
 <p style="text-align: center;">OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS MUNDRA COMMISSIONERATE Custom House, Mundra (Kachhh) MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 PHONE No: 02838-271165/66/67/68, FAX No.02838-271169/62</p> 		
सत्यमेव जयते		
A	FILE NO.	GEN/ADJ/ADC/514/2023-ADJN.
B	DE-NOVO ORDER- IN- ORIGINAL NO	MCH/ADC/MK/119/2023-24
C	PASSED BY	MUKESH KUMARI, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	21-07-2023
E	DATE OF ISSUE	21-07-2023
F	OIA NO & DATE	MUN-CUSTM-OOO-APP-743-22-23 DATED 24.01.2023
G	NOTICEE / PARTY / IMPORTER	M/S AKSHIT PETROCHEM PVT. LTD., KHASRA NO. 106/246, VILL. : KHERA KALAN, NEW DELHI – 110 082.
H	DIN NUMBER	20230671MO0000222B5E

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 accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied 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-743-22-23 DATED 24.01.2023 FOR ISSUANCE OF APPROPRIATE ORDER UNDER THE CUSTOMS ACT, 1962.

BRIEF FACTS OF THE CASE :

This Case Has Been Remitted by The Commissioner (Appeals) Customs, Ahmedabad Vide OIA No. MUN-CUSTM-OOO-APP-743-22-23 dated 24.01.2023 for Issuance Of Appropriate Order Under the Customs Act, 1962 after following the principles of natural justice and adhering to legal provisions.

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On going through the Order in Appeal, found that,

2.1 M/s Akshit Petrochem Pvt. Ltd., Khasra No. 106/246, Vill. Khera Kalan, New Delhi – 110 082, (herein after referred as Importer) imported “PVC Resin SG5 (Suspension Grade) (T.I. 3904 1020) vide Bills of Entry Number 3350953 and 3351255 both dated 30.03.2021, (herein after referred as impugned Bills of Entry) which interalia, attracted anti-dumping duty in terms of Notification No. 32/2019-Customs (ADD) dated 10.08.2019. The Importer self-assessed the same by declaring Anti-Dumping Duty in terms of Sl. No. 1 of the said Notification. The SIIB Officers of Customs, Mundra, acting on some information about improper levying of anti-dumping duty by some importers, examined the carog and found that the anti-dumping duty was not paid correctly as per Notification 32/2019-Cusotoms and that the importer had wrongly claimed that the anti-dumping duty at the rate of USD 61.14 PMT in terms of Sl. No. 1 of the Notification, instead of they being liable to pay anti-dumping duty at the rate of USD 147.96 PMT in terms of Sl. No. 2 of the notification.

2.2 As the name of the manufacturer was not available on bags of PVC, it appeared that the producer of the imported goods was other than the seven producers mentioned at Sl. No. 1 of the Notification and that they are liable pay anti dumping duty at the rate of USD 147.96 PMT in terms of Col. No. 6 of the SL. No. 2 of the notification. When this was brought to the notice of the Importer i.e. the appellant, they vide letter dated 07.04.2021 informed SIIB that they are ready to pay the differential duty and that they do not want Show Cause Notice and Personal Hearing. The adjudicating authority accordingly passed the order wherein he:

1. Ordered to re-assess the goods at higher rate of ADD as per Sl. No. 2 of the Notification and to recover the differential duty before clearance of goods;
2. confiscated the goods, valued at Rs.4,78,68,210/- under Section 111 (m) of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine equal to the differential duty; and
3. imposed a penalty of 10% of the differential duty under Section 112 (a) of the Customs Act, 1962.

2.3 Being aggrieved with the impugned order, the appellant has filed appeal, wherein, they interlia, submitted that, the adjudicating authority erred in confirming the anti dumping duty at higher rate without holding anywhere that the goods were not produced by Xinjiang Shengxiong Chlor-Alkali Co., Ltd.; without holding that the declarations made by the supplier on invoice, packing list and certification of origin to the effect that the goods were produced by Xinjiang Shengxiong Chlor-Alkali Co., Ltd., suffered from any inaccuracy or were false so as to arrive at a conclusion that the goods were produced by any other producer.

Appellant has further stated that they filed the bill of entry on the basis of documents received from the overseas supplier and the adjudicating authority has erred in holding that the appellant deliberately and intentionally misdeclared the name of the producer and thereby confiscating the goods under Section 111(m); that when the adjudicating authority has not found the declaration made by the supplier on various documents that the goods were produced by Xinjiang Shengxiong Chlor-Alkali Co., Ltd., to be incorrect or false, there is no question of mis-declaration and imposition of fine in lieu thereof and imposition of penalty under section 112(a) of the Customs Act, 1962; that moreover, it is nowhere held that the goods were produced by any

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other producer; Appellant has further submitted that they filed the Bill of Entry on the basis of documents received from the overseas supplier and hence, imposition of fine equal to differential anti-dumping duty is extremely harsh and incommensurate with the offence, if any. Appellant has added that anti-dumping duty is duly paid and hence, there is no question of profiting by the appellant; that on the contrary, by recovering the differential anti-dumping duty, that was otherwise not chargeable, the appellant has been put to loss and hence, no redemption could have been lawfully imposed on the appellant. They also submitted that the appellant was incurring heavy demurrage and ancillary charges and hence vide letter dated 14.04.2021, they inform the department that they were depositing higher anti-dumping duty, fine and penalty under protest.

3. Also gone through the findings of the Hon'ble Commissioner (Appeals), wherein, it is interalia, observed that, the contention of the appellant is that the supplier has made declaration on the import documents that the said goods were produced by Xinjiang Shengxiong Chlor-Alkali Co., Ltd., and that the adjudicating authority has not found the same as incorrect or false. I find that, the adjudicating authority has observed in the impugned order that after the examination of goods, the appellant vide letter dated 07.04.2021 accepted that the manufacturer's name is not available on the bags of PVC as per manufacturer / producer – exporter combination of Notification. However, adjudicating authority has not given any reasoning that how the non-mentioning of name of manufacturer on the bags of imported goods would prove that the manufacturer of imported goods is other than the seven manufacturers mentioned at Sl. No. 1 of the Notification, which makes the impugned order a non speaking one; also found that the appellant had waived the show cause notice and personal hearing and there is no reference in the impugned order of any defence submissions in the matter; since the appellant has raised various grounds in the appeals and since these grounds have been raised for the first time before the appellant authority, adjudicating authority had no occasion to consider the same. Moreover, the appeals were sent to the adjudicating authority for his comments on the grounds raised in appeals, but there has been no response. Hence, remitting the case has become sine qua non to meet the ends of justice and on relying on the various judgments; remit the matter pertaining to the subject appeal to the proper officer, who shall examine available facts, documents, submissions and issue speaking orders afresh, as discussed, 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.

4. PERSONAL HEARING

Personal Hearing in respect of the impugned Order in Appeal dated 24.01.2023, was fixed on 11.04.2023, 27.04.2023 and 01.06.2023, but the noticee had not turned up to attend the Hearing as well as failed to submit their defence reply with supporting documents.

5. DISCUSSION & FINDING

5.1. I have carefully gone through the facts of the case, OIA dated 24.1.2023 passed by the Appellate Commissioner remitting the case back for examining the available facts,

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documents, submissions and for issuance of speaking order afresh, as discussed in the OIA, after following the principles of natural justice and adhering to the legal provisions.

5.2 I have carefully gone through the facts of the case. I find that Copy of the impugned Order in Appeal was addressed to the Noticee as well as their Advocate and Consultant which were sent through RPAD by Hon'ble Commissioner Appeals Office. Despite sufficient time provided to the importer for filing their defense submissions, they have not come up with any arguments/contentions supporting their case. Personal hearings were granted to the importer on so many occasions as detailed in the foregoing para. Despite the offer of personal hearing, the importer have neither appeared for any of the hearing nor did they file any submissions till now. I observe that following the principles of natural justice enough opportunities have been provided to the importer. I am bound by the statutory provisions of Section 122A of the Customs Act, 1962 and have accordingly, discharged my responsibility by providing sufficient opportunities of being heard to the importer. The adjudication proceedings cannot wait till the importer makes it convenient to file their defense submissions or appear for the personal hearing offered to them. Therefore, I take up the adjudication of this case, *ex-parte*, on merits and on the basis of facts available on record.

5.3 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 Impugned Bills of Entry filed by the Importer.

6 . Matter under dispute is that, the goods i.e. PVC Resin SG5 imported from China attracts Anti-Dumping Duty as per the Notification No. 32/2019-Customs (ADD) dated 10.08.2019, and as per the Notification at Sl. No. 1 the rate of Anti Dumping Duty is prescribed in respect of PVC Resins supplied by listed / mentioned Seven Exporters from Republic of China to India at the rate of USD 61.14 PMT and at Sl. No. 2 of the said Notification, for all other exporters from Republic of China to India attracts Anti Dumping Duty @ USD 147.96 PMT. In the impugned case the Documents so made available show that the goods being manufactured by Xinjiang Shengxiong Chlor-Alkali Co., Ltd., but the Officer while examining the Goods found NO NAME OF MANUFACTURER on the Packing Bags carrying the Imported Goods.

Therefore, the Department took a stand to demand Anti Dumping Duty as per Sl. No. 2 of the Notification, whereas the Importer, agreed to the fact that no name is imprinted on Packing Bags but as the Documents made available by the Exporter shows name of manufacturer as Xinjiang Shengxiong Chlor-Alkali Co., Ltd., and accordingly the applicable Anti Dumping Duty would be as per Sl. No. 1 of the Notification.

7.1 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),

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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€, 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.

7.2.1 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.

7.2.2 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 (g) they considered the questionnaire submitted by the producers / exporters in present investigation, as, M/s "Xinjiang Shengxiong Chlor Alkali Co. Ltd.," (Producer) and M/s "Xinjiang Zhongtai Chemical Co. Ltd.," (Exporter).

7.2.3. Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 23 of the Customs Tariff

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(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, falling under the heading 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 (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (7) in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8) of the said Table. Accordingly, there are two rates of Anti Dumping Duty for Import of impugned Goods from Republic of China to India viz. @ 61.14 USD PMT in respect of goods Produced by listed 7 Exporters and for all other producers it is @ 147.96 USD PMT.

7.3 From this it is clear that the Rate of applicability of Anti Dumping Duty on import of Impugned Goods from Republic of China is being imposed based on the Producer. Therefore, the name of the Producer plays a vital role.

8. Impugned Bills of Entry were filed by the Importer as per the provisions of Section 17(1) of the Customs Act, 1962. Therefore, onus lies with the Importer to self-assess the duty and to establish and prove the facts.

9. The importer agreed & admitted to the fact that the name of Producer of the Goods has not been imprinted on the Packing Bags. The doubt was raised by the officer and ample opportunities were given at relevant time to support their case, but they merely relied on the Documents made available by the Exporter (Trader).

10. Since the Goods have been Out Charged and not available for Physical Verification, acceptance of the facts at relevant time by the Importer that no name of Producer is available on the Goods but is available in the Documents; as per the Notification, concession rate of Anti Dumping Duty is available based on who is the producer of the Goods so Exported from Republic of China. Onus of proof lies with the Importer. Appellant importer failed to make available the submissions made before the Hon'ble Appellate Authority. Therefore, neither new documents have been made available to me by the Importer in support of their claim nor have they attended the Personal Hearing.

11. In view of the foregoing discussion and findings, the directions by the Appellate Authority to adjudicate the case afresh have been complied by me. However, I find that nothing has changed from the Preliminary Adjudicating Order issued by the then Authority vide OIO No. MCH/ADC/SK/36/2021-22 Dated 30.06.2021. I find that the Demand raised vide Order In Original No. MCH/ADC/SK/36/2021-22 dated 30.06.2021 is True, Fair and Correct as per the provisions of the Customs Act, 1962 and does not require any interference / change, under the circumstances. I don't find it necessary to interfere in the matter and uphold the demand, confiscation of goods and imposition of penalty as ordered vide Order In Original No. MCH/ADC/SK/36/2021-22 dated 30.06.2021.

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12. Accordingly, I pass the following order :

ORDER

1. I order to re-assess the goods at higher rate of ADD as per Sl. No. 2 of the Notification 32/2019-Customs (ADD) dated 10.08.2019 and to recover the differential duty before clearance of goods and appropriate the amount of Duty paid by the Importer while obtaining Out of Charge;
2. I order to confiscate the goods, valued at Rs.4,78,68,210/- under Section 111(m) of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine equal to the differential duty and appropriate the amount of Redemption Fine paid by the Importer while obtaining Out of Charge
3. I impose a penalty of 10% of the differential duty under Section 112 (a) of the Customs Act, 1962 and appropriate the amount of Penalty paid by the Importer while obtaining Out of Charge.

13. 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.

CUSTOMS HOUSE, MUNDRA.

To,
M/S AKSHIT PETROCHEM PVT. LTD.,
KHASRA NO. 106/246,
VILL. : KHERA KALAN,
NEW DELHI – 110 082.

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.



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