I/1200300/2023

सत्यमेव जयते	**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS MUNDRA COMMISSIONERATE Custom House, Mundra (Kachchh) MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 PHONE No: 02838-271165/66/67/68, FAX No.02838-271169/62**	

A	**FILE NO.**	**GEN/ADJ/ADC/503/2023-ADJN.**
B	**DE-NOVO ORDER-IN-ORIGINAL NO**	**MCH/ADC/MK/44/2023-24**
C	**PASSED BY**	**MUKESH KUMARI, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.**
D	**DATE OF ORDER**	**15.05.2023**
E	**DATE OF ISSUE**	**22.05.2023**
F	**OIO NO & DATE OIA NO & DATE**	**MCH/ADC/SK/05/2021-2022 DATED 17.05.2021 MUN-CUSTM-OOO-APP-748-22-23 DATED 24.01.2023**
G	**NOTICEE / PARTY / IMPORTER**	**M/S PRINCE PIPES AND FITTINGS LTD., 8th FLOOR, THE RUBY TULSI PIPE ROAD, 29, SENAPATI BAPAT MARG, DADAR (W), MUMBAI – 400 028.**
H	**DIN NUMBER**	**20230571MO000000AE6D**

1. The Order – in – Original is granted to concern free of charge.

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

The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, Ahmedabad– 380009.

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.

4. Appeal should be accompained by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompained by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.

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

7. 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 or Penalty are in dispute, where penalty alone is in dispute.

THIS CASE HAS BEEN REMITTED BY THE COMMISSIONER (APPEALS) CUSTOMS, AHMEDABAD VIDE OIA NO. MUN-CUSTM-OOO-APP-748-22-23 DATED 24.01.2023 FOR ISSUANCE OF APPROPRIATE ORDER UNDER THE CUSTOMS ACT, 1962.

The Commissioner (Appeals) Customs, Ahmedabad Vide OIA No. MUN-CUSTM-OOO-APP-748–22-23 Dated 24.01.2023, Remitted the matter pertaining to the subject appeal to the proper officer, who shall examine available facts, documents submissions and issue speaking order afresh, as discussed above after following the principles of natural justice and adhering to the legal provisions. While passing this order, no opinion or views have been expressed on the merits of the dispute or the submission made by the appellant.

BRIEF FACTS OF THE CASE

2.1 M/s Prince Pipes and Fittings Ltd., 8TH Floor, The Ruby Tulsi Pipe Road, 29, Senapati Bapat Marg, Dadar (W), Mumbai – 400 028, filed two Bills of Entry bearing No. 3434911 and 3434947 both Dated 04.04.2021 through their Customs Broker M/s M. R. Shipping Private Limited, for clearance of 'PVC Resin SG 5' (Suspension Grade) having total assessable value of Rs.5,39,81,200/- classified under CTH 39041020 of the Customs Tariff Act, 1975 imported from China, covered under Invoice issued by M/s Sun Shine International Pvt. Ltd., Hong Kong.

2.2 Acting upon information regarding non payment or less payment of Anti Dumping Duty on products imported from China, SIIB, Customs, Mundra conducted examination of the cargo and during the course of examination it was revealed that thought in documents the name of manufacturer is shown as "M/s CNSG Jilantai Salt Chlori Alkali Chemical Co. Ltd.," but the name imprinted on the bags of the subject cargo is "M/s CNSG Jilantai Chlori-Alkali Chemical Co. Ltd.," and prima facie the importer has wrongly claimed the benefit of Sl. No. 1 of the Notification NO. 32/2019-Customs (ADD) Dated 10.08.2019 (USD @ 61.14 PMT) whereas liable to pay ADD as per Sl. No. 2 of the Notification NO. 32/2019-Customs (ADD) Dated 10.08.2019 (USD 147.96 PMT) result into less payment of ADD amounting to Rs.33,47,606/- and alongwith applicable SWS and IGST total short payment for Both the Bills of Entry worked out to Rs.39,50,176/-.

2.3 Importer vide letter Dated 17.04.2021 requested for waiver of SCN and PH in the matter.

2.4 Adjudicating Authority vide Order In Original Number MCH/ADC/SK/05/2021-22 Dated 17.05.2021, ordered to (1) re-assess the impugned goods imported vide Bills of Entry as with levy and payment of ADD as per Sl. No. 2 of the Notification No. 32/2019-Customs (ADD) Dated 10.08.2019 and recover differential duty under Section 17(5) of the Customs

Act, 1962 (2) Confiscated Goods and gave an option to pay Redemption Fine equal to the Differential Duty under Section 125 of the Customs Act, 1962 and (3) also imposed penalty of 10% of the Differential Duty under Section 112(a) of the Customs Act, 1962.

3.1. Being aggrieved with the, Order, Importer preferred an Appeal before the Hon'able Appellate Authority i.e. Hon'able Commissioner (Appeals), Customs, Ahmedabad, interalia, on the ground that, the Country of Origin Certificate and other Import Documents clearly mentione that the Goods are manufactured by "M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd.,"; that the adjudicating authority erred in holding that since the name of the producer printed on the bags of the subject cargo carrying impugned goods is other than the seven producers mentioned at Col. No. 6 of the Notification the Anti Dumping Duty on goods is payable in terms of Sl. No. 2 instead of Sl. No. 1 of the Notification; that the bags in which the goods were packaged inadvertently did not mention 'salt'; that the appellant vide letter dated 22.04.2022 specifically stated that they believe that Anti Dumping Duty on goods should be levied in terms of Sl. No. 1 of the Notification; that paid the differential duty under protest so that goods can be released and production of final product is not affected; that order passed by adjudicating authority is erroneous as it failed to take into cognizance of specific submissions and documentary evidences provided by the appellant; that the adjudicating authority erred in holding that the appellant has resorted to mis-declaration of goods; that all the conditions of the notification stood duly fulfilled and there is no case of mis-declaration and hence goods cannot be confiscated and redemption fine cannot be imposed; that there was no malafide intention on the part of the appellant.

3.2 On going through the submissions, Hon'able Appellate Authority (Commissioner (Appeals), Customs, Ahmedabad) remit the matter pertaining to the subject appeal to the proper officer, who shall examine available facts, documents, submissions and issue speaking order afresh, as discussed above after following the principles of natural justice and adhering to the legal provisions. While passing this order, no opinion or views have been expressed on the merits of the dispute or the submissions made by the appellant, which shall be independently examined by the proper officer.

WRITTEN SUBMISSION

4.1 Importer, vide their letter Dated 16.02.2023, received by this office on 23.02.2023 made further submission in the matter, wherein interalia,

submitted that, the company imported goods from China and filed Bills of Entry bearing No. 3434911 and 3434947 both Dated 04.04.2021 for clearance of goods, having total assessable value of Rs.5,39,81,200/- and declared Anti-Dumping Duty @ USD 61.14 PMT as per Sl. No. 1 of the Notification as the goods were manufactured by M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd., and originated and exported from China; SIIB, Customs, Mundra during the course of examination, observed that name imprinted on the bags is M/s CNSG Jilantai Chlori-Alkali Chemical Co. Ltd., and alleged that wrongly claimed the benefit of Sl. No. 1 of the Notification whereas liable for payment as per Sl. No. 2 of the Notification and worked out short payment of Duty; vide letter Dated 17.04.2021 submitted that ready to pay Differential Duty under Protest and also requested for waiver of Personal Hearing and Show Cause Notice in the matter; vide letter Dated 22.04.2021 interalia submitted that, there was an error in translation on the packing bags and the word “salt’ inadvertently missed out, supplier vide their letter clarified the same and requested for Speaking Order as it was believed that declaration under Sl. No. 1 was appropriate; thereafter, OIO was issued denying benefit of Sl. No. 1 of the Anti-Dumping Notification.

Further submitted that, from the plain reading of the Notification, it is evident that following conditions are to be satisfied in order to avail the benefit of Sl. No. 1 of the notification i.e. a) goods are required to be originating from People’s Republic of China; b) Goods are required to be exported from China; c) goods are required to be produced by the producers as specified under the notification; in the present case condition a) and b) of the notification stands fulfilled; dispute in the present case on condition c), in the COO issued by competent authority and other import documents it is mentioned that goods are manufactured by M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd., who is one of the manufactured of Sl. No. 1 of the Notification and they vide their letter dated NIL stated that the goods were manufactured by them; hence, condition c of the notification is also fulfilled in the present case, hence the company was right in declaring the Anti-Dumping Duty in terms of Sl. No. 1 of the Notification. And relied on various judgments in the matter in their favour.

4.2 Also submitted that, the Country of Origin certificate issued by the competent authority in China are proof enough of the veracity of goods being obtained from a particular manufacturer mentioned thereunder i.e. M/s

CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd.,; further submitted that when COO clearly reflects the correct name of the manufacturer then the benefit under Sl. No. 1 of the notification cannot be denied by relying on a completely non-relevant evidence i.e. the name mentioned on packing material of the goods imported.

Further submitted that in order to examine the veracity of the manufacturer, the relevant can only be placed on the COOs as it is issued by an independent Statutory Authority in China after rounds of due diligence which cannot be doubted without any concrete basis. In the present case, it is not in dispute that the Customs Department has accepted the COOs issued by the Competent Authority in China, accordingly, submitted that once the COOs have been accepted by the Customs Authority in India, the same stand proof enough regarding the goods being exported are produced by manufacturer mentioned therein, especially when there is no evidence produced by the Department to show that the goods are manufactured by some other manufacturer and not the one mentioned in the COOs. And relied on various judgments in the matter in their favour.

4.3 At the outset, it is submitted that the Customs Department till date did not conduct any investigation whatsoever to ascertain whether the manufacturer whose name was mentioned on the packing bag existed or not. Moreover, when the query was raised by the Department regarding mismatch of name on packing bag, the company immediately contacted their supplier and obtained clarification from the manufacturer that the discrepancy on the packing bag was nothing but the mentioning of brand name of the product instead of the manufacturer itself. It is submitted that once the company submitted the aforesaid clarification from the manufacturer burden of proof shifted on the Department. However, the Department neither disputed the aforesaid clarification obtained from the manufacturer not conducted any kind of investigation to ascertain the manufacturer of goods. And relied on various judgments in the matter in their favour.

4.4 Further, submitted that the substantial benefit of the notification can not be denied to the Company due to fault of the manufacturer; in the present case, the manufacturer itself clarified that it had printed the brand name instead of the manufacturer’s name on the packing bags, therefore the company cannot be held liable for the act done at the end of the manufacturer-exporter. Relied on Para 9 of judgement of Hon’able Hyderabad

Tribunal in case of M/s Riddhi Siddhi. Further submitted that, the intention of the Notification is to give benefit to the goods manufactured in China and imported in India from specified Seven Manufacturers listed under the Notification.

4.5 Further, submitted that the notification, itself nowhere provides for requirement regarding the packing bags of the goods carrying the name of the manufacturer in order to obtain benefit of Sl. No. 1 of the Notification. Accordingly, there is no statutory compulsion in the notification or any legal documents prescribed to identify the manufacturer by way of Packing Bag.

4.6 And requested that differential duty amount, fine and penalty imposed vide OIO be set aside.

PERSONAL HEARING

5. As directed in the said, O-I-A to follow the principles of natural justice and legal provisions, Personal Hearing was held in the matter.

5.1 Mr. Amit Laddha, Advocate; Mr. Savio K. Thomas, Sr. Managar and Mr/ Yogesh Patil, Managar, attended and during Personal Hearing further submitted summary of Citation of Various Judgments in their favor and reuttered the submission made in the matter vide their letter dated 16.02.2023 and requested to decide the matter on merit.

DISCUSSON & FINDING

6. I have carefully gone through the facts of the case, OIO, OIA issued for denovo adjudication, following the principles of natural justice and legal provisions of the law under Customs Act / Rules.

7. The case before me is to decide the applicability of the Correct Rate of Anti - Dumping Duty, based on the Documents made available in the matter, as per the Sl. No. of the Anti - Dumping Duty Notification No. 32/2019-Customs (ADD) Dated 10.08.2019 for import of PVC SG5 from China covered under Bill of Entry No. 3434911 and Bill of Entry No. 3434947 both Dated 04.04.2021.

8. Opportunity of Personal Hearing was offered and the same were held on Dated 14.03.2023, therefore, the principle of natural justice is being followed in the matter.

9. Gone through the letter Dated 16.02.2023 (received on 23.02.2023) issued by Importer, wherein, interalia submitted that, they Imported Consignment covered under Bill of Entry No. 3434911 and Bill of Entry No. 3434947 both Dated 04.04.2021 from China and correctly paid Duty including Anti Dumping Duty by claiming benefit of Sl. No. 1 of the Anti -

Dumping Duty Notification No. 32/2019-Customs (ADD) Dated 10.08.2019 as the goods were manufactured by M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd.,

10. Also gone through the Order issued by the then Additional Commissioner, and the Order issued by the Hon'able Commissioner (Appeals), Customs, Ahmedabad (being Appellate Authority) wherein, a) as per the impugned Order the name found imprinted on the bags of Imported Goods was "M/s CNSG Jilantai Chlori-Alkali Chemical Co. Ltd.," whereas the documents submitted by the appellant the name of the manufacturer was "M/ s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd.,"

11. On going through the Brief Facts of the case, submission made by the Importer it is seen that the Documents submitted for the goods imported are showing the name of manufacturer eligible for concessional rate of Anti Dumping Duty, whereas while conducting detailed Examination of the material packed in the Bags, no where it was mentioned that the Goods are being manufactured by the Exporter eligible for concessional rate of Anti Dumping Duty, in support of these, no concrete additional evidence is being made available base on which can be accepted that the stand taken by examination wing, department and adjudicating authority at relevant time were not acceptable.

12.1 On perusal of the Notification No. 32-2019-Cus(ADD) Dated 10.08.2019, it is mentioned that, "Whereas, the designated authority, vide notification No. 7/34/2018 DGTR, Dated the 29th October 2018 published in the Gazette of India, Extraordinary, Part I, Section 1, Dated the 29th October, 2018, had initiated the review in terms of Sub-Section (5) of Section 9A of the Customs Tariff Act, 1975 (51 to 1975) (hereinafter referred to as the Customs Tariff Act), and in pursuance of Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, in the matter of continuation of Anti-Dumping Duty on Imports of 'Homopolymer of Vinyl Chloride Monomer (Suspension Grade)' (hereinafter referred to as the subject good) failing under the heading 3904 of the First Schedule to the Customs Tariff Act, originating in, or exported from China PR, Thailand and United States of America (hereinafter referred to as the subject Countries), imposed vide Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 27/2014-Customs (ADD) Dated the 13th June, 2014; and whereas, the

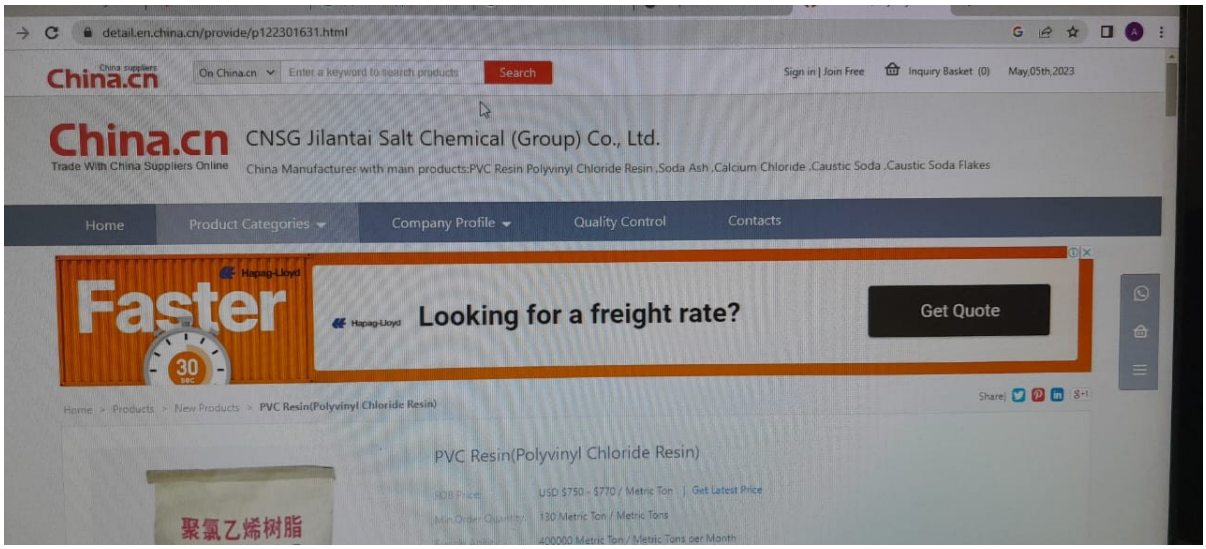
Central Government had extended the period of imposition of Anti-Dumping Duty on the subject goods, originating in or exported from the subject Countries upto and inclusive of the 12th Day of August, 2019 vide Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 23/2019-Customs (ADD), Dated the 11th June 2019, published in the Gazette of India, Extraordinary, part II, Section 3, Sub-Section (i), vide number G.S.R. 416 (E), dated the 11th June 2019; and whereas, in the matter of review of Anti-Dumping Duty on imports of the subject goods, originating in or exported from the subject countries, the Designated Authority in its final findings, published vide Notification F. No. 7/34/2018-DGTR, Dated the 18th July, 2019 published in the Gazette of India, Extraordinary, part 1, Section 1, Dated the 18th July 2019 has come to the conclusion and recommended continue imposition of the Anti-Dumping Duty and therefore, in exercise of the powers conferred by Sub Section (1) and (5) of Section 9A of the Customs Tariff Act, read with Rules 18 and 23 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.

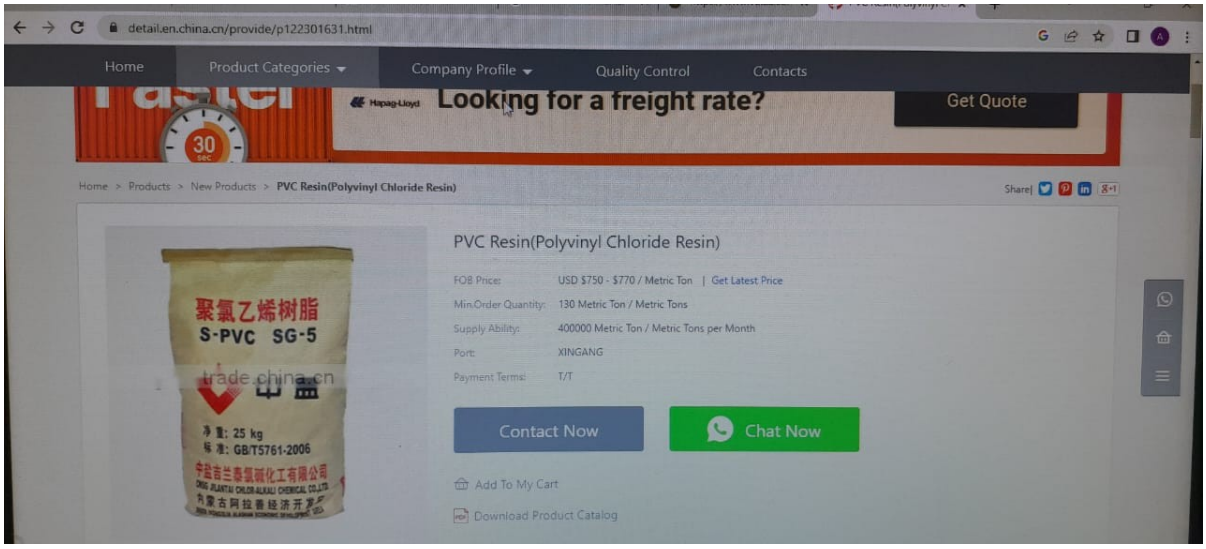
12.2 On going through the Review process being mentioned in the Final Findings by the said Competent Authority i.e. Directorate General of Trade Remedies under Ministry of Commerce and Industry, New Delhi, conducted sunset Review Investigation concerning importers of PVC Suspension Grade Resin from China PR, Thailand and USA, having regard to the Customs Tariff Act, 1975, as amended from time to time 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 and on conclusion of the same vide their Notification issued under F. No. 7/34/2018-DGTR Dated 18.07.2019, circulated their final findings in the matter, in para 33, Para 40, Para 48, Para 74, Para 104 of the Report the Competent Authority has considered the facts and issued finalized amount of Anti-Dumping Duty.

12.2.2 At Para 33 of the said Notification NO. 7/34/2018-DGTR Dated 18.07.2019 is relating to Determination of Export Price for China PR, wherein at (b) they considered the questionnaire submitted by the producers / exporters in present investigation, as, M/s CNSG Jilantai Salt Chlori-Alkali

Chemical Co. Ltd., (Producer) and related Exporter M/s CNSG Jilantai Salt Chemical (Group) Co. Ltd.,.

12.3. On surfing through the net it is found that M/s CNSG Jilantai Salt Chemical (Group) Co., Ltd., is selling their product PVC Resin (Polyvinyl Chloride Resin) with name imprinted on packing bag as MS/ CNSG Jilantai Chlori-Alkali Chemical Co., Ltd.,





12.4 Therefore, reasons to believe that, M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd., (Producer) and related Exporter M/s CNSG Jilantai Salt Chemical (Group) Co. Ltd., as per DGTR and M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd., (Manufacturer) and name imprinted on Bag as M/s CNSG

Jilantai Chlori-Alkali Chemical Co. Ltd., (para 12.3 supra) in the impugned Import, having inter relation and the Import is eligible for Concessional Anti Dumping Duty benefit as per Sl. No. 1 of the Notification No. 32/2019-Customs (ADD) Dated 10.08.2019.

13. Ongoing through the, Order In Original, Order In Appeal, Notification NO. 7/34/2018-DGTR Dated 18.07.2019 and based on which CBIC issued Notification No. 32/2019-Cus (ADD) Dated 10.08.2019 and also gone through the submission made by the noticee, I find that the producers / exporters in present investigation, as, M/s CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd., (Producer) and related Exporter M/s CNSG Jilantai Salt Chemical (Group) Co. Ltd., have no reason to doubt about the Name imprinted on Bag as M/s CNSG Jilantai Chlori-Alkali Chemical Co. Ltd., that the same is not owned by them and the benefit of Sl. No. 1 of Notification No. 32/2019-Cus (ADD) Dated 10.08.2019 can be denied.

14. In view of the foregoing discussion and findings, the directions by the Appellate Authority to adjudicate the case afresh, I find it is quite bonafide to accept and allow the benefit of concession Anti-Dumping Duty at mentioned Sl. No. 1 of the Notification No. 32/2019-Cus (ADD) Dated 10.08.2019 as declared by the Importer and Requested to accept the same, and thus, I pass the following order :-

ORDER

I find that the Demand raised vide Order In Original No. MCH/ADC/SK/05/2021-2022 DATED 17.05.2021 is not sustainable, under the circumstances I ordered to drop the Demand Raised through Order In Original No. MCH/ADC/SK/05/2021-2022 DATED 17.05.2021.

This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

(MUKESH KUMARI)
ADDITIONAL COMMISSIONER,
CUSTOMS HOUSE, MUNDRA.

F. No. GEN/ADJ/ADC/503/2022-ADJN. **Date : .05.2023.**

To,
M/S PRINCE PIPES AND FITTINGS LTD.,

I/1200300/2023

8th FLOOR, THE RUBY TULSI PIPE ROAD,
29, SENAPATI BAPAT MARG, DADAR (W),
MUMBAI – 400 028.

Copy to :-

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra
2. The Deputy Commissioner of Customs (TRC/EDI), Custom House, Mundra
3. The Deputy Commissioner of Customs (Gr. II), Custom House, Mundra
4. Guard File.

Azadi Ka Amrit Mahotsav

G20 भारत 2023 INDIA

वसुधैव कुटुम्बकम्
ONE EARTH • ONE FAMILY • ONE FUTURE

Signed by
Mukesh Kumari
Date: 22-05-2023 18:37:57