

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	FILE NO.	F. No. GEN/ADJ/ADC/2306/2023-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO.	MCH/ADC/AK/40/2024-25
C	PASSED BY	ARUN KUMAR ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA.
D	DATE OF ORDER	10.05.2024
E	DATE OF ISSUE	10.05.2024
F	SCN NUMBER & DATE	CUS/APR/MISC/8310/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra dated 20.11.2023
G	NOTICEE/ PARTY/ IMPORTER	M/s. Precision Tech Enterprises (IEC: 0596003722), Survey No. 76 & 79, Old 249 & 250, Mouje Chadasana, Taluka Becharaji, Mehesan, Gujarat – 384210
H	DIN NUMBER	20240571MO0000217679

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ

निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACT OF THE CASE:

M/s. Precision Tech Enterprises (IEC: 0596003722), Survey No. 76 & 79, Old 249 & 250, Mouje Chadasana, Taluka Becharaji, Mehesana, Gujarat – 384210 (hereinafter also referred to as “the Importer/the Noticee” for the sake of brevity”) filed Bill of Entry no. 8947041 dated 21.11.2018 through their Customs Broker i.e. M/s. Prem Kumar Singh for importation of “THERMOPLASTIC INJECTION MOLDING MACHINE WITH DOUBLE TOGGLE CLAMING SYSTEM AND RELAVENT ACCESSORIES” by classifying under CTH 84771000 of the first Schedule of Customs Tariff Act, 1975.

2 . Further, as per the Notification No. 09/2016 – Customs (ADD) dated 15.03.2016 Anti-dumping duty was imposed on the import of “all kinds of plastic processing machines or injection moulding machines, also known as injection presses, having clamping force equal to or more than 40 tonnes, and equal to or less than 3200 tonnes”, used for processing or moulding of plastic materials (hereinafter referred to as the subject goods) falling under tariff item 84771000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from Chinese Taipei, Philippines, Malaysia or Vietnam and imported into India, at the rates to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (9) of the Table-I. Table -I of the said notification is being reproduced as under:

Table -I

Sl. No.	Tariff Item	Description of Goods*	Specification	Country of origin	Country of export	Producer	Exporter	Duty as per centage of landed value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	84771000	Plastic processing machines or Injection moulding machines used for processing or moulding plastic materials	Clamping force equal to or more than 40 tonnes and equal to or less than 3200 tonnes	Chinese Taipei	Chinese Taipei	M/s Chen Hsong Machinery Chinese Taipei Co Ltd	M/s Asian Plastic Machinery Co Ltd	6.06%
2	-Do-	-Do-	-Do-	Chinese Taipei	Chinese Taipei	M/s Jon Wai Machinery Works Co Ltd	M/s Jon Wai Machinery Works Co Ltd	Nil
3	-Do-	-Do-	-Do-	Chinese Taipei	Chinese Taipei	Any combination other than the above		27.98%

3 . After issuance of the said notification, during the analysis it was observed that M/s. Precision Tech Enterprises filed bill of entry no. 8947041 dated 21.11.2018 for import of “THERMOPLASTIC INJECTION MOLDING MACHINE WITH DOUBLE TOGGLE CLAMING SYSTEM AND RELAVENT ACCESSORIES” classifying the same under CTH 84771000. Details of the said items of bill of entry are as under:

Sl. No	Bill of Entry No. & Date	Item No	Description of Item	CTH	Assessable Value (INR)	Basic Custom Duty	Country of Origin
1	8947041 dated	1	SM120EV2 Thermoplastic	84771000	1386050	103954	Taiwan (TW)

	21.11.2018		Injection Molding Machine with double Toggle Claming System and relevant accessories				
2	8947041 dated 21.11.2018	2	SM80EV2 Thermoplastic Injection Molding Machine with double Toggle Claming System and relevant accessories	84771000	1240150	93011	Taiwan (TW)

4. As per the Customs Tariff Act, particulars of the goods falling under the CTHs 8477 are as described below:

8477	MACHINERY FOR WORKING RUBBER OR PLASTICS OR FOR THE MANUFACTURE OF PRODUCTS FROM THESE MATERIALS , NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER						
84771000	-	Injection-moulding machines	u	7.5%	-		
84772000	-	Extruders	u	7.5%	-		
84773000	-	Blow moulding machines	u	7.5%	-		
84774000	-	Vacuum moulding machines and other thermoforming machines	u	7.5%	-		
	-	Other machinery for moulding or otherwise forming:					
84775100	--	For moulding or retreading pneumatic tyres Or for moulding or otherwise forming inner tubes	u	7.5%	-		
84775900	--	Other	u	7.5%	-		
847780	-	Other machinery :					
84778010	---	Machinery for making rubber goods	u	7.5%	-		
84778090	---	Other	u	7.5%	-		
84779000	-	Parts	kg.	7.5%	-		

5. In the instant case the importer has imported "Injection Molding Machine" vide above mentioned bill of entry. The importer classified the said items under CTH 84771000 which is for Injection Moulding Machine. The goods were imported from Taiwan declaring the Country of Origin as Taiwan and the Country of export is also Taiwan.

6. In view of above, as per Sr.No. 3 of Table-1 of Notification No. 09/2016– Customs (ADD) dated 15.03.2016, as extracted and reproduced at para 2 above, Anti-dumping duty at the rate of 27.98% of landed value of

imported goods is imposable on the import of “Injection Moulding Machine” classified under CTH 84771000 of the Customs Tariff Act, 1975 by CBIC originating in Chinese Taipei (Taiwan) and exported from the Chinese Taipei (Taiwan). However, the importer did not pay the same and cleared the goods without paying the Antidumping duty leviabale thereon. Details of Anti-dumping duty not paid by the importer (item wise covered in the said bill of entry is as under):

SI. No.	Bill of Entry No.	Item No.	CTH	Assessable Value (INR)	Basic Customs Duty (INR)	Country of Origin	Landed Value (INR)	Anti-Dumping Duty (INR)	Short levy of IGST Amount after Imposition of IGST (INR)
1	8947041 dt. 21.11.2028	1	84771000	1386050	103954	Taiwan (TW)	1490004	416903	75043
2	8947041 dt. 21.11.2028	2	84771000	1240150	93011	Taiwan (TW)	1333161	373018	67143
	Grand Total			2626200	196965		2823165	789921	142186

7. Relevant Legal provisions, in so far related to the facts of the case are as under:-

- a. *Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the Importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-*

“(i) The Importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed”.

- b. **NOTIFICATION No. 09/2016 – Customs (ADD) dated 15.03.2016-**

G.S.R. 305(E).- Whereas, in the matter of imports of all kinds of plastic processing machines or injection moulding machines, also known as injection presses, having clamping force equal to or more than 40

tonnes, and equal to or less than 3200 tonnes, used for processing or moulding of plastic materials (hereinafter referred to as the subject goods) falling under tariff item 8477 1000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from Chinese Taipei, Philippines, Malaysia or Vietnam (hereinafter referred to as subject countries) and imported into India, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 14/03/2014-DGAD, dated the 7th January, 2016 has come to the conclusion that-

.....

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

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

Sl.	Tariff Item	Description of Goods*	Specification	Country of origin	Country of	Producer	Exporter	Duty as
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No.					export			per centage of landed value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	84771000	Plastic processing machines or Injection moulding machines used for processing or moulding plastic materials	Clamping force equal to or more than 40 tonnes and equal to or less than 3200 tonnes	Chinese Taipei	Chinese Taipei	M/s Chen Hsong Machinery Chinese Taipei Co Ltd	M/s Asian Plastic Machinery Co Ltd	6.06%
2	-Do-	-Do-	-Do-	Chinese Taipei	Chinese Taipei	M/s Jon Wai Machinery Works Co Ltd	M/s Jon Wai Machinery Works Co Ltd	Nil
3	-Do-	-Do-	-Do-	Chinese Taipei	Chinese Taipei	Any combination other than the above		27.98%

c. Section 28 (4) of the Customs Act, 1962 provides that “Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or
- (b) any willful mis-statement; or
- (c) suppression of facts,

by the Importer or the exporter or the agent or employee of the Importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice”.

d. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been shortlevied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and

not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

e. SECTION 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable to confiscation: -

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act

f. SECTION 112. Penalty for improper importation of goods, etc. –

Any person, -

a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

g. *Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-*

114A - Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that

where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

8. It appeared that the Importer has willfully mis-stated the facts & did not pay the Antidumping duty and short levied total duty of Rs.9,32,107/- (ADD: 7,89,921/- + IGST: 1,42,186) imposable after Notification No. 09/2016- Customs (ADD) dated 15.03.2016 on the imported goods as mentioned in Para 6 above.

9. Whereas, it is apparent that the Importer was in complete knowledge of the correct nature of the goods, however, he did not pay the Antidumping duty leviable thereon. With the introduction of self-assessment under Section 17, more faith is bestowed on the Importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the Importer, has been entrusted with the responsibility to correctly self-assess the duty. Therefore, it appeared that the Importer has willfully violated the provisions of Section 17(1) of the Act in as much as Importer has failed to correctly self-assessed the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of Rs. 26,26,200/-, appeared liable for confiscation under Section 111(m) of the Customs Act, 1962.

10. It appeared that the Importer willfully did not pay the Antidumping Duty which resulted into short levy of duty. Further, it appeared that nonpayment of Antidumping Duty in respect of the Bill of Entry No. 8947041 dated 21.11.2018, has resulted into short levy of duty of Rs.9,32,107/- which is recoverable from the Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable

under Section 28AA of the Act. For such act of omission and commission, the Importer also appears to have rendered themselves liable to penalty under Section 112(a)(ii) or 114A of the Customs Act, 1962.

11. Accordingly, a Show Cause Notice No. CUS/APR/MISC/8310/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra dated 20.11.2023 was issued to M/s. Precision Tech Enterprises, Survey No. 76 & 79, Old 249 & 250, Mouje Chadasana, Taluka Becharaji, Mehesana, Gujarat - 384210 wherein M/s. Precision Tech Enterprises was called upon to show cause to the Additional Commissioner of Customs, Custom House, Mundra, having office at First Floor, Room No. 102, PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

- i. The goods having assessable value of Rs. 26,26,200/- (Rupees Twenty Six Lakhs Twenty Six Thousand Two Hundred only) imported vide bills of entry no. 8947041 dated 21.11.2018, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- ii. The differential duty worked out as Rs.9,32,107/- (Rupees Nine Lakhs Thirty Two Thousand One Hundred Seven Only) for bill of entry no. 8947041 dated 21.11.2018, should not be recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;
- iii. Penalty should not be imposed upon the importer under Section 114A of the Customs Act, 1962.

Record of WRITTEN SUBMISSION

12. Submissions made by M/s. Precision Tech Enterprises vide their letter dated 06.01.2024:

12.1 The noticee has submitted that they do not accept the allegation of short payment of duty, suppression of facts, misdeclaration etc. with an intent to evade Anti-dumping duty (ADD), levelled against them in the show cause notice in this case. They have submitted that they have correctly paid Anti-Dumping Duty of Rs. 1,71,083.80/- on assessable value of Rs. 26,26,200/- @6.06% as per serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016 as is clear from Bill of Entry no. 8947041 dated 21.11.2018. Accordingly, the noticee has submitted that

the allegation that they have not paid Anti-Dumping Duty is not correct. It appears that the allegation of non-payment of Anti-Dumping Duty has been levelled against the noticee without properly examining the said Bill of Entry and related assessment documents. Under these circumstances, the noticee has submitted that the allegation of non-payment of Anti-Dumping Duty in this case is not correct and is against the facts and documents on records.

12.2 Regarding calculation of Anti-Dumping Duty at higher rate of 27.98% as per serial no. 3 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016, the noticee has submitted that their imported "Injection moulding machine" is covered under serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016 as the particulars of producer, M/s. Chen Hsong Machinery Chinese Taipei Co. Ltd. and exporter, M/s. Asian Plastic Machinery Co. Ltd. have been clearly declared in Bill of Entry no. 8947041 dated 21.11.2018 as per import invoice no. 11718 dated 30.10.2018 and certificate of origin no. EA18KA06801-1 dated 09.11.2018. Accordingly, the noticee has submitted that their imported "Plastic Injection moulding machine" is correctly liable to Anti-Dumping Duty @6.06% under serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016. Therefore, the demand of Anti-Dumping Duty @27.98% under serial no. 03 of said notification is not correct and is against the documentary evidence in support of Anti-Dumping Duty @6.06% which has already been paid by the noticee at the time of Customs Clearance of the said imported goods.

12.3 Without prejudice to their contention that they have correctly paid the Anti-Dumping Duty in this case, the noticee submitted that they correctly declared all the relevant particulars like description, quantity, value and sub headings etc. including country of origin (Taiwan) in the Bill of Entry no. 8947041 dt. 21.11.2018 mentioned in the show cause notice. Accordingly, all the relevant particulars of imported goods were in the knowledge of the Customs Department at the time of the customs clearance/assessment of the said goods from the Bill of Entry no. 8947041 dt. 21.11.2018 involved in the show cause notice. But the customs officers while clearing/assessing the said goods against above mentioned BE did not point out or raise any query/objection regarding payment of Anti-Dumping Duty to be paid at a higher rate of 27.98% and the said goods were cleared by the customs on payment of Anti-Dumping Duty @6.06%.

Under these circumstances, demand of Anti-Dumping Duty of Rs. 9,32,107/- in this case after more than normal period of demand of 2 years from the date of clearance/assessment of impugned goods is not correct and is not sustainable. Therefore, the allegation of suppression of facts, misdeclaration etc. with an intent to evade duty against the noticee in the show cause notice is not correct. Therefore, the provision of extended period of demand under Section 28(4) of the Customs Act, 1962 are not applicale in this case. Accordingly, the entire demand of duty of Rs. 9,32,107/- in this case is hit by the bar of time. Hence, the noticee are not required to pay any time barred duty demand in this case. The noticee refer and rely on the following case laws in support of their contention that there is no suppression of facts, misdeclaration etc. in this case and accordingly, the extended period of demand is not applicable in this case.

(a). In *Rainbow Industry vs CCE- 1994 (74) ELT 3 (SC)* it has been held that two ingredients must be present- willful suppression, mis-declaration etc. and the intention to evade duty.

(b). In *Tamilnadu Housing Board's vs. CCE- 1995 (74) ELT 9 (SC)* it was held that the provision of extended period of demand is an exeptional power and hence need to be construed strictly. It was held that both fraud, collusion etc. and intension to evade duty/tax must concur.

In the view of the above, the noticee has submitted that there is no suppression of facts with intention to evade duty in this case and accordingly the issue of demand/show cause notice by invoking the provisions of extended period of demand is not correct, legal and justified.

12.4 In view of above submission, it is clear that there is no suppression, misdeclaration etc. with an intent to evade duty in this case. Therefore, proposal to impose penalty on the noticee is not justified in this case. The noticee refer and rely on the following decisions of the Honourable Supreme Court in this connection.

(i) In the case of *UOI vs Rajasthan Spinning and Weaving Mills-2009 (238) ELT 3 (SC)* it has been held that mandatory penalty applies only when the conditions spelt out under Section 11C of the Central Excise Act, 1944 are fulfilled. This decision is squarely applicable in this case as the provisions of Section 11C of the Central Excise Act, 1944 are similar to Section 28(4) of Customs Act, 1962.

(ii) The principle of law laid down in the above cited case has also been followed by the Hon'ble Supreme Court in the case of CCE vs India Aluminium- 2010 (259) ELT 12 (SC) wherein it has been held by the apex court that penalty under Section 11AC of the Central Excise Act, 1944 is punishment for an act of deliberate deception by the assessee with an intent to evade duty. In case of bonafide mistake, Section 11AC is not applicable.

In view of above facts and case laws, the noticee has submitted that the proposal to demand anti dumping duty along with interest by invoking provisions of extended period of demand and to impose penalty upon them in this case is not correct.

In view of above facts, submission and case laws, the noticee requested to drop proceeding initiated against the noticee in this case.

Record of PERSONAL HEARING

13. Following the principles of natural justice, opportunity of personal hearing was given to the noticee in the subject case. Shri Jatin Rajain, Authorized representative of M/s. Precision Tech Enterprises, appeared on behalf of the noticee to defend the case on 11.01.2024. Shri Jatin Rajain submitted that in their case, supplier as well manufacturer/producer are one and same and thus they are eligible for benefit of notification. He further submitted that they have correctly paid the duty and requested to drop the proceedings initiated in the show cause notice.

DISCUSSION & FINDING

14.1 I have carefully gone through the facts of the case, Show Cause Notice dated 20.11.2023, the noticees' submissions both, in written submitted vide letter dated 06.01.2024 and in person during personal hearing held on 11.01.2024.

14.2 The main issues involved in the case which are required to be decided in the present adjudication are as below:

- i. Whether the Serial No. iii of Table of Notification No. 09/2016-

Customs (ADD) dated 15.03.2016 on the goods is leviable and the differential duty worked out to ₹9,32,107/- for Bill of Entry no. 8947041 dt. 21.11.2018, is liable to be demanded and recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

- ii. Whether the importer is liable to penalty under Section 114A of the Customs Act, 1962.

14.3 The facts of the case are that noticee imported “THERMOPLASTIC INJECTION MOLDING MACHINE WITH DOUBLE TOGGLE CLAMING SYSTEM AND RELAVENT ACCESSORIES” vide Bill of Entry no. 8947041 dated 21.11.2018. The importer classified the said items under CTH 84771000 which is for Injection Moulding Machine. The goods were imported from Taiwan declaring the Country of Origin as Taiwan and the Country of export is also Taiwan.

14.4 As per the Notification No. 09/2016 – Customs (ADD) dated 15.03.2016 Anti-dumping duty was imposed on the import of “all kinds of plastic processing machines or injection moulding machines, also known as injection presses, having clamping force equal to or more than 40 tonnes, and equal to or less than 3200 tonnes”, used for processing or moulding of plastic materials (hereinafter referred to as the subject goods) falling under tariff item 84771000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from Chinese Taipei, Philippines, Malaysia or Vietnam and imported into India, at the rates to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (9) of the below Table.

Sl. No.	Tariff Item	Description of Goods*	Specification	Country of origin	Country of export	Producer	Exporter	Duty as per percentage of landed value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	84771000	Plastic processing machines or Injection moulding machines used for processing or moulding plastic materials	Clamping force equal to or more than 40 tonnes and equal to or less than 3200 tonnes	Chinese Taipei	Chinese Taipei	M/s Chen Hsong Machinery Chinese Taipei Co Ltd	M/s Asian Plastic Machinery Co Ltd	6.06%

2	-Do-	-Do-	-Do-	Chinese Taipei	Chinese Taipei	M/s Jon Wai Machinery Works Co Ltd	M/s Jon Wai Machinery Works Co Ltd	Nil
3	-Do-	-Do-	-Do-	Chinese Taipei	Chinese Taipei	Any combination other than the above		27.98%

14.5 In view of above, as per Table-1 of Notification No. 09/2016–Customs (ADD) dated 15.03.2016, Anti-dumping duty at the rate mentioned in column 9 of above Table is imposable on the import of “Injection Moulding Machine” classified under CTH 84771000 of the Customs Tariff Act, 1975 by CBIC originating in Chinese Taipei (Taiwan) and exported from the Chinese Taipei (Taiwan) as proposed in SCN.

14.6 The noticee vide their letter 06.01.2024 contended the allegation of short payment of duty, suppression of facts, misdeclaration etc. with an intent to evade Anti-dumping duty (ADD), levelled against them in the show cause notice in this case. They have submitted that they have correctly paid Anti-Dumping Duty of Rs. 1,71,083.80/- on assessable value of Rs. 26,26,200/- @6.06% as per serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016 as is clear from Bill of Entry no. 8947041 dated 21.11.2018. Further, the noticee has submitted that the allegation that they have not paid Anti-Dumping Duty is not correct and the allegation of non-payment of Anti-Dumping Duty has been levelled against the noticee without properly examining the said Bill of Entry and related assessment documents.

Further, the noticee has submitted that regarding calculation of Anti-Dumping Duty at higher rate of 27.98% as per serial no. 3 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016, the imported goods “Injection moulding machine” is covered under serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016 as the particulars of producer, M/s. Chen Hsong Machinery Chinese Taipei Co. Ltd. and exporter, M/s. Asian Plastic Machinery Co. Ltd. have been clearly declared in Bill of Entry no. 8947041 dated 21.11.2018 as per import invoice no. 11718 dated 30.10.2018 and certificate of origin no. EA18KA06801-1 dated 09.11.2018. Accordingly, the imported goods “Plastic Injection moulding machine” is correctly liable to Anti-Dumping Duty @6.06% under serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016. Therefore, the demand of Anti-Dumping Duty @27.98% under

serial no. 03 of said notification is not correct and is against the documentary evidence in support of Anti-Dumping Duty @6.06% which has already been paid by the noticee at the time of Customs Clearance of the said imported goods.

14.7 In this regard, I find that the Bill of Entry no. 8947041 dated 21.11.2018 has been verified in ICES and it has been found that Anti-Dumping Duty of Rs. 1,71,083.80/- has been levied in the said bill of entry and the same was paid by importer. In the department comment, it has been mentioned that "*inserted Notification No. 009/2016 for ADD*". In the view of the above, it is evident that noticee has paid the antidumping duty of Rs. 1,71,083.80/- @6.06% as per serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016 as is clear from Bill of Entry no. 8947041 dated 21.11.2018

14.8 Further, I find that in the Bill of Entry no. 8947041 dated 21.11.2018, the exporter is declared as M/s. Asian Plastic Machinery Co. Ltd.. Further, in the invoice no. 11718 dated 30.10.2018 uploaded in e sanchit, it has been mentioned that M/s. Asian Plastic Machinery Co. Ltd. is subsidiary of M/s. Chan Hsong Holding Ltd. and in the certificate of origin no. EA18KA06801-1 dated 09.11.2018 uploaded in e sanchit, it has been mentioned that machine manufacturer is M/s. Chen Hsong Chinese Taipei and its exported through M/s. Asian Plastic Machinery Co. Ltd.

14.9 From the above para, it is evident that as the exporter is M/s. Asian Plastic Machinery Co. Ltd. and producer is M/s. Chen Hsong Chinese Taipei and therefore, anti-dumping duty is leviable as per serial no. 1 of table to Notification No. 009/2016-Customs(ADD) dt. 15.03.2016 on the impugned goods imported vide Bill of Entry no. 8947041 dated 21.11.2018. Further I find that Sr.No. 3 of Table-1 of Notification No. 09/2016- Customs (ADD) dated 15.03.2016 is applicable for any combination other than serial no. 1 and 2, however, in the instant case, anti dumping duty is leviable as per serial no. 1 of table to Notification No. 009/2016-Customs(ADD) dt. 15.03.2016. It is apparent that the anti dumping duty amounting to Rs. 1,71,083.80/- @6.06% as per serial no. 1 of table to Notification No. 9/2016-Customs(ADD) dt. 15.03.2016 has already been paid. Thus I find that the demand of anti dumping duty amounting to Rs. 9,32,107/- as per sr. no. 3 of Table-1 of Notification No. 09/2016- Customs (ADD) dated 15.03.2016 does not survive.

14.10 The show cause notice also proposes confiscation of the goods under consideration. As per section 111(m) of the Customs Act, 1962, any goods which do not correspond in respect of value or in any other particular with the entry made under this Act are liable for confiscation. In this regard, it is evident that the noticee has correctly declared all the relevant particulars like description, quantity, value and sub headings etc. including country of origin (Taiwan) in the Bill of Entry no. 8947041 dt. 21.11.2018 and paid anti dumping duty as per serial no. 1 of table to Notification No. 009/2016-Customs(ADD) dt. 15.03.2016 accordingly. Thus, I find that the goods under consideration are not liable to confiscation under Section 111(m) of the Customs Act, 1962.

14.11 The show cause notice also proposes penalty on M/s. Precision Tech Enterprises under Section 114A of the Customs Act, 1962. Since the demand of anti dumping duty is not found to be sustainable, the imposition of penalty automatically fails to survive.

14.12 In view of the above, I find that the instant show cause notice dated 20.11.2023 is of no relevance now and deemed to be concluded abinitio as the payment of anti dumping duty amounting to Rs. 1,71,083.80/- leviable under serial no. 1 of table to Notification No. 009/2016-Customs(ADD) dt. 15.03.2016 has already been made before clearance of the goods.

ORDER

15. In view of foregoing discussion and findings, I pass the following order.

- i. I vacate the proceeding initiated against M/s. Precision Tech Enterprises vide Show Cause Notice No. CUS/APR/MISC/8310/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra dated 20.11.2023.
- ii. I drop the demand of antidumping duty of Rs.9,32,107/- (Rupees Nine Lakhs Thirty Two Thousand One Hundred Seven Only) for bill of entry no. 8947041 dated 21.11.2018 and consequently demand of penalty is also dropped.

16. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any

other law for the time being in force in the Republic of India.

1 7 . Show Cause Notice dated 20.11.2023 issued vide F. No.- CUS/APR/MISC/8310/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra is hereby disposed off in above terms.

Arun kumar
Additional Commissioner (Import)
Custom House, Mundra

To (Noticee),

M/s. Precision Tech Enterprises (IEC: 0596003722),
Survey No. 76 & 79, Old 249 & 250,
Mouje Chadasana, Taluka Becharaji,
Mehesan, Gujarat – 384210.

Copy to;

- i. The Deputy/Assistant Commissioner (RRA/TRC/EDI), Custom House, Mundra.
- ii. The Deputy/Assistant Commissioner (Group 5), Custom House, Mundra.
- iii. Guard File