

I/1200294/2023

 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/45/2023-24
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/06/2021-2022 DATED 17.05.2021 MUN-CUSTM-OOO-APP-749-22-23 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	20230571MO000000D613

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.

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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-000-APP-749-22-23 DATED 24.01.2023 FOR ISSUANCE OF APPROPRIATE ORDER UNDER THE CUSTOMS ACT, 1962.

The Commissioner (Appeals) Customs, Ahmedabad Vide OIA No. MUN-CUSTM-000-APP-749-22-23 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 Bill of Entry No. 3775865 Dated 30.04.2021 through their Customs Broker M/s M. R. Shipping Private Limited, for clearance of 'PVC Resin SG 5' (Suspension Grade) having total declared assessable value of Rs.4,00,73,095/- and total accepted assessable value of Rs.4,85,37,168/- classified under CTH 39041020 of the Customs Tariff Act, 1975 imported from China, covered under Invoice issued by M/s "Xinjiang Zhongtai Chemical Co. Ltd., China."

2.2 Appellant filed the impugned bill of entry for clearance of 'PVC Resin SG 5' (Suspension Grade) classified under CTH 39041020 of the Customs Tariff Act, 1975 imported from China, which, interalia, attracted Anti-Dumping Duty in terms of Notification No. 32/2019-Customs (ADD) Dated 10.08.2019.

Prior to the aforementioned Bills of Entry the importer had filed two bills of Entry No. 3570115 and 3570118 both Dated 15.04.2021 and self-assessed the same claiming declaring the Anti-Dumping Duty at the rate of USD 61.14 PMT on the said goods leviable in terms of Sl. No. 1 of the Notification NO. 32/2019-Customs (ADD) Dated 10.08.2019 as the goods manufactured by M/s "Xinjiang Shengxiong Chlor Alkali Co. Ltd.," one of the seven producers mentioned at Sl. No. 1 of the Notification. However, on examination of the goods by the Officers, the bags containing the goods were

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found to be imprinted with the name “M/s Zhongtai Chemical” and on that basis said self-assessment was not found acceptable to the department and accordingly re-assessed the Bills of Entry at higher rate of USD 147.96 PMT leviable in terms of Sl. No. 2 of the said Notification and issued a Speaking Order.

2.3 In reply to the query raised before assessment, vide their letter Dated 04.05.2021 (uploaded in EDI System through IRN 2021050500057784) interalia, conveyed that considering past experience and urgent need of the Material, paying ADD as per Sl. No. 2 of the Notification No. 32/2019-Customs (ADD) Dated 10.08.2019.

2.4 Further, uploaded the copy of Certificate (IRN 2021043000077221) issued by the Manufacturer interalia, mentioning that, due to typographical error the Marking on Packaged Bag imprinted as M/s “Xinjiang Shengxiong Ghlor Alkali Co. Ltd.,” instead of M/s “Xinjiang Shengxiong Chlor Alkali Co. Ltd.,”. Duty payment were made on 05.05.2021 and Out of Charge obtained on 05.05.2021.

3.1 Being aggrieved, with the impugned assessment, the appellant has filed this appeal, the appellant has, interalia, submitted they paid higher anti-dumping duty only to avoid delay in clearance of goods; the import documents clearly mentioned that the goods are manufactured by M/s “Xinjiang Shengxiong Chlor Alkali Co. Ltd.,” who is one of the manufacturers specified under Serial No. 1 of the Notification No. 32/2019-Customs(ADD) Dated 10.08.2019 and therefore Anti-Dumping Duty is payable in terms of SL. No. 1 of the Notification and not in terms of Sl. No. 2 of the notification; that the supplier provided a certificate stating that the goods were manufactured by M/s “Xinjiang Shengxiong Chlor Alkali Co. Ltd.,” and owing to typographical error, it was wrongly mentioned as M/s “Xinjiang Shengxiong Ghlor Alkali Co. Ltd.,”; that “Zhongtai Chemical” is the brand name of the product manufactured by M/s “Xinjiang Shengxiong Chlor Alkali Co. Ltd.,” and the same was depicted on the bags of the imported goods.

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

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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, reiterated the submission made before the Hon'able Appellate Authority and mentioned in the impugned Order in Appeal issued by the Hon'able Commissioner (Appeals), Customs, Ahmedabad.

4.2 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 Xinjiang Shengxiong Chlor Alkali Co. Ltd., who is one of the manufacturers 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.

4.3 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 Xinjiang Shengxiong Chlor Alkali 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

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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 nor 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.

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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 Personal Hearing 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. I have to take the decision on the matter (1) the Value loaded during the Assessment and (2) to decide the applicability of the Correct Rate of Anti - Dumping Duty, In the impugned Bill of Entry, 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. 3775865 Dated 30.04.2021, Documents submitted for the goods imported are showing the name of manufacturer M/s "Xinjiang Shengxiong Chlor Alkali Co. Ltd.," eligible for concessional rate of Anti Dumping Duty whereas the name imprinted on the bags of Imported Goods was M/s "Xinjiang Shengxiong Ghlor Alkali Co. Ltd.,".

8. Opportunity of Personal Hearing was offered and the same were held in the matter and were attended by the Noticee as well as their Advocate / Consultant / Adviser, therefore, the principle of natural justice is being followed in the matter.

9. On the matter relating to, matter (1) Value Load,

I found that, Value was loaded with the consent of the Importer and Importer does not have defended the during the process, hence, reasons to believe that, Importer is not having any grievance with the same and therefore, not discussing or deciding during this Process.

10. On the matter relating to, (2) Rate of Anti-Dumping Duty to be assessed in the impugned Bill of Entry as per Notification No. 32/2019-Customs (ADD) Dated 10.08.2019,

10.1 Gone through the letter Dated 16.02.2023 (received on 23.02.2023) issued by Importer, wherein, interalia submitted that, they

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Imported Consignment covered under Bill of Entry No. 3775865 Dated 30.04.2021 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 Xinjiang Shengxiong Chlor Alkali Co. Ltd.,

10.2 Also gone through the, reply to the query raised before assessment, vide their letter Dated 04.05.2021 IRN uploaded in EDI System through IRN 2021050500057784 interalia, conveyed that considering past experience and urgent need of the Material, paying ADD as per Sl. No. 2 of the Notification No. 32/2019-Customs (ADD) Dated 10.08.2019.

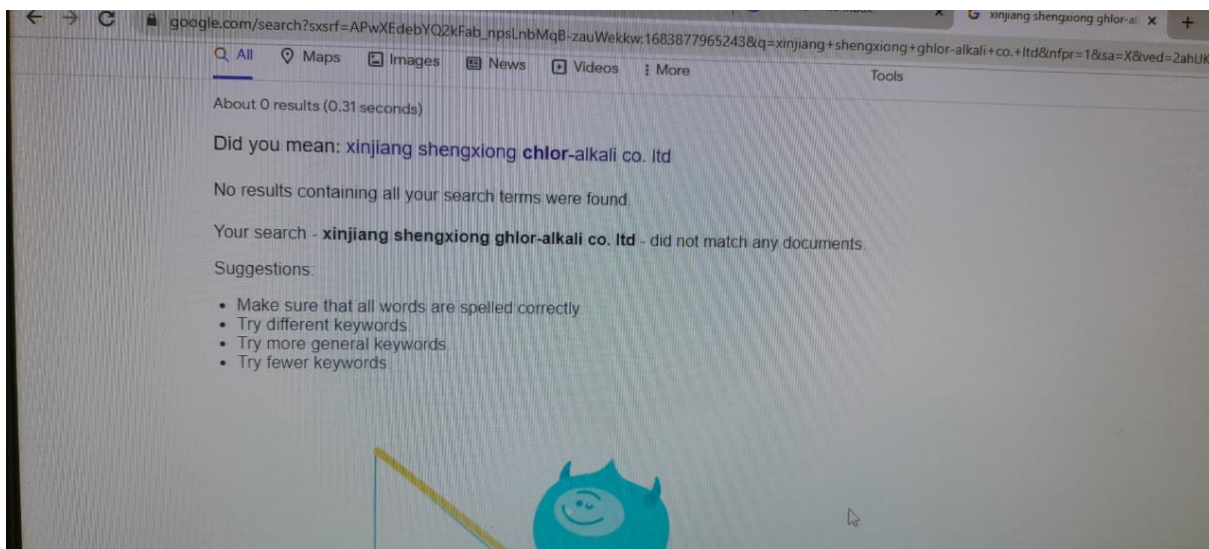
10.3 Also gone through, the copy of Certificate issued by the Manufacturer interalia, mentioning that, due to typographical error the Marking on Packaged Bag imprinted as M/s "Xinjiang Shengxiong Ghlor Alkali Co. Ltd.," instead of M/s "Xinjiang Shengxiong Chlor Alkali Co. Ltd.," uploaded vide IRN 2021043000077221.

10.4 Also gone through 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 "Xinjiang Shengxiong Ghlor Alkali Co. Ltd.," whereas the documents submitted by the appellant the name of the manufacturer was instead of M/s "Xinjiang Shengxiong Chlor Alkali Co. Ltd.,"

10.5 Also gone through the Declaration given by the Exporter, wherein, interalia, mentioned regarding Typographical Error regarding name of the manufacturer imprinted on the Bag as M/s "Xinjiang Shengxiong Ghlor Alkali Co. Ltd.," instead of M/s "Xinjiang Shengxiong Chlor Alkali Co. Ltd.," the same were uploaded through IRN before assessment of the Bill of Entry and obtaining Out of Charge, the same were not objected by the Department, therefore, reasons to believe that the explanation given by the Exporter as well as Importer regarding said typographical error was considered and accepted at relevant time.

10.6 Also made an effort to search through Google for M/s "Xinjiang Shengxiong Ghlor Alkali Co. Ltd.," and found as

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Therefore, reasons to believe that, such named unit does not exist and non existence of the Unit, whose name was imprinted on the Bags carrying goods Imported from Peoples' Republic of China, be considered to be as Typographical Error.

10.7 From all the above submissions, I am of the view that, the Documents submitted for the goods imported are showing the name of manufacturer M/s "Xinjiang Shengxiong Chlor Alkali Co. Ltd.," eligible for concessional rate of Anti Dumping Duty whereas the name imprinted on the bags of Imported Goods was M/s "Xinjiang Shengxiong **G**hlor Alkali Co. Ltd.," are bonafide mistake and for this the major benefit i.e. imposition of Anti Dumping Duty @ 147.96 USD PMT as against @ 61.14 USD PMT, can't be denied.

11. 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 order to 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 for the goods imported from China covered under Bill of Entry No. 3775865 Dated 30.04.2021.

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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.
.05.2023.

Date :

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



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