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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, Jeevantara Building  
5 Parliament Street, New Delhi - 110001  
Dated 28<sup>th</sup> March, 2016

**FINAL FINDINGS**

**Subject: New Shipper Review under Rule 22 of the Anti-Dumping Rules for determination of individual dumping margin for the purpose of imposition of anti-dumping duty on dumped imports of Vitrified/Porcelain Tiles, originating in or exported from China PR, in respect of M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter).**

**No. 15/25/2011-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;

**A. Background of the Case**

2. Whereas, in the original investigation, the Designated Authority (hereinafter also referred to as the Authority) recommended, inter alia, imposition of anti-dumping duty on the imports of 'Vitrified/Porcelain Tiles' (hereinafter also referred to as the subject goods), originating in or exported from China PR (hereinafter also referred to as the subject country), falling under Chapter 69 of the Customs Tariff Act, 1975, vide Final findings Notification No. 37/1/2001-DGAD dated 4th February, 2003. The Central Government notified the definitive anti-dumping duty vide Notification No.73/2003-Customs dated 1<sup>st</sup> May, 2003.
3. Whereas, the Designated Authority had conducted the sunset review (SSR) of the duties and issued the final findings vide Notification No.15/17/2006-DGAD dated 21<sup>st</sup> April 2008, recommending continued imposition of anti-dumping duty on the imports of the subject goods. The Central Government notified the definitive anti-dumping duty vide Notification No.82/2008-Customs dated 27<sup>th</sup> June, 2008.

4. M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), filed an application for New Shipper Review (NSR) in terms of Rule 22 of the Anti-dumping Rules, claiming individual dumping margin.
5. The Authority, having been prima facie satisfied with the conditions laid down under Rule 22 of Anti-dumping Rules, initiated a New Shipper Review investigation, vide Notification No.15/25/2011-DGAD dated 18<sup>th</sup> May, 2012, for determination of individual dumping margin for the purposes of imposition of the anti-dumping duties levied on the dumped imports of Vitrified/Porcelain Tiles originating in or exported from China PR, in respect of M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter). The period of investigation for the purpose of this new shipper review was fixed by the Authority as 1<sup>st</sup> May, 2012 to 31<sup>st</sup> October, 2012 (Six Months).
6. Having initiated the subject NSR investigation, vide the said initiation notification, the Authority recommended provisional assessment on all exports of the subject goods made by M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), till completion of the new shipper review, in accordance with the Rule 22 of the Anti-dumping Rules and having regard to Notification No.73/2003-Customs dated 01-05-2003 and No.82/2008-Customs dated 27<sup>th</sup> June, 2008.
7. The Department of Revenue, Central Government, notified the provisional assessment on all exports of the subject goods made by M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), till completion of the present NSR investigation, vide Notification No.35/2012-Customs (ADD) dated 10<sup>th</sup> July, 2012. The said notification stated that pending the outcome of the new shipper review by the Designated Authority, the subject goods, when originating in or exported from China PR by M/s Foshan Sanshui Romantic Ceramics Co Limited, China PR (producer-1), Heyuan Romantic Ceramics Company Limited, China PR (producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), and imported into India, shall be subjected to provisional assessment till the review is completed. It also stated that the

provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment, if any, in case a definitive anti-dumping duty is imposed retrospectively, on completion of investigation by the designated authority. It further stated that in case of recommendation of anti-dumping duty after completion of the said review by the designated authority, the importer shall be liable to pay the amount of such anti-dumping duty recommended on review and imposed on all imports of subject goods, when originating in or exported from China PR, in respect of the above stated parties, from the date of initiation of the said review.

8. The relevant anti-dumping duty, imposed on the imports of vitrified/porcelain tiles, originating in or exported from China PR, expired with effect from 26<sup>th</sup> June, 2013, since the application for 2<sup>nd</sup> sunset review, filed by the Indian Council of Ceramic Tiles and Sanitaryware (ICCTAS), was rejected by the Authority.
9. Earlier the Authority had conducted oral hearings and since the NSR parties did not consent for verification of their data/information, went ahead for completing the investigation and issued a disclosure statement on 7<sup>th</sup> May, 2015, disclosing the essential facts of the investigation. However, post issuance of 1<sup>st</sup> disclosure statement, the NSR parties offered their consent for verification of their data/information and accordingly on the spot verification was conducted by the Authority. The verification reports were also circulated by the Authority to the concerned NSR parties and their comments obtained. Thereafter, a 2<sup>nd</sup> disclosure statement was issued by the Authority on 16<sup>th</sup> March, 2016, duly examining and addressing the submissions/comments made by the interested parties during the course of this investigation.

## **B. PROCEDURE**

10. The procedure described below has been followed with regard to the present investigation:
  - i. The Authority issued a public notice vide Notification No. 15/25/2011-DGAD dated 18<sup>th</sup> May, 2012, 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 all 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 concerned embassy in India.

- 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. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), the applicants for NSR.
- vi. M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) also filed questionnaire response claiming market economy treatment (MET).
- vii. The Authority made available non-confidential version of the evidences, presented by various interested parties, in the form of a public file, kept open for inspection by the interested parties.
- viii. The Authority held an Oral Hearing on 5th November, 2014 and to provide opportunity to the interested parties to make submissions orally, followed by written submissions. However, none of the interested parties attended the oral hearing and made any oral submission followed by written submission.
- ix. Another oral hearing was held on 27th August, 2015 due change in the incumbent Designated Authority and in pursuance with the judgment of Hon'ble Supreme Court in the ATMA case. Representatives of the NSR parties attended the 2<sup>nd</sup> oral hearing and reiterated their earlier submissions.
- x. Investigation was carried out for the period of investigation (POI) starting from 1<sup>st</sup> May, 2012 to 31<sup>st</sup> October, 2012 (Six Months).
- xi. Post 2<sup>nd</sup> oral hearing, the NSR parties consented for on the spot verification of the data/information furnished by them and the Authority carried out the verification to the extent considered necessary.
- xii. Verifications were conducted by the Authority to the extent considered relevant and necessary.
- xiii. Disclosure statements were issued by the Authority on 7<sup>th</sup> May, 2015 and 16<sup>th</sup> March, 2016 and comments obtained thereon.
- xiv. Submissions/comments made by the concerned NSR parties, including the other interested parties, if any, during the course of this investigation, and considered relevant by the Authority, have been examined and addressed in this finding.

### **C. Submissions made by the Interested Parties**

11. While, none of the interested parties and their representatives attended the oral hearing held by the Authority on 5th November, 2014, the 2nd oral hearing held on 27<sup>th</sup> August, 2015 was attended by the representatives of the NSR parties. The submissions made by the NSR parties during the course of the investigation and considered relevant by the Authority are as follows:
  - i. Applicants have not exported the product under consideration to India during the period earlier investigated by the Designated Authority.
  - ii. Applicants are not related to any of the producer/exporter of the product under consideration (except disclosed in the response) who earlier investigated by the Designated Authority.
  - iii. The applicants are entitled for market economy status.
  - iv. The applicants are entitled to individual dumping margin.
  - v. The Designated Authority may kindly determine individual dumping margin and recommend individual anti-dumping duty in respect of the applicants on the basis of information filed by the applicants.
  
12. The data/information of the NSR parties was verified by the Authority, on the spot, after being consented by them. Although both Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) and Heyuan Romantic Ceramics Company Limited, China PR (Producer-2) had claimed market economy treatment (MET), they withdrew their MET claim in writing during the verification.
  
13. The following major observations were made by the Authority during on the spot verification of Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) and Heyuan Romantic Ceramics Company Limited, China PR (Producer-2):
  - i. The earlier name of Heyuan Romantic Ceramics Company Limited, China PR (Producer-2) was Fanrong Ceramics Co Ltd and the said Company was set up in the year 2000. This aspect was not declared by the Company in none of their earlier responses/submissions.
  - ii. Romantic Brand used by Heyuan Romantic Ceramics Company Limited was registered in the year 2001.
  - iii. Although, Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) and Heyuan Romantic Ceramics Company Limited, China PR (Producer-2) had claimed that they have no related companies involved in the production and sale of the subject goods, as per the website information and as acknowledged by the companies during verification, it was noted that there are several related companies involved in the production and sale of the subject goods.

- iv. Although Heyuan Romantic Ceramics Company Limited, China PR (Producer-2) claimed to have only one production facility for vitrified/porcelain tiles at Huangtuling Village, Denta Town, Dongyuan County, Guangdong Province, China PR, but, as per the website information, they have another production base at Zhangjiang in Guangdong province, which was not declared in their application/responses. Consequently, the Authority was not in a position to verify the production, sales and other details of the said non-declared plant.
- v. During verification, it was claimed that Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) was closed and liquidated on 25.11.2008. The said information was not revealed by the Company earlier. During verification, it was noticed that another company namely Foshan Romantic Ceramics Co Ltd was operating from the same address. On being questioned, it was replied that this is a trading company set up in 2014.
- vi. While the plant of Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) was found to be closed, the plant of Heyuan Romantic Ceramics Company Limited at Huangtuling Village was found to be operating.
- vii. Although, during pre POI, a small consignment of subject goods was exported by M/s Heyuan Romantic Ceramics Company Limited, during the POI, the entire exports of subject goods to India produced by Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) and Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), were made through only M/s Foshan Beyond Import and Export Company Limited, China PR (Shipper), further through M/s Thai Impex Malaysia SDN BHD, Malaysia (Exporter) to India
- viii. During POI, although both Heyuan Romantic and Foshan Romantic had made domestic sales to different parties including Foshan Beyond Import and Export Company Limited, China PR, they did not have direct export.
- ix. The domestic sales details of the NSR producers, are as follows:

M/s Foshan Sanshui Romantic Ceramics Co Limited, China PR  
(Producer-1)

Domestic Sales	Quantity (Sq.Mtr)	Sales Value (RMB)	Sales Realization (RMB per sq.mtr.)
Pre POI	***	***	***
POI	***	***	***
Post POI	***	***	***

M/s Heyuan Romantic Ceramics Company Limited, China PR  
(Producer-2)

Domestic Sales	Quantity (Sq.Mtr)	Sales Value (RMB)	Sales Realization (RMB per sq.mtr.)
Pre POI	***	***	***
POI	***	***	***
Post POI	***	***	***

14. The following major observations were made by the Authority during on the spot verification of Foshan Beyond Import and Export Company Limited, China PR (Shipper):

- i. Foshan Beyond Import and Export Company Limited, China PR withdrew MET claim during the on the spot verification.
- ii. Foshan Beyond Import and Export Company Limited, China PR procured subject goods from Chinese producers including Foshan Sanshui Romantic Ceramics Co Limited, China PR and Heyuan Romantic Ceramics Company Limited, China PR and exported to India and other countries.
- iii. It exported to India only the subject goods produced by Foshan Sanshui Romantic Ceramics Co Limited and Heyuan Romantic Ceramics Company Limited during the POI. Neither they raised any invoice on Thai Impex Malaysia, the purported exporter in the present investigation, nor received payments from them. Foshan Beyond realized the export proceeds in free foreign exchange directly from the Indian importers.
- iv. As clarified by Foshan Beyond, it was indicated on the body of the invoices that the subject goods were exported through Thai Impex Malaysia, although neither invoice was raised on them, nor payment received from them.
- v. Consolidated exports by Foshan Beyond to India during POI, pre-POI and post POI are as below:

Period	Quantity (Sq.Mtr)	Sales Value (RMB)	Sales Realization (RMB per sq.mtr.)
Pre POI	***	***	***
POI	***	***	***
Post POI	***	***	***

15. The following major observations were made by the Authority during on the spot verification of Thai Impex Malaysia SDN BHD, Malaysia (Exporter):

- i. During the on the spot verification, it was noted that Thai Impex Malaysia was operating in the office premises of Swift Secretariat Services, a company owned by a company Secretary. Thai Impex Malaysia was found to be basically a file maintained by the said company secretary.
- ii. None of the employees of the Company including the contact person declared in the response filed by the Company was present during the verification.
- iii. It was informed by the company secretary that Thai Impex Malaysia is 100% owned by Thai Impex India Pvt Ltd, India, the importers of the subject goods from the NSR parties in the present investigation.
- iv. It was further informed by the company secretary that Thai Impex Malaysia was set up in the year 2011 only to facilitate the tile exports to India from the Chinese NSR parties.
- v. Although Thai Impex Malaysia claimed itself to be the exporter and filed response accordingly, no commercial invoicing between Foshan Beyond, China and the Thai Impex Malaysia could be demonstrated.
- vi. Further, Thai Impex Malaysia could not demonstrate with documentary evidence realisation of export proceeds from its related Indian buyers. Only a part payment was received from the Indian buyers, but the Company could not justify with documentary proof the reasons for such payments received from the Indian buyers when the Indian buyers have already made the full payment to Foshan Beyond, China directly.
- vii. It was noted that the Company's audit reports as well as audited annual accounts have not been maintained.
- viii. The details given in Annexure 2A of the response did not match with Company's books of accounts.

16. The following are the comments received on behalf of Heyuan Romantic and Foshan Romantic:

- i. It is evident that the establishment of the company in any case is after the investigation period of the original case investigation and therefore was not in existence in the POI of the original case. Further, the investigation has not shown that the claim of the applicants about no exports in the POI of original case or POI of sunset review case was incorrect.
- ii. The company got the brand registered even before commercial production in order to ensure availability of a desired brand when the production is started. It is not necessary under the Chinese law that the company should be engaged in production before it can seek registration of a brand. Further, registration of a brand in 2001 before establishing the company does not contravene the provisions of Trade Mark Law.
- iii. Foshan Sanshui Romantic Ceramics Co. Ltd., and Foshan Nanhai Caihong Ceramics Co. Ltd are already closed. Zhanjiang Zhonghong Ceramics Co. Ltd., involved in the production and sale of subject goods, was formed and transferred after the POI. The allegation that the information relating to related companies were not given is incorrect as the said companies either closed prior to POI or came into being after POI.
- iv. The 2<sup>nd</sup> production base of Heyuan Romantic at Zhangjiang in Guangdong province concerned commenced production after the POI of the present new shipper case. Since the production itself commenced after POI, the same is entirely irrelevant for the present purposes. The response was filed before the share of zhanjiang factory was transferred.
- v. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) was closed and liquidated after the POI on 25.11.2008 and no more existing. Foshan Romantic Ceramics Co Ltd is a trading company and was set up after the POI of the present case.

17. The following are the comments received on behalf of Foshan Beyond:

- i. The commercial invoices being presented by importer for clearance of goods is issued by Thai Impex. Thus, while the Designated Authority may consider the role of Thai Impex appropriately, it is clarified that it is not factually correct that Thai Impex has not issued the commercial invoice. As regards

payments, it is confirmed that payment is made by the Indian importer directly to the Chinese companies as per the instructions of Thai Impex. In fact, the commercial invoice clearly states the breakdown of payment being made to different parties.

- ii. The payments are made by the Importer in India to Shipper, upon the instruction of the Exporter in Malaysia. The importer and Thailand exporter are closely related and Thai Impex Malaysia is wholly owned by Thai Impex India. As such arrangement of payment on behalf of the subsidiary has no legal consequence and is permitted as per law in Malaysia, India and China. The role of Thai Impex Malaysia does exist as per the Commerce and Custom notifications and evidently the goods are routed to have control over the restricted transactions. The gross amount is kept as the purchase value and the differential amount between the amount payable to Producer/Shipper and the Exporter is meant to meet its expenses for retaining the establishment for the business operation.
- iii. The wordings in the commercial invoices as well as other related documents invariably have been accepted in all cases by the Customs Department in India as the same did satisfy the provisions of the relevant anti-dumping notifications.
- iv. Further, the payment made by the Indian Importer directly to the Shipper in China and the payment of balance amount to the Exporter in Malaysia - are all approved by the Reserve Bank of India in line with Exchange control regulations.
- v. The Series such as Soluble Salt (lower grade with thin quoting), Double Charge (higher grade with full quoting) not given separately and hence price comparison of different items not absolute. In any case, the price in POI is lower and not higher. Lower price cannot mean an attempt to show "no dumping".
- vi. The Shipper has shown the name of the importer not as importer or purchaser but as a "Consignee". A consignee need not be a purchaser but only a destination where goods to be consigned. The Invoice further makes it clear that such a consignment is through Thai Impex Malaysia. Beyond any doubt the transaction is consigned to Thai Impex India, through the account of Thai Impex Malaysia. Further as explained in para 4 above the assessment is done accordingly showing the name of Thai Impex Malaysia, based on the Commercial Invoice raised by Thai Impex Malaysia on Thai Impex India.

18. The following are the comments received on behalf of Thai Impex Malaysia:

- i. Operation of Thai Impex Malaysia is extremely limited and therefore maintenance of elaborate infrastructure is not justified. Further, presence of the employees is not required when there are no day to day operations. Mr. V.S. Prabakhar is a paid employee of Thai Impex Malaysia.
- ii. The company was formed with the objective of doing tiles business in India. It has complied with statutory requirement with regard to maintenance of books of accounts. Since the present new shipper review is pending for the past three years, the company has not undertaken further activities in this regard. When the actual export related documents have been provided to the Designated Authority, book of accounts is immaterial.
- iii. The statement that no commercial invoices do exist is inappropriate. The invoices show the importers name as "Consignee" not as purchaser or importer. Thai Impex Malaysia has raised invoice on Thai Impex India.

**D. Examination by the Authority**

19. 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.*

20. 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.*

21. 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.

22. The subject review was initiated on the basis of the application and information furnished by M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), for determination of individual dumping margin, in respect of the definitive anti-dumping duty imposed by the Central Government vide Notification No.82/2008-Customs dated 27<sup>th</sup> June, 2008, in pursuance of the recommendations made by the Authority vide sunset review final findings Notification No.15/17/2006-DGAD dated 21<sup>st</sup> April 2008, 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. Foshan Sanshui Romantic Ceramics Co Limited, China

PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), till this review is completed in accordance with the Rule 22 of the Rules Supra. Subsequent to the initiation of the investigation, M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), filed the questionnaire response in respect of the claimed exports made by them to India during the POI.

23. 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 NSR applicants or their representatives attended. Another oral hearing was on 27th August, 2015 due to change in the incumbent Designated Authority and in pursuance of the judgment of Hon'ble Supreme Court in the ATMA case. Representatives of the NSR parties attended the 2<sup>nd</sup> oral hearing and reiterated their earlier submissions.
24. Initially the NSR parties did not cooperate for on the spot verification of their records. Resultantly, the Authority went ahead with issuing a disclosure statement on 7<sup>th</sup> May, 2015 as a step forward towards completing the investigation. Subsequently, the NSR parties consented for verification and accordingly the Authority conducted on the spot verification of their information/records, shared the reports with them and obtained their comments, which have been examined and addressed in the present finding, along with other submissions made by the interested parties during the course of this investigation and considered relevant by the Authority.
25. The verification of the information and records of the NSR parties revealed that the M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1) and Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), the related producers were not new players in the business, but were actually old players with different names. The on the spot verification revealed that Heyuan Romantic Ceramics Company Limited, China PR (Producer-2) was earlier known as Fanrong Ceramics Co Ltd, set up in the year 2000. The verification also revealed that the brand name used by Heyuan Romantic Ceramics Company Limited was registered way back in the year 2001. Although Heyuan Romantic Ceramics Company Limited claimed to have been set up in 2009, it was actually set up much before in its earlier incarnation as Fanrong Ceramics Co Ltd. None of these things were declared by the Company in its earlier submissions. Although the Company, in its comments on the verification report, tried to explain the position, but the fact remains that they failed to bring these facts before the Authority.

26. While Heyuan Romantic Ceramics Company Limited had declared as having only one production centre for the subject goods, the web based information followed by verification revealed that the Company had actually two production centres for the subject goods and not one as declared by them. Although Heyuan Romantic Ceramics Company Limited, China PR (Producer-2) claimed to have only one production facility for vitrified/porcelain tiles at Huangtuling Village, Denta Town, Dongyuan County, Guangdong Province, China PR, but, as per the website information, they have another production base at Zhangjiang in Guangdong province, which was not declared in their application/responses. Consequently, the Authority was not in a position to verify the production, sales and other details of the said non-declared plant. Without verifying their records, it cannot be ruled out that the said 2<sup>nd</sup> plant of Heyuan Romantic Ceramics Company Limited did actually not exist during the earlier investigations and not involved in the production and export of subject goods, either directly or indirectly, in some other form or nomenclature, as it is often observed in Chinese business.
27. The verification also revealed that both the related NSR producers had a much wider relationship network than what they had actually declared. There were many related companies involved in the production/sale of the subject goods, which were acknowledged to have either been existing prior to the POI or are closed and out of business now. But, the fact remains that these relationships and their activities were not declared up front by the NSR parties. Therefore, without being declared and subjected to verification, it cannot be ruled out that these related companies were not actually involved in the production and export of the subject goods to India, either directly or indirectly, during the earlier investigations.
28. In terms of the Anti-dumping Rules and provisions in the WTO Agreement concerning NSR, 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. Considering the facts and circumstances of the present case, wherein concerned parties have not come clean to declare the details of their production centres and related parties involved in the production and sales of the subject goods and a sales arrangement which smacks of a deliberate arrangement for the sole purpose of taking advantage of anti-dumping duty through the NSR route, the Authority is not in a position to draw such conclusions.
29. The verification by the Authority also revealed that Foshan Beyond Import and Export Company Limited, China PR, which is claimed to be a shipper, is actually the exporter of the subject goods and realised the export proceeds directly from the

Indian buyers. Foshan Beyond Import and Export Company Limited could not demonstrate with documentary evidence any commercial invoicing between themselves and Thai Impex Malaysia SDN BHD, Malaysia, which is declared to be the exporter.

30. Although the entire exports were made to its related Indian importers, Thai Impex Malaysia could not demonstrate with documentary evidence realisation of export proceeds. Only a part payment was received from the Indian buyers, but the Company could not justify with documentary proof the reasons for such payments received from the Indian buyers when the Indian buyers have already made the full payment to Foshan Beyond, China directly. During the verification, the Thai Company was found to be a name sake company without any major infrastructure or activities. During the verification, Thai Impex Malaysia could not demonstrate with documentary evidence its role as an exporter in the present transactions and realisation of the complete export proceeds in its name. Even the Company could not demonstrate its audit reports and audited annual accounts and could not reconcile the details claimed in Annexure 2A of the response with its books of accounts. During the verification, it could be made out that the sole motive of forming Thai Impex Malaysia was to facilitate the NSR transactions with the Indian buyers and to ensure that the Chinese NSR parties do not make any sales to any other Indian buyers, other than the related Indian buyers of Thai Impex Malaysia.
31. Under the above stated circumstances, the Authority holds that it may not be appropriate to clear the exports of the subject goods made by M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), without payment of Anti-Dumping duty.

**E. Comments after issuance of 2<sup>nd</sup> Disclosure Statement:**

32. Although the Authority had allowed time up to 21st March, 2016 for furnishing comments on the disclosure statement, on 22nd March, 2016, the following comments, which are basically reiterations of earlier submissions, were submitted on behalf of the NSR parties:
- i. The information relating to related companies were not given as the said companies were either closed prior to POI or came into being after POI.
  - ii. The allegation that certain facts were not brought to the attention of the Authority carry no importance as they are not relevant for the investigation.
  - iii. Mere fact that the website showed one more production centre is not an evidence of its existence.

33. The Authority notes that the post disclosure comments are basically reiterations of earlier submissions, which have been adequately addressed in this finding. The Authority further notes that both the related NSR producers had a much wider relationship network than what they had actually declared. Without being subjected to verification, it cannot be ruled out that these related companies were not actually involved in the production and export of the subject goods to India, either directly or indirectly, during the earlier investigations.

**F. Conclusion and Recommendation:**

34. Based on the facts as stated above and the legal position, the Authority concludes that the New Shipper Review applicants i.e. M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), Heyuan Romantic Ceramics Company Limited, China PR (Producer-2), Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), cannot be treated as New Shippers 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 produced by M/s. Foshan Sanshui Romantic Ceramics Co Limited, China PR (Producer-1), and Heyuan Romantic Ceramics Company Limited, China PR (Producer-2) and exported by Foshan Beyond Import and Export Company Limited, China PR (Shipper) and Thai Impex Malaysia SDN BHD, Malaysia (Exporter), during the period from the date of initiation of the present NSR investigation recommending provisional assessment i.e. 18<sup>th</sup> May, 2012, may be subjected to levy of Anti-Dumping Duty @ Rs. 155/Per Square Meter, as imposed earlier on the imports of the subject goods, originating in or exported from China PR, until the date of validity of the said duty, notified earlier vide Notification No. 82/2008-Customs dated 27<sup>th</sup> June, 2008.
35. An appeal against the orders of the Central Government arising out of this finding shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

A. K. Bhalla  
Designated Authority