



**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**

<b>A</b>	<b>File No.</b>	VIII/48-16/Adj./ADC/MP&SEZ/2016-17
<b>B</b>	<b>Order-in-Original No.</b>	<b>MCH/ADC/GPM/50/2017-18</b>
<b>C</b>	<b>Passed by</b>	<b>Shri G.P. Meena,</b> Additional Commissioner of Customs, Custom House, Mundra
<b>D</b>	<b>Date of Order</b>	31.08.2017
<b>E</b>	<b>Date of Issue</b>	31.08.2017
<b>F</b>	<b>SCN NO. &amp; Date</b>	F.No. S/43-14/SIIB/2013-14 dated 09.09.2016
<b>G</b>	<b>Noticee / Party / Importer / Exporter</b>	M/s. Alfakrina Exports, 104-05, Guru Raksha Complex, virani Chowk,, Tagore Road, Rajkot-360001.

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

02. Any person aggrieved by this Order-in-Original may file an appeal under Section 128 of the 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 (APPEALS), MUNDRA"

having his office at 7<sup>th</sup> floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad – 380 009.

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

04. The appeal should bear Court Fee Stamp of Rs.5/- (Rupees five only) under Court Fee Act and it must be accompanied by –

05. A copy of the appeal , and

06. 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 Court Fees Act, 1870.

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

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

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

**Sub – SCN issued to M/s. Alfakrina Exports, 104-05, Guru Raksha Complex, virani Chowk,, Tagore Road, Rajkot-360001. vide F.No. S/43-14/SIIB/2013-14 dated 09.09.2016 issued by the Additional Commissioner of Custom, Custom House Mundra.**



**Brief facts of the case:**

M/s. Alfakrina Exports, No. 104-05, Gururaksha Complex, Virani Chowk, Tagore Road, Rajkot, Gujarat, India, - 360 001 (IEC No. 02411001894) (hereinafter- referred to as "the importer") had filed home consumption Bills of Entry No.8697507 dtd.07.12.2012, 8697506 dated 07.12.2012, 8226047 dated 16.10.2012 & 8405328 dated 05.11.2012 with Custom House Mundra through their appointed CHA M/s. Arihant Shipping Agencies and Bill of Entry No. 7848365 dated 04.09.2012 through their appointed CHA M/s. Bright Shiptrans Pvt. Ltd., for import of total 90 MT of PVC Sheeting Flex Banner (in Rolls). The said imported quantity of 90 MT was cleared for home consumption by the importer. In the said Bills of Entry, the Port of Loading was declared as Port Klang. Country of Origin in these Bills of Entry was declared as Malaysia.

2. On the basis of intelligence received from the Directorate of Revenue Intelligence, Chennai which indicated that some consignments including the above said consignment of PVC Flex Banner was exported from China, but the importers mis-declared / suppressed the country of origin in the Bills of Entry filed before the Customs Authorities at Mundra port, to evade antidumping duty leviable @ US \$0.538 per Kg, on import of PVC Flex Banner falling under tariff item 39204900 of the First Schedule to the Customs Tariff Act, 1975, originating in, or exported from China in terms of Notification No.82/2011-CUS dtd.25.08.2011 and also declared the country of origin as Malaysia to evade basic customs duty at the appropriate rate by claiming benefit of concessional rate of BCD in terms of Noti.No.53/2011-Cus (Sr.No.516) dtd.01.07.2011 as amended.

3. Accordingly investigations were taken up by the Special Investigation and Intelligence Branch of Kandla Customs (SIIB). During the course of investigations, statements of various persons of Importer firm, CHA firm and containers liners were recorded. Certain documents were produced by the importer firm, CHA and container liners.

4. The aforesaid documents as produced by the Importer firm, CHA firm and container liners were scrutinized by the SIIB. Those documents indicated that M/s. Alfakrina Exports had imported consignment of PVC Flex Banner Sheets from China. The import documents like invoices, packing lists, certificate of origin etc. were found portraying import of the said consignment from Malaysia to evade antidumping duty by misleading the Customs Authorities in India.

5.1 A statement of Shri Pritesh Kumar Ramniklala Goti, Proprietor of M/s. Alfakrina Exports, Rajkot was recorded under Section 108 of the Customs Act, 1962 on 02.09.2013



wherein he inter alia stated that :

- M/s Alfakrina Exports, Rajkot started business in the month of May, 2011. They imported first consignment of PVC Flex Banner in Sep, 2012 followed by subsequent four consignments during the period from Oct, 2012 to Dec, 2012 wherein supplier was Topaz Plastic's Industries, Malaysia.
- Shri Jaydeep N Adesara, Proprietor of M/s Jai Goverdhan Enterprise placed orders on behalf of M/s Alfakrina Exports, Rajkot, and they did not exactly recollect as to how the order was placed.
- They did not make any market research and they give their consent of Shri Jaydeepbhai to place order on behalf of M/s Alfakrina Exports and Shri Jaydeepbhai told them about M/s Topaz.
- They were not aware of the fact that these goods were actually Chines Origin and attract ADD.

5.2 A statement of Shri Ketan Hiralal Shall, Partner of M/s Arihant Shipping Agencies, recorded under Section 108 of the Customs Act, 1962 on 02.09.2013, wherein he intere-lia stated that:

- Four consignment covered by Bills of Entry — 8226047 dated 16.10.2012, 8405328 dated 05.11.2012, 8697506 dated 07.12.2012 and 8697507 dated 07.12.2012 pertaining to M/s Alfakrina Exports have been handled by them.
- Shri Jaydeep N Adesara contacted Shri Ramesh Barot, their ex-employee on phone for both the importers and later on he mailed the documents like Invoice, Packing list, B/L. Later on they received all the original documents through courier wherein they also received Certificate of Origin.
- They were not aware about the mis- declaration of Country of Origin but after they have been made known by the department, it looks that there may be ADD evasion coupled with mis-declaration as above. The importer is liable to discharge the duty liability in case of such contraventions.

5.3 Statement of Shri Parag Ramesh Bhatia, Director of M/s Arihant Shipping Agencies, recorded under Section 108 of the Customs Act, 1962 on 04.02.2014, wherein he intere-lia stated that:

- Only one consignment covered by Bill of Entry No. 7848365 dated 04.09.2012 pertaining to M/s Alfakrina Exports has been handled by them.
- They received the work through Shri Ketan Shah of M/s Arihant Shipping and Shri Ketan Shah contact him along with the import documents like invoice, packing list, B/L, Certificate of Origin etc.



- They were not provided with SAFTA certificate in Original or copy. Hence they had not claim concessional rate of duty.

5.4 Statement of Shri Pritesh Kumar Ramniklala Goti, Proprietor of M/s. M/s.Alfakrina Exports, Rajkot was recorded under Section 108 of the Customs Act, 1962 on 21.03. 2016, wherein he inter alia stated that:

- The BL No. FMPL/SHA/PKG/1211006A shows Shangai Port, China as Port of Loading and Port Klang as Port of discharge and BL No. PKGMUN23765 shows Port Klang, Malasya as Port of Loading & Mundra Port as Port of Discharge. He therefore understand that the Container No. VSBU2013760 has first moved from Shanghai Port, China to Port Klang, Malasya under BL No. FMPL/SHA/PKG/1211006A and thereafter moved from Port Klang to Mundra Port under BL No. PKGMUN23765. I therefore understand that the goods covered under BL No. PKGMUN23765 dated 23.11. 2012 have originated from China only. On the basis of BL No. PKGMUN23765 dated 23.11.2012, they have filed BE No. 8697506 dated 07.12.2012. They have not paid Anti-dumping duty on the basis of Certificate of Origin dated 20.11.2012, which shows the Country of Origin as Malasya. However, on perusal of the aforesaid BLs, they understand that the goods covered by BL No. PKGMUN23765 dated 23.11.2012 actually originated from China and they attracted Anti-dumping duty. However, he has to further state that he did not know that the said goods were of Chinese Origin.
- The BL No. FMPL/SHA/PKG/1211006 dated 05.11.2012 shows Shangai Port, China as Port of Loading and Port Klang as Port of discharge and BL No. PKGMUN23764 shows Port Klang, Malasya as Port of Loading & Mundra Port as Port of Discharge. He therefore understand that the Container No. VSBU2014242 has first moved from Shanghai Port, China to Port Klang, Malasya under BL No. FMPL/SHA/PKG/1211006 dated 05.11.2012 and thereafter moved from Port Klang to Mundra Port under BL No. PKGMUN23764 dated 23.11.2012. He therefore understands that the goods covered under BL No. PKGMUN23764 dated 23.11.2012 have originated from China only. On the basis of BL No. PKGMUN23764 dated 23.11.2012, they have filed BE No. 8697507 dated 07.12.2012. They have not paid Anti-dumping duty on the basis of COO dated 20.11.2012 which shows the Country of Origin as Malasya. However, on perusal of the aforesaid BLs, they understand that the goods covered by BL No. PKGMUN23764 dated 23.11.2012 actually originated from China & they attracted Anti-dumping duty. However, he has to further state that he did not know that the said goods were of Chinese Origin



5.5 In his third statement, Shri Pritesh Kumar Ramniklala Goti, Proprietor of M/s. Alfakrina Exports, Rajkot was recorded under Section 108 of the Customs Act, 1962 on 28.03.2016, wherein he inter alia stated that:

- The goods imported vide Bills of Entry no. 7848365 dated 04.09.2012, 8226047 dated 16.10.2012, 8405328 dated 05.11.2012 8697506 dated 07.12.2012 and 8697507 dated 07.12.2012 sold to various wholesale/retail sale dealers in Rajkot and some other places.
- He had agreed that the goods mentioned in Bills of Entry no. 7848365 dated 04.09.2012, 8226047 dated 16.10.2012, 8405328 dated 05.11.2012, 8697506 dated 07.12.2012 and 8697507 dated 07.12.2012 have been supplied from M/s Topaz Plastic Industries (M) Sdn BHD Malasiya having office at C-2-12-8, Boulevard Towar, Solaris Dutamas No.1, Jalan Dutamas 1, 50480 kualalampur, Malaysia.

6. Scrutiny of Bills of Lading as produced by M/s Noval Lines & Logistics Pvt. Ltd. Gandhidham, clearly revealed that Bills of Lading PKGMUN 23764 dated 23.11.2012 and PKGMUN 23765 dated 23.11.2012 showed Mis Topaz Plastic Industries (M) SON BHD. C2-12-8, Boulevard Tower, Solaris Dutamas, No.1, Jalan Dutamas1, 50480, Kuala Lumpur, Malaysia supplier and consignee was M/s Alfakrina Exports No. 104-05, Gururaksha Complex, Virani Chowk, Tagore Road, Rajkot, Gujarat while the Bills of Lading No. FMPL/SHA/PKG/121106 dated 05.11.2012 and FMPL/SHA/PKG/1211006A dated 05.11.2012 showed M/s CIXI Linyun Plastics Wart Co. Ltd. Xisan Village, Hangzhouwan Town, Cixi Ningbo, Zhejijang, China as supplier and consignee was M/s Topaz Plastic Industries (M) SON BHD. C2-12-8, Boulevard Tower, Solaris Dutamas, No.1, Jalan Dutarnas1, 50480, Kuala Lumpur, Malaysia. In Bills of Lading Bills no. FMPL/SHA/PKG/121106 dated 05.11.2012 and FMPL/SHA/PKG/1211006A dated 05.11.2012 from Shanghai(China) to Port Kelang (Malaysia) have the same cargo and same container nos with same seal nos as they showed in Bills of Lading PKGMUN 23764 dated 23.11.2012 and PKGMUN 23765 dated 23.11.2012. So it is clearly evident that cargo was actually Chinese Origin and transhipped through Malaysia. As in other Bills of lading No. PKGMUN 40350, PKGMUN 40357, and PKGMUN 40355 have same supplier and same consignee and same cargo i.e. PVC Flex Banner it can be evident that cargos pertaining to these Bills of lading are also Chinese Origin.

7. The importer had submitted before the Customs authorities, certificate of origin issued by the Ministry of International Trade and Industry, Malaysia mentioning the



country of origin of the impugned goods 8.S Malaysia. Further, their import documents contained wordings portraying that the impugned goods were supplied from Malaysia. However, it was evident from the documents as discussed hereinabove that the impugned consignment of PVC Flex Banner Sheets originated from China, and not from Malaysia. Therefore, it is evident country of origin of the subject goods imported in India was clearly China.

8. **Suppression/willful mis-statement in respect of Country of Origin:**

In this case, the importer did not produce the Bill of Lading from China to Malaysia before the Customs Department, which resulted in clear suppression of facts. Had the Customs Department not carried out thorough investigation, the facts would not have come out. Having knowledge of all these facts, the importer through CHA M/s Arihant Shipping Agencies Pvt filed home consumption Bills of Entry No.8697507 dtd.07.12.2012, 8697506 dated 07.12.2012, 8226047 dated 16.10.2012 & 8405328 dated 05.11.2012 and CB M/s. Bright Shiptrans Pvt. Ltd filed home consumption Bill of Entry No. 7848365 dated 04.09.2012 without levying Anti-dumping duty and also claiming benefit of concessional rate of BCD and mentioned Malaysia as the country of origin in the Bill of Entry. Therefore, the fact that the country of origin of goods covered under home consumption Bills of Entry No.8697507 dtd.07.12.2012, 8697506 dated 07.12.2012, 8226047 dated 16.10.2012 & 8405328 dated 05.11.2012 and 7848365 dated 04.09.2012 as China was suppressed by M/s.Alfakrina Exports. This act on the part of M/s.Alfakrina Exports clearly amounted to mis-declaration of country of origin. It, therefore, became amply clear that M/s.Alfakrina Exports had knowingly and intentionally suppressed the fact of country of origin of impugned goods imported under the cover of aforesaid Bill of Entry and mis-stated the country of origin in the said bill of entry filed at Custom House Mundra.

9. **Demand of Antidumping duty**

It was evident from the foregoing paras that the impugned consignment was of Chinese Origin. Therefore, the import of subject consignment at Mundra was squarely covered under Notification No.82/2011-Cus dtd.25.08.2011 and antidumping duty @ US \$ 0.538 per Kg was clearly attracted. The consignment of 90 MT of PVC Flex Banner Sheets was cleared for home consumption by M/s.Alfakrina Exports. In this Bill of Entry, actual country of origin was suppressed by mis-declaring the country of origin as Malaysia and evading payment of antidumping duty at appropriate rate aggregating to Rs. 26,47,121.4 with intention to evade antidumping duty, the actual country of origin was suppressed/ not declared



in the subject Bills of Entry. This act amounted to suppression of material facts and thus, extended period of demand as provided under Section 28(4) of the Customs Act, 1962 was clearly attracted. Therefore, the anti-dumping duty Rs. 26,47,121.4 was liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No.82/2011-Cus dated 25.08.2011 along with interest under Section 28AA of the Customs Act, 1962.

**10. Confiscation of Goods and penalty on the firm / proprietor:**

10.1 Under the provisions of Notification No.82/2011-Cus dated 25.08.2011, antidumping duty on PVC Flex Banner Sheets originating from China was leviable at the rate of US\$ 0.538 per Kg. It was amply clear from the above discussed evidences that the consignment of PVC Flex Banner Sheets have originated from China. In the home consumption Bills of Entry No.8697507 dated 07.12.2012, 8697506 dated 07.12.2012, 8226047 dated 16.10.2012 & 8405328 dated 05.11.2012 and Bill of Entry No. 7848365 dated 04.09.2012 the fact of country of origin of the impugned goods was knowingly suppressed and mis-declared with intention of evading levy of anti-dumping duty and customs duties by Mis. Alfakrina Exports. The above act of suppression/mis declaration of material fact had rendered the impugned consignment of 90 MT of PVC Flex Banner Sheets having assessable value of Rs. 51,61,001.80/- covered under home consumption Bills of Entry No.8697507 dtd.07.12.2012, 8697506 dated 07. 12. 2012, 8226047 dated 16. 10. 2012 & 8405328 dated 05. 11.2012 and Bill of Entry No. 7848365 dated 04.09.2012 liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, though the same were not available for confiscation. Further all these acts of contravention on their part made M/s. Alfakrina Exports liable to penalty under Section 112(a) and I or 114A of the Customs Act, 1962.

10.2 It further appears from the foregoing discussion that Shri Priteshkumar Ramniklal Goti, Proprietor of M/s. Alfakrina Exports failed to produce the Bills of Lading from China to Malaysia and failed to ascertain the correct origin of goods. This resulted in huge evasion of anti-dumping duty as well as customs duties. Had the matter not been investigated by the Customs Department, such an evasion would have gone unnoticed thereby causing huge loss to the Government exchequer. Based on the Bills of Lading produced by them with the Customs Department, they filed a false Bills of Entry declaring therein Malaysia as a country of origin. Thus, it was evident that Shri Priteshkumar Ramniklal Goti had indulged himself in causing preparation of false/ incorrect document viz. Bills of Entry and used the same in clearance of the



subject goods. This act on his part rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962.

11. Therefore, M/s. Alfakrina Exports, Rajkot called upon to show cause to the Additional Commissioner of Customs, Mundra as to why: -

- i. the 90 MT of PVC Flex Banner Sheets covered under home consumption Bills of Entry No.8697507 dtd.07.12.2012, 8697506 dated 07.12.2012, 8226047 dated 16. 10. 2012 & 8405328 dated 05.11.2012 and Bill of Entry No. 7848365 dated 04.09.2012 valued at Rs.51,61,001/80 as detailed in Annexure-1 to the Notice should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- ii. Antidumping duty totally amounting to Rs.26,47,122/- (Rupees Twenty Six Lacs Forty Seven Thousand One Hundred Twenty Two Only) on 90 MT of PVC Flex Banner Sheets covered under home consumption Bills of Entry No.8697507 dated 07.12.2012, 8697506 dated 07.12.2012, 8226047 dated 16.10.2012 & 8405328 dated 05.11.2012 and Bill of Entry No. 7848365 dated 04.09.2012 as detailed in Annexure-1 to the Notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No.82/2011-Cus dated 25.08.2011 along with interest under Section 28AA of the Customs Act, 1962 by re-assessing this Bill of Entry.
- iii. Penalty should not be imposed on them under Section 112(a) and /or 114A of the Customs Act, 1962.

12. Shri Priteshkumar Ramniklal Goti, Proprietor of M/s. Alfakrina Exports, Rajkot is also called upon show case to the Additional Commissioner of Customs, Mundra as to why penalty should not be imposed on him under Section 114AA of the Customs Act,1962.

**13. Personal hearing and defense Reply:**

13.1. The said importer has not filed written submission within 30 days of receipt of the notice and hence, this office vide letter dated 13.10.2016 requested the said importer to submit their defence reply. The said importer has not submitted written reply and hence personal hearing in the matter was fixed on 06.06.2017 and re fixed on 06.07.2017. The said importer vide their letter dated 05.07.2017 requested for 15 days' time and accordingly, personal hearing was fixed on 02.08.2017. Shri N.M.Uandkat, C.A and



authorized representative of the importer appeared for personal hearing and submitted written submission and reiterated the same.

13.2. The importer in their reply mainly argued that only allegation of goods imported by them is of China origin but there is no such base for such allegation; that in both the BLs i.e. what they have produced and which the department has produced and relied upon have same cargo and same container numbers and according the goods were Chinese Origin. But they are not agreeing with such allegation. The department has not challenged the genuineness of the 'Certificate of Country of Origin'; that without verifying the genuineness of the 'Certificate of Country of Origin' with Malaysian authority how it can be said that the same is not correct and origin of the goods were different from what has been declared in the certificate.

13.3. Further they have also produced the Invoices and Packing List alongwith the Bills of Entry filed for clearance of the said goods wherein the name of port is mentioned as 'Port Klang, Malaysia' and country of origin is mentioned as 'Malaysia'. The fact and details mentioned in the invoices and packing list were not challenged by the department. The Noticee has also made payment to the supplier M/s Topaz Plastic Industries (M) SDN, BHD, Malaysia. Without verifying the genuineness of 'Certificate of Country of Origin', Invoices and Packing List the department cannot take different view and cannot allege that the country of origin of the said goods was not Malaysia but China. They have relied upon the following judgements:

- i. Commissioner of Customs, Delhi-III V/s Om Prakash Rahul Kumar reported in 2009 (248) ELT 389 (Tri.-Del)
- ii. Hazari Trading Co. V/s Commissioner of Customs, Mumbai, reported in 2012 (284) ELT 91 (Tri.-Mumbai)
- iii. Commissioner of Customs, Chennai V/s Yapp India Automotive System P. Ltd., reported in 2016 (342) ELT 146 (Tri.-Chennai) Commissioner of Customs, Titicorin V/s Sterlite Industries (India) Ltd., reported in 2015 (317) ELT 482 (Tri.-Chennai)
- iv. Jindal Poly Films Ltd. V/s Commissioner of Customs (Import), Mumbai reported in 2012 (286) ELT 423 (Tri.-Mumbai)
- v. M/s MTC Business Pvt., Ltd. V/s Commr. Of Customs.(Import) Sheva, reported in 2012 (275) ELT 462 (Tri.-Mumbai)
- vi. Commissioner of Customs Trichy V/s New Bombay Exports, reported in 2009 (238) ELT 540 (Tri.-Chennai)

13.4. They stated that the department has nowhere mentioned in the Show Cause Notice that from where department found the said BLs and whether the department has



verified the authenticity of the same; that the said BLs were not recovered either from the possession of them or from the premises owned by them; that the department has not verified the fact from the issuing authority of the said BLs and therefore the said BLs cannot be relied upon and can be considered as evidence; that the allegation in the Show Cause Notice regarding goods imported and cleared vide three Bills of Entry is not supported by any evidences and the same is required to be dropped. The demand is made only on the basis of presumption and assumption; that the department has, simply on the basis of two Bills of Lading presuming that in case of other consignments also the same analogy applies and the goods were of Chinese origin. Such presumption and assumption has no room before any legal proceeding. The allegation requires substantial evidence, which is lacking in this case and hence the demand is required to be dropped imposed and in support of this arguments, they relied on the judgement in case of M/s Nexus International V/s Commissioner of Customs reported in 2016 (336) ELT 667 (Tri.-Del) wherein it is held that allegation on the basis of assumption and presumption is not sustainable in the eye of law and Airport Authority of India V/s Commissioner of Customs (I&G).

13.5. They argued that when the goods are not available for confiscation and in such situation goods cannot be confiscated and redemption fine cannot be imposed and in support of these arguments, they relied on the judgement in case of M/s Shiv Kripa Ispat Pvt. Ltd. V/s Commissioner of & Cus., Nasik reported in 2009 (235) ELT 623 (LB), Commissioner V/s Indu Nissan Oxo Chemical Industries, reported in 2015 (324) ELT A 30 (Guj.) & Commissioner V/s Shiv Kripa Ispat Pvt. Ltd., reported in 2015 (318) ELT A259 (Born).

13.6. Further they argued that In view their reply to SCN, confiscation of the goods and redemption fine cannot be imposed and Penalty under Section 112 and Section 114AA of the Customs Act, 1962 not imposable and prayed to drop the proceedings.

**Discussion and findings:**

14. I have carefully gone through the records of the case, defense submission and the submission made at the time of personal hearing. The issue to be decided in the instant case is;

- i. Whether the impugned goods i.e 90 MT of PVC Flex Banner Sheets Imported under home consumption Bills of Entry No.8697507 dated 07.12.2012; 8697506 dated 07.12.2012; 8226047 dated 16.10.2012 ; 8405328 dated 05.11.2012 and Bill of Entry No. 7848365 dated 04.09.2012 valued at Rs.51,61,001/80 are of Malaysian origin or chines origin and whether the



impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 or otherwise ;

- ii. Whether the Antidumping duty totally amounting to Rs.26,47,122/- on 90 MT of PVC Flex Banner Sheets imported vide abovementioned bill of Entries is required to be recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No.82/2011-Cus dated 25.08.2011 along with interest under Section 28AA of the Customs Act, 1962 by re-assessing this Bill of Entry or otherwise;
- iii. Whether the Importer is liable to penal action under Section 112(a) and /or 114A of the Customs Act, 1962.
- iv. Whether the proprietor Shri Priteshkumar Ramniklal Goti, Proprietor of M/s. Alfakrina Exports, Rajkot is liable to penal action under Section 114AA of the Customs Act, 1962.

15. The documents on the basis of which the show cause notice has been prepared were produced by the liner. The liner has produced two sets of bills of lading one from Shanghai to Port Klang (B/L Nos. FMPL/SHA/PKG/1211006 & FMPL/SHA/PKG/1211006A) and another from Port Klang to Mundra ( PKGMUN23764 & PKGMUN23765) and both the bills of lading shown the same container numbers with same seal numbers and same goods. Also the said document and other related documents have been shown to Shri Priteshkumar Goti, Proprietor of M/s Alfakirana Exports while recording his statement, he agreed with the same. Thus, the showing the container numbers with same seal nos and same goods showing that the goods moved from Shanghai to port Klang and another from Port Klang to Mundra in respect of bill of lading Nos. 8697506 and 8697507 both dated 07.12.2012.

15. With the frame work of aforesaid four questions set out for determination, while dealing with the first and foremost question it is noticed that the Importer M/s Alfakrina Exports, Rajkot had imported five consignments of PVC Flex Banner Sheets at Mundra from China and had cleared under five different Bills of Entry. The Country of Origin of the imported of PVC Flex Banner Sheets is China and the overseas supplier is Topaz Plastic's Industries, Malaysia in all the cases. In this regard on going through the statement dated 21.03.2016 of Shri Pritesh Kumar Ramniklala Goti, Proprietor of M/s. Alfakrina Exports, Rajkot as discussed in para 5.4 above has admitted that ongoing through the relevant papers he is of the opinion that the goods are of china origin, however to save his skin he further stated that he did not know that the goods were of china origin. Further on going through the documents, I find that in the BL No. EMPUSHA/PKG/1211006A and BL No. EMPL/SHA/PKG/1211006 both dated 05.11.2012 showing the name of Shipper CIXI LINYUN Plastics Wart, Co. Ltd.



China and Consignee as M/s Topaz Plastic Industries (M) SDN BHD, Malaysia. Also it is also seen that the port of loading as Shanghai and place of delivery as Port Kelang(N) in the above refereed Bill of Ladings and the said goods onwards moved to Mundra port under the same Container Nos. VSBU2013760 and VSBU2014242. Further it is seen that the Container Nos. VSBU2013760 and VSBU2014242 under which the goods have been imported by the said importer and reached at the Mundra Port is reflected in the above referred Bill of Lading under which the goods shipped from Shanghai port to Kelang and onward at Mundra port. Thus, it shows that the actual country of origin in this case is China and not Malaysia and hence the Certificate i.e Country Of Origin given by the said importer issued by the Malaysia is not correct. From the above facts, it is established beyond doubt that the Country Of Origin of the goods imported by the said importer is China and not Malaysia as declared by the importer. Therefore, the said goods are liable for anti-dumping duty under Notification No. 82/2011-Cus dated 25.08.2011. Further, for the goods PVC Flex Banner Sheets which is mentioned at sr. No. 3 of table of the said notification anti-dumping duty is prescribed @ 0.538 US\$ per Kgs which has been calculated in the show cause notice, which has been not disputed by the importer. Therefore, I find that the importer is liable to pay Antidumping duty amounting to Rs.26,47,122/- on 90 MT of PVC Flex Banner Sheets imported vide abovementioned bill of Entries under the provision of Section 28(4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No.82/2011-Cus dated 25.08.2011. As the said importer has not paid the anti-dumping duty on due date, therefore the said importer is also liable to pay interest on the said amount as prescribed under Section 28AA of the Customs Act, 1962.

16. In view of above discussion, it is crystal clear that the impugned consignments were of Chinese Origin and importer has intentionally mis declare the Country of Origin of goods to avoid anti-dumping duty. He was well aware that the anti-dumping duty on the said goods, if the country of origin is China and squarely covered under Notification No. 82/2011-Cus dated 25.08.2011 and attract anti-dumping duty. In the home consumption bill of entry, the facts of country of origin of the impugned goods was knowingly suppressed and mis-declared by the said importer. Further, Malaysia was declared as country of origin to wrongly availed the benefit of concessional rate of BCD in terms of Notification No. 53/2011 -Cus dated 01.07.2011 as amended. The above act of suppression/mis-declaration of material facts had rendered the impugned goods i.e 90 MT of PVC Flex Banner Sheets having assessable value of Rs.26,47,122/- covered under above referred home consumption bill of entries are liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I find that the said imported goods



are liable for liable for confiscation under Section 111(m) of the Customs Act, 1962. Since, these goods were not placed in seizure and also not physically available for confiscation, I refrain from imposition of redemption fine as the goods are not physically available for confiscation nor released under any bond. In this regard it is settled law that absence of availability of goods it cannot be confiscated. Thus I held that goods are liable for confiscation under Section 111(m) of the Customs Act, 1962, however as the goods are not physically available for confiscation, I refrain from imposition of redemption fine.

17.1 I find that M/s Alfakirana Exports, Rajkot has failed to observe the conditions of the Notification No. 82/2011- Cus dated 25.08.2011 in as much as they failed to declare correct country of origin of the goods while submitting the declaration for filing the bills of entry with an intent to evade the payment of Anti-dumping duty leviable thereon and thereby made the goods liable for confiscation under the provisions of Section-111 of the Customs Act, 1962, and rendered themselves liable to the penal action under the provisions of Section-112(a) of the Customs Act, 1962. However, as I propose to impose mandatory penalty under Section 114A of the Customs Act, 1962 separate penalty under Section 112 (a) of the Customs Act, 1962 is not required to be imposed.

17.2. As regards penalty to be imposed on Shri Priteshkumar Ramniklal Goti, Proprietor of M/s. Alfakrina Exports, Rajkot under Section 114AA of the Customs Act, 1962, I find that it is a settle legal position that whenever penalty has been imposed on the propriety firm, no personal penalty is required to be imposed on proprietor. As I have imposed the penalty on the firm/company, hence I do not find any reason to impose penalty on Shri Priteshkumar Ramniklal Goti, Proprietor of M/s. Alfakrina Exports, Rajkot under Section 114AA of the Customs Act, 1962.

In view of my above findings, I pass the following order:

**-: ORDER :-**

- i. I confirm the demand of anti-dumping duty amounting to Rs.26,47,122/- (Rupees Twenty six Lakhs Forty Seven Thousand One Hundred Twenty Two Only) under the provision of Section 28(4) of the Customs Act, 1962 read with the provisions of Section 9(A) of the Customs Tariff Act, 1975 read with Notification No.82/2011-Cus dated 25.08.2011 on PVC Flex Benner Sheets imported.
- ii. I order to recover Interest at the appropriate rate under Section 28 AA of the Customs Act, 1962 from M/s Alfakirana Exports, Rajkot.



- iii. I order for confiscation of the goods viz., PVC Flex Benner Sheets imported totally valued at Rs. 51,61,001/80 vide B/E's No. 8697507 dtd.07.12.2012, 8697506 dated 07.12. 2012, 8226047 dated 16. 10. 2012, 8405328 dated 05.11.2012 and Bill of Entry No. 7848365 dated 04.09.2012, under the provision of Section 111(m) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of confiscation, as the goods are physically not available for confiscation nor released under any bond or legal instruments.
- iv. I impose penalty of Rs.26,47,122/- (Rs.Twenty Twenty six Lakhs Forty Seven Thousand One Hundred Twenty Two only) on M/s Alfakirana Exports, Rajkot under the provisions of Section 114 A of the Customs Act, 1962.

This order is issued without prejudice to any other action may be taken in respect of the goods in question and / or against the person concerned or any other person, if found involved under the provisions of the Customs Act, 1962 and / or other law for the time being in force in the Republic of India.

*hurray*  
31/08/17  
(Girraj P Meena)  
Additional Commissioner  
Customs House, Mundra

**BY SPEED POST**

F.No. VIII/48-16/Adj/ADC/MP&SEZ/2016-17

Date :- 31/08/17

To  
M/s. Alfakirana Exports,  
No. 104-05, Gururaksha Complex,  
Virani Chowk, Tagore Road,  
Rajkot, Gujarat, India, - 360 001

Copy to :

1. The Deputy Commissioner (SIIB), Custom House, Mundra.
2. The Deputy Commissioner, Import Group, Custom House, Mundra.
3. The Deputy Commissioner (RRA), Custom House, Mundra.
4. The Deputy Commissioner (Recovery), Custom House, Mundra.
- ✓ 5. The Deputy Commissioner (EDI), Custom House Mundra.
6. Guard File.