	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	
	A	File No.
B	Order-in-Original No.	MCH/ADC/AK/105/2019-20
C	Passed by	Shri Ajay Kumar, Additional Commissioner of Customs, Custom House, Mundra
D	Date of Order	03.02.2020
E	Date of Issue	03.02.2020
F	SCN NO. & Date	SCN waived vide request letter dated 10.01.2020
G	Noticee / Party / Importer / Exporter	M/s. Mingchen Plastic Technology Private Limited, Tower B, 507, Pioneer Urban Square, Sector-62, Gurugram, Haryana-122001

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

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

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:

“सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रमरोड़, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश 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/- रुपये 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 accompany 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 मद्र सं-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, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क 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.

Sub: M/s. Mingchen Plastic Technology Private Limited, Haryana having IEC Code No.

AAMCM8029Q has filed B/E No. 5666874 dtd. 13.11.2019 and have mis-declared the cargo.

BRIEF FACTS OF THE CASE

M/s. Mingchen Plastic Technology Private Limited, 507, Tower B, Pioneer Urban Square, Sector-62 Gurugram, Gurgaon, Haryana-122001, India holding IEC No. AAMCM8029Q (hereinafter referred as the Importer) had filed Bill of Entry No. 5666874 dated 13.11.2019 for clearance of Moulding Machine -Model No: PD600, Moulding Machine - Model No. - YC220, Grinder, Griner Knife Set, Charging Basket, Vertical Mixing Bucket, Horizontal Mixing Bucket, Cooling Tower, Suction Machine, Compressor, Vacuum Cleaner, PU Tube, Scale, Mould, Small Hoisting Gear, Working Table & PP Plastic particlesthrough Customs Broker M/s. Unnati Cargo, Mundra. The Bill of Lading No. COAU7086161790 dated 21.10.2019 declared the Gross Weight as 38020.00 Kg and port of loading mentioned is Shekou, China. The invoice No. MC1901 dated 25.10.2019 declared total invoice value as USD 14,243/-.

1.1 During the course of assessment, it is observed that the item No. 1 & 2 (Injection Moulding Machines) falling under CTH 84771000 attract ADD @29% of the landed cost, if the same are having clamping force "equal to or more than 40 Tonnes and equal to or less than 1000 Tonnes" if imported from China under Notification no 57/2015-Cus(ADD) dated 04.12.2015. Whereas it was observed that the importer had not neither imposed the ADD in self-assessment nor they had declared the clamping force of the moulding machines.

1.2. Whereas the importer was asked for the details /declaration regarding the clamping force of the Moulding Machines being imported. In reply to the same, the importer stated that the Tonnage of the Machines were 600 Tonnes and 220 Tonnes respectively for item no 1 and Item no 2 of above mentioned Bill of Entry. From their submission, it appears that the goods i.e. the moulding machines imported through the above BE attract ADD @ 29% of the landed cost under the provisions of Section 9A of the Customs Tariff Act, 1975, read with the Notification No. 57/2015-Cus (ADD) dated 04.12.2015, under serial no 1 of the table of the said notification.

1.3 Whereas, it further appears that the values declared by the importer were grossly undervalued. The value of the moulding machines as declared by the Importer in the BE were USD 6318/- (Rs 460013.58) for item no 1 and USD 2890/- (Rs 210420.90) for item no 2. It is seen that the weight of the machines, as per the packing list uploaded by the importer in the system was 24000kgs and 10000 kgs respectively. On being enquired about the low values of the machines, Importer uploaded a letter dated 26.11.2019 in e-sanchit, requesting that the BE may be allowed for First Check and that they were ready for the valuation regarding survey by the Chartered Engineer Agency. Accordingly, the goods were ordered for first check examination on 28.11.2019.

1.4. Whereas the importer submitted another letter dated 30.11.2019 wherein they submitted that as they were having long term relationship with the supplier and that they had been given best prices but the department may put the value of the goods between 45-50 lakhs and that they would pay all the duties & taxes. On being called for further documents, the importer submitted letter dated 12.12.2019 and enclosed a transaction advice, proforma

invoice and commercial invoice. The importer in its letter stated that they had earlier purchased machines from the same company for another location outside India and that those machines had come with some technical fault and in order to compensate the previous fault of the machine, Supplier had adjusted the amount of purchase of these machines for India and had given trade discount of USD 56,479/- and therefore their invoice was having low prices.

1.5 Whereas it appears that as per the second invoice (Parallel Invoice No. MC1901 dated 25.10.2019) submitted by the importer the actual invoice price for the item No. 01 & 02 is as mentioned below.

S. No.	Item No	Price Declared in BE/uploaded Invoice No. MC 1901 dated 25.10.2019	Price as per Revised Invoice Without Discount under Parallel Invoice No. MC1901 dated 25.10.2019
1	01 (Model No. PD600 Moulding Machine)	USD 6,318/-	USD 43,970/-
2	02 (Model No. YC220 Moulding Machine)	USD 2,890/-	USD 21,717/-

1.6 Whereas it appears that the importer has uploaded one invoice in the e-sanchit having number MC1901 dated 25.10.2019 showing the value of the consignment as USD 14243/- whereas during the further enquiry they submitted another invoice having same number showing the value of the goods as USD 70,722/- with a discount of USD 56,479/- on the invoice price.

1.7 Whereas it appears from the submissions of the importer that the discount granted to them is not a discount given as a normal trade practice but it may be a compensation of some faulty machines supplied to them at some other location outside India, as narrated by the importers, (No documentary evidences are submitted for their claim) and as such the discount given is not a discount but may be an adjustment of the sum due towards the supplier, as a result of supply of some other faulty goods, if any. So as such the discount cannot be considered as a discount but can be considered only as an adjustment of advance or deposit with the supplier. So it appears that the actual transaction value of the goods is USD 70,722/-

1.8 Whereas it appears that as per the examination report of the goods and the Chartered Engineer certificate No. ELBI/Mundra/20/45 dated 22.01.2020 & certificate No. ELBI/Mundra/20/46 dated 23.01.2020 issued by M/s ELBI Consultancy (India) Pvt Limited, the goods mentioned at Sr. No. 1, 2, 3, 5, 6, 7, 8, 9, 15, 16 & 17 are used second hand machinery/capital goods and the goods mentioned at Sr. No. 4, 10, 11, 12 ,13 & 14 are old and unused, instead of New as declared by the importer in the Bills of entry filed by them. The value of these items as per the invoice produced by the importer is USD 70,277/- C&F.

1.9 From the above, it appears the importer has mis-declared the old items as new and has attempted to import the second hand goods, without following the procedures as stipulated by the FTP 2015-20 under para 2.31 as well as the procedure as stipulated by the Board vide

circular no. 493/124/86-Cus, VI dated 19.11.1987 and 25/2015 dated 15.10.2015. It further appears that the importer has attempted to evade the Customs duty by grossly undervaluing the goods by showing the value of the goods as USD 14243/- instead of the actual value of the goods which happen to be USD 70,722/- as per the parallel invoice (having same number no. & date) produced by them and have also attempted to evade the Anti Dumping duty applicable @29% of the landed cost in terms of Notification no 57/2015-Cus(ADD) for item no 1 and Item no 2.

1.10 Thus it appears that the importer has failed to observe the conditions of Section-46(4) of the Customs Act, 1962 and have rendered the goods at sr. no. 01 to 17 of the invoice /be totally valued at USD 70277.00/- (Rs. 50,59,944/-) liable for confiscation under the provisions of Section-111(m) of the Custom Act 1962, and have also rendered themselves liable for the penal action under the provisions of Section-112(a) of the Customs Act, 1962.

1.11 It also appears that importer is liable for penalty under section 114 AA of the Customs Act, 1962 for knowingly and intentionally using the parallel invoice Invoice No. MC1901 dated 25.10.2019, which was incorrect in material particularly in as much as it falsely shows the value and type (new or old) of the goods, produced is in violation in the transaction of the business for the purpose of the Customs Act, 1962.

1.12 Whereas it further appears that M/s Unnati Cargo, Mundra having License no. ASCPK1243RCH002 is the Customs broker for the importer. M/s Unnati Cargo are working under the Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018. They have been entrusted with certain obligations which have been detailed in Rule 10 of the said Regulations. The relevant portion of the regulations is as under

“ 10. Obligations of Customs Broker.— A Customs Broker shall —

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay.

1.13 Whereas it appears that M/s Unnati Cargo has failed to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and that they have failed to advise their client regarding applicability of the Anti-Dumping Duty on the goods imported by them and have filed the Bill of Entry, on behalf of the importer, without applying the Anti Dumping Duty and failed to estimate the value of the new/old goods of nearly 34000 Kg and filed the Bill of Entry without verifying the factual value of the goods . The applicability of the ADD has been noticed by the Department during assessment and the importer has

disclosed the clamping force of the Moulding machines only on being questioned by the Department through Queries raised. In addition to the failure to correctly advise their client M/s Unnati Cargo has also failed to discharge their duties with utmost speed and efficiency without delay.

1.14 Whereas it appears from the above that M/s Unnati Cargo have abetted in the attempt of the importer to evade the Anti Dumping Duties on the imported goods and clearance of second hand goods in the guise of New, making the goods liable for confiscation under the provisions of Section-111(m) of the Custom Act 1962, and thus M/s Unnati Cargo appears to have rendered themselves liable for the penal action under the provisions of Section-112(a) of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN

2. The importer M/s. Mingchen Plastic Technology Private Limited, vide letter dated 10.01.2020 has submitted that they do not want any Personal Hearing and Show cause notice. However, M/s Unnati Cargo, the Customs Broker has not submitted any confirmation that they do not want any Personal Hearing and Show cause notice in the matter.

DISCUSSION & FINDINGS

3. I have carefully gone through the facts of the case and records & evidences submitted before me and I find that the importers vide their letter dated 10.01.2020 have requested for waiver of the show cause notice and personal hearing in the matter, therefore, I find that the principle of natural justice as provided in section 122 A of the Customs Act, 1962, has been completed. Hence, I proceed to decide the case on the basis of the documentary evidences available on records.

3.1 I find that with regard to applicability of Anti dumping duty on item no 1 & 2 i.e. Moulding Machine -Model No: PD600, Moulding Machine - Model No. - YC220 of said Bill of Entry, the importer is supposed to declare the tonnage of the Machines, however, they intentionally do not declare the tonnage of the both the machines as "600 Tonnes" and "220 Tonnes" to avoid the payment of Anti dumping Duty on the goods in terms of Section 17 of the Customs Act, 1962.

I find that as per Notification no 57/2015-Cus(ADD) dated 04.12.2015 ADD @ 29% of the landed cost is applicable on Plastic processing or Injection moulding machines having country of origin as People's Republic of China and/or country of export as People's Republic of China . The relevant portion of notification 57/2015-Cus(ADD) dated 04.12.2015 is as under:

S. No.	Tariff item	Description of goods	Specification	Country of origin	Country of export	Producer	Exporter	% of landed value
-1	-2	-3	-4	-5	-6	-7	-8	-9
1	8477 10 00	Plastic processing or Injection moulding machines*	Clamping force equal to or more than 40 tonnes and equal to or less than 1000 tonnes	People's Republic of China	People's Republic of China	Any	Any	29
2	8477 10 00	-Do-	-Do-	People's Republic of China	Any country, other than People's Republic of China	Any	Any	29
3	8477 10 00	-Do-	-Do-	Any country, other than People's Republic of China	People's Republic of China	Any	Any	29

I find that ADD @ 29% of the landed cost is to be levied on item no 1 and Item no 2 under the provisions of Section 9A of the Customs Tariff Act, 1975, read with the Notification No. 57/2015-Cus (ADD) dated 04.12.2015 under serial no 1 of the table of the said notification as the clamping force of the machines being imported is 600 Tonne and 220 Tonne respectively for item no 1 and Item no 2. I find that the goods are mis-declared in terms of section 46(4) of the Customs Act, 1962 as far as the declaration of the clamping force of the machines in the form of Tonnages to avoid the payment of Anti Dumping Duty under the provisions of Section 9A of the Customs Tariff Act, 1975, read with the Notification No. 57/2015-Cus (ADD) dated 04.12.2015 and therefore, liable for confiscation under Section 111(m) of the Customs Act, 1962.

3.2. I further find that the value of the goods as declared by the importer is grossly undervalued and has not been correctly declared. The invoice No. MC 1901 dated 25.10.2019 presented by the importers to Customs through e-sanchit does not reflect the correct values of the goods. I find that the actual value of the goods imported by the importer as per the parallel invoice No. MC1901 dated 25.10.2019, presented by them is USD 70,722/- with a discount of USD 56,479/- on the invoice price. I find that the importers have taken a plea that this is a trade discount granted by the Supplier to them and it is a compensation of some faulty machines supplied to them at some other location outside India, however, I find that this is not a trade discount given as a normal trade practice and cannot be treated as compensation of any faulty machine. No documentary evidences have been given to the department in this regard. Hence

the discount cannot be considered as a trade discount in terms of Customs Valuation Rules, 2007 as amended time to time. Accordingly, the actual transaction value of the goods is USD 70,722/- as shown in their parallel invoice No. MC1901 dated 20.10.2019 (submitted along with their letter dated 12.12.2019), in terms of Section 14 of the Custom Act, 1962 read with the Customs Valuation Rules, 2007 (as amended time to time). As the value of the goods imported vide above mentioned Bill of Entry is mis-declared in terms of Section 46(4) of the Customs, Act, 1962 and liable for confiscation under Section 111(m) of the Customs Act, 1962.

3.3 I further find that the goods valued at Rs. 50,59,944/- (USD 70,277/-), mentioned at Sr. No. 1 to 17 of the invoices MC 1901 dated 25.10.2019 (Both Invoices), are old & used/ old and unused as per the Chartered Engineers Certificate as mentioned above, as against declared new machines and therefore mis-declared in terms of Section 46(4) of the Customs Act, 1962 and therefore also liable for confiscation under Section 111 (m) of the Customs Act, 1962

3.4. Thus I find that that the importer has failed to observe the provisions of Section-46(4) of the Customs Act, 1962 on various accounts as mentioned above, and rendered the goods liable for confiscation under the provisions of Section-111(m) of the Custom Act 1962, and therefore rendered themselves liable for the penal action under the provisions of Section-112(a) of the Customs Act, 1962.

3.5 I find that importers are also liable for penalty under Section 114 AA of the Customs Act, 1962 for knowingly and intentionally using the invoice No. MC1901 dated 25.10.2019 (one which was submitted at the time of filing the Bill of Entry and other which is submitted along with their letter dated 12.12.2019), which is incorrect in material particularly in as much as it falsely shows the value and type (new or old) of the goods, produced is in violation in the transaction of the business for the purpose of the Customs Act, 1962.


3.6. I further find that the Customs Broker M/s Unnati Cargo have failed to advise their client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof regarding applicability of the Anti Dumping Duty on the goods imported by the Importer and also failed to estimate the value of the new/old goods of nearly 34000 Kg and filed the Bill of Entry without verifying the factual value of the goods. I hold that M/s Unnati Cargo, Office No. 105, 1st Floor, Honeycomb CFS, Bharat CFS Zone, Mundra abetted in the attempt of the importer to evade the Anti Dumping Duties on the imported goods, clearing the grossly undervalued good and clearing the Old and Second Hand Goods, which are making the goods liable for confiscation under the provisions of Section-111(m) of the Custom Act 1962, and thus M/s Unnati cargo have also rendered themselves liable for the penal action under the provisions of Section-112(a) of the Customs Act, 1962. However, as the Customs Broker, M/s Unnati Cargo did not waive the issuance of Show Cause Notice and opportunity of Personal hearing, they may be issued Show Cause Notice separately for abetment of their act in clearance of the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 (as amended time to time) read with Customs Brokers Licensing Regulations, 2018 as notified

vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018 for penalty under Section 112 of the Customs Act, 1962.

4. Accordingly I pass the following orders:-

ORDER

- a. I reject the values declared by the importer under Rule 12 of the Customs Valuation (Determination of value of the imported Goods) Rules, 2007 and hold that the value of the goods be taken as USD 70722/- for the purpose of assessment in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 (As amended time to time).
- b. I order that Anti dumping duty @ 29% under the provisions of Section 9A of the Customs Tariff Act, 1975, read with the Notification No. 57/2015-Cus (ADD) dated 04.12.2015 under serial no 1 of the table of the said notification, be imposed on the goods at Sr. no. 01 & 02 at the time of assessment.
- c. I order the confiscation of the goods mentioned at Sr. no 01 to 17 totally valued at Rs. 50,59,944/- under Section 111(m) of the Customs Act, 1962. However, I give them an option to redeem the confiscated goods on payment of redemption fine of Rs. 10,00,000.00 (Rupees Ten Lakh only) in terms of Section 125 of the Customs Act, 1962.
- d. I also impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on M/s. Mingchen Plastic Technology Private Limited, under Sec 112(a) of the Customs Act, 1962
- e. I also impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on M/s. Mingchen Plastic Technology Private Limited, under Sec 114AA of the Customs Act, 1962


(Ajay Kumar)

Additional Commissioner,
Custom House, Mundra.

Dated:03.02.2020

F.No.VIII/48-1435/Mingchem/Gr.V/MCH/19-20

To,

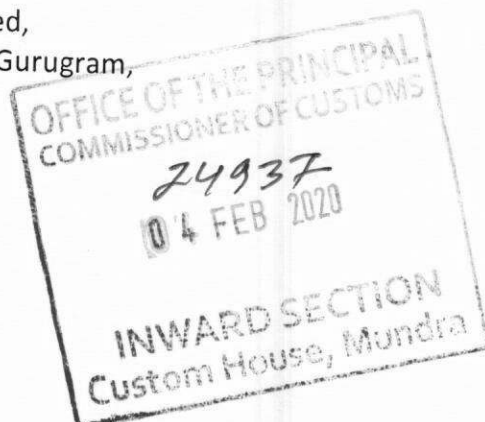
M/s. Mingchen Plastic Technology Private Limited,
507, Tower B, Pioneer Urban Square, Sector-62 Gurugram,
Gurgaon, Haryana-122001, India.

To,

M/s Unnati Cargo, (Custom Broker),
Office No. 105, 1st Floor,
Honeycomb CFS, Bharat CFS Zone,
Mundra

Copy to:

- (1) The Chief Commissioner (In-situ), Custom House, Mundra.
- (2) Asstt./Dy. Commissioner of Customs (VA), Custom House, Mundra.
- (3) The Assistant / Deputy Commissioner (RRA), Custom House, Mundra.
- (4) The Assistant / Deputy Commissioner (TRC), Custom House, Mundra
- (5) The Assistant / Deputy Commissioner (EDI), Custom House, Mundra
- (6) Guard file



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