



सीमा शुल्क आयुक्त का कार्यालय, एनएस-III
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
न्हावा शेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707

File No S/10-147/2024-25/CC/Gr.IV/NS-III/CAC/JNCH

Date:- #approval date

SCN No. 1450/24-25/Commr./Gr.IV/NS-III/CAC JNCH dated 04.12.2024

DIN	: 20250778NX0000407731
आदेश की तिथि Date of Order	: 31.07.2025
जारी किए जाने की तिथि Date of Issue	: 31.07.2025
आदेश सं. Order No.	: 148/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 148/2025-26/Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by	: श्री विजय रिशी SH. VIJAY RISI आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	: मेसर्स हॉकिन्स कुर्कर्स लिमिटेड M/s. Hawkins Cookers Limited

मूलआदेश

ORDER-IN-ORIGINAL

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

फार्म : फार्म न .सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके
Form खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)

	Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर
Time Limit	Within 3 months from the date of communication of this order.
फीस	: (क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है।
Fee	(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है। (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो।
Mode of Payment	A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य	: विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।
General	For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी ।
- Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

BRIEF FACTS

A Show Cause Notice no. 1450/24-25/Commr./Gr.IV/NS-III/CAC JNCH dated 04.12.2024 was issued to **M/s Hawkins Cookers Limited (IEC: 0388038454)** situated at F-101, Maker Tower, Cuffe Parade, Mumbai, Maharashtra -400005 (hereinafter referred as ‘the Importer’) had imported consignments of items namely 'Stainless Steel Triply Circles' of various grades under CTH 73269070 (hereinafter referred to as ‘the said goods’) as detailed in **Annexure-A.**,

ANNEXURE A

Sr . N o.	BE No.	BE Date	Ite m No .	Descripti on of Goods	Assassa ble Value	BCD Paid (@10 %)	SWS Paid	IGST Paid	Total Duty Paid	BCD Payable (@7.5%)	SWS Payabl e	CVD Applica ble @ 18.95% of Landed Value	IGST applicable	Total Duty Payabl e	Differen tial Duty
1	7903106	15.06.20	1	SS Triply Circle	732562	73256	7326	146366	226948	54942	5494	149232	169601	379270	152322
2	7903106	15.06.20	2	SS Triply Circle	1382088	138209	13821	276141	428171	103657	10366	281549	319979	715549	287379
3	7903106	15.06.20	3	SS Triply Circle	359968	35997	3600	71922	111518	26998	2700	73330	83339	186366	74848
4	7903106	15.06.20	4	SS Triply Circle	328080	32808	3281	65550	101639	24606	2461	66834	75956	169857	68218
5	7903106	15.06.20	5	SS Triply Circle	341991	34199	3420	68330	105949	25649	2565	69668	79177	177059	71110
6	7903106	15.06.20	6	SS Triply Circle	268157	26816	2682	53578	83075	20112	2011	54627	62083	138833	55758
7	7903106	15.06.20	7	SS Triply Circle	320804	32080	3208	64097	99385	24060	2406	65352	74272	166090	66705
8	7903106	15.06.20	8	SS Triply Circle	245471	24547	2455	49045	76047	18410	1841	50006	56831	127088	51041
9	8637645	29.08.20	1	SS Triply Circle	1276022	127602	12760	254949	395312	95702	9570	259942	295422	660636	265324
10	8637645	29.08.20	2	SS Triply Circle	1496650	149665	14967	299031	463662	112249	11225	304886	346502	774862	311200
11	8637645	29.08.20	3	SS Triply Circle	1783505	178351	17835	356344	552530	133763	13376	363322	412914	923375	370846
12	8768709	10.09.20	1	SS Triply Circle	2419329	241933	24193	483382	749508	181450	18145	492848	560119	1252561	503053
13	8768709	10.09.20	2	SS Triply Circle	286972	28697	2870	57337	88904	21523	2152	58460	66439	148574	59670
14	8768709	10.09.20	3	SS Triply Circle	964158	96416	9642	192639	298696	72312	7231	196411	223220	499174	200478
15	8768709	10.09.20	4	SS Triply Circle	227547	22755	2275	45464	70494	17066	1707	46354	52681	117808	47314
16	9774521	01.12.20	1	SS Triply Circle	1146418	114642	11464	229054	355160	85981	8598	233540	265417	593536	238376
17	9774521	01.12.20	2	SS Triply Circle	1248106	124811	12481	249372	386663	93608	9361	254255	288959	646183	259520
18	9774521	01.12.20	3	SS Triply Circle	737646	73765	7376	147382	228523	55323	5532	150268	170779	381902	153379
19	9774521	01.12.20	4	SS Triply Circle	468090	46809	4681	93524	145014	35107	3511	95356	108371	242345	97330
20	9774521	01.12.20	5	SS Triply Circle	933759	93376	9338	186565	289279	70032	7003	190218	216182	483436	194157
21	9774521	01.12.20	6	SS Triply Circle	423904	42390	4239	84696	131326	31793	3179	86355	98142	219468	88143
22	9774521	01.12.20	7	SS Triply Circle	1152067	115207	11521	230183	356910	86405	8641	234690	266725	596461	239550
23	9774521	01.12.20	8	SS Triply Circle	1257589	125759	12576	251266	389601	94319	9432	256187	291155	651092	261491
24	9774521	01.12.20	9	SS Triply Circle	575630	57563	5756	115011	178330	43172	4317	117263	133269	298021	119691
25	9774521	01.12.20	10	SS Triply Circle	154349	15435	1543	30839	47817	11576	1158	31443	35735	79911	32094
26	9774521	01.12.20	11	SS Triply Circle	400903	40090	4009	80101	124200	30068	3007	81669	92816	207560	83360
27	2560033	30.01.21	1	SS Triply Circle	1223340	122334	12233	244423	378991	91750	9175	249210	283225	633361	254370
28	2560033	30.01.21	2	SS Triply Circle	1024410	102441	10244	204677	317362	76831	7683	208685	237170	530369	213006
29	2560033	30.01.21	3	SS Triply Circle	475199	47520	4752	94945	147217	35640	3564	96804	110017	246025	98809
30	2560033	30.01.21	4	SS Triply Circle	405691	40569	4057	81057	125683	30427	3043	82644	93925	210039	84356
31	2560033	30.01.21	5	SS Triply Circle	1432843	143284	14328	286282	443895	107463	10746	291888	331729	741827	297932
				Total	25493248	2549325	254932	5093551	7897808	1911994	191199	5193293	5902152	13198638	5300830

2. During the course of post clearance audit, it was observed that the Importer has mis-classified the said goods in order to evade the applicable CVD of 18.95% on 'SS Triply Circles' as per Notification No.1/2017-Customs (CVD) dated 07.09.2017. As per the said notification, CVD of 18.95% was imposed on all 'Flat rolled products of stainless steel; originating in or exported from PR China and classified under CTH 7219 or 7220. The only product exempted from the CVD was 'razor blade grade steel.

3. In order to ascertain proper CTH for ALUMINIUM CLADDED CIRCLES/ SS triply circle, it is necessary to understand the scheme of distribution of different items under Chapter 72 and 73 of Section XV of the Customs Tariff Act, 1975:

3.1. The Section XV (Base Metals and Articles of Base Metal) of Customs Tariff consists of two chapters of Iron and Steel:-

Chapter 72 - Iron and Steel and Chapter 73 - Articles of Iron and Steel.

To understand the difference between the items of Chapter 72 and the items of Chapter 73, it is important to take a look at the description of goods in some of the chapter headings (CTH) in both the said chapters.

3.1.1. Chapter Heading in CTH 72

Chapter Heading	Description of goods
7201	PIG IRON AND SPIEGELEISEN IN PIGS, BLOCKS OR OTHER PRIMARY FORMS.
7203	FERROUS PRODUCTS OBTAINED BY DIRECT REDUCTION OF IRON ORE AND OTHER SPONGY FERROUS PRODCUTS, IN LUMPS, PELLETS OR SIMILAR FORMS; HAVING A MINIMUM PURITY BY WEIGHT OF 99.94% IN LUMPS, PELLETS OR SIMILAR FORMS.
7205	GRANULES AND POWDERS, OF PIG IRON, SPIEGELEISEN, IRON OR STEEL GRANULES.
7206	IRON AND NON-ALLOY STEEL IN INGOTS OR OTHER PRIMARY FORMS (EXCLUDING IRONOF HEADING 7203)
7207	SEMI-FINISHED PRODUCTS OF IRON OR NON-ALLOY STEEL
7208	FLAT-ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600 MM OR MORE, HOT-ROLLED NOT CLAD, PLATED OR COATED
7213	BARs AND RODS, HOT-ROLLED, IN REGULARLY WOUND COILS, OF IRON OR NON-ALLOY STEEL

On careful examination of description of goods viz. pig iron, granules, iron ingots, bars etc., it appeared that neither of the goods qualify as finished product. It consists of primary material, semi-finished products and flat-rolled products of iron and different type of steel (Non alloy/Stainless/Other Alloys).

3.1.2. Chapter Heading in CTH 73

Chapter Heading	Description of goods
7301	SHEET PILING OF IRON OR STEEL, WHETHER OR NOT DRILLED, PUNCHED OR MADEFROM ASSEMBLED ELEMENTS; WELDED ANGLES, SHAPES AND SECTIONS, OF IRON OR STEEL
7302	RAILWAY OR TRAMWAY TRACK CONSTRUCTION MATERIAL OF IRON OR STEEL, THEFOLLOWING: RAILS, CHECK-RAILS AND RACK RAILS,

	SWITCH BLADES, CROSSING FROGS, POINT RODS AND OTHER CROSSING PIECES, SLEEPERS (CROSS-TIES), FISH-PLATES, CHAIRS, CHAIR WEDGES, SOLE PLATES (BASE PLATES), RAIL CLIPS, BEDPLATES, TIES AND OTHER MATERIAL SPECIALIZED FOR JOINTING OR FIXING RAILS.
7303	TUBES, PIPES AND HOLLOW PROFILES, OF CAST IRON
7309	RESERVOIRS, TANKS, VATS AND SIMILAR CONTAINERS FOR ANY MATERIAL (OTHER THAN COMPRESSED OR LIQUIFIED GAS), OF IRON OR STEEL, OF A CAPACITY EXCEEDING 300L, WHETHER OR NOT LINED OR HEAT-INSULATED, BUT NOT FITTED WITH MECHANICAL OR THERMAL EQUIPMENT.
7316	ANCHORS, GRAPNELS AND PARTS THEREOF, OF IRON OR STEEL
7319	SEWING NEEDLES, KNITTING NEEDLES, BODKINS, CROCHET HOOKS, EMBROIDERY STILETTOS AND SIMILAR ARTICLES, FOR USE IN THE HAND, OF IRON OR STEEL; SAFETY PINS AND OTHER PINS OF IRON OR STEELS, NOT ELSEWHERE SPECIFIED OR INCLUDED
7323	TABLE, KITCHEN OR OTHER HOUSEHOLD ARTICLES AND PARTS THEREOF, OF IRON OR STEEL; IRON OR STEEL WOOL; POT SCOURERS AND SCOURING OR POLISHING PADS, GLOVES AND THE LIKE, OF IRON OR STEEL.

As can be seen from above table the goods included in Chapter 73 are sheet pilings, tubes, pipes, anchors, sewing needle, kitchen articles of iron or steel etc. All these products have their direct end uses and can be used independently without being further worked upon. For example, the article mentioned at CTH 7301 - SHEET PILING OF IRON OR STEEL, though being simple metal sheets have their use as finished product/Article for construction and other activities.

3.2. An article under Chapter 73 has to be a finished product which either can be used independently or to be joined or fixed together to make structures etc.

3.3. In case of 'SS Triply Circle', it does not have any function or use which is intrinsic to it. It is a flat-rolled product, which is further worked upon to get a desired article. The 'SS Triply Circle' cannot be termed as an 'Article' because it cannot be used directly and has to be substantially processed further to get the desired article. To arrive at right CTI for the 'SS Triply Circles', its nature, form and composition is discussed in detail in the following paras:-

3.4. Further, the SS Triply Circle is a composite product of two base metal viz. Stainless Steel and Aluminum, yet it should be classified as product of Stainless Steel (Not aluminum) as Stainless Steel predominates weight as Aluminum. As per note 7 to Chapter XV of the Customs Tariff Act, 1975, "*Classification of composite articles; except where the heading otherwise require, article of base metal (including articles of mixed materials treated as articles of base metals under the Interpretative Rules)*" containing two or more base metals are to be treated as articles of base metal predominating by weight over each of the other metals. For this purpose: (a) iron and steel, or different kinds of iron or steel, are regarded as one of the same metal". Based on above note, the 'SS Triply Circle' merits classification as a product of Stainless Steel under Chapter 72.

3.5. In Chapter 72 of the Customs Tariff Act, 1975, the different CTHs have been put into 4 sub-chapters as follows:

(i) PRIMARY MATERIALS PRODUCTS IN GRANULAR OR POWDER FORM (CTH 7201 TO 7205)

(ii) IRON AND NON-ALLOY STEEL (7206 TO CTH 7217)

(iii) STAINLESS STEEL (CTH 7218 TO CTH 7227)

(IV) OTHER ALLOY STEEL; HOLLOWDRILL BARS AND RODS OF ALLOYS OR NON-ALLOY STEEL (CTH 7228 TO 7229)

3.5.1. The SS Triply Circles is a product of Stainless Steel and therefore shall fall in the sub chapter III- Stainless Steel (CTH 7218 to CTH 7227) of Chapter 72. The only relevant CTH for this kind of product is either:

7219 (Flat Rolled Products of Stainless Steel, of a width of 600 mm or more) **OR**

7220 (Flat-Rolled Products of Stainless Steel, of a width of less than 600mm)

3.5.2. To further clarify the issue, the relevant part of Note 1 to the Chapter 72 of the Customs Tariff Act, 1975 is reproduced as below:

1 (ij) Semi-finished products:

Continuous cast products of solid section, whether or not subjected to primary hot-rolling; and

Other products of solid section, which have not been further worked than subjected to primary hot-rolling or roughly shaped by forging, including blanks for angles, shapes or sections.

These products are not presented in coils.

1 (k) Flat-rolled products:

Rolled products of solid rectangular (other than square) cross-section, which do not confirm to the definition at (ij) above in the form of

–Coils of successively superimposed layers, or

–Straight lengths, which if of a thickness less than 4.75 mm are of a width measuring at least ten times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness.

Flat-rolled products include those with patterns in relief derived directly from rolling (for example, grooves, ribs, chequers, tears, buttons and lozenges) and those which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings.

Flat-rolled products of a shape other than rectangular or square, of any size, are to be classified as products of a width of 600 mm or more, provided that they do not assume the character of articles or products of other heading.

3.5.3. Considering the shape of the SS Triply Circles/Aluminum Cladded Triply Circles as round/ circular if fits into the definition of Flat-rolled product of a width of 600 mm or more as per Note 1(k) of Chapter 72 of the Customs Tariff Act, 1975. **Thus, SS Triply circles merits classifiable under CTH 7219.**

Chapter heading 7219 reads as - *Flat-rolled products of Stainless Steel of a width of 600mm or more*. As the import product is a clad product, not specially mentioned in any of the CTI under CTH 7219, it would merit classification under the category - 'OTHERS' under CTI 72199090.

3.6. On account of classification of the import product SS Triply Circle under CTH 7219, the CVD Notification No.01/2017-Cus dated 07.09.2017 appear to be applicable:

Sr. No.	Heading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount as % of landed value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	7219 or 7220	Flat-rolled products of stainless steel-(Note below)	China PR	China PR	Any	Any	18.95%
2	-do-	-do-	China PR	Any Country	Any	Any	18.95%
3	-do-	-do-	Any Country	China PR	Any	Any	18.95%

Note: (1) Flat Rolled Products of Stainless Steel for the purpose of the present notification implies: "Flat rolled products of stainless steel, whether hot rolled or cold rolled of all grades/ series; whether or not in plates sheets, or in coil form or in any shape, of any width, of thickness 1.2mm to 10 Sum in case of hot rolled coils; 3mm to 105mm in case of hot rolled plates & sheets; and up to 6.75 min case of cold rolled flat products Product scope specifically excludes razor blade grade steel".

4. In view of above facts, it appeared that mis-classification of Stainless Steel Triply Circle under Customs Tariff heading 73269070 by the importer has led to non-payment of CVD @18.95% of landed value which otherwise would have been applicable, had the import product been rightly classified under CTH 7219.

5. Accordingly, a Consultative Letter CL No. 16/2022-23 (C2) vide F. No. S/2-Audit-Gen-476/2021-22/JNCH (C-2) dated 07.04.2022 was issued to the importer advising for payment of differential duty along with applicable interest and penalty. However, importer has neither made any payment nor has given any documentary evidence or reply to the CL to the Audit Section.

6. Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on imported goods by the importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic

declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service center, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry in this instant case, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

7. Relevant Legal Provisions: After the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including Classification and calculation of duty, but in the instant case the subject goods have been mis-classified and IGST amount has not been paid correctly.

Relevant legal provisions for recovery of duty that appears to be evaded are reproduced here for the sake of brevity which is applicable in the instant case:

7.1. Section 17(1) Assessment of duty, reads as:

An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

7.2 Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) read as:

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or*
- (b) any willful mis-statement; or*
- (c) suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him,

and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

7.3 SECTION 28AA- Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 2, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest, at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

7.4. SECTION 46 Entry of goods on importation, subsection 46(4) reads as:

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

7.5. Section 111(Confiscation of improperly imported goods etc.) reads as: *The following goods brought from a place outside India shall be liable to confiscation..... (m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.....;*

7.6. Section 112 (Penalty for improper importation of goods etc.) reads as:

"Any person,-

(a)who in relation to any goods does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act shall be liable,-

(1) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher....."

7.7. SECTION 114A- Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso;

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purpose of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also in case where the duty or interest determined to be applicable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty – five percent of the consequential increase of the order by which such increase in the duty or interest takes effect.:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation – For the removal of doubts, it is hereby declared that –

- (i) *the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*
- (ii) *any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.*

7.8. SECTION 114AA – Penalty for use of false and incorrect material –

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

7.9. SECTION 117. Penalties for contravention, etc., not expressly mentioned. – *Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.*

8. Acts of omission and commission by the Importer:

8.1. As per section 17 (1) of the Act, “An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.” Thus, in this case the importer had self-assessed the Bills of Entry and appeared to have Non-levy / Short levy of Customs Duty and/or IGST due to mis-declaration and mis-classification. As the importer got monetary benefit due to said act, it appeared that the same was done deliberately by willful mis-declaration of the said goods in the Bills of Entry during self-assessment. Therefore, differential duty, as mentioned in Annexure-A, is liable to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

8.2. It appeared that the Importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable Customs Duty on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appeared that the Importer has rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appeared liable to penal action under Section 112(a) and/ or Section 114A of the Customs Act, 1962. As the Importer deliberately and knowingly mis-declared and mis-classified the impugned goods to evade the Countervailing Duty leviable under Notification

No.01/2017-Cus dated 07.09.2017. Accordingly, the Importer also appeared liable to penal action under Section 114 AA of the Customs Act, 1962.

8.3 The impugned item is partially described as the goods based upon cladding material i.e. Aluminum and not upon base material i.e. Stainless Steel. Thus, the Importer deliberately and knowingly mis-declared and mis-classified the impugned goods to evade the Countervailing Duty leviable under Notification No.01/2017-Cus dated 07.09.2017. Accordingly, the Importer also appeared liable to penal action under Section 114 AA of the Customs Act, 1962.

9. From the foregoing, it appeared that the Importer has willfully mis-classified the goods; that the Importer has submitted a false declaration under section 46(4) of the said Act. Due to this act of omission of Importer, there has been loss to the government exchequer equal to the differential duty mentioned in Annexure-A.

10. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, **M/s Hawkins Cookers Limited (IEC: 0388038454)** were called upon to Show Cause to the Commissioner of Customs, NS-III, Jawaharlal Nehru Custom House, Nhava Sheva, Tal-Uran, Dist.- Raigad, Maharashtra-400707 within 30 days of the receipt of this notice as to why:

- (i)The classification of the imported goods declared as ‘Stainless Steel Triply Circles’ under the Bills of Entry as mentioned in Annexure-A under CTH 73269070 should not be rejected and the same should not be re-classified under CTH 72199090.
- (ii)Differential duty amounting **Rs. 53,00,830/- (Rupees Fifty-Three Lakh Eight Hundred and Thirty only)** for Bills of Entry as mentioned in Annexure-A should not be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- (iii)The subject goods valued at **Rs. 2,54,93,248/- (Rupees Two Crore Fifty-Four Lakh Ninety-Three Thousand Two Hundred and Forty-Eight only)** should not be confiscated under section 111(m) of the Customs Act,1962.
- (iv)Penalty should not be imposed on them under Section112(a) and/or 114A and Section 114AA of the Customs Act, 1962.

11. WRITTEN SUBMISSION

The noticee has submitted written submission dated 17.01.2025, which is as follows:-

- 11.1** At the outset, Hawkins denies all the allegation made in the show cause notice under reply and nothing that is alleged in the show cause notice is admitted or deemed to be admitted by Hawkins unless so specifically admitted in this reply.

- 11.2 It is erroneously alleged in the show cause notice that Hawkins did not respond to pre-consultation notice dated 07.04.2022. This is factually incorrect. Hawkins, vide letter dated 16.05.2022, responded to the pre-consultation notice and explained its case in detail.

Section 28(4) is not applicable in facts of the present case and in law.

- 11.3 Without prejudice to other submissions herein, it is submitted that the show cause notice issued in exercise of powers under Section 28(4) of the Act is ex-facie devoid of jurisdiction and contrary to and in non-compliance of Circular No. 1053/2/2017-CX., dated 10.03.2017, issued by the Board.
- 11.4 Section 28(4) of the Act provides for invocation of an extended period of limitation of five years if any of the following ingredients exist:
- a. collusion; or
 - b. any wilful misstatement; or
 - c. suppression of facts
- 11.5 Further, in the Circular dated 10.03.2017, it is clarified as under:

“A long-standing practice of assessment which is widely prevalent across the country should not be suddenly changed by issuing show cause notice demanding duty. Such issues should be referred to the Board in a comprehensive manner with inputs obtained from the other zones regarding the proposed change in the practice of assessment. Demand of duty if any should be limited to normal period in such cases as the practice of assessment in such cases is known to both trade as well as the department.”

- 11.6 It is clear from the above clarification that, apart from other compliances, demand of duty, if any, should be limited to normal period as practice in such cases is known to both the trade as well as the department.
- 11.7 It is submitted that in the present case, none of the above factors exist and thus, the extended period cannot be invoked.
- 11.8 It is pertinent to note that the issue in the present case pertains to classification of the imported goods.
- 11.9 Further, from a bare perusal of the show cause notice, it is manifest that the present issue of classification involves interpretation of law.
- 11.10 Reliance is placed on external aids in the form of the HSN Explanatory Notes in order to allege that the imported goods are wrongly classified by us.
- 11.11 It is submitted that Hawkins cannot be held guilty of suppression of facts or wilful misstatement when the issue involved in the present case is admittedly complex and based on interpretation of the law.
- 11.12 Further, it is pertinent to note that Hawkins has been importing the impugned goods for 5 years and assessment under Chapter 73 has been accepted by the department.

- 11.13 Further, in any event, this is not a case of misdeclaration of description of goods. The goods have been correctly described in the Bill of Entry (BE).
- 11.14 It is submitted that Hawkins did not mis-declare the description of the goods. The goods were described as per import documents.
- 11.15 It is settled law that the alleged mis-classification of goods does not amount to mis-declaration to invoke Section 28(4) of the Act.
- 11.16 In view of the above, it is submitted that the sine qua non to invoke Section 28(4) of the Act is missing in the present case.
- 11.17 Without prejudice and in any event, in view of the submissions made in paragraphs above, it is evidently clear that Hawkins had no intention to evade duty and Hawkins continued to assess the goods under tariff item 7326 9070, even after recession of notification no. 1/2017-Cus.
- 11.18 There was no element of fraud, wilful misstatement or suppression of facts to evade tax as explained in previous paragraphs. Therefore, extended period of limitation can not be invoked under section 28 of the Act.

In any event, in the absence of any reassessment under Section 17(4) of the Act or appeal against the disputed Bills of Entry, it is not open to raise demand under Section 28 of the Act.

- 11.19 Without prejudice to the above, it is submitted that, admittedly, the Bills of Entries mentioned in Annexure A to the show cause notice under reply were assessed by Hawkins. The assessment was accepted by the department. Neither any reassessment was done nor any appeals are filed against the said assessment.
- 11.20 It is submitted that the differential duty demand cannot be made without challenging the assessment of the subject Bills of Entry.
- 11.21 Section 17(1) of the Act provides for self-assessment of duty by the importer. Further, Section 17(2) of the Act empowers the proper officer to verify the Bill of Entry and self-assessment of duty done by the importer.
- 11.22 In case the proper officer is not satisfied with the self-assessment done by the importer, then Section 17(4) of the Act empowers the proper officer to reassess the duty leviable on the goods and pass a speaking order within 15 days from the date of reassessment of the Bill of Entry.
- 11.23 From the above, it is evident that there is a specific provision under Section 17 of the Act which provides for powers to reassess the duty.
- 11.24 However, no re-assessment has been initiated by the proper officer in the present case. In absence of any challenge to the assessment made on Bills of Entry, the assessment has become final. Admittedly, duty as assessed has been paid prior to the out-of-charge order.
- 11.25 In **ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV [2019 (368) ELT 216 (SC)]**, the Hon'ble Supreme Court was pleased to hold thus:

20. Right to appeal is available to any person i.e. to the department as well as to importer/exporter against an order of self-assessment. Until and unless assessment order is

modified and a fresh order of assessment is passed and duty redetermined, the refund cannot be granted by way of refund application. The refund authorities cannot take over the role of Assessing Officer. The officer considering refund claim cannot reassess an assessment order. An assessment order has to be questioned within the stipulated period of limitation. The refund application cannot be entertained directly under Section 27 unless the order of assessment is appealed against and is modified.

43. *As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).*

11.26 Though the ratio of the above judgment is in the context of the refund claim filed by the assessee without challenging the duly assessed Bill of Entry, it will equally apply to any recovery proceedings initiated under Section 28 of the Act without challenging the duly assessed Bill of Entry in appeal.

11.27 Following the above judgment of the Hon'ble Supreme Court, the Hon'ble Punjab & Haryana High Court in **Jairath International v. Union of India [2019 (370) ELT 116 (P&H)]** was pleased to hold thus:

17. *In view of judgment of Hon'ble Supreme Court in the case of ITC v. CCE (supra), we find that shipping bill either self-assessed or assessed by proper officer is amenable to appeal by both sides. Respondent by way of show cause notice under Rule 16 of the Drawback Rules, 1995 cannot modify assessed shipping bill.*

11.28 In view of the above, on this ground alone, the show cause notice is liable to be dropped.

In any event, classification claimed by Hawkins under Chapter 73 is correct and proper.

- 11.29 It is settled law that burden of correct classification is always on the department even under the self-assessment regime. In the present case, the show cause notice has failed to discharged the burden casts on the department. The proposed classification under Chapter 72 is without any basis.
- 11.30 The goods imported by Hawkins are articles containing steel of various grades and aluminium.
- 11.31 Chapter 73 deals with “**Articles of iron or steel**” and the goods imported by Hawkins rightly fall under Chapter 73.
- 11.32 The manufacturing process of the goods is as under:
- a. The goods are cladded materials consisting of three metals viz. Stainless Steel 304, Aluminium 1050 and Stainless Steel 430 grade;
 - b. Coils of each of the above materials are aligned side by side. The Aluminium surface is ground on both the sides. The Stainless Steel 304 as well as Stainless Steel 430 are ground on one side;
 - c. The three strips of metal are then trimmed to size and spot welded at different places;
 - d. The said strips are then cleaned for heating and then heated upto a temperature of 550 - 600 degree centigrade with high pressure to form a bond;
 - e. The cladded coil is then passed through a heavy roller for straightening of the material;
 - f. The bonded/cladded metal is then cut to required sizes and circles are sheared. After circle shearing, deburring is done to keep the circumference smooth;
- 11.33 It is clear from the above process that, in terms of the Note 7 to Section XV, the said goods are to be treated as Stainless Steel circles.
- 11.34 Admittedly the goods are “clad metals”. The goods are a composite article containing steel of various grades and aluminium. Clad metals are specifically covered under CTH 7326 9070.
- 11.35 The explanatory notes to HSN provides that CTH 7326 covers all articles of iron and steel obtained by forging or punching, by cutting or stamping or by any other processes such as folding, assembling, welding, turning, milling or perforating.
- 11.36 The purported interpretation of the department in the show cause notice that the goods included in Chapter 73 are sheet pilings, tubes, pipes, sewing needle, kitchen articles of

iron and steel etc. and have their direct end uses and can be used independently without further worked upon is misplaced.

- 11.37 The contention that the article under Chapter 73 has to be a finished product which either can be used independently or to be joined or fixed together to make structures etc. is without any basis.
- 11.38 The allegation in the show cause notice under reply that the goods being a composite product of two base metals viz. Stainless Steel and Aluminium, it should be classified as product of Stainless Steel (Not aluminium) as Stainless Steel predominates weight of Aluminium is misplaced.
- 11.39 Note 1(ij) to Chapter 72 is not applicable to the goods. Note 1(ij) defines "semi-finished products". In the present case, goods imported by Hawkins are not "semi-finished product".
- 11.40 The goods imported by Hawkins have been further worked upon and subjected to deep drawing or roughly shaping by forging. The goods imported by Hawkins are not blanks for angles, shapes and sections.
- 11.41 Note 1(k) to Chapter 72 is not applicable to the goods. It is submitted that rolled products of solid rectangular (other than square) cross-section, which do not confirm to the definition at (ij) of Note 1 to Chapter 72 are covered in Note 1 (k). The goods do not fall into the definition contained in Note 1(k).
- 11.42 Note 1(k) applies to flat rolled products and includes flat rolled products derived directly from rolling (for example, grooves, ribs, chequers, tears, buttons and lozenges) and those which have been perforated, corrugated or polished, provided that they do not thereby assume character of articles or products of other heading.
- 11.43 CTH 7219 pertains to flat rolled products of stainless steel, of a width of 600 mm or more. Whereas, CTH 7326 pertains to other articles of iron or steel and CTH 73269070 specifically covers **“articles of clad metal”**.
- 11.44 It is submitted that the goods imported by Hawkins are articles of clad metal is not in dispute.
- 11.45 CTH 7219 9090 is a residuary entry with respect to flat rolled products of stainless steel of a width of 600 mm or more. It is not in dispute that the goods imported by Hawkins is not flat rolled products of stainless steel of a width of 600 mm or more but are composite goods containing stainless steel of various grades and aluminium. The said goods cannot to be classified under a residuary heading when they are specifically covered under CTH 7326 9070. It is settled law the specific entry always prevails over general entry.
- 11.46 The Hon’ble Apex Court, in **State of Karnataka v. M/sDurga Projects Inc [2018 (10) G.S.T.L. 513 (S.C.)]**, held thus:

“Section 4 imposes a liability to pay taxes upon every dealer on his taxable turnover. Besides imposing a liability, Section 4 prescribes the rate of tax. The rate of tax on goods mentioned in the Second, Third and Fourth Schedules was specified in sub-clauses (i), (ii) and (iii) of Section 4(1)(a). The Second Schedule at the material time attracted a rate of 1%, the Third Schedule 4% and the Fourth Schedule, 20%. On ‘other goods’ the rate of tax was 12.5% under Section 4(1)

(b). The expression ‘other goods’ in Section 4(1)(b) evidently means those goods which are not governed by Section 4(1)(a). Where goods are specifically covered by any of the entries of the Second, Third and Fourth Schedules, such goods would be covered by the specific entry relating to those goods. Recourse to the residual provisions of Section 4(1)(b) would be available only in respect of ‘other goods’, that is, goods which did not fall within the purview of Section 4(1)(a). The law on the construction of a residual entry has been crystalized in several judgments of this Court and it would be appropriate to refer to one of them : HPL Chemicals Ltd. v. CCE - (2006) 5 SCC 208 = [2006 \(197\) E.L.T. 324](#) (S.C.). After advertng to the decisions in Dunlop India Ltd. (supra), and Bharat Forge and Press Industries Pvt. Ltd. (supra), this Court reiterated that “only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry”. Applying this principle, where goods are specifically covered by clauses (i), (ii), or (iii) of Section 4(1)(a), recourse to the residual provisions of Section 4(1)(b) would not be available. To allow a residual provision to consume the specific would be to invert the intent of the legislature. The state wants us to do just that.”

.... Emphasis ours

- 11.47 In view of settled position in law, the action of department seeking to assess goods under a residuary heading ignoring the specific heading is untenable in law. It is reiterated that CTH 7219 9090 cannot be applied to the goods imported by Hawkins.
- 11.48 It is submitted that the contention that considering the shape of goods as round/circular fits into the definition flat products of width more than 600 mm or more as per Note 1(k) to Chapter 72 is erroneous. A classification cannot be decided based on the shape only. In any event, the definition under Note 1(k) to Chapter 72 covers rolled products of solid rectangular (other than square) cross-section, which do not confirm to the definition at (ij) of Note 1 to Chapter 72 and not circular products.
- 11.49 It is submitted that Notification No. 01/2017-Cus dated 07.09.2017 relied upon in the show cause notice to contend that Hawkins is liable to pay Counter Vailing Duty (CVD) is not applicable to the goods imported by Hawkins. The said Notification specifically covers certain articles falling either under CTH 7219 or CTH 7220.
- 11.50 It can be seen from the Product under Consideration (PUC) in the said Notification, in order to invoke Notification the product must satisfy the following characteristics:
- (i) it should be Flat Rolled Products;
 - (ii) it should be of Stainless Steel;
 - (iii) it could be of either HR or CR manufacture;
 - (iv) it could be any grades/series;
 - (v) it could be either in plates, sheets or in coil form;
 - (vi) it could be in any shape;
 - (vii) it could be of any width;
 - (viii) it could be of thickness ranges mentioned in the notification;

- 11.51 The goods imported by Hawkins are not classifiable under CTH 7219 and therefore question of payment of CVD in terms of Notification No. 01/2017-Cus dated 07.09.2017 does not arise.
- 11.52 The basic requirement of goods to be classified under Chapter 72 is that the goods have to be either in the form of Coils or straight lengths. Whereas, the goods imported by Hawkins is neither in coil form nor in straight lengths but in various circular pieces and do not fall under the purview of the definition of Flat Rolled Products.
- 11.53 Merely because the goods imported by Hawkins are a composite product of two base metals viz. Stainless steel and Aluminium, the same does not entitle the goods to be classified under CTH 7219 9090.
- 11.54 Assuming but without admitting that the goods imported by Hawkins fall under the definition of flat rolled products, even then, the said goods do not assume the character of products of CTH 7219 9090 in view of specific entry under Chapter 73 viz. CTH 7326 9070 which covers "Articles of clad".
- 11.55 Since the goods imported by Hawkins being circle shaped, the same would not fall within the definition of flat rolled products, the said goods are to be classified in terms of Chapter Note 1(n) to Chapter 72. Note 1(n) reads as under:

n) Angles, shapes and sections:

Products having a uniform solid cross-section along their whole length which do not conform to any of the definitions at (0), (k), (l) or (m) above or to the definition of wire.

Chapter 72 does not include products of heading 7301 or 7302

- 11.56 Even if it is assumed that the Stainless Steel Clad Circles are not yet articles as alleged in the show cause notice under reply, even then when there is a specific entry in the Tariff for Angles, Shapes and Section, the Stainless Steel Clad Circles will not be classifiable under the heading 72.22 which is specific to Angles, Shapes and Section.
- 11.57 It is clear from the above that the goods imported by Hawkins is:
- not made of only stainless steel but is a clad product of stainless steel with aluminum and magnetic steel. It is only for purpose of classification that the item is being classified under heading of stainless steel, but, since the item is not pure stainless steel, the said Notification does not cover the goods imported by Hawkins;
 - The specification mentioned is that of width, whereas the goods imported by Hawkins is defined by diameter, being a circle. A circle can never have a width and therefore, the goods imported by Hawkins does not fall within the purview of the notification.

- 11.58 It is submitted that in CBIC's Instruction No. 354/5/2012-TRU dated 08.05.2012 with respect to imposition of Anti-dumping Duty (**ADD**), it is held that when such ADD is imposed, it is specific only to the articles mentioned therein and not to all the goods falling in any tariff heading.
- 11.59 In the present case, the purported re-classification of goods imported by Hawkins from CTH 7326 to CTH 7219 is contrary to the said Instruction No. 354/5/2012-TRU dated 08.05.2012, which is binding on the department. It is submitted that there is no short payment of duty. The proposed demand based on re-classification of goods is clearly devoid of jurisdiction. It is denied that differential duty, is recoverable from Hawkins either under Section 28(4) of the Customs Act, 1962 or any other provisions of the Act.
- 11.60 It is denied that Hawkins did not pay the applicable Customs Duty on the goods at the time of clearance of goods as alleged. The duty paid by Hawkins, at the time of clearance of goods, was proper and correct. This is evident from the fact that the department found the assessment and payment of duty by Hawkins correct and proper and no appeal or reassessment has been initiated by the department.

There is no mis-declaration of goods under Section 111(m) of the Act and thus, the imported goods are not liable to be confiscated

- 11.61 It is submitted that there is no mis-declaration of goods as envisaged under Section 111(m) of the Act and thus, the imported goods are not liable to be confiscated. Section 111(m) of the Act reads thus:

SECTION 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable to confiscation : –

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

- 11.62 It is submitted that Hawkins has not mis-declared the value of the imported goods. The show cause notice has neither disputed the value of goods as per invoice nor as declared in the Bills of Entry as filed with the Customs department. Hence, the first part of Section 111(m) of the Act is not applicable in the facts of the present case. It is further submitted that Hawkins has not mis-declared any other particulars in the Bills of Entry. It is denied that Hawkins has

allegedly mis-classified the goods or that it has allegedly submitted a false declaration under section 46(4) of the Act. It is submitted that adopting a classification of the goods in the Bill of Entry not acceptable to the department by itself does not constitute a mis-declaration within the meaning of Section 111(m) of the Act. The imported goods correspond to the declaration made by Hawkins regarding the description in the Bills of Entry.

- 11.63 It is well settled position in law that the burden of classification is on the revenue and not on the importer. Assuming without admitting that Hawkins has mis-classified the imported goods, it does not amount to mis-declaration of the goods. The importer is entitled to adopt the classification, which according to his belief is correct classification.
- 11.64 Reliance is placed on **Jayesh P. Surana vs Commissioner of Customs (Imports), Chennai 2009 (241) E.L.T. 87 (Tri. – Chennai)** wherein the Hon'ble Tribunal has inter alia held as:

“4. I have considered the rival submissions. As regards the description of the goods in the Bill of Entry, I find that the importer had entered the correct description of the goods as men's jackets and ladies jackets. They had declared the respective quantities as appearing in the related invoice. The appellants had claimed classification of the goods under Chapter Heading 61 erroneously. Classification and assessment of imported goods are the functions of the department. An importer cannot be penalized for claiming a classification which the authorities find to be incorrect. There is no allegation that the description entered in the Bill of Entry was incorrect. As regards the lower quantity of men's jackets and higher quantity of ladies jackets declared in the Bill of Entry, it cannot be categorically found to have been deliberate misdeclaration by the importer. The impugned order does not find so. As regards the value declared the Commissioner noted that “Shri Jayesh P. Surana had stated that the transaction value was not the price mutually negotiated and accepted between the supplier and himself and the price was declared in the Bill of Entry for the purpose of declaration without any knowledge about the actual value of the goods and that the value was arbitrarily low.” There is nothing on record to support this finding. Therefore, the allegation of misdeclaration of description, price and quantity of the impugned goods cannot be validly found to have been deliberately made. Admittedly the quantities of both varieties of jackets declared were different from the respective quantities imported. Therefore, these jackets were rightly confiscated by the Commissioner under Section 111(m) of the Act. Therefore, the penalty imposed on Shri Jayesh P. Surana under Section 112(a) of the Act is also in accordance with law. However, considering the fact that the importer had not misdeclared the quantity of jackets imported in the Bill of Entry knowingly and that there is no other ground to confiscate the imported goods under Section 111(m), the penalty imposed under Section 112(a) is reduced to Rs. 10,000/- (Rupees ten thousand only). The appeal is thus allowed partially.”

11.65 Thus, it is clear that, assuming without admitting Hawkins made a wrong classification in the Bill of Entry by itself cannot be held to be mis-declaration. In absence of any mis-declaration on our part, it is submitted that the imported goods are not liable to be confiscation under section 111 of the Act.

In any event, the imposition of fine in lieu of confiscation is ex-facie untenable in law.

11.66 Without prejudice and in any event, the imposition of fine in lieu of confiscation is ex-facie without jurisdiction and without the authority of law having regard to admitted fact that the goods were neither seized nor cleared on execution of bond. It is a settled position in law that when the imported goods are not available for confiscation, no fine can be imposed for redemption thereof.

11.67 In this regard, reliance is placed on the judgment of the Hon'ble Bombay High Court in **Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc. [2009 (248) ELT 122 (Bom.)]**, wherein the Hon'ble Bombay High Court was pleased to hold thus:

5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

11.68 The above judgment has been affirmed by the Hon'ble Supreme Court as reported at **2010 (255) ELT A120 (SC)**. Further, the Hon'ble Bombay High Court in **Commissioner of Customs (Import) Mumbai Versus Air India Ltd [2009 (8) TMI 115 - BOMBAY HIGH COURT]**, has held as thus:

5. .. the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

11.69 In the present case as well, the imported goods have already been cleared for home consumption. No bond was required to be executed for the purpose clearance for home consumption. Consequently, the imported goods are not seized and not available for confiscation. In any event, as submitted above, even otherwise, the imported goods are not liable for confiscation under Section 111(m) of the Act. Thus, it is submitted that no redemption fine can be imposed on Hawkins under Section 125 of the Act.

In any event, no penalty can be imposed on Hawkins under Section 112 of the Act

11.70 In any event, it is submitted that no penalty can be imposed under Section 112(a) of the Act. Section 112(a) of the Act provides for imposition of penalty on any person who does or omits to do any act in relation to any goods, rendering the goods liable for confiscation under Section 111 of the Act. In the present case, in view of the submissions made above, it is clear that the imported goods are not liable for confiscation under Section 111 of the Act. Thus, the question of imposition of penalty under Section 112(a) of the Act does not arise.

In any event, no penalty can be imposed on Hawkins under Section 114A of the Act.

11.71 It is submitted that no penalty can be imposed under Section 114A of the Act. It is submitted that penalty under Section 114A of the Act can be imposed only if the duty is short paid by reason of:

- a. collusion;
- b. wilful misstatement;
- c. suppression of facts;

11.72 In view of the submissions made above, it is clear that Hawkins is not guilty of any collusion, suppression or wilful misstatement of facts.

11.73 Further, it is submitted that penalty under Section 114A of the Act cannot be imposed when extended period under Section 28(4) of the Act cannot be invoked.

11.74 In the present case, none of the ingredients of section 114A are satisfied and imposition of penalty thereunder is ex-facie erroneous and liable to be set aside.

11.75 In the present case, from the submissions made above, it is amply clear that the imported goods are correctly classified and no differential duty is liable to be paid thereon.

11.76 It is a settled position in law that no penalty can be imposed where there is no demand. [Coolade Beverages Limited (2004) 172 ELT 451 (All.)]

11.77 In view of the above, it is submitted that no penalty can be imposed under Section 114A of the Act.

In any event, no penalty can be imposed on Hawkins under Section 114AA of the Act.

11.78 In any event, it is submitted that no penalty can be imposed under Section 114AA of the Act. From the submissions made above, it is amply clear that Hawkins has not made, signed or used, any declaration, statement or document which is false or incorrect in any particular, knowingly or intentionally. It is submitted that the description given by Hawkins in the bills of entry is more specific and is the correct description of the imported goods. The imported goods correspond to the declaration so made regarding the description. In view of the above, it is submitted that no penalty can be imposed under Section 114AA of the Act.

In any event, no interest can be recovered under Section 28AA of the Act

11.79 In the view of the aforesaid, no interest can be recovered from Hawkins under Section 28AA of the Act. It is submitted that Section 28AA of the Act can be invoked when there is delay in payment of duty. In the present case, Hawkins is not liable to pay any duty and in view of this, the question of invocation of Section 28AA of the Act does not arise. In view of the submissions hereinabove, it is submitted that the proceedings initiated pursuant to the show cause notice under reply are liable to be dropped and accordingly, be dropped.

Additional Submission dated 17.07.2025 submitted by the noticee is as follows :-

11.80 At the outset, we reiterate the submissions made in reply to the show cause notice vide our letter dated 17.01.2025.

11.81 Perusal of Annexure A to the show cause notice would indicate that Hawkins had paid BCD of 10 per cent, which is now sought to be demanded at 7.5 per cent. In other words, Hawkins paid BCD in excess of duty now proposed to be demanded. Thus, there can be no intent to evade BCD. This is a bona fide dispute of classification.

11.82 Without prejudice and in any event, we submit that notification no. 1/2017-Customs (CVD) is issued under Section 9 (1) of the Customs Tariff Act, 1975 based on the final findings published vide notification No. 14/18/1015-DGAD, dated the 4th July 2017.

11.83 It is clear that Section 9(1) empowers countervailing duty on the article imported into India on which country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom.

11.84 Even opening portion of the notification no. 1/2017 refers to "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" (hereinafter referred to as the subject goods) falling under tariff heading 7219 or 7220. Thus, the said notification does not apply to all goods of 7219 or 7220 even assuming that the Triply Circles are classifiable under 72199090.

11.85 Further, show cause notice, without any basis, proceeds on the assumption that the imported goods are stainless steel products. Assuming without admitting that goods are classifiable under CTH 72199090, it is submitted that no provision for recovery of alleged

short levy of Countervailing duty existed prior to 16.08.2024, in view of undisputed fact that sub-section (7A) of Section 9 of the Customs Tariff Act is substituted with effect from 16.08.2024 specifically providing for recovery. Substituted sub-section (7A) reads thus:

“(7A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, exemption, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder as the case may be”

11.86 Unamended sub-section (7A) of Section 9 of Customs Tariff Act reads thus:

“(7A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.”

11.87 Our aforesaid submissions are duly supported by the judgment of the Hon’ble Bombay High Court in the case of **Mahindra and Mahindra Limited (2023) 3 Centax 261 (Bom.)** and followed in the case of **A.R. Sulphonate Private Limited(2025) 29 Centax 212 (Bom.)**.

11.88 We once again reiterate the submissions made in the reply letter dated and pray that the same be treated as part of the present submissions. In view of the aforesaid it is submitted that no duty is recoverable from us and accordingly, the proceedings are liable to be dropped and be dropped.

12. PERSONAL HEARING

Advocate Shri Prakash Shah and Authorized Representative Shri Brahmanand Pani appeared on behalf of the noticee on 17.07.2025 and reiterated the written submission submitted by them on 17.01.2025 and 18.07.2025 and case laws submitted by them on 17.07.2025.

13. DISCUSSIONS AND FINDINGS

I have carefully gone through the Show Cause Notice, material on record and facts of the case. Accordingly, I proceed to decide the case on merit.

The written submission dated 17.01.2025 and 18.07.2025 submitted by the Advocate Shri Prakash Shah and Authorized Representative Shri Brahmanand Pani on behalf of the Noticee and they attended personal hearing on 17.07.2025 and reiterated the written submission submitted by them on behalf of the noticee. Therefore, I proceed to decide the case on the facts and evidences available on record.

Principles of natural justice

13.1. Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) read of the Customs Act, 1962 and in terms of the principle of natural justice, a personal hearing in this matter have been granted to the Noticee on 17.07.2025 for which Advocate Shri Prakash Shah and Authorized Representative Shri Brahmanand Pani appeared on behalf of the noticee .

- Advocate Shri Prakash Shah and Authorized Representative Shri Brahmanand Pani on behalf of the Noticee explained and reiterated the written submission submitted by them on

17.01.2025 and 18.07.2025 and case laws submitted on 17.07.2025 submitted by them on behalf of the noticee.

I thus find that the principle of natural justice has been followed and I accordingly proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. Vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

13.2 I have carefully gone through the facts of the case. I observe that, **M/s Hawkins Cookers Limited (IEC: 0388038454)** situated at F-101, Maker Tower, Cuffe Parade, Mumbai, Maharashtra - 400005 (hereinafter referred as 'the Importer') had imported consignments of items namely 'Stainless Steel Triply Circles' of various grades under CTH 73269070 (hereinafter referred to as 'the said goods') as detailed in **Annexure-A**. After the course of post clearance audit, it has been proposed that the Importer has mis-classified the said goods in order to evade the applicable CVD @ 18.95% on 'SS Triply Circles' as per Notification No.1/2017-Customs (CVD) dated 07.09.2017. As per the said notification, CVD @ 18.95% was imposed on all 'Flat rolled products of stainless steel; originating in or exported from PR China and classified under CTH 7219 or 7220. The only product exempted from the CVD was 'razor blade grade steel'. The Show Cause Notice has alleged that mis-classification of Stainless Steel Triply Circles under different Customs Tariff Items (CTIs) 73269070 by the importer has led to non-payment of CVD @18.95%.

14. On a careful perusal of the Show Cause Notice and case records, I observe that following main issues are involved in this case which are required to be decided:

A. As to whether the goods i.e. 'SS Triply Cladded Circles', imported vide Bs/E mentioned in Annexure-A above are rightly classifiable under CTI-72199090 as proposed in the Show Cause Notice or under CTH 73269070 as declared by the Noticee.

B. As to whether the Differential Duty of Rs. 53,00,830/- (Rupees Fifty-Three Lakh Eight Hundred and Thirty only) on levability of CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 (for the relevant period) is recoverable under section 28(4) of the Customs Act, 1962 in respect of Bills of Entry as detailed in Annexure 'A' above along with applicable interest under Section 28AA of the Customs Act, 1962.

C. As to whether the goods imported in respect of Bills of Entry as detailed in Annexure -A above having declared Assessable Value of Rs. 2,54,93,248/- (Rupees Two Crore Fifty-Four Lakh Ninety-Three Thousand Two Hundred and Forty-Eight only) are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

D. As to whether penalty under Section 112(a) and/or 114A and Section 114AA of the Customs Act, 1962 is liable to be imposed on M/s Hawkins Cookers Limited.

A. NOW I TAKE UP THE FIRST QUESTION AS TO WHETHER THE GOODS I.E. 'SS TRIPLY CLADDED CIRCLES', IMPORTED VIDE BS/E MENTIONED IN ANNEXURE-A ABOVE ARE RIGHTLY CLASSIFIABLE UNDER CTI-72199090 AS PROPOSED IN THE SHOW CAUSE NOTICE OR UNDER CTH 73269070 AS DECLARED BY THE NOTICEE.

15. To decide the classification of the product in question i.e. "SS Triply Cladded Circles" of different sizes/types, it would be prudent to know what the product is, what the main ingredients of the products are and what the uses of the product are and what is the manufacturing process of the item.

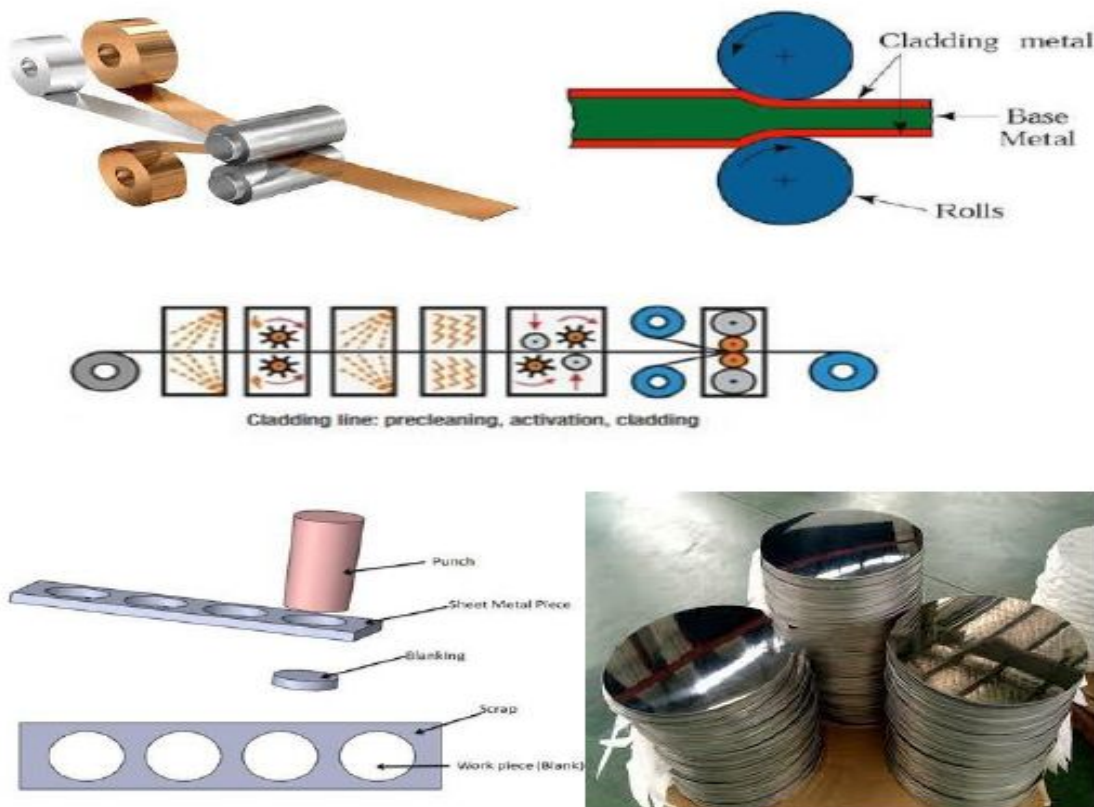
15.1 I observe that 'SS Triply Circles' are 'Flat-Rolled' base metal product of Stainless Steel. These are imported in Circle form. Flat-Rolled products are produced from slabs/thin slabs of base metals in rolling mills using flat rolls. In its simplest form, a rolling mill consists of two driven rolls in a mill stand with a screw down. The work piece to be rolled is passed through the rotating rolls to get the desired shape. Sometimes even heat may be applied to get the desired product. 'Triply' is the name given to this product as 'aluminium layer' is sandwiched between two stainless steel layers, through the process of Cladding. Though there are numerous uses of cladded products but in this case, the said Triply circles are used for manufacture of utensils and kitchen items. The product under consideration is cladded with Aluminium as mentioned above. Cladding is a kind of surface treatment method and includes- (a) pouring molten cladding metal onto the basic metal, followed by rolling; (b) simple hot rolling of the cladding metal to the basic metal; (c) any other method of deposition of the cladding metal followed by any mechanical or thermal process to ensure welding (for example electro-cladding). These metal cladded products are mostly achieved through the process of roll bonding where layers of different metal sheets are passed through a pair of rollers under sufficient pressure to bond the metal layers. This process results in a Flat-rolled cladded product. The process of Cladding leads to the formation of a composite material. A composite material is a combination of two or more materials with different physical and chemical properties. When they are combined, they create a material which is specialized to do a certain job, for instance to become stronger, lighter or resistant to electricity. They can also improve strength and stiffness. The reason for their use over traditional materials is that they improve the properties of their base materials and are applicable in many situations. The information as available in public domain suggests that there are several advantages of utensils made from this composite metal having 3 layers of - Stainless Steel and Aluminium.

Layer-1- Food Grade 18/8 stainless steel use in the inner surface for healthy cooking.

Layer 2- Encapsulated layer of aluminium right throughout the cookware which ensures even heat distribution and avoids food from getting burnt.

Layer 3- 430 Magnetic stainless steel used as the third layer, making cookware induction friendly.

15.2. Some of images, related to the product are as under: -



15.3. I observe that Chapter 72 and chapter 73 both are covered under Section XV i.e. (BASE METALS AND ARTICLES OF BASE METAL) of Customs Tariff consists of two chapters of Iron and Steel. Chapter 72 covers Iron and Steel and Chapter 73 covers Articles of Iron and Steel. It consists of primary Material, Semi-Finished products and Flat rolled products of Iron and different types of Steel (Non-alloy/Stainless/Other Alloys). Further, I find that goods included in Chapter 73 are sheet piling, tubes, pipes, anchors, sewing needle, kitchen articles of iron or steel etc. All these

products have their direct end use and can be used independently without being further worked upon. An article under Chapter 73 has to be a finished product which either can be used independently or to be joined or fixed together to make structures etc.

15.4 I observe that the item ‘SS Triply Circle’ or ‘Aluminium clad circles 3 Ply SS304 + AL + SS430’ is a composite product of two base metals viz. Stainless Steel and Aluminium and it should be classified as product of stainless Steel as Stainless Steel predominates the weight. **I find that it is also an undisputed fact that the stainless steel is predominating by the weight in the imported item.** As per Note 7 to Chapter XV of Customs Tariff Act, 1975,

“7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the Interpretive Rules) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.

For this purpose:

(a) iron and steel, or different kinds of iron or steel, are regarded as one and the same metal”.

Although, section note 7 is for articles of steel, whereas the present case involves a different kind of dispute namely as to whether the process of cladding of one layer of aluminum with two layer of flat rolled stainless steel will result into an article of steel or not. However, section note 7 contains a principle of weight ‘weight’ in the manner that classification will be decided on the basis of preponderance of weight.

Based on above note, I find that the ‘SS Triply Circle’ merits classification as a **product of Stainless Steel** and it is also an admitted fact that the item has to be processed before using in manufacturing of cooking wares, hence, I find that the item is not having the essential shape of finished articles, they have not assumed the character of articles of chapter 73 or of other headings, i.e., heading 7326 and the item ‘SS Triply circles’, neither have any independent function or use nor they can be used by joining or fixing together, therefore, I am of the opinion that it doesn’t merit to be classified in chapter 73 for the reasons. Further, it is a flat-rolled product, which is to be further worked upon to get a desired article. Therefore, it fulfils the criteria to be classified under Chapter 72 only and the possibility of its classification under chapter 73 stands ruled out, it merits classification under Chapter 72.

15.5 I further observe that the ‘SS Triply Circle’ is a product of Stainless Steel and therefore shall fall in the Sub-Chapter III. STAINLESS STEEL (CTH 7218 to CTH 7227) of chapter 72. The only relevant CTH for this kind of product, I find is either 7219 (FLAT-ROLLED PRODUCTS OF STAINLESS STEEL, OF A WIDTH OF 600 MM OR MORE) OR 7220 (FLAT-ROLLED PRODUCTS OF STAINLESS STEEL, OF A WIDTH OF LESS THAN 600 MM).

i. The CTH 73269070 is for ‘articles of clad metals’ it is evident from the said wording of the heading of CTH 73269070 that there is difference between ‘articles’ and ‘clad metals’. Since this heading is for articles of steel, the same does not qualify for only any ‘article’ or only any ‘clad metal’. It may be seen that an article may be made of many materials or metals. However, all such articles would not merit classification under CTH 73269070 if they are not ‘made’ of ‘clad metal’. Similarly, there may be many instances of ‘clad metals’ any different variations of clad steel like clad mild steel or clad copper would not qualify under CTH 73269070 because they are not clad stainless steel. Sheer reading of the heading of CTH 732670, it is clear that such clad metals of stainless or mild steel will have to be first converted into an article and only thereafter, said article of clad metal/steel could qualify classification under CTH 73269070.

ii. However, it has already been discussed as to how clad metal/steel will merit classification under CTH 7219.90. It is clearly brought out in the findings in the above paras that CTH 7219 covers both ‘**non further worked than hot/cold rolled**’ steel and ‘**further worked on hot/cold rolling like clad of steel product**’. On seeing the provisions of CTH 721911, 721914, 721931 it would transpire that all these heads are for only hot or cold rolled stainless steel. Whereas CTH 721990 is for other than aforesaid ‘not further worked’ stainless steel. Therefore, it is evident that ‘further worked on stainless less’ like clad steel/ metals will merit classification under CTH 7219.90. In this way, since there is a clear, apparent an unequivocal tariff heading provided for clad metals/steel in tariff in form of CTH 7219.90, therefore, the clad metal/steel are more specifically and more appropriate classifiable under CTH 7219.90. Therefore, there is no need of forcing the classification of subject ‘clad metal/steel’ or Tri-Ply steel under CTH 73269070 which is not meant for ‘clad metal/steel’ but for only ‘articles of clad metals’

iii. In this way the product, which due to conversion of flat rolled products does not result in to 'articles of steel', will merit classification under CTH 721990. Since, the cladding does not result into conversion of clad metals into articles of steel, the clad metal/steel i.e. TriPly circles merit classification under CTH 73269070. All such products of stainless steel, which are the results of any such process like cladding which do not transform the base metals/ clad metals or any other metal which does not convert into an article of steel, will qualify under the mischief of CTH 7219.90.

iv. The clad metals/steel cannot be classified under CTH 73269070 only because of the usage of the phrase 'clad metals' because sheer reading of CTH 73269070, it is clear that a product has to fulfil both criteria namely i) the criterion of being 'an article' and ii) criterion of being made from 'clad metal'. The noticee claim is based on gross and misinterpretation and myopic reading of the phrase 'articles of clad steel' wherein the notice has conveniently forgot the subject TriPly is merely a 'clad steel' not an 'article of steel'. Therefore, it will merit classification under CTH 72199090 and not under 73269070. It may be seen that cladding is covered under the scope of CTH 7219, as note 1(k) of the CTH 72 clearly provides that **'Flat-rolled products include those with patterns in relief derived directly from rolling (for example, grooves, ribs, chequers, tears, buttons and lozenges) and those, which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings.'**

15.6 Further, I observe that Semi Finished Products and Flat Rolled Products has been defined in Note 1(ij) and Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975. I find that as per Note 1(ij) **Semi-finished products** is defined as *"Continuous cast products of solid section, whether or not subjected to primary hot-rolling; and Other products of solid sections, which have not been further worked than subjected to primary hot-rolling or roughly shaped by forging, including blanks for angles, shapes or sections. These products are not presented in coils."*

Further Note 1(k) Flat-rolled products reads as "Rolled products of solid rectangular (other than square) cross-section, which do not conform to the definition at (ij) above in the form of coils of successively superimposed layers, or straight lengths, which if of a thickness less than 4.75 mm, are of width measuring at least ten times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness."

Flat-rolled products include those with patterns in relief derived directly from rolling (for example, grooves, ribs, chequers, tears, buttons and lozenges) and those, which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings.

Flat-rolled products of a shape other than rectangular or square, of any size, are to be classified as products of a width of 600 mm or more, provided that they do not assume the character of articles or products of other headings.

In view of above, I observe that Note 1(k) of Chapter 72, defines Flat-rolled products in part as rolled products of solid rectangular (other than square) cross section, and include flat-rolled products of a shape other than rectangular or square, **of any size**, provided that they do not assume the character of articles or products of other headings as articles of steel merely because the same contain a clad layer of aluminum sandwiched between two layers of stainless steel where stainless steel predominate in weight by a big margin. Circles are shapes that are other than rectangular or square. The circles under import, remain flat-rolled products of stainless steel, of heading 7219.

15.7 I observe that Rule 1 of the GIR provides that the goods under consideration should be classified in accordance with the terms of the heading or relevant Section or Chapter Notes.

However, on applying the provisions of rule of 1 GIR, I find that good merit classification under CTH 7219.90 due to the following reasons:-

15.7.1 As per rule 1 of GIR *"for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes"*. In the scheme of chapter 72, Custom Tariff Heading 7219.90 is for further worked flat rolled Stainless-steel products like clad products. It is because entire CTH 7219 is divided into two parts, one for **"not further worked flat rolled stainless steel products"** and **"further worked flat rolled stainless steel products"**. Whereas CTHs 7219.11, 7219.14, 7219.31 are for **"not further worked flat rolled stainless steel products"**, CTH 7219.90 is for others. It clearly shows that CTH 7219.90 is for **"further worked flat rolled stainless steel products"**. In this context, clad flat rolled stainless steel has been provided with a

very clear and unambiguous Custom Tariff Heading in terms of CTH 7219.90. Therefore, the same merits classification under CTH 7219.90 in terms of general rules of interpretation. Further, cladding is a process where a layer of one material is bonded to other by welding, rolling, laser base techniques.

15.7.2 The triply steel is obtained by hot rolling-based bonding of two layers of stainless steel with one layer of aluminum sandwich between them. In any case, two layers of steel are always obtained by rolling of two layers. Presence of two layers the weight of Triply is about three times more than the weight of aluminum therefore the weight of two layers of stainless steel in Triply is about six times more than the aluminum due to presence of two layers of stainless steel in contrast of one layer of aluminum. Since ‘**rule 2(b)**’ read with ‘**rule 3(a)**’ of the rules of interpretation legally provides that “any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances”. Moreover, flat rolled steel provides the most specific description of the products of the importer. Further, importer also considers their product as steel and not as aluminum. Moreover, there is no dispute about the fact that the goods of the importer are flat rolled products. Therefore, in terms of the provisions of ‘**rule 2(b)**’ read with ‘**rule 3(a)**’ also, the goods of the importer merits classification under CTH 7219.90.

15.8 There is no dispute in the instant case that subject goods are in the shape of circles, therefore, as per section note 1(k) of chapter 72 the imported goods are to be classified under CTH 7219.90. The Noticee has not brought forwarded any contention/evidence to the effect that the subject goods have assumed the character of articles. The whole case of the notice is based on the only argument that the goods have attained the form of article due to cladding of a layer of aluminum. However, due to there being a clear separate heading 7219.90 for such further worked or clad flat rolled stainless steel products, the imported products have to be classified thereunder in terms of rule 1 of GIR.

15.9 My above findings are supported by following case laws: -

(A) NEEL METAL PRODUCTS LTD. Versus COMMISSIONER OF C. EX., DELHI-III (2017 (7) G.S.T.L. 76 (Tri. - Chan.))

*“6. On careful consideration of the said facts, we find that the facts are not in dispute by the Revenue as **blanks are metal sheets cut to the specification for use in further manufacture of products**. The Revenue has assumed the character of products only after manufacturing process are carried out but in case **these blanks are not usable or cannot be said as motor vehicle parts**. They would become only blanks/motor vehicle part after various process carried out, therefore, it cannot be said that these blanks are classifiable under CETH 8708/8714.....*

As these blanks in question are not used as part of the motor vehicle part and they are required to be further processing which has been done by the buyers of the goods. In that circumstances, we hold that the appellant has correctly classified the said goods under Chapter 72 of the Central Excise Tariff Act. “

(B) S.S. MIRANDA LIMITED Versus COLLECTOR OF CENTRAL EXCISE, BOMBAY - 1997 (96) E.L.T. 634 -Tribunal) (upheld by Hon’ble Supreme Court:- [Commissioner v. S.S. Miranda Limited – [1999 \(106\) E.L.T. A191](#) (S.C)]

*“6. What then is the correct classification of the goods? The plea of the appellant that even after the bars and rods **are subjected to processes** in their hands, they remained bars and rods of alloy steel, cannot be accepted, the bars and rods have acquired a different character viz. that of tool bit blank which can be considered as the article of iron and steel and hence classification under Heading 7308.90 as other articles of iron and steel for the **period up to 1-3-1988** would be more appropriate than Heading 72.09. **After 1-3-1988, the tariff provides for a more specific entry for the disputed items viz. Heading 7224.00 which covers semi-finished products of other alloy steel**. We have already held that the goods in question are in the nature of semi-finished products. This Heading is more appropriate **than** the Heading 7326.90 where the Department has sought to classify the goods after 1-3-1988.”*

(C) V.R. FORGINGS (P) LTD. Versus COLLECTOR OF CENTRAL EXCISE, MEERUT-

1995 (80) E.L.T. 562 (Tribunal)

“4. We have carefully considered the submissions made by both the sides. On prima facie view of the issue under dispute, we are inclined prima facie to agree with the submissions made by the Learned DR that the goods in this case would appear to be in a semi-finished stage and in such a condition their classification under Chapter 72 would prima facie appear to be more appropriate.”

15.10 I also find support from the US Customs Ruling No. HQ 963255 dated APRIL 28, 2000:-

“LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

*Chapter 72, Note 1(k), HTSUS, defines Flat-rolled products in part as rolled products of solid rectangular (other than square) cross section, and include flat-rolled products of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings. Circles and octagons are shapes that are other than rectangular or square. However, in Motor Wheel Corp. v. United States, 19 CIT 385 (1995), the Court of International Trade found that steel in circular shapes cut from flat-rolled other alloy steel of heading 7208, HTSUS, by an automated cookie cutter process, constituted a stamping made from flat-rolled other alloy steel. Because subheading 7326.19, HTSUS, includes the phrase “forged or stamped, but not further worked,” the Court held that the circular shapes had assumed the character of goods of another heading and were classifiable as other articles of iron or steel, forged or stamped, but not further worked, in subheading 7326.19.00, HTSUS. In our opinion, because the steel circles at issue are produced by a type of circular cutting operation, and not by a recognized stamping operation, they have not assumed the character of articles of another heading, and are not covered by the decision in Motor Wheel. **The circles remain flat-rolled products of stainless steel, of heading 7219.***

HOLDING:

Under the authority of GRI 1, the steel circles produced from flat-rolled stainless steel in coils by a Bombed Circular Cutter is provided for in heading 7219. It is classifiable in subheading 7219.90.00, HTSUS.”

15.11. The Noticee had contended the subject goods correctly classifiable under chapter 73 and fall outside the scope of the CVD notification.

However I find no merit in the contention of the notice because of the following reasons :-

- In this regard I reiterate my findings at para 15 to 15.8 wherein it has been established that the imported goods should be classified under CTH 7219.
- The Subject **CVD notification no. 01/2017 – Customs (CVD) dated 07.09.2017** as amended, clearly imposes CVD on all the products under CTH 7219/7220 at four digit level.
- The Department’s case relies on the contention, that the Imported goods falls under CTH 7219 instead of CTH 7326. Therefore, the levy of CVD in the instant case entirely depends upon the basic question, as to whether the subject imported goods covered under CTH 7219 or CTH 7326. As per the detailed findings at para 5 to 5.8 above, it has been clearly established that imported goods falls squarely within the scope of CTH 7219.
- The ‘SS Triply Circle’ merits classification as a product of Stainless Steel and it is also an admitted fact that the item has to be processed before using in manufacturing of cooking wares, hence, I find that the item is not having the essential shape of finished articles, they have not assumed the character of articles of chapter 73 or of other headings, i.e., heading 7326 and the

item 'SS Triply circles', neither have any independent function or use nor they can be used by joining or fixing together, therefore, I am of the opinion that it doesn't merit to be classified in chapter 73 for the reasons. Further, it is a flat-rolled product, which is to be further worked upon to get a desired article. Therefore, it fulfils the criteria to be classified under Chapter 72 only and the possibility of its classification under chapter 73 stands ruled out, it merits classification under Chapter 72.

- Therefore, upon classification of the imported goods under CTH 7219, the Importer becomes liable to pay [CVD@18.95%](#), in accordance with the provisions of notification no. 01/2017 – Customs (CVD) dated 07.09.2017, as amended.

15.12 I find that the Noticee has contended that section 28(4) of the Customs Act, 1962 is not applicable in this case as invocation of extended period of limitation of five years can be done only if there is collusion; or any wilful misstatement; or suppression of facts by the importer. I find no merit in the contention of the Noticee as I reiterate my findings at para 15 to 15.8 where it has been undisputedly established that the goods imported merits classification under CTH 72199090. As the goods are reclassified under CTH 72199090, the Importer is liable to pay CVD @ 18.95% in terms of CVD notification no. 01/2017 – Customs (CVD) dated 07.09.2017, as amended. Further I find that consequent amendment of Section 17 of the Customs Act, 1962 vide Finance Act, 2011; the concept of 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides self-assessment of duty on Imported goods by the Importer himself, by filing a Bill of Entry in electronic form. Further, the provisions of Section 46 of the Customs Act, 1962 makes it obligatory for the Importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to be filed and self-assessment is considered complete upon generation of Bill of Entry number by the Indian Customs Electronic Data Interchange System. Under self-assessment, it is the duty of the Importer who has to ensure that he has declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment of Section 17 of the Customs Act, 1962, since 8th April, 2011, it has added enhanced responsibility on the Importer to declare the correct description, value, quantity, notification benefit, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. The classification of the goods must be governed strictly with accordance of the Rules of Interpretation, Chapter Notes and Section Notes.

It in the instant case, it is clearly evident that the Importer has intentionally mis classified the imported goods in order to evade applicable CVD, due to which the government has suffered loss amounting to Rs. 53,00,830/-.

15.13.1 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that "no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon'ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

"31. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are

synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (*Ram Chandra Singh v. Savitri Devi and Ors.*[2003 (8) SCC 319].

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi* reported in 2014(307) ELT 160(Tri. Del). In *Samsung* case, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd.* - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: *S.P. Chengalvaraya Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :*RoshanDeenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra Singh's case* (supra) and *Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: *Gowrishankarv. Joshi Amha Shankar Family Trust*, (1996) 3 SCC 310 and *S.P. Chengalvaraya Naidu's case* (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: *UOI v. Jain Shudh Vanaspati Ltd.* - 1996 (86) E.L.T. 460 (S.C.) and in *Delhi Development Authority v. Skipper Construction Company (P) Ltd.* - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of *Chengalvaraya Naidu* reported in (1994) 1 SCC 1 : AIR 1994 SC 853. *Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education* (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: *Commissioner of Customs v. Essar Oil Ltd.*, (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of *K.I. Pavunnyv.AC, Cochin* - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of *CC. v. Candid Enterprises* - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

15.14 As explained above, it is conclusively established that the importer had willfully misclassified the goods in order to evade the applicable CVD. Therefore, the importing firm evaded the duty of Rs. 53,00,830/-, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962, by invoking extended period.

15.15 I find that the Noticee has contended that “in the absence of any reassessment under Section 17(4) of the Act or appeal against the disputed Bills of Entry, it is not open to raise demand under Section 28 of the Act.” In support of his contentions, the Noticee refers to and relies upon the following judgments:

1. ITC vs Commissioner of Central Excise
- 2019-TIOL-418-SC-CUS-LB (para 29 to 31,43,44 & 47);
2. M/s. Jairath International Vs Union of India
-2019-TIOL-2459-P&H-CUS (Para 15)];

15.15.1 I find that the Noticee has placed very heavy reliance on the above case laws saying that once a bill of entry has been cleared in assessment the department cannot raise any demand without challenging the said clearance of bill of entry in appeal. He means to say that the said clearance of bill of entry is an adjudication order which attains finality unless until challenged in appeal. Learned counsel has drawn a parallel between a refund under section 27 and demand under section 28 and contended that the above case laws, which have been issued in the context of refund, will also be applicable in in case of demand. However, there is no merit in the said contention of the learned counsel because of the following reasons:

i. I observe that the provisions of section 17 of the Customs Act, 1962 require that the importer entering any imported goods under section 46 of Customs Act, 1962 shall self-assess the duty, if any, leviable on such goods. The proper officer may verify the self-assessment on a said few self-assessed bills of entry selected by the Risk Management System of the department. The said verification by the proper officer is based only on information and documents provided by the importer. Therefore, the said process of assessment under section 17 of the Customs Act, 1962 is mainly a process of self-assessment and verification thereof on the basis of evidences provided by the importer himself. There is no dispute about the fact that the importer is in possession of all the information and documents needed for the said process of self-assessment. The government has reposed an immense faith in the importer, and therefore, barring a few bills of entry to be selected by Risk Management System of the department, most of the bills are facilitated on the basis of the self-assessment done by the importer. In spite of the fact of the self-assessment, still the importer has been allowed to recourse to section 149 whereby he can approach the proper officer to get the self-assessment revised from the proper officer and claim the resultant refund if any.

ii. In view of above I find that the possibility of getting an already self-assessed or re-assessed bill of entry getting amended by the importer on the basis of the documentary evidence under section 149 of the Customs Act, 1962 clearly establishes that the said processes of self-assessment and re-assessment by the proper officer under section 17 of the Customs Act, 1962 are not adjudication processes. Had it been so, an already self -assessed or re-assessed bill of entry could have been amended only after following an appellate process.

In a number of cases, Hon’ble courts have allowed redetermination of classification, value duty etc under section 149 of the Customs Act without following any appellate process.

Following Case laws have been relied upon for the same

- **(2025) 29 Centax 3 (Mad.) [12-12-2024] IN THE HIGH COURT OF JUDICATURE AT MADRAS :BHARTI AIRTEL LTD *Versus* UNION OF INDIA.**
- **(2023) 10 Centax 394 (Del.) IN THE HIGH COURT OF DELHI: COMMISSIONER OF CUSTOMS *Versus* M.D. OVERSEAS**
- **(2024) 25 Centax 29 (Guj.) IN THE HIGH COURT OF GUJARAT AT AHMEDABAD:**

BALL AEROSOL PACKAGING INDIA PVT. LTD. *Versus* UNION OF INDIA

iii. Further I observe that there is no dispute about the fact that as per section 17(5) of the Customs Act, 1962, *where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter Inserted by Act 29 of 2006, Section 20 (w.e.f. 13.7.2006).*, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be.

iv. In view of provisions of section 17(5) of the Customs Act, 1962, I observe that the proper officer is required to pass a speaking adjudication order in only those cases where the duty is determined contrary to the self-assessment done by the importer. However, in the instant case there is no dispute that the duty was always determined as per the self-assessment done by the importer himself. Therefore, the subject self-assessment or re-assessment never reached to a pass where proper officer was required to pass a speaking order. Therefore, neither the self-assessment nor the reassessment itself constitutes to be an appealable order otherwise there was no need to specifically prescribe in section 17(5) of the Customs Act, 1962 for passing a speaking appealable order in the situation contrary to the self-assessment done by the importer.

v. It is seen that law provides for raising the demand under section 28 and seeking the refund by the importer under section 27 of the Customs Act, 1962 in spite of the self-assessment or re-assessment by the department. As per section 28(1), where any duty has been short paid or short levied for any reason other than reasons of collusion, willful misstatement, suppression of facts, a proper may raise a demand within two years from the relevant date under section 28(1) of the Customs Act, 1962. In the cases of collusion, willful misstatement, suppression of facts, a proper may raise a demand within five years from the relevant date under section 28(4) of the Customs Act, 1962. If the contention of the noticee is accepted that assessment or re-assessment tantamount to appealable order, in that case, the provisions of law enshrined in section 28 and other related sections of interest, penalty etc. of the customs Act, 1962 will be rendered infructuous because in that case the department will never be able to raise any demand whatsoever after self-assessment or re-assessment.

vi. I observe that, there is a difference between “**can be treated**” and “**shall be treated**” whereas the **first phrase is a possibility** while **the second one is a compulsion**. Hon’ble Supreme Court in the case of ITC Ltd Vs Commissioner of central excise Kolkata 2019(368). I reproduce the judgement

“43. As the order of selfassessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression ‘Any person’ is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of [Section 128](#) make appealable any decision or order under the Act including that of selfassessment. The order of self assessment is an order of assessment as per [section 2\(2\)](#), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in [Section 17](#) to pass a reasoned/speaking order in the situation in case on verification, selfassessment is not found to be satisfactory, an order of reassessment has to be passed under [section 17\(4\)](#). [Section 128](#) has not provided for an appeal against a speaking order but against “any order” which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in [Escorts](#) (supra).”

“47 When we consider the overall effect of the provisions prior to amendment and post-amendment under [Finance Act, 2011](#), we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or selfassessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of [Section 27](#) to set aside the order of selfassessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include

selfassessment, he has to get the order modified under [Section 128](#) or under other relevant provisions of the Act.”

Vii. In view of the above, it may be clearly seen that Hon’ble Supreme Court has distinguished between process of self-assessment/ re-assessment and process of refund and held that an importer will have to first get self-assessment/ re-assessment modified before filing refund under section 27 of Customs Act, 1962. In that process of the modification of self-assessment/ re-assessment, the order of such self-assessment/ re-assessment can be treated as an appealable order. Therefore, Hon’ble Supreme Court has clearly truncated and defined the scope of treating a self-assessment/ re-assessment order only for the purpose of modification of the self-assessment/ re-assessment for refund.

It may also be seen that in addition to possibility of challenging a self-assessment or re-assessment as an appealable order, the law provides for other means of modification of assessment under the provision of section 149 of the Custom Act, 1962. Therefore, the aforesaid modifications of self-assessment or re-assessment can be achieved under the provisions of section 149 of the Custom Act, 1962 without a treating self-assessment/ re-assessment as an appealable order. In the view of aforesaid, there is no merit in contention of the learned Counsel because he cannot expand the limited scope of **possibility of treating a self-assessment/ re-assessment** as an appealable order for limited purpose of refund under section 27 and extrapolate **it as a legal compulsion** to the situations of demand made u/s 28 of the Customs Act, 1962. The Hon’ble Supreme Court’s order applies to the limited situations and for limited purpose which is clearly detailed in the order of Hon’ble Supreme Court itself. Any deviation from the same will result into very illogical, illegal, unintended, untenable and preposterous consequences, in the form of rendering all the provisions of demand, interest, penalty etc as infructuous.

15.16 I find that it has been clearly established that the imported product merits classification under CTH 7219 read with Note 7 of the Chapter 15 of the Customs tariff Act, 1975 for the following reasons:-

- The preponderance of weight in the imported goods is of the steel and there is no dispute regarding the product being flat rolled product comprising of two layers of steel with a sandwiched layer of aluminum between them.
- The product squarely falls within the definition of semi-finished product, as per Rule 2(b) of the Rules of Interpretation read with Note 1(ij) and Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975. The process of cladding with aluminum neither changes the nature of the imported product as semi-finished product nor makes it as a finished article of steel. There is no dispute about the fact that imported products are not rectangle or square in shape of any size. Therefore, in view of the relevant Chapter Note’s they do not assume the characteristics of a finished article, merely because of cladding a layer of aluminum.

15.17 In view of above facts, findings, Chapter Notes, Section Notes, Rule of Interpretation, **I hold that the item – ‘SS Triply circles’ imported vide Bills of Entries mentioned above in Annexure A, is rightly classifiable under CTH 72199090.**

B. AS TO WHETHER THE DIFFERENTIAL DUTY OF RS. 53,00,830/- (RUPEES FIFTY-THREE LAKH EIGHT HUNDRED AND THIRTY ONLY) ON LEVIABILITY OF CVD @18.95% AS PER NOTIFICATION NO. 01/2017-CUSTOMS (CVD) DATED 07.09.2017 (FOR THE RELEVANT PERIOD) RECOVERABLE UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962 IN RESPECT OF BILLS OF ENTRY AS DETAILED IN ANNEXURE ‘A’ ABOVE ALONG WITH APPLICABLE INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT, 1962.

16. In this regard, I reiterate my findings mutatis mutandis at para 15 above, to decide applicability of CVD under Notification No. 01/2017-Customs (CVD) dated 07.09.2017, it would be prudent to reproduce relevant part of the Notification, as under: -

“Whereas, in the matter of “Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products” (hereinafter referred to as the subject goods) falling under tariff heading 7219 or 7220 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975),

TABLE

<i>Sl. No.</i>	<i>Heading</i>	<i>Description of goods</i>	<i>Country of origin</i>	<i>Country of export</i>	<i>Producer</i>	<i>Exporter</i>	<i>Duty amount as % of landed value</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)</i>	<i>(8)</i>
1.	7219 or 7220	Flat-rolled products of stainless steel- (Note below)	China PR	China PR	Any	Any	18.95%
2.	-do	-do-	China PR	Any Country	Any	Any	18.95%
3.	-do	-do-	Any Country	China PR	Any	Any	18.95%

Note :- (i) *Flat Rolled Products of Stainless Steel for the purpose of the present notification implies “Flat rolled products of stainless steel, whether hot rolled or cold rolled of all grades/series; whether or not in plates, sheets, or in coil form or in any shape, of any width, of thickness 1.2 mm to 10.5 mm in case of hot rolled coils; 3 mm to 105 mm in case of hot rolled plates & sheets; and up to 6.75 mm in case of cold rolled flat products. Product scope specifically excludes razor blade grade steel”.*

16.1. In view of above, I find that Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products falling under CTH 7219 & 7220 attracts CVD @ 18.95% of Landed Value. For the Notification, ‘Flat Rolled Products of Stainless Steel’ has been defined vide Note to the said Notification. As per the definition, hot rolled or cold rolled flat stainless steel of all grades/series in plates, sheets, or in coil form or in any shape, of any width, of thickness 1.2 mm to 10.5 mm in case of hot rolled coils; 3 mm to 105 mm in case of hot rolled plates & sheets; and up to 6.75 mm in case of cold rolled flat products, are to be considered as ‘Flat-rolled products of stainless steel’ for the purpose of applicability of CVD.

16.2. As per my detailed findings in Para 15 above, the item – “SS Triply Circles” is Flat-rolled products of stainless steel and rightly classifiable under 72199090 and it is also an undisputed fact that the item has been imported from China, therefore, I further find that CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 for the relevant period is leviable for the goods imported vide Bills of Entry mentioned in Annexure-A above.

16.3. In the subject case, as per Notification No. 1/2017-Cus. (CVD) dated 07.09.2017, scope of product excludes only “razor blade grade steel.” Since, the goods i.e. SS Triply Circles are not razor blade grade steel, CVD as per Notification No. 1/2017-Cus. (CVD) dated 07.09.2017, is applicable to these goods.

16.4. In view of the facts and findings above, I further find that differential duty (CVD) amounting **Rs. 53,00,830/- (Rupees Fifty-Three Lakh Eight Hundred and Thirty only)**, is required to be demanded and recovered from the importer, **M/s Hawkins Cookers Limited** under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under the provisions of Section 28AA of the Customs Act, 1962. In this regard, the ratio laid down by Hon’ble Supreme Court in the case of CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)] is squarely applicable in the instant case on the ground of mis-statement and suppression of facts.

C. AS TO WHETHER THE GOODS IMPORTED IN RESPECT OF BILLS OF ENTRY AS DETAILED IN ANNEXURE -A ABOVE HAVING DECLARED ASSESSABLE VALUE OF RS. 2,54,93,248/- (RUPEES TWO CRORE FIFTY-FOUR LAKH NINETY-THREE THOUSAND TWO HUNDRED AND FORTY-EIGHT ONLY) ARE LIABLE FOR CONFISCATION UNDER THE PROVISIONS OF SECTION 111(M) OF THE CUSTOMS ACT, 1962.

17. As per my detailed findings in Paras 15 and 16 above, the goods “SS Triply Circles” imported vide Bills of Entry mentioned above in Annexure A, are rightly classifiable under CTI 72199090, but the importers have wrongly classified the said goods under CTIs- 7326 and evaded customs duty (CVD) amounting to **Rs. 53,00,830/- (Rupees Fifty-Three Lakh Eight Hundred and Thirty only).**

17.1. In this regard, I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; ‘Self-Assessment’ has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

17.2. From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared & misclassified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- (i) Accuracy and completeness of the information declared;
- (ii) The authenticity and validity of any document supporting the information provided; and
- (iii) Comply with restrictions or prohibitions relating to the goods under this Act or any law in force at the time being

Section 46 of the Customs Act, 1962:

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed]

Provided that the Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system allow an entry to be presented in any other manner:

Provided further that, if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the

goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

17.3. I find that the SCN proposes confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. Provisions of Section 111 (m) of the Customs Act, 1962 is re-produced herein below:

“any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, shall be liable to confiscation.”

17.4. From the above discussions, I find that the noticee were involved in mis-declaration & misclassification of the goods imported vide Bills of Entry mentioned in Annexure-A to the SCN. Further, the Hon’ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)] has held that “The department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue.” Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon’ble CESTAT, South Zonal Bench, Chennai has held as under: -

“Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means. ‘

17.5. As the provisions of Section 111 (m) suggests in the instant case, the noticee did not declare correct description & CTH even though in some Bs/E, they have classified the goods under chapter 73 and hence, contravened the provisions of Section 46 of the Customs Act, 1962. It is an admitted fact, the imported item is known as ‘SS Triply Circles’ but to evade customs duty, and restrained themselves to mention word – ‘Stainless Steel’ which is the primary description of the item. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Supported by above judicial pronouncements, I hold that the investigation has adduced sufficient evidences which establish the case and accordingly, I arrive to the conclusion that the Noticee cannot escape their liability towards mis-declaration & misclassification of the imported goods. These acts of omission and commission on

the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

17.6. I find that however, the goods are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

17.7. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.).

17.8. I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

17.9. I find that the declaration under section 46 (4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- (a) M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- (b) M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- (c) M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);

(d) M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”

(e) Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. As reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon’ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon’ble Supreme Court in the case of Weston Components.”

17.10. In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon’ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held RF imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods liable for confiscation under other sub-sections of Section 111 too as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can’t be given differential treatment.

17.11 The noticee has further contended that the goods are not liable for confiscation under section 111 (m) of the Customs Act, 1962 as burden of proof of classification lies not the department not on the importer. However I find no merit in the contention of the noticee because of the following reasons :-

- After the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including Classification and calculation of duty, but in the instant case the subject goods have been mis-classified and CVD amount has not been paid correctly. Relevant legal provisions for recovery of duty that appears to be evaded are reproduced here for the sake of brevity which is applicable in the instant case:
- I find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by M/S Hawkins cookers ltd. In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importers while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the description, country of origin and assessable value while being presented to the Customs.
- **I place my reliance on the following case law:** The department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue.” Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in

2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under: -

- *“Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means.*

17.11. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. **Accordingly, I observe that the present case is also merits imposition of Redemption Fine.**

D. AS TO WHETHER PENALTY UNDER SECTION 112(A) AND/OR 114A AND SECTION 114AA OF THE CUSTOMS ACT, 1962 IS LIABLE TO BE IMPOSED ON M/S HAWKINS COOKERS LIMITED.

18. As per my detailed findings in paras 15 and 16 above, I find that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

18.1. I reiterate my findings from paras 15 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section 114 A / 112 (a) of the Customs Act, 1962 are reproduced as under: -

Section 114A. Penalty for short-levy or non-levy of duty in certain cases. –

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

*[**Provided** that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [284A], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation . - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest 3 [sub-section (8) of section 28] relates to notices issued prior to the date* on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

18.2 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

“31. ‘‘Fraud’’ as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the

application of any equitable doctrine including *res judicata*. (*Ram Chandra Singh v. Savitri Devi and Ors.*[2003 (8) SCC 319].

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi* reported in 2014(307)ELT 160(Tri. Del). In *Samsung* case, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.)* it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: *S.P. Chengalvaraya Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :*RoshanDeenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra Singh's case (supra)* and *Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: *Gowrishankarv. Joshi Amha Shankar Family Trust*, (1996) 3 SCC 310 and *S.P. Chengalvaraya Naidu's case* (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: *UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.)* and in *Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005*]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of *Chengalvaraya Naidu* reported in (1994) 1 SCC 1 : AIR 1994 SC 853. *Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education* (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: *Commissioner of Customs v. Essar Oil Ltd.*, (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of *K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.)*. No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred.”

18.3 As explained above, it is conclusively established that the importer M/s Hawkins Cookers Limited has misclassified the goods under Chapter 73 to evade appropriate CVD. Thus, the importing firm has deliberately misclassified the goods and evaded the duty of **Rs. 53,00,830/- (Rupees Fifty-Three Lakh Eight Hundred and Thirty only)** which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962. Consequently, the importing firm are liable for penalty under Section 114A of the Customs Act, 1962.

18.4 Since I will be imposing penalty on the importer under Section 114A, I shall refrain from imposing Penalty under Section 112(a) of the Act on the importer, M/s Hawkins Cookers Limited, in terms of the fifth proviso to Section 114A of the Act *ibid*.

18.5 Furthermore, I find that Penal Action under Section 114 AA of the Customs Act has also been proposed against M/s Hawkins Cookers Limited.

The relevant provision of the Section 114AA of the Custom Act, 1962 is as under: -

114AA Penalty for use of false and incorrect material –

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

I reiterate my findings from paras 15 for the question of penalty also as the same appears *mutatis mutandis* to this also.

18.6 I note that, The Hon’ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer’s price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.

18.7 There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue,-

- i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
- iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

18.8 As observed in paras 15 and 16 above, in the instant case, there is clear evidence of fraud and suppression of facts. The M/s Hawkins Cookers Limited has cleared the imported goods by misclassifying them to avail the benefit of CVD. Therefore, I hold that M/s Hawkins Cookers Limited is liable for imposition of penalty under Section 114AA *ibid*.

19. In view of the above facts of the case and findings on record, I pass the following order;

ORDER

- (i) I reject the declared classification of goods i.e. “SS Triply Cladded Circles” under CTH 73269070, imported vide Bills of Entry mentioned above in Annexure A above and order to classify the same under CTH 72199090 with applicable duties;
- (ii) I confirm the demand of total differential duty of **Rs. 53,00,830/- (Rupees Fifty-Three Lakh Eight Hundred and Thirty only)**, in respect of goods cleared by **M/s Hawkins Cookers Limited** vide Bills of Entry as mentioned above in Annexure A, under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest leviable under Section 28AA of the Customs Act, 1962.
- (iii) I order confiscation of the imported goods vide Bills of Entry listed in ‘Annexure- A’ above, valued at **Rs. 2,54,93,248/- (Rupees Two Crore Fifty-Four Lakh Ninety-Three Thousand Two Hundred and Forty-Eight only)** under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and impose redemption fine of **Rs. 63,00,000/- (Rs. Sixty-three lakhs only)** on **M/s Hawkins Cookers Limited** in respect of the goods cleared in past for their redemption u/s 125 of the Customs Act, 1962;
- iv. I impose a penalty equivalent to differential duty of **Rs. 53,00,830/- (Rupees Fifty-Three Lakh Eight Hundred and Thirty only)**, and interest accrued there upon on the importing firm **M/s Hawkins Cookers Limited** under section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- v. I impose a penalty of **Rs. 25,00,000/- (Rupees Twenty-five lakhs Only)** on **M/s Hawkins Cookers Limited** under Section 114 AA of the Customs Act, 1962

Digitally signed by
Vijay Risi
Date: 31-07-2025
14:44:59
(VIJAY RISI)
COMMISSIONER OF CUSTOMS
NS-III, JNCH

To,

M/s Hawkins Cookers Limited (IEC: 0388038454)
F-101, Maker Tower, Cuffe Parade, Mumbai, Maharashtra -400005

Copy to:

1. AC/DC Group IV.
2. The Deputy Commissioner, Audit, D3 Circle, JNCH
3. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to upload the OIO in DIGIT.
4. AC/DC, Chief Commissioner’s Office, JNCH

5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. EDI for uploading on JNCH website.
8. Office Copy.