iii. The company has only one factory for the Vitrified/Porcelain Tiles and the government does not provide any export incentive to the company. The Company does not have any subsidiaries or other related companies in other countries including India.

- iv. All sales by the company are on Principal to Principal basis and no agency arrangement is involved. Exports to India are made as per the contract entered into by the company with M/s. Prestige General Trading, Dubai. The goods sold in the home market and goods exported to India are identical.

C.III Views of M/s. Prestige General Trading, UAE, (exporter)

- i. M/s Prestige General Trading,UAE General Trading is a registered company having Commercial License issued by the Department of Economic Development, United Arab Emirates. It is not related to M/s. Nanhai Shangyuan Oulian Construction Porcelains Co Ltd China. M/s Prestige General Trading,UAE General Trading has not exported the subject goods from China during the period of investigation of the principal Anti-dumping investigation conducted by the Indian Designated Authority. The company is not engaged in production activities and is involved only in trading. There are no incentives of any kind given by the Government of UAE on any exports carried out by the firm. The company does not have any related companies in other countries including India.
- ii. The Company had entered into an arrangement with M/s. Nanhai Shangyuan Oulian Construction Porcelains Company Limited, Foshan, China PR. Simultaneously, the company entered into an exclusive sales arrangement with M/s. Nitco Tiles Ltd., India for sale of the entire quantity of vitrified/ porcelain tiles that were to be procured from the said Chinese Company. The shipments directly take place from Foshan, China, PR to Mumbai and there is no transshipment/unloading/handling at Dubai.
- iii. The company is engaged in the business of Imports & Exports of Marble, Granite, Metals (Ferrous & Non-Ferrous), Electronic Products, Household Utensils, Bearing, Chemicals & Pharmaceuticals etc. from India, UK, CIS, Singapore & Middle East etc.

C.IV. EXAMINATION BY THE AUTHORITY;

4. The Designated Authority initiated new shipper review keeping in view the provisions of the anti dumping rules, which are reproduced below:

"Rule 22: (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 form 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 initiation of the review".

Rule 22 clearly specifies the circumstances under which a new shipper investigation can be carried out for the purpose of calculating individual dumping margin. Individual dumping margin in respect of any exporter or producer from the exporting country in question can be determined provided the two conditions are satisfied. These are: (a) that the exporter or producer has not exported the product under consideration during the period of investigation and, (b) that exporter or producer shows that they are not related to any of the exporter or producer in the exporting country who are subject to the anti dumping duties on the product concerned. The Designated Authority in the present case finds that the exporter or producer has not exported the product under consideration during the period of investigation as production of Vitrified/porcelain tiles was started in April, 2002 much after the period of investigation and declared that they are not related to any of the exporter or producer in the exporting country who are subject to the anti dumping duties. During the investigation the Authority did not find any evidence of relationship with any of the exporters and producers in China PR who are subjected to anti-dumping duty. The Authority, therefore, notes that the New Shipper Review investigation was initiated in line with the provision laid down in Rule 22 of the anti-dumping rules which is in conformity with article 9.5 of the WTO AD Agreement.

5. The initiation of the present new shipper review was challenged before the Hon'ble High Court of Mumbai by M/s. H&R Johnson (India) Ltd. Issues raised above have duly been examined and settled by the Hon'ble Court. In this case, the Hon'ble High Court of Mumbai has held that, *"The basic requirements for initiating the periodic review under Rule 22 are (a) the subject goods or the product must be subject to anti-dumping duty, and (b) the exporters or producers who are seeking determination of individual margin of dumping must not have exported the product or subject goods to India during the period of investigation and they must 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. The new shipper who is seeking review, apart from making a declaration in the application that he fulfils the above conditions set out in Rule 22, cannot be expected to adduce any evidence that he had not exported the goods during the period investigation or that he is not related to the exporters in*

the exporting country who are subject to anti-dumping duty on the product. For prima facie satisfaction though DA is not required to conduct a detailed enquiry before initiating new shipper review, it cannot be said that the statements made by the new shipper must be accepted as gospel truth. It will be open to the DA to look into the evidence collected at the time of original investigation or any other material that is available to him to prima facie ascertain the veracity of the statements made by the new shipper. If there is material evidence to contradict the statements made in the application, then the DA can refuse to initiate the new shipper review. In the present case, on the date of initiation of new shipper review, there was no material on record to show that the statements made by M/s. Nanhai, China PR were not correct. Neither in the petition nor at the time of arguments any material has been produced by the petitioners to show that the declaration made by the new shipper is not correct. In this view of the matter no fault can be found with the order of DA in recommending initiation of new shipper review. In our opinion, there was no requirement under the Rules for the DA to ascertain the linkage between the exporter and the producer or any other exporters in UAE before initiating new shipper review. Neither in the petition nor at the time of argument any material has been produced before us to show that was the declaration made by M/s Nanhai, ChinaPR incorrect. Therefore, in the facts of the present case, it cannot be said that there was no prima facie satisfaction on the part of DA before initiating the new shipper review."

6. The Authority notes that the Hon'ble High Court has also held that once a declaration is made by Nanhai, China PR to the effect that the goods produced by them have not been exported during the original period of investigation and that they are not related to the exporters who might have exported the goods to India, then any application or declaration by M/s Prestige General Trading, UAE, who is the exporter of the goods produced by M/s Nanhai Shangyuan Oulian Construction Porcelain Co Ltd China PR is not necessary. The Hon'ble High Court has also noted that the notification issued by the Ministry of Finance is strictly in accordance with Rule 22(2) which states that 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 the AD Rule.

7. With regard to the issue of non-existence of M/s. Prestige General Trader, UAE, exporter of the subject goods to India in the present investigation, a team of officers verified the information submitted by the exporter at the premises in Dubai. It is observed that M/s. Prestige is a proprietorship company with a commercial license issued by the Department of Economic Development, UAE. The owner of the firm is a national from the UAE and has authorised by a General Power of Attorney, Mr. Ashish Shah, as the authorised signatory for all trade activities. It was also observed that different P.O. Box Nos. given in different submissions before the authority is due

to the fact that one PO Box No. represents the address of the proprietor whereas the other PO Box No. represents the address of the authorised signatory. With regard to the relationship of M/s. Prestige General Trader, UAE, and M/s. Nanhai Shangyuan Oulian Construction Porcelain Co Ltd China PR, it was observed that the both the companies are owned by different nationals and have not made any investments in each other activities. M/s. Prestige General Trader, UAE, is not engaged in any production activities. The exporter has submitted the copy of the balance sheet and profit and loss account to the Designated Authority. Although, rule 22 does not prescribe the examination and determination of the above issues as already settled by the Hon'ble High Court of Mumbai, on the appeal petition filed by the domestic industry, the Authority has examined these issues in detail to ensure that a fair treatment is given to the issues raised by the domestic industry in the present investigation and it is found upon verification that various argument regarding the existence of the exporter at Dubai was not sustainable.

8. With regard to the allegation raised by the domestic industry that M/s. Prestige General Trader, UAE, was exempted from payment of anti dumping duty without making any request or identifying its credentials, the Authority notes that this exemption is granted to the export made by the M/s. Prestige General Trader,UAE of the subject goods if the same is produced by M/s. Nanhai Shagyuan Oulin Construction Co., Ltd., China PR and not on exports of the subject goods produced by the other companies. The objection raised by the domestic industry on the existence of the Company and signatory of the application of M/s. Prestige General Trading, UAE, the Hon'ble High Court has observed that "*once a declaration is made by Nanhai to the effect that goods produced by them have not been exported during the POI and that they are not related to the exporters who might have exported the goods to India, then any application or declaration of Prestige who is the exporter of the goods produced by Nanhai is not necessary. Therefore, for determining the margin of dumping in respect of goods produced by Nanhai, neither the application nor the declaration by Prestige was necessary*".

9. It is necessary to point out that the proceedings in this present case must be seen in the light of matters raised by a section of domestic industry before the Hon'ble High Court of Mumbai and Hon'ble Supreme Court during the pendency of these procedures. M/s. H&R Johnson (India) Ltd. filed a writ petition in High Court of Mumbai against the initiation of present new shipper review and a stay was granted on the operation of initiation notification dated 23.5.03 and Customs notification dated 1.7.03 pending the hearing and final disposal of the petition by the Hon'ble Court. The Hon'ble High Court vacated the stay on 2.12.03 and directed the Authority that investigation should be carried out expeditiously. The Hon'ble Supreme Court did not grant any stay on the appeal petition filed by the domestic industry against the orders

of the High Court and it is still pending in the Supreme Court. After the order dated 20th January, 04 by the Hon'ble Supreme Court, the process of investigation was restarted. Thereafter Exporters' response to the questionnaire was examined and deficiencies were pointed out. In response to these deficiencies, the exporter provided information in the revised exporter questionnaire. Additional information was also solicited from time to time to facilitate the investigation. Certain anomalies were also noticed with regard to sales quantity and value and the exporter rectified the same. With regard to the observations made by the domestic industry about incomplete exporter questionnaire response, the authority notes that these observations are not based on facts.

10. The argument of the domestic industry is not correct that exporter/ producer have been allowed to file completely amended responses much after the period for filing of such responses are over. The producer submitted significant response within the extended time limit. In view of the stay order granted by the Hon'ble High Court of Bombay no further steps were taken in this review case till 20th January, 2004. The Authority notes that after the vacation at stay additional information/ clarifications were sought from exporter/ producer. Complete information in the new exporter proforma was made available to the designated authority in February, 2004 before the verification was carried out.

11. The domestic industry (vide their letter dated 05/3/2004) contended that the exporter furnished investment details under Para D of the questionnaire for the company as a whole, while giving the allocation details in Appendix 7. The exporter claimed that separate records are being maintained for the product concerned. These two positions were looked into and examined. The Chinese producer has provided details of investments in response to the revised questionnaire on 12.02 2004. In this revised questionnaire, the company has indicated that figures given are for the company as a whole. However, vide their letter dated 26.02.2004 the exporter submitted further information giving details of allocation of expenditure. During the course of the investigation and verification at the plant of the exporter, it was seen that the exporter was earlier producing only Ceramic Tiles on two production lines and converted one of the lines for producing Vitrified/porcelain Tiles in early 2002. On the basis of technical assessment, allocation of expenses relating to fixed assets was therefore done. The examination showed that ****% of the assets are dedicated for Vitrified/porcelain Tiles and rest ****% are for Ceramic Tiles. It was found that allocation of depreciation had been done on similar basis and was informed/ clarified in their letter dated 26/2/2004. The Appendix 7 as referred by the domestic industry was submitted by the exporter on 16/8/2003, however subsequently vide their submissions dated 26/2/2004 they informed the ratio of allocation in Appendix 7

which was later on verified. The Authority notes that the allocations as provided under Appendix 7 were found to be in order after detailed verification at their plant.

12. The issue raised by the domestic industry that the Chinese producer has withheld certain information was also examined. The Authority verified and found that the costs/allocations have been done on consistent and reasonable basis.

13. The information regarding the basis of apportionment, capacities and stocks etc. were submitted before the verification, which were subsequently verified. The information in respect of production process was provided. The exporter provided details in respect of materials purchased which was duly verified. Reasonable interest and financial cost have been apportioned to the product under consideration. The company had claimed confidentiality in respect of its financial statements. Profit & loss account on monthly basis submitted to the Tax Bureau by the producer was submitted before the verification vide their letter dated 26-2-2004 and the same was verified. The purported discrepancies pointed out by the domestic industry in various Appendixes were examined during the verification. The duly examined and reconciled data have been adopted for the purpose these findings.

14. It is argued by the domestic industry that the exporter has kept the vital information confidential depriving the opposing interested parties of the right to challenge the information and make the meaningful submissions to the Authority. However, regarding the information made available to the opposite interested party the Authority has dealt with it as per provisions regarding confidentiality. Rule 7 of the Anti Dumping Rules provides for submission of information by the interested parties on confidential basis subject to the condition laid down therein. The non-confidential summary of the information submitted on a confidential basis is placed in the public file, which is available for the inspection, by all the interested parties in terms of Rule 6 (7) of the Anti Dumping Rules. In this case non-confidential summary of the confidential submissions made is placed in the public file accessible to the interested parties and copies of the same were provided as and when requested.

D. COMMENTS ON DISCLOSURE STATEMENT AND THEIR EXAMINATION

D. I Views of M/s. Murudeshwar Ceramics Ltd.,

15. M/s. Murudeshwar Ceramics was an applicant in the original investigation but has not expressed their views in this New Shipper Review till the disclosure statement. They have now made comments on the disclosure statement of the Authority, as

- i. The manufacturing units of Vitrified/Porcelain Tiles in Gujarat are in acute crises due to rampant dumping of Vitrified/Porcelain Tiles from China PR. In the original investigation anti-dumping duty was imposed as US\$ 8.28/Sq. Mtr concerning imports of Vitrified/Porcelain Tiles from China PR.
- ii. It is stated that the export price, at which the Vitrified/Porcelain Tiles are exported to India, is quite low in the range of US\$ 2.75 to US\$ 5.90/Sq. Mtr. Therefore imports are coming at price much below US\$ 8.28/Sq, Mtr that is the anti-dumping duty in the original investigation.
- iii. Due to the individual dumping determination for the New Shipper, the effect of earlier notification will be nullified and the domestic industry will again suffer material injury caused due to dumping at abnormally low prices by Nanhai/Prestige.
- iv. It is relevant to point out that it is possible for the Chinese Exporters to dump several products including Vitrified/Porcelain Tiles at such abnormally low prices is because they receive subsidies/assistance from the State in several forms. It is for this reason that China is treated as non-market economy. It is common knowledge that there are no systems being followed, foreign exchange rate is managed, there is no system of proper accounting/costing etc. Therefore to treat this individual exporter (Nanhai) as operating in market economy conditions without state intervention is totally incorrect and inconsistent with the view taken by most of the countries in the World. The abnormally low export price is due to the state intervention and subsidies, therefore this case may be treated as non-market economy.
- v. They have requested that proceedings initiated under this New Shipper Review may be dropped or appropriate anti-dumping duty of US\$ 8.28/Sq. Mtr be levied as in the original case.
- vi. M/s. Nanhai (producer) entered into a exclusive sales arrangement with Prestige (exporter), further M/s. Prestige entered into a similar arrangement with M/s. Nitco Tiles, Mumbai. The DGAD has held that exports from M/s. Nanhai are not a dumped price inspite of abnormally low export price and anti-dumping duty is not proposed to be levied. This situation will lead to monopolise the Tiles business by M/s. Nitco Tiles Ltd.,

D.II Views of M/s. H & R JOHNSON (India) Ltd.,

16. M/s. H & R Johnson has made comments on the disclosure statement of the Authority, as

- i. The Authority was misled in the present investigation and information provided to that effect requires clarification.

- ii. The exporter has claimed number of information as confidential which are not to be claimed confidential. The name of the proprietor has been kept confidential.
- iii. It is also stated that no certificate of verification of the information given in the questionnaire response was available in the public file. Has the Authority considered uncertified information of the exporter and producer for the purpose of the investigation?
- iv. The response to the NME questionnaire of the exporter was not made available.
- v. Even at this stage of the investigations, the information is either misleading or woefully incomplete and cannot be a basis to carve out an exception for the Designated Authority not recommend imposition of duty. It is pertinent to note that the accommodation granted to the exporter/producer in the present cases is unprecedented. We understand that the producer filed the response to revised detailed Non-market economy Questionnaire much after the verification trip to China was over and even the revised questionnaire had been filled erratically and is lacking several important aspects.
- vi. It is submitted that this approach is incomplete contrast to the decision of the Hon'ble CESTAT in the case of Exide Batteries Vs. Designated Authority reported at 2003(155) ELT 35 where the Appellate Tribunal ordered for imposition of duties on certain exporters as applicable to non-market economy only on the ground that the information provided on non-market economy was never verified by the Designated Authority. Further, it is pertinent to note that this view of the Appellate Tribunal has been accepted by the office of Hon'ble Designated Authority as no appeal has been filed by the Designated Authority against such a view of the Appellate Tribunal.

D. III EXAMINATION BY THE AUTHORITY

17. The arguments raised by the interested parties regarding granting market economy status to the Chinese producer has been examined by the Authority at appropriate places in these findings. The claim of market economy treatment to Chinese Producer has been examined and analyzed on the basis of verified data of the Chinese company which was provided to the Authority in their exporter submission covering its elements as laid down in para 8(3) of Annexure 1 of AD Rules. M/s Nanhai Shangyuan Oulian Construction Ceramics Co., Ltd., China PR, producer of the subject goods filed the submissions substantiating its claim of MET in their response to the initiation notification. There is no mandatory requirement to file information in the specific format. However the exporter/ producer can make submissions rebutting the presumption under para 8 (3) of Annexure I of AD Rules. The information/ evidence submitted by the exporter/ producer in the submissions contained the relevant information/evidence required to be examined by the Authority for MET. The

officers of DGAD conducted the verification at the exporter/ producer' premises only after the basic information/ evidence were made available by the exporter/ producer. During the course of verification visit at the producer's premises the clarification sought by the officers with regard to WTO accession of China was submitted by the exporter/producer after the verification. In this submission the exporter/ producer has tried to further reiterate the submissions filed earlier. No fresh basic evidence/information requiring further verification was submitted by the exporter/producer, after the verification visit.

18. The interested parties have argued that the export price and the cost of production are different from the original investigation. The new shipper investigation determines the individual dumping margin of the company for a different period in respect of the New Shipper, who has requested for its individual assessment as per Rule 22 of the Anti-dumping Rules, without the requirement of any injury analysis. In the original investigation the Authority had examined both the dumping and injury due to the alleged dumped imports from the subject countries for a different period of investigation.

19. The information provided by the exporter and the producer has been verified by the team of officers of DGAD and only verified data have been taken on board in these final findings. Various issues raised by the interested parties in the course of investigation have been duly examined and verified from their records by the verification team.

20. The interested parties have argued that the Chinese exporters are able to dump at such an abnormally low price because they receive subsidies and assistance from state government. The Authority notes that this allegation raised by the interested party is not substantiated.

21. The interested parties in their submissions have stated that inspite of anti-dumping duty on Vitrified/Porcelain Tiles, the Chinese tiles are routed through Malaysia, Indonesia etc. to avoid anti-dumping duty. The Authority notes that this is not a relevant issue to be examined in the new shipper investigations.

22. The submissions made by Gujarat Ceramic Floor Tiles Manufacturers Association on the disclosure statement received from other interested parties, as disclosure statement was not sent to them by DGAD, as Gujarat Ceramic Floor Tiles Manufacturers Association was neither an interested party in the original investigation nor in this new shipper review in accordance with the provisions of AD Rules. Further it is clarified that this Association has never made any submissions during the earlier investigation or this investigation. They are producers of Ceramic tiles which was not the Product Under Consideration in the original investigation, therefore, the Authority

notes that this Association does not have the locus- standi as an interested party to make submissions in this investigation. However similar issues raised by other interested parties have been appropriately dealt in these findings.

23. The arguments regarding exclusive sales arrangement with M/s. Nanhai Shangyuan Oulian Construction Porcelain Co Ltd. China PR (producer) through M/s Prestige General Trading, UAE (exporter), with M/s. Nitco Tiles, Mumbai has been examined by the Authority. It has been found that the exporter has exported to India significant volume of the subject goods. The Authority has also examined in detail the sales made by the importer to various parties. It has been observed that these sales have been made to different customers, in different volumes at reasonable profit. The Authority notes that the exclusive arrangement of sales between the producer through exporter with the importer is a stated fact which was verified from their records by the team of officers from DGAD during the verification visit at respective premises.

E. claim of market economy treatment and its examination

E.I Views of Domestic Industry

- i. The producers from the China did not submit the information in the non market questionnaire. This departure from set standard practice of eliciting information about market or non market economy status of individual cooperating exporters has lead to a situation where there is no cogent evidence in writing provided by the Nanhai to the effect that although it was based in China, it was conducting its business under market conditions. This departure in practice has resulted in denying us an opportunity to comment on such crucial requirement envisaged under the rules at the time of public hearing.
- ii. The present investigation is required to be conducted in accordance with the amended Rules on NME. The exporter must satisfy the Authority regarding its claim of Market Economy Treatment. The non-confidential version of the exporter is grossly inadequate and insufficient to allow any understanding of the substance of information filed by the exporter. China is a Non-Market Economy country and has been treated as such in the original investigations also. In the Note to the notification No. 28/2001-Customs (N.T.), the Republic of China has been listed amongst the non-market economy countries. It is also provided in the said Notification that in view of the changing economic conditions in Russia and in China, where it is shown on the basis of sufficient evidence in writing on the factors specified in the said Notification that market conditions prevail for one or more such firms which are subject to anti dumping investigations, the designated authority may apply the principles set out in

paragraphs 1 to 6 of the anti dumping duty rules instead of the principles in paragraph 8 of the said Rules.

E.II Views of M/s. Nanhai Shangyuan Oulian Construction Porcelains Co., Ltd. China PR,

- i. The new shipper has claimed market economy treatment (MET) and has submitted evidence to substantiate the same.
- ii. Bankruptcy Law of Peoples Republic of China PR has an appropriate legal and regulatory framework for the operation of the firms and the firms can freely declare bankruptcy according to the related laws and regulations.
- iii. The major raw materials required for the manufacture of vitrified tiles are available in and around Foshan City which has more than 600 Vitrified/porcelain tiles factories. Company is free to procure the raw materials and other relevant inputs from the open market based on market prices set by demand and supply. No state or local authority has any say, in any manner, in setting the prices or costs of the raw material or the final product. There are no restrictions or conditions, either direct or indirect, on imports of raw materials used but the company never imports any raw materials from abroad.
- iv. The utilities are charged at normal rates without any special or subsidized rates. Electricity is being supplied by Foshan Branch of Guangdong Electricity Group Company. Similarly, water is supplied by Foshan Water Supply General Company Ltd. According to Article 35 of the Electricity Law of the People's Republic of China the electricity price shall be based on the principle of uniform policy. From January, 2003 the electricity price is regulated according to the time in which the electricity is consumed. Water and electricity have been charged according to the consumption pattern and the prevailing prices charged by the concerned supply companies.
- v. As regard to labour, firms have the freedom to organize and remunerate their labour. The only condition is that the firm has to ensure that the minimum wage levels are guaranteed. All employees have medical and education facilities. The company provides the housing facilities to the workers in the factory. The workers will have salary, overtime; prevent pollution charge, labour protection charge, injury insurance and retirement insurance.
- vi. According to the accounting principles in China, the firm has to maintain basic accounting records and the firms have their accounting records audited by independent auditing firms. The normal corporate financial accounting period is from January to December. The accounting practices are in accordance with the Generally Accepted Accounting Principles (**GAAP**) of China.
- vii. The land, buildings and machines are used for the production and commercial purposes. The company owns these facilities. Chinese laws protect property

ownership. Natural and legal persons have the right by law to possess, utilize, profit from and dispose of his property. The General Principles of the Civil Law of People's Republic of China stipulates that an owner has rights to lawfully possess, utilize, profit from and dispose of his property. Thus, firms are subject to both bankruptcy and property laws, which guarantee the legal stability and certainty for the operations of business.

- viii. The Protocol of Accession of PR China to the WTO exhaustively sets out in its annexes the limited products that are subject to State trading (import and export), Products and Services subject to price controls etc. and how these are to be phased out during the transition period. The said annexes to the Protocol do not indicate vitrified tiles as subject to such price control nor does it contain any of these raw materials or consumables such as cobble stones, dyes and chemicals as being subject to Government control.
- ix. China formally accepted the International Monetary Fund convention and became a member of IMF under Article 8 on 1st Dec, 1996, and abolished all restrictions on the current account RMB can be exchanged into major foreign currencies freely under current account ever since. Where a domestic enterprise needs foreign currency for a the current account transaction, it can purchase the foreign currency, according to the market rate, in the designated foreign exchange bank in RMB with relevant valid voucher, as well as make its payment from its foreign exchange account. This means that the subject enterprises of these two cases can purchase foreign currency whenever they need because these companies deal in goods falling under current account transactions.
- x. The company has never been involved in barter-trade or counter-trade. The company has never been involved in compensation trade (also known as product buy-back).
- xi. Company does not offer credit to its customers except under exceptional circumstances. All export sales are against letters of credit at sight or by way of advance remittance. Company, therefore, has not experienced any bad debts.
- xii. As indicated in the audited account, buildings are depreciated over a period of 20 years useful life. The depreciation rate is 4.75% after providing for a residual value of 5%. Machinery and Equipment are depreciated over a useful life of 10 years on straight line basis; after providing for 5% residual value, the annual depreciation rate is 9.5%.

E.III Examination by the Authority

24. In the instance case, China was proposed to be investigated as a non-market economy. Petitioner in the original investigation has alleged China as non-market economy. Therefore, determination of normal value is to be examined in accordance

with the Rules relating to non-market economies as contained in Para 7 & 8 of Annexure-1 of Rules.

25. As communicated to the new shipper and to the Embassy of China, the Authority proposed to examine the determination of normal value in the light of Para 7 & 8 of Annexure 1 of anti dumping Rules as amended. The Authority notes that para 7 of Annexure 1 of anti dumping rules, *inter-alia* provides that:

"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin....."

Further Para 8 of Annexure 1 of the Rules Supra (as amended) provides that:

"8 (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph(3)

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country,

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

26. The Authority notes that the exporter has furnished necessary information/evidence as mentioned in sub Para 3 of the Paragraph 8 of Annexure 1 of anti dumping Rules to enable the Designated Authority to consider the following criteria as to whether

- a. the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and

demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values:

- b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts:
- c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
- d. the exchange rate conversions are carried out at the market rate;

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

27. To determine whether the producer/exporter is independent from government control or not, the Authority examined

- i. Whether a respondent is subject to government control in their sales and procurement activities,
- ii. Whether the export price is set by or subject to the approval of a governmental authority,
- iii. Whether the respondent has authority to negotiate and signed contracts and other agreements,
- iv. Whether the respondent has autonomy from the government in making decisions regarding the selection of its management and
- v. Finally whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

28. M/s Nanhai Shangyuan Oulian, China PR is a limited liability company incorporated under the Law of People's Republic of China. During the course of investigation the Authority did not find any evidence regarding government participation in finalizing the export/domestic price and quantity. The management was found to be free in finalizing both the domestic and export sales contracts. The verification team also did not find any control on the management to notify any government authorities regarding the selection in their management. The company was found significantly free to decide regarding its use of revenue without taking permission of the State. As regards the existence of state interference, the Authority

observed that decision relating to procurement of inputs, finalization of selling price/costs etc. of the company was found free from the State.

29. The bankruptcy and property laws were examined and found that the company is free to acquire property. The bankruptcy law is applicable to a firm when a firm become bankrupt and the details regarding the settlement of the dues is governed by law maintained under bankruptcy law. The company owns land, buildings and machines which were used for the production and commercial purposes. Chinese laws protect property ownership. Natural and legal persons have the right by law to possess, utilize, profit from and dispose of his property.

30. The exchange rate conversions were also verified from their books of accounts and found that the export transactions were converted into the Chinese currency as per the exchange rate prevailing on the date of transaction. During the verification visit the export invoices were verified to see whether the realized amounts are credited into their books of accounts. The Authority observed that exchange conversions have taken place at the existing rate, which is stable.

31. The company was found to be free to purchase raw materials, fuels and other materials either in China or source it from other parts of the World. Presently the company is buying all raw materials in China itself which is locally available. It is further seen that they have procured the raw materials at varying rates from different sources at prevalent market prices. The Authority, on the basis of examination of the pricing and cost of raw material, is of the view that production cost and financial situation of the company did not show any distortion or State control either in procurement of raw materials or in the production policy.

32. Electricity is supplied by the electric company Foshan Branch of Guangdong Electricity Group Company owned by state authorities and tariff is paid by the company as per the prevailing tariff rates. Water is supplied by company Foshan Water Supply General Company Ltd owned by the state authorities. Electricity and water has been charged according to the consumption pattern and the prevailing prices charged by the concerned electricity/water supply company. Invoices showed that rates charged for these elements of cost appeared to be reasonable.

33. All the employment decisions were found to be taken by the company. There is full freedom to the company with regard to its mode of hiring employees and the average salary paid to the different classes of workers. The Chinese Government does not provide any benefit like housing, medical care etc. however, the company provides accommodation and the cost of the same is reflected in the books of accounts as an expense.

34. There are domestic sales of the subject goods in the domestic market in substantial volume. The evidence of state involvement was not found in determination of sale price/quantities. It was observed that sales in the domestic market have been made to different customers at different prices and all such decisions are taken on purely commercial basis. It was explained by the company that there is no price list either for domestic or export as it varies from customer to customer and reflected on the basis of demand and supply position in the market. It was found from their records that the company has made sales in the domestic market to different customers at varying rates and volume.

35. The books of accounts and records of the company are maintained in mandarin and figures are denoted in Renmin (RMB). The accounting standards and rules are prescribed by Ministry of Finance of People's Republic of China. The company prepares monthly accounts including profit & loss account and balance sheet. These monthly accounts are submitted as part of the tax return submitted to the Tax Bureau.

36. All assets of company have been obtained from the open market on purely commercial basis. No assets were provided by the state or any third company free or on other than commercial principles. The Authority did not find any evidence of subsidy scheme either for loans or electricity supply of which the benefit is available to the company.

37. In view of the information provided by the Chinese producer on the issue of its claim of market economy treatment with regard to para 8(3) of Annexure-I of AD Rules and able to demonstrate that the cost/prices of the subject goods of the producer operates as per market forces, the Authority considers it appropriate to treat this individual exporter as if operating in a market economy. The company was able to show to satisfaction of the Authority that management and control regarding production, marketing and pricing were in the hands of the management of the company, which were significantly independent from state intervention. In the light of above examination it was considered to grant Market Economy treatment to the producer and determine normal value in line with para 1 to 6 of Annexure 1 to the Anti Dumping Rules.

F. Assessment of Normal Value, Export Price & determination of Dumping Margin

NORMAL VALUE:

38. Under Section 9A(1)(c), normal value in relation to an article means:

- i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

39. The Authority sent exporter questionnaire to M/s Nanhai, China PR Shagyuuan Oulin Construction Co. Ltd., China PR (Producer) and M/s Prestige General Trading, Dubai, UAE (Exporter), for the purpose of determination of normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. In response to the questionnaire the new shipper submitted the information in exporter questionnaire. The company sells all the comparable types of similar sizes of the subject goods in the domestic market, which has been exported to India also. They have exported three sizes of the subject goods and the detailed information regarding the domestic sales in their home market has been provided. The normal value as per Section 9A (1) (c) is comparable price of domestic sales of subject goods in the ordinary course of trade for the like article, which is meant for consumption in the exporting country. They have also provided the costs of production of all three sizes of the subject goods that have been exported to India during the period of investigation. The transaction wise domestic sales were verified from their records during the course of on the spot verification. The element wise cost of production was also verified and reconciled from the books of account with the records of the company. An analysis of the profit and loss account of the company shows that the company has made an overall profit on the sale of subject goods during the period of investigation and calendar year. The Normal Value based on domestic sales has been determined after considering the volume of sales above per unit cost (applying 80/20 test) so as to determine that these sales are in the ordinary course of trade.

40. The company has exported three sizes of subject goods to India during the period of investigation. The size wise ex-factory normal value is assessed as ****, ****, and ****US\$ per Sq meters of the subject goods.

EXPORT PRICE:

41. In response to the questionnaire, the exporter has furnished invoice-wise/ size-wise details of exports made to India during the period of investigation in Appendix-2. The exporter has also furnished copies of invoices in support of the same. Adjustment as claimed by the exporter in Appendix-4 with regard to bank charges, storage, transportation have been considered after duly verified and allowed to arrive at the ex-factory export price to India. The exports to India by M/s. Nanhai, China PR are carried out through M/s. Prestige ,UAE(exporter) who finally export the goods to India.

42. The exclusive sales arrangement with M/s. Nanhai (producer) through Prestige (exporter), with M/s. Nitco Tiles, Mumbai was examined and found that the exporter has exported to India significant volume of the subject goods. The Authority notes that the exclusive arrangement of sales between the producer through exporter with the importer is a stated fact which was verified from their records.

43. The ex-factory export price has been calculated after taking into account the verified data on adjustments. In this regard the invoices pertaining to M/s. Nanhai, China PR to M/s. Prestige, UAE and finally M/s. Prestige, UAE to Indian customers were verified and reconciled along with the adjustments claimed by them. During the course of investigation it is found that the goods were shipped from the Chinese port directly whereas the invoices were raised from M/s. Nanhai, China PR to M/s. Prestige, UAE and M/s Prestige, UAE to Indian customers. The details regarding their adjustments were verified and reconciled from the records available with the company during the course of verification.

44. The size wise ex factory export price of subject goods comes to US \$****, ****, **** /Sq meters during the period of investigation.

DUMPING MARGIN:

45. Considering the normal value and export price as detailed above, dumping margin for different sizes of vitrified/porcelain tiles has been determined. It has been found that the exporter has exported the subject above its Normal Value and hence the weighted average dumping margin has been assessed as -5.72%.

G. Final Findings and Recommendations of the Authority

46. After considering the foregoing the Authority concludes that

- i. Export price of Vitrified/porcelain Tiles exported to India produced by M/s. Nanhai Shagyuan Oulin Construction Co. Ltd., China PR (now known as Foshan Oulian Construction Ceramic Ltd.) and exported from M/s Prestige General Trading, Dubai, UAE is above its normal value during the period of investigation.
- ii. The Authority, therefore, recommends that no anti dumping duty be imposed on imports of Vitrified/porcelain Tiles falling under Chapter 69 of the Custom Tariff Act, 1975 produced by M/s. Nanhai Shagyuan Oulin Construction Co. Ltd., China PR (now known as M/s Foshan Oulian Construction Ceramic Ltd.) and exported from M/s Prestige General Trading, Dubai, UAE.
- iii. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Act.

(Abhijit Sengupta)
Designated Authority