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/10-056/2024-25/Commr/Gr.IV/NS-III/CAC/JNCH Date 29.05.2025
SCN No. 480/2024-25/Commr/Gr.IV/NS-III/CAC/JNCH dated 11.06.2024

DIN	:	**DIN-20250578NX0000777BE4**
		आदेश की तिथि : 29.05.2025 Date of Order जारी किए जाने की तिथि : 29.05.2025 Date of Issue
आदेश सं. Order No.	:	76/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 76/2025-26 /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 आर्यन ओवरसीज M/s. Aaryan Overseas

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 **Form**	:	फार्म न .सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके 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 **Time Limit**	:	इस आदेश की सूचना की तारीख से ३ महीने के भीतर Within 3 months from the date of communication of this order.
फीस **Fee**	:	(क) एक हजार रुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है। (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 **Mode of Payment**	:	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। A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य **General**	:	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। 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 of the case

1. Aaryan Overseas having their registered office at C-11/ 1, Wazirpur Industrial Area, New Delhi- ll0052 (here-in-after referred to as Importer) filed 10 Bills of Entry for import and clearance of the goods detailed as under Table- A:

Table- A

	Bill of Entry No.		
1	4412286 dated 08.08.2019	Invoice No.	2019EVG060 dated 11.07.2019
		Bill of Lading No.	ONEYPKGV28406801 dtd 27.08.2019
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2019-AI-21-010553 dtd 27.08.2019
		Supplier Name	Excel Vantage Global(HK) Ltd
2	4680859 dated 28.08.2019	Invoice No.	2019EVG061 dtd 08.08.2019
		Bill of Lading No.	
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	Not Available
		Supplier Name	Excel Vantage Global (HK)Ltd
3	5138929 dated 01.10.2019	Invoice No.	2019EVG063
		Bill of Lading No.	PKGNSA1901375
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	NOT AVAILABLE
		Supplier Name	Excel Vantage Global (HK) Ltd

4	5808331 dated 25.11.2019	Invoice No.	2019EVGHK024
		Bill of Lading No.	PKGNSA1901752
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2019-AI-21-010998 dtd 19.11.2019
		Supplier Name	Excel Vantage Global (HK) Ltd
5	6778297 dated 06.02.2020	Invoice No.	2019EVGHK047
		Bill of Lading No.	
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2020-AI-0101214 dtd 31.01.2020
		Supplier Name	Excel Vantage Global (HK) Ltd
6	6819227 dated 10.02.2020	Invoice No.	2019EVGHK089 dtd 20.01.2020
		Bill of Lading No.	BILPKLNHV2001012
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2020-AI-21-0101212 dtd 31.01.2020
		Supplier Name	Excel Vantage Global (HK)Ltd
		Invoice No.	2019EVGHK090 dtd 25.01.2020
		Bill of Lading No.	PALPKLNHV04320 dtd 18.02.2020

7	7017694 dated 26.02.2020	Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2020-AI-21-0101308 dtd 20.02.2020
		Supplier Name	Excel Vantage Global(HK) Ltd
8	8099896 dated 07.07.2020	Invoice No.	20EVG037 dtd 19.06.2020
		Bill of Lading No.	CULPKG20010709
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2020-AI-21-001486 dtd 25.06.2020
		Supplier Name	EVG Metal Industries SDN. BHD.
9	9360803 dated 28.10.2020	Invoice No.	20EVG015 dtd 17.09.2020
		Bill of Lading No.	GNVPKNH2009015 dtd 30.09.2020
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3
		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2020-AI-21-001658 dtd 01.10.2020
		Supplier Name	EVG Metal Industries SDN. BHD.
10	6344591 dated 03.01.2020	Invoice No.	2019EVGHK046
		Bill of Lading No.	PALPKLNHV04308
		Description of Goods	Stainless Steel Cold Rolled Coil Grade 3 J3

		Declared CTH	72209090
		Declared Country of Origin of Goods	Malaysia
		COO No.	KL-2019-AI-21-0101064
		Supplier Name	Excel Vantage Global Ltd

1.1 In the instant case, the declared Country of Origin of the goods was Malaysia for Bills of Entry Nos. as mentioned in Table- A. The importer had availed duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(1) availing Country of Origin benefit in view of 'Rule 13' of Rules of Origin for ASEAN-India FFA (AIFFA) agreement. For claiming duty exemption, the importer submitted the Country-of-Origin Certificates (as mentioned in Table- A above) issued by the Ministry of International Trade and Industry, Malaysia (MITI) in the name of (consigned from) EVG Metal Industries.

1.2 A letter dated 15.02.2023 was received from Deputy Commissioner of Customs, Group IV/IVA, JNCH vide file no CUS/APR/SCN/85/2023-Gr-IV, wherein it was informed that DRI, Delhi had provided a list of Importers who have been availing COO benefits under notification no 046/2011(ASEAN-India Free trade agreement) by using non-authentic COO certificates. The veracity of the CCC) certificates submitted by these importers was verified by the exporting countries and were found to be nonauthentic. Aaryan Overseas was amongst the list of Importers provided by DRI whose COO certificates were found non-authentic.

1.3 The matter was examined by this office and it was found that some imports of Stainless-Steel products had been made at JNCH by availing duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(1) availing Country of Origin benefit on the basis of the Country-of-Origin Certificates issued by the above mentioned overseas suppliers.

1.4 Alert Circular No. 02/2021 vide F.No. DRI/HQ/CI/B Cel1/50D/ Enq 01/2020/2916 dated 09.09.2021 received from Joint director of DRI(CI) regarding Import of Steel Products availing the concessional rate of duty under ASEAN-India Preferential Trade Agreement and India-Malayasia Preferential Trade agreement, issued list of 14 Malaysian Suppliers namely (i) QM International Trading SdnBhd, (ii) EVG Metal Industries SdnBhd, (iii) Artfransi International SdnBhd, (iv) Maly Metal Industry SdnBhd, (v) **Jentayu Industries**, (vi)Ezy Metal Enterprise, (vii)Cekap Prima SdnBhd, (viii) Future Metal Enterprise, (ix) MZH Maju Industry, (x) Hard Metal Trade SdnBhd, (xi) Pioneer Ult Enterprise, (xii) MH MegahMaju Enterprises, (xiii) Setica Industries (M) SdnBhd and (xiv) Opulent Metals Sdn Bhd. **All the said 14 suppliers of Malayasia are found unauthentic.**

1.5 In this regard, details of Bills of Entry Nos filed by the Aaryan Overseas are as under table-B having supplier E:VG Metal Industries as follows in Table-B:

Table-B

Sr. No.	Bill of Entry No & Date	Description of Goods	Supplier	CTI	Declared AV (in Rs.)	Paid Duty Structure	Declared Duty (in Rs.)
1	4412286 dated 08.08.19	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	21,66,204	BCD@0% SCD@0% IGST@	389916.72

						18%	
2	4680859 dated 28.08.2019	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	2 1 ,38,450	BCD@0% SCD@0% IGST@18%	384921
3	5138929 dated 01.10.2019	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	21,44,129	BCD@0% SCD@0% IGST@18%	385943.22
4	580833 1 dated 25.11.2019	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	2 1 ,38,046	BCD@0% SCD@0% IGST@18%	384848.28
5	6778297 dated 06.02.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	21 ,27,397	BCD@0% SCD@0% IGST@18%	382931.46
6	6819227 dated 10.02.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	22,14,314	BCD@0% SCD@0% IGST@18%	398576.52
7	7017694 dated 26.02.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	22,08,163	BCD@0% SCD@0% IGST@18%	397469.34
8	8099896 dated 07.07.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	45,57,429.74	BCD@0% SCD@0% IGST@18%	820337.4
9	9360803 dated 28.10.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	27,26,332.41	BCD@0% SCD@0% IGST@18%	490739.8

10	6344591 dated 03.01.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	Excel Vantage Global(HK) Ltd	72209090	21,56,208	BCD@0% SCD@0% IGST@ 18%	388117.44
					2,45,76,673/-		**44,23,801/-**

1.6 In determining the origin of products eligible for the preferential tariff treatment under ASEAN-India FFA (AIFFA), amongst others, rules of Article 13 shall be applied:

"Rule 13 Certificate of Origin- A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the other Parties in accordance with the Operational Certification Procedures as set out in Appendix D."

1.7 For the purposes of implementing the Rules of Origin for the AIIFA, amongst others, in the instant case, the following Articles notified in the Operational Certification Procedures for the Rules of Origin under ASEAN-INDIA FREE TRADE AREA (AIFFA) as set out in Appendix D may be referred:

"***Article 4:-***

The exporter and/ or the manufacturer of the products qualified for preferential tariff treatment shall apply in writing to the Issuing Authority of the exporting Party requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to products, the origin of which by their nature can be easily verified.

Article 5:-

At the time of carrying out the formalities for exporting the products under preferential tariff treatment, the exporter or his authorized representative shall submit a written application for the AIFFA Certificate of Origin together with appropriate supporting documents proving that the products to be exported qualify for the issuance of an AIFTA Certificate of Origin. "

Article 16:-

(a) The importing Party may request a retroactive check at random and/ or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on a producer/ exporter's cost statement based on the current cost and prices within a six- month timeframe prior to the date of exportation subject to the following procedures:

(i) the request for a retroactive check shall be accompanied by the AIFFA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFFA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;

(ii) the Issuing Authority shall respond to the request promptly and reply within three (3) months after receipt of the request for retroactive check;

(iii) in case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing Party may suspend provision of preferential tariff treatment while awaiting' the result of verification. However, it may release the good to the importer subject to

any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and "

1.8 The Tariff Notification No. 046/2011 dated 01.06.2011 is applicable for giving duty exemption benefits to specific goods when imported into India from Philippines and other ASEAN countries in view of ASEAN- India PFA (AIFFA). The Notification No. 046/2011 dated Ol.06.2011 were further amended time to time. In this case, relevant provisions of the applicable Notifications are as below:

• Principal Notification No. 46/2011 dated 1st June, 2011-

"G.S.R. (E).- in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 153/ 2009-Customs dated the 31st December, 2009 [G.S.R. 944 (E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of l975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in,- column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II.

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix 1, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N. T.), dated the 31st December 2009.

Sr. No	*Chapter or heading or subheading or tariff item*	*Description*	*Rate*
955	*72*	*All goods*	*5.0*

• Amended Notification No. 96/2017-Customs dated 29th December, 2017-

G.S.R.(E). –In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of' 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/ 2011-Customs, dated the 1st June, 2011,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 423 (E), dated the 1st June, 2011, namely: -In the said notification, for the Table, the following Table shall be substituted, namely: -

Sr.No	*Chapter or heading or subheading or tariff item*	*Description*	*Rate*
1	*72*	*All goods*	*5.0*

1.9 Summons dated 16.01.2024 under Section 108 of the Customs Act, 1962 was issued to the importer M/s. Aaryan Overseas directing them to appear before this office. The Importer did not appear before this office on the summoned date.

1.10 Further, Summons dated 17.01.2024 under Section 108 of the Customs Act, 1962 was issued to the Customs Broker M/s Aashapura Logistics directing to appear before this office. The Importer did not appear before this office on the summoned date.

1.11 The details of Country-of-Origin Certificate and Invoice in respect of Bills of entry filed by M/s. Aaryan Overseas are as under table -C:

Table-C

Sr. No.	Bill of Entry No. & date	Supplier	Country of Origin(Declared)	Invoice No.	COO Certificate No.
01	4412286 dated 08.08.2019	Excel Vantage Global(HK) Ltd	Malaysia	2019EVG060	KL-2019-AI-21-010553
02	4680859 dated 28.08.2019	Excel Vantage Global(HK) Ltd	Malaysia	2019EVG061	Not Available
03	5138929 dated 01.10.2019	Excel Vantage Global(HK) Ltd	Malaysia	2019EVG063	Not Available
04	5808331 dated 25.11.2019	Excel Vantage Global(HK) Ltd	Malaysia	2019EVGHK024	KL-2019-AI-21-010998
05	6778297 dated 06.02.2020	Excel Vantage Global(HK) Ltd	Malaysia	2019EVGHK047	KL-2020-AI-0101214
06	6819227 dated 10.02.2020	Excel Vantage Global(HK) Ltd	Malaysia	2019EVGHK089	KL-2020-AI-21-0101212
07	7017694	Excel	Malaysia	2019EVGHK090	KL-2020-AI-21-

	dated 26.02.2020	Vantage Global(HK) Ltd			0101308
08	8099896 dated 07.07.2020	Excel Vantage Global(HK) Ltd	Malaysia	20EVG037	KL-2020-AI-21-001486
9	9360803 dated 28.10.2020	Excel Vantage Global(HK) Ltd	Malaysia	20EVG015	KL-2020-AI-21-001658
10	6344591 dated 03.01.2020	Excel Vantage Global(HK) Ltd	Malaysia	2019EVGHK046	KL-2019-AI-21-0101064

1.12 Further, it has been intimated by the office of Additional Director, DRI, New Delhi vide its letter vide F.No.. DRI/DZU/23/ENQ- 15/2022/ 1501 dated 11.05.2023 [RUD-3] that Shri Sanjay Jain, one of the Chinese/Malaysian Suppliers, in his statement dated 02.02.2023, 04.02.2023 & 20.02.2023, admitted to have supplied Chinese origin goods via Malaysia to a number of importers in India. In his statement, Shri Sanjay Jain mention that he established company EVG Metals and in detail explained, how Chinese origin goods were routed through Malaysia to India. Among the companies where COO certificate was found unauthentic. EVG Metal is one of those which tried to take benefit of PFA and avoided BCD and CVD on Chinese origin goods.

1.13 From above, it appeared that companies like EVG Metal Industries was created only to route Chinese origin goods through Indonesia and Malaysia to India.

1.14 It also appeared that M/s. Aaryan Overseas in connivance with their Chinese, Indonesian and Malaysian based supplier submitted fake COO certificate of Indonesia and Malaysia. The importer is not new to import, he is fully aware of various modus operandi. It, therefore, appears that M/s. Aaryan Overseas had intentionally by suppression of facts, wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011 dated 01.06.2011 as amended, in respect of the goods imported from Indonesia and Malaysia on the invoice of EVG Metal Industries.

1.15 It appeared that the Customs Broker M/s. Aashapura Logistics, in connivance with importer filed the said Bills of entry and helped the importer to avail the benefits of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(1) availing Country of Origin benefit in view of 'Rule 13' of Rules of Origin for ASEAN India FFA (AIFFA) agreement as the said CB has not exercised due diligence in verifying the correctness of the certificates provided by the importer which has been found fake on later stage.

1.16 COO certificates in respect of Bills of entry as detailed in table A above filed by M/s. Aaryan Overseas has been verified as non-authentic. It appears that the said goods covered under the said bills of entry have not been originated from Malaysia. It appears that the said goods have been originated from China and first routed to Malaysia from China and then exported to India

with an intent to evade payment of appropriate Customs Duty i.e. BCD (7.5%) by availing Customs Tariff Notification No. 46/2011 dated 01.06.2011 as well as CVD (@ 18.95% on landed value as it was applicable on goods under heading 72 19 or 7220 originated from China and exported from China or Any country as per Notification No. O1/2017-Customs (CVD) dated 07.09.2017.

1.17 Hence, it appeared that they were wilfully involved in this case of undue availment of duty exemption benefit and thus the said importer appears to be liable for evading government revenue on account of submission of fake Country of Origin Certificates in respect of the said Bill of Entry as mentioned in Table-A above.

1.18 Therefore, it appeared that the goods declared in the subject Bill of Entry attracts higher rate of duty i.e. BCD @ 7.5%, CVD @18.95% on Landed value and IGST@18% as applicable for CTI 7220/7219 as it appeared that the said goods have been originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty.

1.19 The duty re-assessed and the details of duty foregone is given under Table-D:

Table-D

Sr. No.	Bill of Entry No & Date	Declared AV (in Rs.)	Declared Duty (in Rs.)	Duty Payable (in Rs.) BCD@7.5%, SWS@10%, CVD@18.95% IGST@18%	Differential Duty payable (in Rs.)
01	4412286 dated 08.08.2019	21,66,204	389916.72	1121510.42	731593.70
02	4680859 dated 28.08.2019	21,38,450	384921	1107141.32	722220.32
03	5138929 dated 01.10.2019	21,44,129	385943.22	1110081.51	724138.29
04	5808331 dated 25.11.2019	21,38,046	384848.28	1106932.16	722083.87
05	6778297 dated 06.02.2020	21,27,397	382931.46	1101418.84	718487.38
06	6819227 dated 10.02.2020	22,14,314	398576.52	1146418.45	747841.92
07	7017694 dated 26.02.2020	22,08,163	397469.34	1143233.88	745764.54
08	8099896 dated 07.07.2020	45,57,429.74	820337.4	2359521.52	1539184.12
09	9360803 dated 28.10.2020	27,26,332.41	490739.8	1411506.12	920766.32
10	6344591 dated 03.01.2020	2156208	388117.44	1116335.18	388117.44
Total		**2,45,76,673/-**	**44,23,801.18/-**	**1,27,24,099.4/-**	**79,60,198/-**

1.20. **Relevant Provisions of the Customs Act, 1962:**

(A) ***Section 46: Entry of goods on importation.***

(1) The importer of any goods, other than goods intended for transit or transhipment, 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.

(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 Actor under any other law for the time being in force.

(B) ***Section 28 of the Customs Act, 1962.***

"(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 wilful 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"

(C) ***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 28, 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.

(D) ***Section 111: Confiscation of improperly imported goods, etc.-***

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

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

(E) ***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."

(F) ***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 22[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:]"*

(G) ***Section 114AA: Penalty /or 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.

(H) ***Section 124: Issue of show cause notice before confiscation of goods, etc.***

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter.

1.21 Findings of the Investigation:

(a) M/s. Aaryan Overseas filed Bill of Entry as detailed in Table-A above through Customs Brokers M/s. Sevenways Shipping Services regarding Bills of Entry no. 4412286 dt 08.08.2019, 4680859 dt 28.08.2019, M/s P.V. Ramana Murthy Son regarding Bill of Entry 5138929 dt 01.10.2019, M/s Aashapura Logistics regarding Bills of Entry 5808331 dt 25.11.2019, 6344591 dt 03.01.2020, 6778297 dt 06.02.2020, 6819227 dt 10.02.2020, 7017694 dt 26.02.2020, 8099896 dt 07.07.2020 and 9360803 dt 28.10.2020 for import and clearance of Cold Rolled Stainless Steel Coils Grade J3 imported from Malaysia on the invoice of Excel Vantage Global (HK) Ltd and EVG Metal Industries SDN.BHD. against the Invoice No. mentioned in Table-B above. The importer had availed duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(1) availing Country of Origin benefit in view of ASEAN-India FFA (AIFFA) agreement. For claiming duty exemption, M/s Aaryan Overseas submitted the Certificate of Origin (COO) certificates purported to be issued by the Ministry of International Trade and Industry, Malaysia (MITI).

(b) DRI, Delhi had provided a list of Importers who have been availing COO benefits under notification no 046/2011(ASEAN-India Free trade agreement) by using non authentic COO certificates. The veracity of the CCO certificates submitted by these importers was verified by the exporting countries and were found to be non-authentic. Aaryan Overseas was amongst the list of Importers provided by DRI whose COO certificates were found non-authentic. Hence, it appears that the Country-of-Origin Certificates issued by Excel Vantage Global (HK) Ltd and EVG Metal Industries SDN.BHD which were submitted by M/s. Aaryan Overseas to claim duty

exemption under Notification No. 46/2011 dated 01.06.2011 for import of the Steel products, were fake and in fact they were not issued by the Ministry of International Trade and Industry, Malaysia (MITI).

(c) It also appeared that M/s. Aaryan Overseas in connivance with their Chinese and Malaysian based supplier submitted fake COO certificates of Malaysia and goods claimed to be of Malaysia Origin did not qualify to be goods of Malaysia origin. The said importer submitted fake certificate of Origin of Malaysia, to wrongfully claim ineligible benefit. It, therefore, appeared that M/s. Aaryan Overseas had intentionally by suppression of facts, wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011 dated 01.06.2011 as amended, in respect of the goods imported from Malaysia on the invoice of Excel Vantage Global (HK) Ltd and EVG Metal Industries SDN.BHD and also evaded CVD on the said goods.

(d) It appeared that the said goods have been originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty i.e. BCD (7.5%) by availing Customs Tariff Notification No. 46/2011 dated 01.06.2011 as well as CVD (@18.95% on landed value as it was applicable on goods under heading 72 19 or 7220 originated from China and exported from China or Any country as per Notification No. 1/2017-Customs (CVD) dated 07.09.2017. This resulting in loss of Rs. 79,60,198/- of the Government exchequer.

(e) It appeared that the declared goods were imported in contravention of provisions of the Customs Act, 1962 and the provisions laid down in the Articles notified in the Operational Certification Procedures for the Rules of Origin under ASEAN-INDIA FREE TRADE AREA (AIFFA), by way of submission of forged documents and for their acts of omission and commission, the said importer thus rendered the goods covered under Bills of Entry no. 4412286 dt 08.08.2019, 4680859 dt 28.08.2019, 5138929 dt 01.10.2019, 5808331 dt 25.11.2019, 6344591 dt 03.01.2020, 6778297 dt 06.02.2020, 6819227 dt 10.02.2020, 7017694 dt 26.02.2020, 8099896 dt 07.07.2020 and 9360803 dt 28.10.2020 liable for confiscation under Section111(q) of the Customs Act, 1962 and also rendered themselves liable for penal action under the provisions of Section 112 (a) and/or 114A and 114AA of the Customs Act, 1962. Hence, the differential Duty amount of Rs. 79,60, 198/- short levied is liable to be recovered from the importer under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

(f) It appeared that the Customs Broker M/s. Aashapura Logistics, M/s. Sevenways Shipping Services and M/s P. V. Ramana Murthy Son has not exercised due diligence to ascertain the correctness of any information which he imparts to the client with reference to any work related to clearance of cargo. It appears that the Customs Broker have not advised their client to comply with the provisions of the act, other allied Acts and the rules and regulations thereof, and in case of non-compliance shall bring the matter to the notice of the Department which rendered Customs Broker M/s Aashapura Logistics, M/s. Sevenways Shipping Services and M/s P. V. Ramana Murthy Son liable for penal action under the provision of Section 112 of the Customs Act, 1962.

1.22 Therefore in terms of Section 124 reads with Section 28(4) of the Customs Act, 1962, **M/s Aaryan Overseas (IEC: 0514011343)** situated at C-11/ 17 Wazirpur Industrial Area, New Delhi- 110052, is hereby called upon to show cause to the Commissioner of Customs, NS-III, JNCH, Nhava Sheva, Taluka - Uran, District Raigad, Maharasthra – 400707, within 30 days of the receipt of the notice, as to why:

i. The duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(1) should not be denied and C'VD @18.95% on the landed value should not be levied as per the Notification No. 01/2017-Customs (CVD) dated 07.09.2017 and Differential

Duty amount of Rs. 79,60,198/- (Rupees Seventy Nine Lakhs Sixty Thousand One Hundred and Ninety Eight only) as mentioned in Table-D to this notice should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

ii. The subject goods as detailed in Table-D to this notice having a total assessable value of Rs. 2,45,76,673/- (Rupees Two crore forty five lakh seventy six thousand six hundred and seventy three only) should not be held liable for confiscation under Section 111(q) of the Customs Act 1962.

iii. Penalty should not be imposed on the importer under Section 112 (a) and /or 114 A and 114AA of the Customs Act, 1962.

1.23 Therefore, in terms of Section 124 of the Customs Act, 1962 Customs Broker M/s. Aashapura Logistics, M/s Sevenways Shipping Services and M/s P. v. Ramana Murthy Son are hereby called upon to show cause to the Commissioner of Customs, NS-III, JNCH, Nhava Sheva, Taluka - Uran, District - Raigad, Maharasthra – 400707, within 30 days of the receipt of the notice, as to why:

i. Penalty should not be imposed on them under Section 112 of the Customs Act,1962.

2. WRITTEN SUBMISSION

I find that as per Para 11 and Para 12 of the Subject SCN, all the Noticee's were given 30 days to submit their written submission. The noticee No. 1 i.e. M/s. Aayran Overseas submitted their reply to the SCN vide their written submission dated 19.05.2024. They submitted that –

2.1 ONUS IS ON THE DEPARTMENT TO PROVE UNDERVALUATION AND MISDECLARATION: The legal principle "the onus is on the department in charge of misdeclaration and undervaluation" underscores that the burden of proof lies with the customs or relevant authorities alleging such violations during importation. In accordance with this principle, the accusing department must present compelling evidence to substantiate claims of misdeclaration (providing false information) and undervaluation (assigning a lower value than warranted), adhering to the fundamental tenet of innocent until proven guilty in legal proceedings.

2.2. In the present case, the adjudicating authority has erroneously disregarded the declared transaction value without sufficient evidence, contrary to the principles laid down by the Hon'ble Supreme Court in Commissioner of Customs (Imports), Mumbai v. M/s Ganpati Overseas [2023 LiveLaw (SC) 864]. The Apex Court has reaffirmed that the transaction value must be the primary basis for customs valuation, and 3 any deviation requires cogent evidence demonstrating undervaluation. The burden of proof lies squarely on the customs department, which must substantiate its claims with verifiable material and comparable import data. The Supreme Court further held that unattested and unverified documents, such as unauthenticated export declarations, lack evidentiary value and cannot serve as the basis for enhancing the declared value.

2.3 It is clearly stated in the matter of: - 1.3.1. Commissioner of Customs (Imports), Mumbai Vs. Ganpati Overseas and Ors. MANU/SC/1089/2023 it is stated that: "28. Thus, what is deducible from an analysis of the relevant legal provisions and the corresponding judicial pronouncements is that a customs officer is not a police officer. Further, the person summoned and who makes a statement Under Section 108 is not an Accused. However, a statement made by a person Under Section 108 of the Customs Act before the concerned customs officer is admissible in evidence and can be used against such a person. Object underlying Section 108 is to elicit the truth from the person who is being examined regarding the incident of customs infringement. Since the objective is to ascertain the truth, the customs officer must ensure the truthfulness of the statement so recorded. If the statement recorded is not correct, then, the very

utility of recording such a statement would get lost. It is in this context that the customs officer who is empowered Under Section 108 to 4 record statement etc. has the onerous responsibility to see to it that the statement is recorded in a fair and judicious manner providing for procedural safeguards to the concerned person to ensure that the statement so recorded, which is admissible in evidence, can meet the standard of basic judicial principles and natural justice. It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards. Certainly, a statement recorded under duress or coercion cannot be used against the person making the statement. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording of such a statement since the adjudicating authority exercises quasi-judicial powers".

2.3.2. Commissioner of Central Excise and Service Tax, Noida Vs. Sanjivani Non-Ferrous Trading Pvt. Ltd. MANU/SC/1456/2018 "10. The law, thus, is clear. As per Sections 14(1) and 14(1- A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 5 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision, it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value."

2.4 The allegation that Noticee suppressed material facts and imported Cold Rolled Stainless Steel (CRSS) Coils of Chinese origin through alternate routes to evade Countervailing Duty (CVD) and Anti-Dumping Duty (ADD) is unfounded and not supported by conclusive evidence. Para 25 of the Show Cause Notice claims that CVD and ADD were applicable on CRSS Coils of Chinese origin under Notification No. 1/2017-Cus (CVD) dated 07.09.2017 and Notification No. 61/2015-Cus (ADD) dated 10.12.2015, respectively, and were leviable up to 01.02.2021 (CVD) and 31.01.2021 (ADD).However, the department has failed to establish that the imported goods were, in fact, of Chinese origin or that they were routed through third countries solely to evade duties.

2.5 The Noticee categorically denies any misdeclaration of origin. The Certificates of Origin (COO) submitted at the time of import clearance were issued by designated authorities in the exporting country which is Malaysia. These COOs legitimately qualify the goods for preferential duty benefits under Notification No. 46/2011-Cus., dated 01.06.2011 (Indo-ASEAN PTA). The Noticee has not been given an opportunity to cross-examine the individuals whose statements or chats have been used against it, rendering this evidence inadmissible in legal proceedings. 2.6

Moreover, the Customs authorities had access to all import documents at the time of clearance, including commercial invoices, COOs, and Bills of Entry. The clearance of goods by the proper officer, without raising objections at the material time, demonstrates that there was no suppression of facts. If the department had doubts about origin or valuation, it should have initiated inquiries at the time of clearance, rather than invoking extended limitation under Section 28(4) of the Customs Act, 1962. Since neither CVD nor ADD was applicable on goods lawfully imported from Malaysia, the department's attempt to retrospectively impose duties lacks legal merit and should be set aside.

2.7 The reliance on proforma invoices and Statements to establish undervaluation is legally flawed. Proforma invoices are not legally recognized documents for determining the transaction value of goods. The law is settled that proforma invoices do not establish final pricing, as they are often used for preliminary estimates before negotiations, discounts, and commercial terms are finalized. The department's reliance on such documents is misplaced and does not justify the rejection of declared transaction values. The recovered invoices from electronic 7 devices also lack evidentiary value unless the individuals involved in such transactions are made available for cross-examination.

2.8 The rejection of declared transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is arbitrary and fails to satisfy legal requirements. Under the rules, rejection of declared value requires concrete evidence showing that comparable imports have taken place at a higher price under similar commercial conditions. The department has not provided any such legally acceptable comparable data. Instead, it relies on assumptions drawn from selective documents without considering industry-specific pricing variations, volume-based discounts, or long-term contractual pricing mechanisms.

2.9 The alleged routing of goods through Malaysia is being presented as an attempt to suppress value, but this completely disregards legitimate commercial and logistical reasons for multi-jurisdictional trade practices. The show cause notice does not prove that the declared values were incorrect but merely presumes so based on the existence of multiple invoices, which in itself does not establish an undervaluation or misdeclaration. The commercial invoices submitted at the time of import clearance reflected the actual transaction value, and no contrary evidence has been produced by the department to establish otherwise.

2.10 The charge of undervaluation is a serious allegation that must be substantiated with conclusive proof. The claim that proforma invoices and other recovered documents indicate suppressed values is arbitrary and devoid of legal merit. The comparison of transaction values across 8 different invoices without accounting for variations in commercial terms, supplier agreements, and procurement strategies leads to a flawed conclusion. The department's approach ignores the settled principle that transaction value must be determined based on actual contracts and payments rather than assumptions drawn from unrelated documents.

2.11 The department has failed to follow the legally mandated procedure for rejecting the declared value and re-determining it. Rule 12 requires the department to provide clear reasons why the declared value is unacceptable before resorting to alternative valuation methods. No such reasons have been provided in the show cause notice. Additionally, the extended period of limitation under Section 28(4) of the Customs Act has been wrongly invoked, as all relevant information was available with the authorities at the time of import clearance. The proper officer had examined and allowed the goods to be cleared, and such clearances attained finality unless challenged promptly.

2.12 In view of the above, the allegations of undervaluation against Noticee are unsubstantiated and legally untenable. The rejection of declared transaction values lacks legal justification, and the department's reliance on unverified and inadmissible documents undermines the validity of its claims. Therefore, the allegations must be set aside.

2.13 The allegation of undervaluation in respect of CRSS Coils imported by Noticee from M/s EVG Metal Industries, Malaysia & M/s Excel Vantage Global (HK) Ltd., Hong Kong—is baseless and legally untenable. The reliance placed on proforma invoices and Statements as primary 9 evidence is flawed, as these documents do not establish the final transaction value of the goods.

2.14 In support of our response to the Show Cause Notice, we rely on the judgment of the Hon'ble CESTAT, New Delhi, in M/s Mittal Appliances Ltd. vs. Commissioner of Customs (Customs Appeal No. 51888 of 2021). In this case, the Tribunal upheld the principle that transaction value cannot be rejected merely on the basis of assumptions unless there is valid

justification under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The Tribunal observed that the rejection of transaction value requires a reasonable doubt and must be supported by evidence, such as misdeclaration or documentary discrepancies. Furthermore, it reaffirmed that valuation based on similar goods under Rule 5 must be appropriately justified. Applying this principle, the transaction value declared by the Noticee should not be rejected arbitrarily unless supported by cogent evidence, and any re-assessment must strictly adhere to the valuation rules. Therefore, the proposed demand is unsustainable and merits withdrawal.

2.15 In the case of Deeplalit Enterprise Pvt. Ltd. & Lilaram Arjandas Asudani vs. Commissioner of Customs, Ahmedabad (Customs Appeal Nos. 11063-11064 of 2016), the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) West Zonal Bench at Ahmedabad delivered a significant ruling on the valuation of imported goods and the rejection of declared transaction value. The Tribunal emphasized that the rejection of transaction value under Rule 5 of the Customs Valuation Rules, 2007, must be based on cogent evidence and justifiable reasons, 10 and cannot be done merely on the basis of higher values of similar goods imported at other ports. The Tribunal held that the department failed to provide sufficient evidence to reject the declared value and relied solely on NIDB data without establishing the similarity of goods, quantity, or quality. The Tribunal also noted that the department did not follow the proper procedure under Rule 12 of the Customs Valuation Rules, which mandates providing reasons for doubting the declared value and giving the importer an opportunity to respond. Citing precedents such as Eicher Tractors and Tolin Rubbers Pvt. Ltd., the Tribunal reiterated that transaction value must be accepted unless there is evidence of special circumstances or misdeclaration. Consequently, the Tribunal set aside the confiscation of goods and penalties imposed under Section 111(m) of the Customs Act, 1962, and allowed the appeals with consequential relief. This case underscores the importance of adhering to statutory provisions and providing adequate evidence when rejecting declared transaction values in customs assessments.

2.16 UNSUBSTANTIATED ALLEGATIONS REGARDING THE MISDECLARATION OF ORIGIN AND DUTY EVASION: 2.1.The allegations made in the Show Cause Notice, which claim that the Noticee wrongly availed the benefit of the preferential rate of duty by suppressing the origin of goods and misdeclaring them as originating from Malaysia are factually incorrect and legally untenable. The department's assertion that out of 10 Bills of Entry were used to save CVD and Anti-Dumping Duty is unsubstantiated and based on assumptions rather than concrete evidence. The Noticee reiterates that 11 it has not suppressed the origin of goods, nor has it made any wrongful declarations to customs authorities at the time of importation.

2.17 The allegations concerning the misdeclaration of Malaysian Origin in 10 Bills of Entry and imports from Excel Vantage Global (HK) Ltd. & EVG Metal Industries SDN, BHD, Malaysia, in 10 Bills of Entry are categorically denied. The COOs submitted at the time of clearance were duly issued by authorized certifying bodies in the exporting countries, and the department has failed to follow the prescribed verification process under the Operational Certification Procedures (OCP) of the ASEAN Trade in Goods Agreement (ATIGA) before questioning their authenticity. The alleged differential duty demand of Rs. 79,60,198/- in the SCN is therefore without merit and must be set aside.

2.18 The claim that imports made from EVG Metal Industry, Malaysia, and Excel Vantage Global (HK) Ltd., Hong Kong, were misdeclared as Malaysian Origin is equally baseless. The Noticee maintains that the goods imported from these suppliers were declared in full compliance with customs regulations. The alleged demand in the SCN is strongly disputed, as the department has failed to provide valid comparative import data to support its claim.

2.19 Additionally, it has been stated that Mr. Sanjay Jain, arranged all deals and COOs in Malaysia, yet the department has failed to make him a Noticee in the present proceedings. This omission calls into question the selective and biased approach adopted by the department, which

has relied on statements allegedly implicating the Noticee without affording it the right to cross-examine key individuals involved in these transactions.

2.20 In light of the above, the allegations concerning the misdeclaration of origin, suppression of value, and wrongful availing of preferential duty benefits are unsubstantiated, arbitrary, and legally untenable. The corresponding duty demands must therefore be quashed in their entirety.

2.21. TRANSACTION VALUE CANNOT BE DISCARDED SOLELY BASED ON PROFORMA INVOICES

2.21.1 The rejection of the declared transaction value of the imported goods by the department is legally unsustainable, as it is based on unreliable and inadmissible evidence. The department has erroneously placed reliance on statement of Sh. Sanjay Jain to allege undervaluation. It is a settled principle of law that proforma invoices do not represent the actual transaction value of goods, as they are merely preliminary documents used for quotation purposes and are subject to further negotiations, modifications, and commercial adjustments before finalization. The valuation of imported goods must be determined based on final commercial invoices and actual transaction payments, as mandated under Section 14 of the Customs Act, 1962. The department's reliance on such non-final documents, without any corroborative evidence, is wholly misplaced and cannot form the basis for rejecting the declared transaction value.

2.21.2 Further, the rejection of the declared transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is arbitrary and contrary to law. As per Rule 12, a declared value can only be rejected if the department demonstrates, with cogent reasons, that the value is inconsistent with the actual transactional price 13 of identical or similar goods imported under comparable conditions. The department has failed to produce any valid comparable imports at higher prices that could justify the rejection of the declared value. It has also disregarded legitimate factors that influence pricing, such as volume discounts, advance payments, long-term supply contracts, and variations in product specifications, all of which have a direct bearing on the final transaction price. The arbitrary comparison of different invoices, without accounting for these commercial factors, renders the department's approach legally untenable.

2.21.3 It is also pertinent to note that the subject goods were duly assessed and cleared by the proper officer at the time of importation, and no objections regarding valuation were raised at that stage. The rejection of the transaction value at a later date, without any new or substantive evidence justifying such action, amounts to a retrospective and arbitrary revision of the declared value. The extended period of limitation under Section 28(4) of the Customs Act, 1962, has also been wrongly invoked, as there was no suppression of material facts by the Noticee. The entire import process was conducted transparently, with all relevant documents, including commercial invoices and Certificates of Origin, duly submitted at the time of import clearance. If the department had any doubts regarding the valuation or origin of the goods, it ought to have raised them at the time of clearance rather than attempting to invoke extended limitation without valid justification.

2.21.4 In view of the foregoing, the rejection of the declared transaction value is wholly unsustainable in law. The department's reliance on proforma invoices and statements, without proper verification and compliance with legal evidentiary standards, undermines the validity of its allegations. 14 The absence of valid comparables, the failure to consider commercial factors influencing pricing, and the retrospective rejection of declared values without substantive grounds further reinforce that the department's case lacks merit. The allegations of undervaluation, therefore, must be set aside in the interest of justice.

2.21.5 In light of the Hon'ble Tribunal's decision in the case of Hindustan Zinc Ltd. (Excise Appeal No. 51720/2021), it is evident that denial of Cenvat Credit merely on procedural or technical grounds is not permissible under law. The Tribunal has categorically held that Cenvat Credit cannot be denied when all necessary details, as required under Rule 9 of the Cenvat Credit

Rules, 2004, are available in the invoices, even if they are issued in the name of the head office instead of the factory unit. Further, in cases where inadvertent clerical mistakes or misclassifications occur, the assessee should not be penalized, provided that substantive compliance is demonstrated through documentary evidence. The Tribunal has also reaffirmed that the extended period of limitation cannot be invoked in the absence of any suppression, fraud, or misrepresentation by the assessee. This ruling serves as a critical precedent in ensuring that genuine claims of Cenvat Credit are not arbitrarily disallowed and reinforces the principle that procedural lapses should not override substantive entitlement.

2.21.6. The allegations in the show cause notice, which claim that the Noticee failed to declare the correct description and actual prices of CRSS Coils at the time of import, are denied as incorrect and devoid of merit. The Noticee has fully complied with its obligations under the Customs Act, 1962, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, by providing accurate details of the imported goods, 15 including their value, origin, and classification. The claim that the Noticee imported CRSS Coils of Chinese origin via Malaysia through a Malaysian firm, or through a Hong Kong-based company in April 2024, is a mere assertion without substantive evidence.

2.21.7 The department's reliance on proforma invoices and certain unverified documents to allege suppression of value of goods imported from Ruking International Co. and other entities mentioned in Para 27.6 of the show cause notice is legally untenable. The Noticee reiterates that the commercial invoices submitted at the time of import clearance reflected the actual transaction value, and these invoices were duly verified by customs authorities at the time of import. The allegation that the commercial invoices did not represent the true value of the imported goods is therefore incorrect.

2.21.8 The re-determination of value of the imported goods, as proposed in Para 28 of the show cause notice, is strongly disputed, as it is based on unreliable evidence and fails to adhere to the prescribed customs valuation framework. The Noticee did not submit any fraudulent or manipulated documents, nor did it suppress the value of the imported goods. The valuation of the imported goods should be based solely on the commercial invoices submitted at the time of import, which were duly assessed and cleared by the proper customs officer.

2.21.9 In light of the above, the rejection of the declared transaction value and the proposed re-determination are unjustified, arbitrary, and contrary to established legal principles. The allegations must be quashed and set aside in the interest of justice.

2.21.10 In view of the judgment rendered by the Hon'ble Supreme Court in COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, NOIDA V. M/S. SANJIVANI NON-FERROUS TRADING PVT. LTD., it is well established that the transaction value declared by the importer must be accepted as the assessable value unless there are valid reasons for its rejection. The Apex Court reaffirmed that under Section 14 of the Customs Act, 1962, the transaction value should be based on the price actually paid, and any enhancement of assessable value requires cogent reasons supported by evidence. The Court categorically held that the burden is on the Revenue to establish undervaluation by demonstrating the presence of contemporaneous imports of identical or similar goods at a higher price. Mere suspicion or rejection of the declared value without a proper examination of evidence is not permissible. In the absence of a valid reason for rejecting the transaction value, the enhancement made by the Revenue was rightly set aside by the Tribunal and upheld by the Supreme Court.

2.21.11The references made to various Customs Valuation Rules, 2007, in the show cause notice to justify the rejection of the declared transaction value and re-determination of value are misplaced, legally untenable, and not applicable in the present case. The valuation of imported goods must strictly follow the hierarchical methods prescribed under the Valuation Rules. However, the department has erroneously applied valuation rules without fulfilling the necessary conditions precedent for their applicability.

2.21.12 Firstly, Rule 3(1) of the Valuation Rules mandates that the primary method of valuation shall be the transaction value, i.e., the price actually paid or payable for the imported goods. The department has 17 arbitrarily disregarded this fundamental rule and rejected the declared transaction value without providing any valid basis, despite the fact that the commercial invoices submitted at the time of import clearance represented the actual transaction value and were duly assessed by the proper officer. The rejection of the declared value must be based on objective and verifiable reasons, which are absent in the present case. 2.21.13 Secondly, Rule 12 of the Valuation Rules, which empowers customs authorities to reject declared value, is subject to strict conditions. The rule states that the transaction value can be rejected only if the department provides written reasons and substantiates its doubts with objective evidence.

2.21.14 Further, the department has sought to apply Rules 4 to 8, which provide alternative methods for determining value only after Rule 3 (Transaction Value Method) is properly rejected. The sequential application of valuation methods is a well-established principle, and Rules 4 to 8 cannot be invoked without first lawfully rejecting the transaction value under Rule 12. The department's failure to follow this mandatory sequence renders its valuation approach legally unsound.

2.21.15 Rule 4 and Rule 5, which deal with the transaction value of identical and similar goods, respectively, require customs authorities to compare the subject goods with comparable imports under "substantially similar conditions". However, the department has not cited any valid comparable imports that meet the prescribed criteria. The comparison of proforma invoices or selectively chosen invoices without accounting for differences in quantity, contract terms, mode of transport, 18 and trade conditions invalidates the department's reliance on these rules.

2.21.16 Similarly, Rule 6 (Deductive Value Method) applies only if the imported goods are resold in India in the same condition. The department has not demonstrated that the imported CRSS Coils were subject to resale under comparable conditions to warrant the use of this method. Rule 7 (Computed Value Method) is also inapplicable, as there is no evidence that customs authorities have obtained manufacturing cost data from the exporter or producer. Without such data, the computed value method cannot be applied.

2.21.17 Lastly, Rule 8 (Residual Method) can only be invoked if all preceding methods are inapplicable. However, since the department has failed to justify its rejection of the transaction value under Rule 12 and has not properly considered Rules 4 to 7, any attempt to determine value under Rule 8 is arbitrary and legally unsustainable.

2.21.18 In view of the above, the department's references to various valuation rules in the show cause notice are misplaced and not applicable in the present case. The transaction value declared by the Noticee is in full compliance with the Valuation Rules and should be accepted. The rejection of declared value and re-determination of duty demand based on incorrect application of valuation methods must be set aside in its entirety.

2.22 EXTENDED PERIOD OF LIMITATION NOT INVOCABLE:

2.22.1 The invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962, by the department is wholly unjustified, arbitrary, and legally unsustainable. At the time of import clearance, the proper officer, after conducting a due examination of all material facts and documents, including commercial invoices, Certificates of Origin (COOs), and Bills of Entry, allowed clearance for home consumption. Once the goods were assessed and cleared without any objection, such clearance attained finality in law. The department's failure to challenge the clearances at the relevant time precludes it from reopening the matter at a later stage by invoking extended limitation, especially when no new facts have emerged that were not already within the knowledge of the authorities at the time of importation. When the department had full access to all import-related documents at the time of clearance, the allegation of suppression of facts by the Noticee is wholly baseless and without merit.

2.22.2. The Noticee categorically denies the allegation that it knowingly and intentionally used fake or unauthenticated Certificates of Origin (COOs) from Malaysia to claim a preferential rate of duty. The COOs submitted at the time of import were issued by authorized certifying bodies in the exporting countries, and the Noticee had no role in their issuance. The allegation that the Noticee manipulated invoices to suppress value is also denied in its entirety, as the commercial invoices submitted at the time of import clearance represented the true and actual transaction value. The Noticee did not arrange, procure, or submit any fraudulent COOs or invoices, and the department has failed to provide any substantive evidence to support this allegation.

2.22.3. In response to the Show Cause Notice (SCN), we respectfully submit that the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962, is unwarranted and legally unsustainable. The Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has consistently held that mere self-assessment of returns does not justify the invocation of the extended limitation period. In the case of M/S. WELLWORTH PROJECT DEVELOPERS PRIVATE LIMITED V. COMMISSIONER OF CGST Service Tax Appeal No. 50259 of 2024, the Tribunal observed that "mere suppression of facts is not enough to invoke the extended period of limitation... The suppression has to be with an intent to evade payment of service tax." In our case, all relevant documents, including commercial invoices, Certificates of Origin (COOs), and Bills of Entry, were duly submitted at the time of importation, and there was no intent to evade duty. Therefore, the extended period of limitation should not be invoked.
2.22.4 In the case of M/S. T.S. MOTORS INDIA PVT. LTD. VS. COMMISSIONER OF CGST & CENTRAL EXCISE, LUCKNOW (Service Tax Appeal No. 70377 of 2018), the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) dealt with the issue of whether the extended period of limitation under Section 73(1) of the Finance Act, 1994, could be invoked for recovering service tax. The appellant, engaged in providing business auxiliary services, was issued a show cause notice alleging suppression of the value of taxable services for the period 2004-05 to 2007-08. The Commissioner confirmed a portion of the demand, invoking the extended period of limitation, and imposed penalties. However, the Tribunal set aside the order, holding that the 21 extended period of limitation could not be invoked without proving deliberate suppression of facts with intent to evade tax. The Tribunal relied on several Supreme Court decisions, including PUSHPAM PHARMACEUTICALS CO. VS. COLLECTOR OF CENTRAL EXCISE (1995) AND UNIWORTH TEXTILES LTD. VS. COMMISSIONER OF CENTRAL EXCISE (2013), which established that mere suppression of facts is not enough to invoke the extended period of limitation. The suppression must be deliberate and with the intent to evade payment of duty. In this case, the show cause notice did not specifically allege intent to evade tax, and the Commissioner’s findings went beyond the scope of the notice. The Tribunal also emphasized that the adjudicating authority cannot base its decision on grounds not raised in the show cause notice, as held in COMMISSIONER OF CENTRAL EXCISE, NAGPUR VS. BALLARPUR INDUSTRIES LTD. (2007) AND NESTOR PHARMACEUTICALS LTD. VS. COMMISSIONER OF CENTRAL EXCISE, DELHI (2000). As a result, the Tribunal ruled that the extended period of limitation was not justified in this case and set aside the Commissioner’s order. This case highlights that the extended period of limitation under Section 73(1) of the Finance Act, 1994, cannot be invoked without proving deliberate suppression of facts with intent to evade tax, and the show cause notice must specifically allege such intent. These principles are relevant and should be cited in your reply to challenge the invocation of the extended period and the demand for service tax.

2.22.5 The Kolkata Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) ruled that the extended period of limitation cannot 22 be invoked if revenue officials are negligent in their investigation. In the case of M/S. PREMIER POWER PRODUCTS (CAL) PVT. LTD., Excise Appeal No. 70222 of 2013 the DGCEI conducted an inspection in July 2008, finding stock shortages and recording statements from the company’s director. However, no further investigation was carried out for over two years, and a show cause notice was issued only in March 2011, alleging suppressed material facts and clandestine removals. The Tribunal noted that despite having details of buyers from seized documents, no statements were recorded from

them to corroborate the allegations. The director's statements were recorded three times, with a gap of over two years between the first and subsequent statements, indicating a lack of follow-up investigation. The Tribunal criticized the officials for their negligence, stating that the delay in issuing the show cause notice and the lack of corroborative evidence pointed to extreme negligence. Consequently, the Tribunal held that the extended period of limitation could not be invoked and allowed the appeal, setting aside the demands. This ruling emphasizes that negligence by revenue officials in conducting a timely and thorough investigation cannot justify the invocation of the extended period of limitation.

2.22.6 The department's claim that the Noticee routed Chinese-origin goods through Malaysia to evade customs duty is incorrect and misleading. The Noticee maintains that the goods procured from China were declared as Chinese-origin goods, and those imported from Malaysia were declared accordingly. The department's attempt to generalize all imports as having been fraudulently routed is speculative and lacks evidentiary support. The Noticee also denies any involvement in arranging export documents such as invoices, packing lists, Bills of 23 Lading, or COOs to wrongfully avail benefits under Notification No. 46/2011-Cus., as alleged in the show cause notice.

2.22.7 The proposed confiscation of goods under Section 111(o) and 111(q) of the Customs Act and the imposition of penalties under Section 112 and Section 114AA are strongly disputed, as there is no evidence to support a finding of deliberate misdeclaration or fraudulent intent on the part of the Noticee. The goods imported under the 10 Bills of Entry were cleared by the proper officer based on legally submitted documents, and the department has failed to establish any grounds warranting confiscation or penalties.

2.22.8 The rejection of the COOs as fake and the consequent denial of the preferential rate of duty under Notification No. 46/2011-Cus., dated 01.06.2011, are strongly opposed. The department has failed to follow the prescribed verification procedures under the Operational Certification Procedures (OCP) of the ASEAN Trade in Goods Agreement (ATIGA). No evidence has been provided to demonstrate that the COOs were invalid, and no formal inquiry was conducted with the issuing authorities of the exporting countries. The mere assertion that certain COOs were unverified, without following due process, cannot be used as a ground to reject the preferential duty benefit.

2.22.9 The rejection of the declared transaction value and its subsequent redetermination are legally unsustainable, as they violate the principles laid down under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The department has failed to justify why the declared value should be rejected under Rule 12, nor has it provided legally valid comparable imports to support the re-determination of 24 value. The demand for differential customs duty of Rs. 79,60,198/-, along with interest, is therefore disputed in its entirety, as it is based on an incorrect and arbitrary valuation methodology.

2.22.10 In view of the foregoing, the allegations of misdeclaration, undervaluation, and duty evasion against the Noticee are unsubstantiated, legally unsound, and should be set aside in their entirety. The show cause notice suffers from procedural irregularities, reliance on inadmissible evidence, misinterpretation of valuation rules, and wrongful invocation of extended limitation. The claims made therein are liable to be quashed in the interest of justice.

2.23 The averments made above are mutually exclusive in the alternative and without prejudice to one another and the Noticee craves leave of the Hon'ble Commissioner of Customs to add amend, alter and improve the grounds during the course of hearing and the Noticee seeks a personal hearing to present his case before the Hon'ble Commissioner of Customs. The Noticee also craves further leave of the Hon'ble Commissioner of Customs to adduce further evidence and refer to the case laws during the course of personal hearing.

2.34 Therefore, in the facts and circumstances of the instant case and in the conspectus of the submissions made hereinabove, the Noticee most respectfully prays the Hon'ble Commissioner

of Customs that the Impugned Show Cause Notice may kindly be withdrawn, and the penal action proposed therein may kindly be dropped in the interest of justice.

2.35 In view of above importer has prayed

A. that the learned Appellate Authority may be pleased to: A. Set aside the impugned Show Cause Notice No. 480/2024- 25/COMMR./GR.IV/NS-III/CAC/JNCH dated 11.06.2024 issued to M/s Aaryan Overseas.

B. Consider the submissions of the Noticee's and take the same on record. The Noticee requests that the Hon'ble Authority pass an appropriate order after considering the averments and submissions made on the above grounds.

C. Pass any other order as may be deemed fit and proper in the facts and circumstances of the case, thereby rendering justice. The Noticee also reserves the right to make additional submissions, if necessary, and to be heard in person during the proceedings

PERSONAL HEARING

3. There are four Noticees i.e. M/s.Aaryan Overseas and CB M/s. Aashapura Logistics, M/s Sevenways Shipping Services and M/s P. V. Ramana Murthy Son following the principle of natural justice opportunities for personal hearing on ……in this matter was granted to the Noticees under Section 122(a) of the Customs Act,1962.I find that all the noticee's were given more than 3 opportunities by the adjudicating authority, however, noticee's did not appeared before the adjudicating authority for personal hearing.

DISCUSSION AND FINDINGS

4.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written submission made by all the Noticee. Accordingly, I proceed to decide the case on merit.

Principles of natural justice

4.2 Before going into the merits of the case, I find that in the instant case, in compliance of the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, Personal Hearing opportunities were granted by the Adjudicating Authority to all the Noticee on 29.01.2025, 20.03.2025, 24.05.2025 and 19.05.2025 to which only notice no 1 attended the personal hearing.

4.3 I find that enough opportunities were given to all the noticee's for their submission or to be heard, however notice no 2-4 neither submitted their written submission nor appeared for personal hearing.

I thus find that the principle of natural justice has been followed and I can 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.)]

4.4 **Issue in Brief**

The Show Cause Notice (SCN) alleges the importation of Cold Rolled Stainless Steel Sheets and coil Grade J3 by M/s. Aaryan Overseas under preferential tariff treatment claimed under Customs Tariff Notification No. 46/2011 dated 01.06.2011 (as amended from time to time) under Sr. No. 967(I), based on ingenuine Certificates of Origin (COOs) from Malaysia. Investigations have revealed that the COOs submitted were forged and that the actual origin of the goods was China.

The importer is alleged to have mis declared the origin to take undue benefit of ASEAN-INDIA FTA and to evade applicable Basic Customs Duty (BCD) of 7.5% and Countervailing Duty (CVD) of 18.95% on Chinese-origin goods for Bills of entries mentioned in table A thereby defrauding the government of customs revenue amounting to Rs. 79,60,198/-. The investigation by Special Investigation & Intelligence Branch (SIIB), JNCH confirmed that Excel Vantage Global (HK) Ltd. the purported supplier, was not registered in the Malaysian ePCO system, and the Ministry of International Trade and Industry of Malaysia (MITI) had denied issuing the COOs. The SCN also proposes confiscation of the goods and penalty on all the noticee's.

4.5 **NOTICEE'S CONTENTION**

I find that in response to the SCN the contention of the noticees is as follows-
Submission of M/s. Aaryan Overseas.
The importer contends that the allegations in the SCN are baseless and should be set aside. They argue that:

- Onus is on the department to prove undervaluation and misdeclaration.
- The Noticee categorically denies any misdeclaration of origin. The Certificates of Origin (COO) submitted at the time of import clearance were issued by designated authorities in the exporting country which is Malaysia. These COOs legitimately qualify the goods for preferential duty benefits under Notification No. 46/2011-Cus., dated 01.06.2011 (Indo-ASEAN PTA).
- the Customs authorities had access to all import documents at the time of clearance, including commercial invoices, COOs, and Bills of Entry. The clearance of goods by the proper officer, without raising objections at the material time, demonstrates that there was no suppression of facts.
- it has been stated that Mr. Sanjay Jain, arranged all deals and COOs in Malaysia, yet the department has failed to make him a Noticee in the present proceedings.
- The invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962, by the department is wholly unjustified, arbitrary, and legally unsustainable.
- The Noticee categorically denies the allegation that it knowingly and intentionally used fake or unauthenticated Certificates of Origin (COOs) from Malaysia to claim a preferential rate of duty. The COOs submitted at the time of import were issued by authorized certifying bodies in the exporting countries, and the Noticee had no role in their issuance.

4.6 **FRAMING OF ISSUES**

Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

i. As to whether Importer's eligibility for Customs basic duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(1) should not be denied and CVD @18.95% on the landed value should not be levied as per the Notification No. 01/2017-Customs (CVD) dated 07.09.2017.Whether or not the differential duty amount of Rs. **79,60,198/- (Rupees Seventy-Nine Lakhs Sixty Thousand One Hundred and Ninety-Eight only)** on account of Levi ability of BCD

and CVD should be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

ii. As to whether the subject goods having total assessable value of Rs.**2,45,76,673/- (Rupees Two crore forty-five lakh seventy-six thousand six hundred and seventy-three only)** should be held liable for confiscation under Section 111(q) of the Customs Act, 1962.

iii. As to whether Penalty should be imposed on M/s Aaryan Overseas under Section 112 (a) and /or114 A and 114AA of the Customs Act, 1962.

iv. As to whether Penalty should be imposed on Customs Broker M/s. Aashapura Logistics under Section 112 of the Customs Act, 1962.

v. As to whether Penalty should be imposed on Customs Broker M/s Sevenways Shipping Services under Section 112 of the Customs Act, 1962.

vi. As to whether Penalty should be imposed on Customs Broker M/s P.V. Ramana Murthy Son under Section 112 of the Customs Act, 1962.

A. <u>As to whether Importer's eligibility for Customs basic duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(1) should not be denied and CVD @18.95% on the landed value should not be levied as per the Notification No. 01/2017-Customs (CVD) dated 07.09.2017.</u>

4.7 I observe that the Importer Aaryan Overseas having their registered office at C-11/ 1, Wazirpur Industrial Area, New Delhi- ll0052 imported Stainless Steel Circle declared to be falling under CTH 72209090 from Malaysia. On the said Import of Stainless-Steel Circles of CTH 72 BCD @ 7.5% is levied as per Serial No. 376 E of the notification no. 50/2017 – Customs dated 30.06.2017. In addition to the BCD @ 7.5%, if the same imports are from China, the same are also chargeable to CVD @ 18.95 % as per Customs Notification. 01/2017(CVD) date 07.09.2017. Further, IGST is also chargeable @18.95% as per serial no 208 of the Schedule III of the IGST notification no. 01/2017 dated 28.06.2017 as amended.

However, India is a signatory of ASEAN India Free Trade Agreement (AIFTA) agreement wherein the import of subject Stainless-Steel circle is eligible for a concessional rate of "NIL" BCD as per Sl no. 967(I) of Customs Tariff notification no. 46/2011 dated 01.06.2011.

However subject concessional rates of NIL BCD is subject to strict compliance to the provisions of Section 28 DA of the Customs Act, 1962 and Rules of Origin for the ASEAN – Free trade India (AIFTA). The said rules of origin are mandated in terms of the Article 4 of AIFTA Agreement and the same have been duly notified vide Customs notification no. 189 (NT) date 31.12.2007 under section 5 of the Customs Tariff Act, 1975. The above said concessional NIL rate of BCD is available subject to submission of a true and valid Country of origin certificate (COO) as per Rule 13 of Rules of Origin and Article 4 of the AIFTA agreement.

In this background of Concessional NIL rate of BCD on Stainless Steel circles imported from ASEAN Countries including Malaysia, the Importer in total has filed 10 Bill of Entry through Customs Broker M/s Aashapura Logistics while claiming concessional NIL rate of BCD and NIL rate of CVD claiming on the basis of Importer's/ Customs Brokers declaration in the subject Bills of entries:- ***"We declare that content of invoice and other relating documents pertaining to the subject goods including the COO certificate are true and correct in every aspect."*** The Importer/Broker have accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer/ Customs Broker M/s Aashapura Logistics have also declared in all the said 10 Bill of entries the said goods ***'qualify as originating goods for preferential rate of duty under the Customs Tariff***

(Determination of Origin of goods under the Preferential trade agreement between the Government of member states of ASEAN and Republic of India) Rules, 2009 vide notification no. 189/2009-Customs (NT) date 31.12.2009'.

In this background the provisions of Section 17 (1) of the Customs Act, 1962 are important which prescribe that

"Section 17 Assessment of duty.—

4. *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"*

Further provisions of Section 28 DA of the Customs Act, 1962 are also important which place the whole responsibility of accuracy and truthfulness of the Country of Origin certificate on the Importer. The said provisions are reproduced below:-

"Section 28 DA. Procedure regarding claim of preferential rate of duty

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,-

(i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;

(ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;

(iii) furnish such information in such manner as may be provided by rules;

(iv)exercise reasonable care as to the accuracy and truthfulness of the information furnished.

(2) he fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care."

In this regard, the provision of regulation 10 (d) and 10 (e) of the Customs Broker Licensing regulation, 2018 are also important and have binding on all Customs Broker's including M.s M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son. The said binding provision are reproduced below :-

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

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

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"

In view of the above, I observe that inescapable and definitive responsibility for producing a genuine and truthfull Country of Origin certificate has been placed on both Importer and the Customs Broker in case of claiming benefit of concessional rates of NIL BCD on import of subject from Malaysia.

However, I Observe that there is no dispute about the fact in the instant case that competent authority of Malaysia for issuing Country of Origin certificate .i.e. The Ministry of International Trade and Industry (MITI) has confirmed that subject Country of Origin certificate used by the Importer and presented by both the Customs brokers are unauthentic. Therefore, neither Importer nor both the Customs Brokers during the course of investigation have ever contested that the subject Country of Origin certificate submitted by the Importer/Customs Broker were authentic.

In fact the investigation has brought on the following evidences on the record:-

Sr.no	List of Evidence Description
1	RUD-1 Letter from Group IV, JNCH dated 15.02.2023 vide CUS/APR/SCN/85/2023-Gr-IV
2	RUD-2 Alert Circular No. 02/2021 vide F.No. DRI/HQ/CI/B Cell/50D/ Enq 01/2020/2916 dated 09.09.2021.
3	RUD-3 DRI, New Delhi letter vide F.No. DRI/DZU/23/ENQ-15/2022/1501 dated 11.05.2023
4	RUD-4 Copy of statement of Shri Sanjay Jain, one of the Chinese/Malaysian Suppliers, dated 02.02.2023
5	RUD-5 Copy of statement of Shri Sanjay Jain, one of the Chinese/Malaysian Suppliers, dated 04.02.2023
6	RUD-6 Copy of statement of Shri Sanjay Jain, one of the Chinese/Malaysian Suppliers, dated 20.02.2023

4.7 The authenticity of the Country of Origin (COO) certificates was disputed and an email reply from the Board on 10.06.2022, confirmed that the Ministry of International Trade and Industry of Malaysia (MITI) had verified 42 COO certificates as inauthentic. MITI explicitly stated that these certificates were not issued by them, substantiating the fact that the COO certificates submitted by the Importing firm were inauthentic.

4.8 I further find that the letter from the FTA Cell, Directorate of International Customs, CBIC, dated 06.02.2023 explicitly stated that all 80 Country of Origin (COO) Certificates issued to five Malaysian suppliers were found to be unauthentic. The suppliers Excel Vantage Global (HK) Ltd was among them. This conclusive finding confirmed the widespread fraudulent activity, where fake COO certificates were used to claim undue benefits.

4.9 It has further observed that the Directorate of Revenue Intelligence has conducted an in-depth investigation into this matter and issued an Alert Circular No. 02/2021-CI on 09.09.2021 highlighting that in excess of 150 Country of Origin (COO) certificates, predominantly pertaining to steel products originating from Malaysia and a few from Thailand, have been verified as non-authentic by the respective issuing authorities. The circular further provides a comprehensive listing of the implicated suppliers in Annexure-A. The aforesaid certificates, having been inauthentic, consequently render any benefits accrued therefrom under the ASEAN-India Preferential Trade Agreement and the India-Malaysia Preferential Trade Agreement as ineligible. It was also informed in the said alert circular that it had been observed from the physical copy of COO that exports have been effected from Malaysia through third party invoicing, commercial invoices had been issued by third parties other than those listed in annexure A, even though the COO had been issued in the name of exporters as listed in the enclosed annexure. Name of Suppliers mentioned in Table I i.e. **M/s Excel Vantage Global (HK) ltd and M/s EVG Metal industries figure in the said Annexure A of Alert Circular No. 02/2021-CI dated 09.09.2021.**

4.11 The office of the Additional Director, Directorate of Revenue Intelligence (DRI), New Delhi, provided crucial information through letter F.No. DRI/DZU/23/ENQ-15/2022/1501, dated 11.05.2023. This letter revealed that Shri Sanjay Jain, a Chinese / Malaysian supplier made significant admissions in his statements dated February 2, 4, and 20, 2023. Shri Sanjay Jain confessed to supplying Chinese-origin goods to multiple importers in India through Malaysia. He also disclosed that he established a company called M/s EVG Metals. In his detailed

statements, Shri Sanjay Jain explained the modus operandi of routing Chinese goods through Malaysia to India. Notably, **M/s Excel Vantage Global (HK) ltd and M/s EVG Metal industries** ltd were the companies that attempted to exploit the Free Trade Agreement (FTA) to evade payment of Basic Customs Duty (BCD) and Countervailing Duty (CVD) on Chinese-origin goods and these companies used inauthentic Certificates of Origin (COO) to claim these benefits.

4.12 I find that the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:

i. *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd*. Reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence

ii. In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India : " 4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act."*

iii. It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of In *Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)

iv. State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law." (Vide Taylors's Treatise on the Law of Evidence, VI. I).

v. There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721*.

vi. Hon'ble Supreme Court in the case of Kanhailal Vs. UOI, 2008 (1) Scale 165 observed: *" The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava's case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*

vii. Hon'ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of KANTILAL M JHALA Vs UNION OF INDIA vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that ***"Confessional statement corroborated by the seized documents, admissible even if retracted".***

viii. The Apex Court in the case Hazari Singh V/s. Union of India reported in 110 E.L.T. 406, and case of Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person.-"

ix. The Hon'ble Supreme Court in the case of Badaku Joti Savant Vs. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be

admissible in evidence and in conviction based on it is correct.

x. In the case of BhanaKhalpa Bhai Patel Vs. Asstt. Collr. Of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon'ble Apex Court at Para 7 of the judgment held that *:-" It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90)* E.L.T. *241 (S.C.) = (1997) 3 S.C.C. 721."*

xi. In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*

xii. Hon. Supreme Court's decisions in the case of Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence

xiii. Jagjit Singh vs State Of Punjab And Another, Hon'ble Punjab and Haryana High Court in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that : *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

4.13 In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. **I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

4.14 A thorough examination of above facts it is undoubtedly established that the importing firm has imported the subject imported goods deliberately suppressed the material facts to circumvent Indian customs regulations and relevant notifications, to get undue benefits. It is also evident that company such as **M/s Excel Vantage Global (HK) ltd and M/s EVG Metal industries** were specifically established to facilitate the routing of Chinese-origin goods through Malaysia to India. This modus operandi enabled the companies to exploit the Free Trade Agreement (FTA) between India and Malaysia, thereby evading payment of applicable duties on Chinese-origin goods.

4.15 In order to facilitate a comprehensive understanding of the Rules of Origin under the ASEAN-India Free Trade Agreement (AIFTA), it is imperative to look into the details of these rules as referenced in the show cause notice.

* **For the purpose of determining the origin of products entitled to preferential tariff treatment under the ASEAN-India Free Trade Agreement (AIFTA), the rules stipulated in Article 13, inter alia, shall be applicable :**

"Rule 13 Certificate of Origin- A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the other Parties in accordance with the Operational Certification Procedures as set out in Appendix D."

*** In implementing the Rules of Origin under the ASEAN-India Free Trade Agreement (AIFTA) in the present case, reference may be made to the relevant Articles as notified in the Operational Certification Procedures for Rules of Origin under AIFTA, as outlined in Appendix D:**

*"**Article 4:-***

The exporter and/or the manufacturer of the products qualified for preferential tariff treatment shall apply in writing to the Issuing Authority of the exporting Party requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to products, the origin of which by their nature can be easily verified.

***Article 5**:-*

At the time of carrying out the formalities for exporting the products under preferential tariff treatment, the exporter or his authorised representative shall submit a written application for the AIFTA Certificate of Origin together with appropriate supporting documents proving that the products to be exported qualify for the issuance of an AIFTA Certificate of Origin."

Article 16:-

(a) The importing Party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on a producer/exporter's cost statement based on the current cost and prices within a six- month timeframe prior to the date of exportation subject to the following procedures:

(i) the request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;

(ii) the Issuing Authority shall respond to the request promptly and reply within three (3) months after receipt of the request for retroactive check;

(iii) In case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing Party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the good to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and…"

4.16 I have also seen the Tariff Notification No. 046/2011 dated 01.06.2011 which is applicable for giving duty exemption benefits to specific goods when imported into India from Philippines and other ASEAN countries in view of ASEAN- India FTA (AIFTA). The Notification No. 046/2011 dated 01.06.2011 were further amended time to time. In this case, relevant provisions of the applicable Notifications are as below:

- ***Principal Notification No. 46/2011 dated 1st June, 2011-***

  "G.S.R. *I.- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962),and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.153/2009-Customs dated the 31st December, 2009 [G.S.R. 944 I, dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby*

exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in,-
column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II.
Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009.

Sr. No.	*Chapter or heading or subheading or tariff item*	*Description*	*Rate*
955	*72*	*All goods*	*5.0*
956	*730110 to 731814*	*All goods*	*5.0*

- ***Amended Notification No. 96/2017-Customs dated 29th December, 2017-***
G.S.R.(E).—In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2011-Customs, dated the 1st June, 2011,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R. 423 I, dated the 1stJune, 2011, namely: -In the said notification, for the Table, the following Table shall be substituted, namely: -

Sr.No.	*Chapter or heading or subheading or tariff item*	*Description*	*Rate*
967	*72*	*All goods*	*0*
968	*730110 to 731814*	*All goods*	*0*

4.17 In this case, M/s. Aaryan Overseas availed duty exemption benefits under Customs Tariff Notification No. 46/2011 dated 01.06.2011 (Sr. No. 967(I)), claiming Country of Origin benefits as per the ASEAN-India FTA (AIFTA) agreement. To support this claim, the importer submitted Certificate of Origin (COO) certificates allegedly issued by the Ministry of International Trade and Industry, Malaysia (MITI). However, the DRI Delhi uncovered a list of importers who wrongly claimed benefits under Notification No. 46/2011, which pertains to the ASEAN-India Free Trade Agreement. These importers allegedly used fake Certificates of Origin (COO) to avail themselves of preferential tariff treatment. M/s. Aryan Overseas was listed by the DRI as one of the importers whose Certificate of Origin (COO) certificates were deemed non-authentic. This implies that the company have misrepresented the origin of goods to avail benefits under the ASEAN-India Free Trade Agreement (AIFTA) or other trade agreements.

4.17.1 In the instant case, The Importer has contested that:-

i) CAROTAR, 2020 has provided a form, containing a list of basic minimum information which an importer is required to obtain while importing goods under claim of preferential rate of duty.

ii) Therefore, in case there is a doubt with regard to origin of goods, information would be first called upon from the importer of the goods, in terms of rule 5 read with rule 4 of CAROTAR, 2020, before initiating verification with the partner country in terms of rule 6.

However, there is no merit in the said contention of the notice because of the following reasons:-

- As per the Importer/ Noticee No 1 contention they are required to posses information and knowledge as per Rule 4 read with Rule 5 of the CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. The said Provisions of Rule 4 and Rule 5 are reproduced below:-

Rule 4.

Origin related information to be possessed by importer .-

The importer claiming preferential rate of duty shall-

(a) possess information, as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.

(b) keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.

(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.

Rule 5.

Requisition of information from the importer .-

(1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.

(2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.

(3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.

(4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.

(5) Not with standing anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:

(a) The importer relinquishes the claim; or

(b) The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

- However, in the instant case that there is no dispute about the fact that they have taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty. On the contrast of the aforesaid binding legal requirement the Importer/Noticee No. 01 is claiming that he submitted the Subject COO certificate as provided by the supplier
- There is no merit in the claim of the Importer/Noticee No 1 also because he failed to provide the above said vital information along with supporting documents as prescribed in Rule 4 (b) of the CAROTAR, 2020 at any relevant point of time namely i) at the time of recording of his statement under section 108 of the Customs Act, 1962, ii) His defence reply dated 06.05.2024 iii) At the Personal Hearing on 28.04.2025 (Through the Insolvency Resolution Professional) who has represented the Importer/Corporate Debtor as per IBC, 2016 and Provisions of the Customs Act, 1962.
- In fact, Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions ; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility.

4.17.2 The Importer has also contended that *Rule 18 (a) of the Customs Tariff [Determination of Origin of Goods Under Preferential Trade Agreement Between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN0) and the Republic of India] Rules, 2009 allows to retain the Country-of-Origin Certificates and all documents related to application to be retained for not less than two years from the date of issuance. Relevant provision of the Rule is reproducedherewith:-*

"18(a) The application for AIFTA Country-of-Origin Certificates and all documents related to such application shall be retained by the Issuing Authorities for not less than two years from the date of issuance."

However, there is no merit in the above contention of the Importer either because there is no dispute that Importer has used an unauthentic COO Certificate and pocketed a substantial amount of Government revenue in the form of fraudulent availment of Basic Customs Duty exemption benefit.

As mandated by Section 28 DA of the Customs Act, 1962 read with Rule 4 of CAROTAR,2020, The Importer has failed to possess sufficient information as per Form I of the said rules along with supporting documents of the same.

Therefore in terms of Section 28 DA(2) of the Customs Act, 1962, Importer/ Noticee No . 1 now cannot claim either ignorance or avoid responsibility of ensuring accuracy and truthfulness of COO certificate, facing the pecuniary consequences in terms of payment of related duty and penalty.

4.18 On careful consideration of the above facts of the case, it is an established fact that the Country-of-Origin Certificates submitted by the importing firm to claim duty exemption under Notification No. 46/2011 dated 01.06.2011 for steel products were inauthentic. These certificates, purportedly issued by **M/s Excel Vantage Global (HK) ltd and M/s EVG Metal industries** were not genuine. Investigations revealed that the certificates were not issued by the Ministry of International Trade and Industry, Malaysia (MITI), as claimed. It is also established that the intention behind this submission of these fake COO Certificates was to fraudulently claim duty exemption, thereby evading payment of applicable customs duties.

4.19 It has been established that the impugned goods were routed from China to Malaysia and then exported to India to claim duty exemption as stated in above para. Now the question is whether CVD was applicable on the impugned goods at the time of import or not. I find that as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017, the goods under heading 7219 or 7220 originating from China, 18.95% CVD was applicable on landed value of the goods and as per Custom Notification no. 04/2019 -Customs (CVD) dated 17.09.2019.

4.20 In view of the above, I hold that Basic Customs Duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(I) should be denied and CVD @18.95% on landed value (for Bill of entry of Table A) should be levied as per Notification No. 1/2017-Customs (CVD) dated 07.09.2017.

4.21 The Show Cause Notice proposed the demand and recovery of differential duty of amount **Rs. 79,60,198/-** based on ineligible duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(I) and non-payment of CVD @18.95% on landed value, under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962.
The relevant legal provision is as under

> ***SECTION 28(4) of the Customs Act 1962.***
> ***Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded.*** –
> *(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 wilful 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.

4.22 In view of the discussion in the foregoing paras, I find that the investigation has placed on record sufficient evidences, both oral and documentary, thereby discharged burden to prove that the imported goods were of Chinese origin and that the syndicate has entered into a conspiracy to manipulate the country of origin in order to evade Customs duty. In view of the facts and evidences on record, it has been conclusively proven that M/s. Aaryan Overseas, in collusion with their Chinese and Malaysian suppliers, engaged in a deliberate and systematic attempt to evade customs regulations. By submitting fake Country of Origin Certificates purportedly issued by Malaysian authorities, the importer misrepresented the origin of goods, thereby wrongfully availing themselves of the concessional/preferential duty rate under Notification No. 46/2011 dated 01.06.2011, as amended. It is also established that the goods in question originated from China, were first routed to Malaysia, and then exported to India. The deliberate routing of goods through Malaysia, with the intent to evade payment of appropriate customs duties. Thus, the importing firm has deliberately suppressed these facts before Customs and submitted counterfeited Country of Origin Certificates misrepresenting that these goods were of Malaysian Origin, in fact these goods were of Chinese Origin. Therefore, the goods declared in the subject Bill of Entry are liable for a higher rate of duties i.e Basic Customs Duty (BCD) at 7.5%, Countervailing Duty (CVD) at 18.95% on the landed value, and IGST at 18% for CTI 7220/7219. Consequently, the Differential Duty amount of **Rs. 79,60,198/-** should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962.

4.23 I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully suppressed the correct country of origin of the imported goods by not declaring the same at the time of filing of the Bills of Entry to evade payment of correctly leviable duty. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong declaration of the goods and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to mis-declare the COO to take full duty exemption benefit, being fully aware of the correct country of origin of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

4.24 In view of the foregoing, I find that, due to deliberate suppression of country of origin of the goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

(a) 2013(294)E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified

(b) 2013(290)E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;

(c) 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]

(d) 2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

4.25 Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

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 28, 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.

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)]** wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

"....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

4.26 In view of the facts and findings in above paras, I hold that total differential duty of **Rs. 79,60,198/-**should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from M/s. Aaryan Overseas along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

ii. As to whether the subject goods having total assessable value of Rs.**2,45,76,673/- (Rupees Two crore forty-five lakh seventy-six thousand six hundred and**

seventy-three only) should be held liable for confiscation under Section 111(q) of the Customs Act, 1962.

4.27 I reiterate my findings from paras 4.7 to 4.26 for the question of confiscation also as the same are mutatis mutandis applicable to this issue also.

I find that, the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

4.28 I also 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 Aaryan Overseas 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.

4.29 I find that the SCN proposes confiscation of goods under the provisions of Section 111(q) of the Customs Act, 1962. Provisions of these Sections of the Act, are re-produced herein below:

*"SECTION 111. **Confiscation of improperly imported goods,** etc. — The following goods brought from a place outside India shall be liable to confiscation:*

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

4.30 I have already held in foregoing paras that the importer had wilfully claimed preferential rate of duty. They had evaded correct Customs duty by intentionally mis-represented/mis-stated the country of origin of the impugned goods & wrongly availed Customs duty benefits. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible Nil rate of duty. Therefore, on account of the aforesaid mis-declaration / mis-statement in the aforementioned Bills of Entry, the impugned goods having a total Assessable Value of **Rs.2,45,76,673/- (Rupees Two crore forty-five lakh seventy-six thousand six hundred and seventy-three only)** are liable for confiscation under Section 111(q), of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the importer has rendered the goods liable for confiscation under Section 111(q) of the Customs Act, 1962.

4.31 I also find that the case is established on documentary evidences in respect of past imports, though 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 [as observed by the Hon'ble Supreme Court in CC

Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. 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. '*

4.32 I therefore hold that the said imported goods are liable for confiscation under the provisions of Section 111(q) of the Customs Act, 1962, as proposed in the Show Cause Notice. The subject goods imported 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)."*

4.32.1 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.).

4.32.2 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.

4.32.3 It is established under the law 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/ Bond 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 Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
e. 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."

f. 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."

4.32.4 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

.

4.33 In view of above facts, findings and legal provisions, I find that it is an admitted fact that the noticee had colluded with the overseas suppliers to supress the true country of origin of the impugned goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion and wilful mis-statement of the imported goods, have rendered the goods liable to confiscation under section 111(q) of the Customs Act, 1962. **Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.**

iii. As to whether Penalty should be imposed on M/s Aaryan Overseas under Section 112 (a) and /or114 A and 114AA of the Customs Act, 1962.

4.34 I reiterate my findings from paras 4.7 to 4.26 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 [28AA], 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

4.35 It is a settled law that fraud and justice never dwell together (Frauset 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. Changalvaraya 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 I : 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."

4.36 As explained above, it is conclusively established that the importing firm M/s. Aaryan Overseas, in collusion with their Chinese and Malaysian suppliers, submitted fake Certificates of Origin (COO) purporting to be from Malaysia. The goods in question, which were claimed to be of Malaysian origin, did not meet the necessary criteria to qualify as such. By submitting these counterfeit COO certificates, the importer wilfully claimed ineligible benefits, specifically the concessional/preferential rate of duty under Notification No. 46/2011 dated 01.06.2011. It has also been established that the goods in question originated from China, were first routed to Malaysia, and then exported to India. The deliberate routing of goods through Malaysia, with the intent to evade payment of appropriate customs duties. Thus, the importing firm has deliberately suppressed these facts before Customs and submitted counterfeited Country of Origin Certificates misrepresenting that these goods were of Malaysian Origin, but in fact these goods were of Chinese Origin. Therefore, the importing firm evaded the duty of Rs.79,60,198/-, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962, by invoking extended period. Consequently, the importing firm are liable for penalty under Section 114A of the Customs Act, 1962.

4.37 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. Aaryan Overseas, in terms of the fifth proviso to Section 114A of the Act ibid.

4.38 Furthermore, I find that Penal Action under Section 114 AA of the Customs Act has also been proposed on M/s. Aaryan Overseas **The relevant provision of the Section 114AA of the Custom Act, 1962 is as under:-**

114AA Penalty for use of false and incorrect material –

I reiterate my findings from paras 5.6 to 5.25 for the question of penalty also as the same appears mutatis mutandis to this also.

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.

4.39.1 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.*

4.39.2 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)

4.39.3 As observed in above paras, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. The Importer M/s. Aaryan Overseas. cleared the imported goods by knowingly and intentionally resorting to use of false and incorrect declaration, statement and manipulated Country of Origin Certificates etc. Therefore, I hold that the Importer M/s. Aaryan Overseas is liable for imposition of penalty under Section 114AA ibid.

4.40 Further, Law very categorically puts the duty to exercise due diligence on the importer. Without prejudice to what has been stated herein above, it is beyond doubt that the noticee is the beneficiary from the fraud committed by them. They have submitted that the COO was supplied to them by the overseas supplier of goods and they were not in the knowledge of the same. However, I find that this argument is fraught with many loopholes the notice being the actual beneficiary. In **Texport Overseas Pvt. Ltd. v. Commissioner of Customs, 2015 (319) E.L.T. 70 (SC)**, the Supreme Court held that importers bear the burden of proving the authenticity of documents when claiming duty exemptions.

iv. As to whether Penalty should be imposed on Customs Broker M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son under Section 112 of the Customs Act, 1962.

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

4.41.1 I observe that the Importer M/s. Aaryan Overseas, imported Stainless Steel Coils Grade J3 of different thickness declared to be falling under CTH 72199090 and CTH 72209090. On the said Import of Stainless Steel Circles of CTH 72 BCD @ 7.5% is levied as per Serial No. 376 E of the notification no. 50/2017 – Customs dated 30.06.2017. In addition to the BCD @ 7.5%, if the same imports are from China, the same are also chargeable to CVD @ 18.95 % as per Customs Notification. 01/2017(CVD) date 07.09.2017. Further, IGST is also chargeable @18% as per serial no 208 of the Schedule III of the IGST notification no. 01/2017 dated 28.06.2017 as amended read with notification 86/2018.

However, India is a signatory of ASEAN India Free Trade Agreement (AIFTA) agreement wherein the import of subject Stainless Steel Coils are eligible for a concessional rate of "NIL" BCD as per Sl no. 967(I) of Customs Tariff notification no. 46/2011 dated 01.06.2011.

However subject concessional rates of NIL BCD is subject to strict compliance to the provisions of Section 28 DA of the Customs Act, 1962 and Rules of Origin for the ASEAN – Free trade India (AIFTA). The said rules of origin are mandated in terms of the Article 4 of AIFTA Agreement and the same have been duly notified vide Customs notification no. 189 (NT) date 31.12.2007 under section 5 of the Customs Tariff Act, 1975. The above said concessional NIL rate of BCD is available subject to submission of a true and valid Country of origin certificate (COO) as per Rule 13 of Rules of Origin and Article 4 of the AIFTA agreement.

4.41.2 I observe that in the instant case, the Importer has filed 10 Bills of entries through three Customs Broker, M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son. Details of which are as follows:-

Sr. No.	Bill of Entry No & Date	Description of Goods	Custom Broker	Declared AV (in Rs.)	Paid Duty Structure	Declared Duty (in Rs.)	Differential Duty
1	4412286 dated 08.08.19	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s Sevenways Shipping Services.	21,66,204/-	BCD@0% SCD@0% IGST@ 18%	389916.72	7,31,593/-
2	4680859 dated 28.08.2019	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s Sevenways Shipping Services.	21,38,450/-	BCD@0% SCD@0% IGST@ 18%	384921	7,22,220/-
3	5138929 dated 01.10.201	Stainless Steel Cold Rolled Coil	M/s P.V. Ramana Murthy Son	21,44,129/-	BCD@0% SCD@0%	385943.22	7,24,138/-

	9	Grade 3 J3			IGST@ 18%		
4	5808331 dated 25.11.2019	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s. Aashapura Logistics,	21,38,046/-	BCD@0% SCD@0% IGST@ 18%	384848.28	7,22,083/-
5	6778297 dated 06.02.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s. Aashapura Logistics,	21,27,397/-	BCD@0% SCD@0% IGST@ 18%	382931.46	7,18,487/-
6	6819227 dated 10.02.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s. Aashapura Logistics,	22,14,314/-	BCD@0% SCD@0% IGST@ 18%	398576.52	7,47,841/-
7	7017694 dated 26.02.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s. Aashapura Logistics,	22,08,163/-	BCD@0% SCD@0% IGST@ 18%	397469.34	7,45,764/-
8	8099896 dated 07.07.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s. Aashapura Logistics,	45,57,429.74/-	BCD@0% SCD@0% IGST@ 18%	820337.4	15,39,184/-
9	9360803 dated 28.10.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s. Aashapura Logistics,	27,26,332/-	BCD@0% SCD@0% IGST@ 18%	490739.8	9,20,766/-
10	6344591 dated 03.01.2020	Stainless Steel Cold Rolled Coil Grade 3 J3	M/s. Aashapura Logistics,	21,56,208/-	BCD@0% SCD@0% IGST@ 18%	388117.44	3,88,117/-
				2,45,76,673/-		**44,23,801/-**	79,60,198

In this background of Concessional NIL rate of BCD on Stainless Steel Coils imported from ASEAN Countries including Malaysia, and Concessional NIL rate of BCD on Stainless Steel Coils imported from ASEAN Countries including Malaysia, the Importer in has filed 10 Bills of Entry through three Customs Broker, M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son while claiming concessional NIL rate of BCD

and NIL rate of CVD claiming on the basis of Importer's/ Customs Brokers declaration in the subject Bills of entries:- ***"We declare that content of invoice and other relating documents pertaining to the subject goods including the COO certificate are true and correct in every aspect."*** The Importer/Broker have accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer/ Customs Broker M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son have also declared in all the said Bills of entries the said goods ***'qualify as originating goods for preferential rate of duty under the Customs Tariff (Determination of Origin of goods under the Preferential trade agreement between the Government of member states of ASEAN and Republic of India) Rules, 2009 vide notification no. 189/2009-Customs (NT) date 31.12.2009'***.

In this background the provisions of Section 17 (1) of the Customs Act, 1962 are important which prescribe that

> **"Section 17 Assessment of duty.—**
> 4. *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"*

4.41.3 Further provisions of Section 28 DA of the Customs Act, 1962 are also important which place the whole responsibility of accuracy and truthfulness of the Country of Origin certificate on the Importer. The said provisions are reproduced below:-

> *"Section 28 DA. Procedure regarding claim of preferential rate of duty*
> *(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,-*
> *(i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*
> *(ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
> *(iii) furnish such information in such manner as may be provided by rules;*
> *(iv)exercise reasonable care as to the accuracy and truthfulness of the information furnished.*
> *(2) he fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care."*

4.41.4 Further, I find that as per Rule 4 read with Rule 5 of the CAROTAR (Customs Administration of Rules of Origin under Trade Agreements) Rules, 2020 with regards to Origin of the goods the information will be called upon from the Importer of the goods. The said Provisions of Rule 4 and Rule 5 are reproduced below:-

> ***Rule 4.***
>
> ***Origin related information to be possessed by importer .-***
>
> *The importer claiming preferential rate of duty shall-*
>
> *(a) possess information, as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.*

(b) keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.

(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.

Rule 5.

Requisition of information from the Importer .-

(1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.

(2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.

(3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.

(4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.

(5) Not with standing anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:

(a) The importer relinquishes the claim; or

(b) The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

- However, in the instant case that there is no dispute about the fact that they have taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty. On the contrast of the aforesaid binding legal requirement the Importer/Noticee No. 01 is claiming that they have submitted the Subject COO certificate as provided by the supplier.
- In fact, Form-I of Rule 4 of the CAROTAR,2020 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per Form-1 of Rule 4 of the CAROTAR,2020 the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions ; what is the effect of production process

in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility.

Further I find that as per *Rule 18 (a) of the Customs Tariff [Determination of Origin of Goods Under Preferential Trade Agreement Between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN0) and the Republic of India] Rules, 2009 allows to retain the Country-of-Origin Certificates and all documents related to application to be retained for not less than two years from the date of issuance. Relevant provision of the Rule is Reproduced herewith :-*

> *"18(a) The application for AIFTA Country-of-Origin Certificates and all documents related to such application shall be retained by the Issuing Authorities for not less than two years from the date of issuance."*

In view of the above there is no dispute that Importer has used an unauthentic COO Certificate and pocketed a substantial amount of Government revenue in the form of fraudulent availment of Basic Customs Duty exemption benefit.

As mandated by Section 28 DA of the Customs Act, 1962 read with Rule 4 of CAROTAR,2020, The Importer has failed to possess sufficient information as per Form I of the said rules along with supporting documents of the same.

Therefore in terms of Section 28 DA(2) of the Customs Act, 1962, Importer/ Noticee No . 1 now cannot claim either ignorance or avoid responsibility of ensuring accuracy and truthfulness of COO certificate, facing the pecuniary consequences in terms of payment of related duty and penalty.

Further the provision of regulation 10 (d) and 10 (e) of the Customs Broker Licensing regulation, 2018 are also important and have binding on all Customs Broker's including M/ M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son. The said binding provision are reproduced below :-

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

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

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"

In view of the above, I observe that inescapable and definitive responsibility for producing a genuine and truthful Country of Origin certificate has been placed on both Importer and the Customs Broker in case of claiming benefit of concessional rates of NIL BCD on import of subject from Malaysia.

4.42 However, I Observe that there is no dispute about the fact in the instant case that competent authority of Malaysia for issuing Country of Origin certificate.i.e. The Ministry of International Trade and Industry (MITI) has confirmed that subject Country of Origin certificate used by the Importer and presented by both the Customs brokers are unauthentic. Therefore, neither Importer nor both the Customs Brokers during the course of investigation have ever contested that the subject Country of Origin certificate submitted by the Importer/Customs Broker were authentic.

In fact the investigation has brought on the following evidences on the record:-

RUD No	Description
RUD-1	Email dated 10.06.2022 received from Board
RUD-2	Directorate of Revenue Intelligence vide Alert Circular No. 02/2021-CI dated 09.09.2021
RUD-3	Letter vide F.No. DRI/DZU/23/ENQ-15/2022/1501 dated 11.05.2023 issued by Additional Director,DRI
RUD-4	Statement of Shri Sanjay Jain dated 02.02.2023 recorded by DRI
RUD-5	Statement of Shri Sanjay Jain dated 04.02.2023 recorded by DRI
RUD-6	Statement of Shri Sanjay Jain dated 20.02.2023 recorded by DRI
RUD-7	Exhibit II containing details of Imports as furnished by Shri Sanjay Jain

4.43 I find that, the authenticity of the Country of Origin (COO) certificates was disputed and an email reply from the Board on 10.06.2022, confirmed that the Ministry of International Trade and Industry of Malaysia (MITI) had verified 42 COO certificates as inauthentic. MITI explicitly stated that these certificates were not issued by them, substantiating the fact that the COO certificates submitted by the Importing firm were inauthentic.

4.44 I further find that the letter from the FTA Cell, Directorate of International Customs, CBIC, dated 06.02.2023 explicitly stated that all 80 Country of Origin (COO) Certificates issued to five Malaysian suppliers were found to be unauthentic. The supplier of Excel Vantage Global (HK) Ltd and EVG Metal Industries SDN.BHD were among them. This conclusive finding confirmed the widespread fraudulent activity, where fake COO certificates were used to claim undue benefits.

4.45 It has further been observed that the Directorate of Revenue Intelligence has conducted an in-depth investigation into this matter and issued an Alert Circular No. 02/2021-CI on 09.09.2021 highlighting that in excess of 150 Country of Origin (COO) certificates, predominantly pertaining to steel products originating from Malaysia and a few from Thailand, have been verified as non-authentic by the respective issuing authorities. The circular further provides a comprehensive listing of the implicated suppliers in Annexure-A. The aforesaid certificates, having been inauthentic, consequently render any benefits accrued therefrom under the ASEAN-India Preferential Trade Agreement and the India-Malaysia Preferential Trade Agreement as ineligible. It was also informed in the said alert circular that it had been observed from the physical copy of COO that exports have been affected from Malaysia through third party invoicing, commercial invoices had been issued by third parties other than those listed in annexure A, even though the COO had been issued in the name of exporters as listed in the enclosed annexure. Name of Supplier mentioned in Table I i.e. (i)f Excel Vantage Global (HK) Ltd and EVG Metal Industries SDN.BHD figure in the said Annexure A of Alert Circular No. 02/2021-CI dated 09.09.2021.

4.46 The office of the Additional Director, Directorate of Revenue Intelligence (DRI), New Delhi, provided crucial information through letter F.No. DRI/DZU/23/ENQ-15/2022/1501, dated 11.05.2023. This letter revealed that Shri Sanjay Jain, a Chinese / Malaysian supplier made significant admissions in his statements dated February 2, 4, and 20, 2023. Shri Sanjay Jain confessed to supplying Chinese-origin goods to multiple importers in India through Malaysia. He also disclosed that he established a company called M/s EVG Metals. In his detailed statements, Shri Sanjay Jain explained the modus operandi of routing Chinese goods through Malaysia to India. Notably, M/s. EVG Metals was one of the companies that attempted to exploit the Free Trade Agreement (FTA) to evade payment of Basic Customs Duty (BCD) and Countervailing Duty (CVD) on Chinese-origin goods and these companies used inauthentic Certificates of Origin (COO) to claim these benefits.
I find that the Custom Broker M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son were aware of the fact that the goods imported in the said BEs are not eligible to get benefit specifically the concessional/preferential rate of duty under Notification

No. 46/2011 dated 01.06.2011. It has been conclusively proven that M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son, the Customs Broker, failed to exercise due diligence in verifying the accuracy of information related to cargo clearance. They did not ensure compliance with the Customs Act, allied Acts, and relevant rules and regulations. Furthermore, the Customs Broker did not advise their client to adhere to these provisions, nor did they bring any instances of non-compliance to the attention of the Department. This negligence renders M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son are liable for penal action under Section 112 of the Customs Act, 1962.

4.47 It is on record that the CB was aware that the importing firm M/s. Aaryan Overseas, in collusion with their Chinese and Malaysian suppliers, submitted fake Certificates of Origin (COO) purporting to be from Malaysia, however, the goods are of Chinese origin were first routed to Malaysia, and then exported to India. Though the CB was aware of the fact, they have played a master role in this episode by clearing the goods on the basis of fake COO Certificates.

4.48 The above facts were supported by the of the CB, recorded during investigation wherein he admitted that he was aware about the procedures / rules to be followed by CB; that they have filed impugned bills of entry for which they have submitted Country of Origin Certificates issued by the Ministry of International Trade and Industry, Malaysia and the duty benefit obtained.

4.49 From the above, it is clear that he acknowledged being aware of the procedures and rules to be followed by the Customs Broker. He further revealed that they had filed impugned bills of entry, submitting Country of Origin Certificates issued by MITI and had availed duty benefits accordingly. This statement implicates CB in the fraudulent activities, confirming his involvement in the submission of fake Country of Origin Certificates and availing of undue duty benefits.

4.50 In the same statement, when questioned, he answered that they are merely Customs Broker for the imported goods and clearance of the same at Nhava Sheva Port. However, this CB’s claim of innocence, stating unawareness of the fake COO Certificates, is contradicted by evidences. His earlier involvement in the clearance process suggest that he was, in fact, aware of the fake COO Certificates.

4.51 Further, the evidence conclusively establishes the Customs Broker's culpability, leaving no doubt about their involvement in the fraud. It is thus clear that the CB was aware of the importer's fraudulent activities and actively participated in clearing the goods by submitting fake COO Certificates. The CB's role was not merely passive, but rather, they facilitated the fraud by providing false documentation, making them a willing participant in the illicit scheme. Their actions demonstrate a clear intent to facilitate importer to get undue benefit of the concessional/preferential rate of duty under Notification No. 46/2011.

4.52 In all cases on thorough examining the sequence of events and the CB’s submissions during investigations, demonstrate the Customs Broker's active and deliberate involvement in the entire episode. The Customs Broker's actions are not merely those of negligence or oversight but rather a deliberate and systematic attempt and they are hand in gloves with the Noticee no 1, to defraud the government exchequer. His wilful and deliberate acts of omission and commission have rendered the impugned goods liable to confiscation under Section 111(q) of the Customs Act, 1962. This level of complicity and active participation in fraudulent activities with an intention to evade customs duty has rendered him liable for penalty under Section 112(a) of the Customs Act, 1962 on them.

4.53 They contended that there is nothing on record to prove that they had knowledge of the alleged wrongdoings of the Importer. They stated that the Bills of Entry were filed by them

under bonafide belief that the Certificates provided by the importer is a valid document and they came to know about the non-authenticity of COO Certificates after receiving information from Custom Department and they were completely unaware about the status of authenticity of COO Certificates prior to filing of BOE. The Customs Broker's argument is not acceptable. They filed multiple Bills of Entry using the same modus operandi, indicating a deliberate plan and his act of negligence may have resulted in huge loss to the Government Exchequer, Policy violation. The fact of the case indicates that though it is case of duty evasion, the fact that the CB was involved in similar previous offences indicates that the CB firm knew about the procedure and process of declaration to be made at the time of filing the Bills of Entry and it is clear that the CB did not have any intention of declaring the goods of Chinese origin and was deliberately attempting to evade payment of Customs Duty. Under the circumstances, the seriousness of misdemeanour/past offences were required to be kept in mind when using the discretion under section 112 of the Customs Act, 1962.

4.54 Furthermore, I find that the department is not required to prove the case with mathematical precision. It has been held by the Hon'ble Supreme Court in *CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)] 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:-

c. "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.".

4.55 As per Regulation 10 of CBLR, 2018 :

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

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

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

iii. I find that in this case, the Customs Broker failed to fulfil his obligations by not advising his client to adhere to the relevant notification provisions. Furthermore, he neglected to report the non-compliance to the Deputy Commissioner as required under Regulation 10(d) of CBLR, 2018.

iv. I further find that the Customs Broker breached his obligations under Regulation 10(m) of the Customs Brokers Licensing Regulations (CBLR) 2018, as he failed to discharge his duties with utmost efficiency. For which separate proceeding under CBLR 2018 may be initiated.

4.56 In a trade facilitation regime, Customs Brokers play a pivotal role as intermediaries between Customs Authorities and importers/exporters, and exercise significant influence over the smooth operation of international trade. As such, they are entrusted with a high level of trust and responsibility. However, when Customs Brokers fail to adhere to the Customs Act and Customs Broker Licensing Regulations (CBLR) that leads to unlawful imports, resulting in significant revenue losses for the government. In this case, as enumerated above, the Customs Broker failed to comply with the Customs Act as well as CBLR Regulations. To support my view, I rely on the following judgments:

4.56.1 The Hon'ble Madras High Court in case of M/s Cappithan Agencies Versus Commissioner of Customs, Chennai-Viii, [2015(326) ELT 0150 Mad.], had held that:

"13. The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

14.In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed."

4.56.2 Further, I rely upon the judgment of Hon'ble CESTAT Delhi in case of M/S. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in para 6.1. Hon'ble Tribunal held as under:

"Para 6.1 *These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."*

4.56.3 Further, the Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

"A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in

CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)".

4.56.4 I rely on the judgment of Hon'ble Supreme Court in the case of Commissioner of Customs Versus M/s K M Ganatra & Co as reported in 2016 (2) TMI 478 - SUPREME COURT held as under:

> *"15. In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai 2002 (142) E.L.T. 84 (Tri. - Mumbai) wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed:-*
> *"The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations. …"*
> *We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed."*

4.56.5 I also place reliance in the precedence laid down by the CESTAT Hyderabad while highlighting the criticality of the role of Customs Broker, in the case of ShakellyVenkat Chand Vs Commissioner of Customs, Vijayawada arising out of Customs Appeal No. 31287 of 2018 wherein it has been held that

> *7. The moot question for deciding in this Appeal is whether in the facts of the case, the Appellant viz., Shri ShakellyVenkat Chand was acting in good faith, exercising due diligence or there was any malafide intent in tacitly helping the importer to clear the consignment, which was found to be grossly misdeclared. The role of* ***the Customs Broker is very crucial in the process of clearance of goods as they are required to do due diligence before facilitating filing of relevant documents for clearance of goods. As a regular Customs Broker, it is not expected that he would accept any document*** *including KYC* ***in a mechanical manner****. He is expected to exercise due diligence to satisfy about the bonafide of the importer and the documents submitted by him. The employee of the Customs Broker in the instant case has in fact noted and admitted that there was some kind of impersonation and that should have alerted him and he should have brought to the notice of the Customs Authority immediately, instead he remained silent. This is the admitted position in the statement given by the Appellant and the Appellant is also not denying this fact nor giving any substantive reason about him being silent about the impersonation in the first place. He is responsible for the act of his employee also who is misrepresenting the CHB before the Customs Authorities.....*

4.57 In the nutshell, in view of the negligence rendered by M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son have failed in discharging their duties and despite knowing or having reason to believe that the impugned goods imported are liable to confiscation under section 111(q) of the Customs Act, 1962 and aided the importer M/s. Aaryan Overseas in clearing the impugned goods. Therefore, I find that the CHA M/s M/s. Aashapura Logistics, M/s Sevenways Shipping Services, M/s P.V. Ramana Murthy Son is liable for penalty under Section 112 (a) of the Customs Act, 1962.

4.58 I find that both the noticee's have relied on various judgements and denied all the allegation levelled against them in the SCN. The reason for non-admissibility of various case laws in this case are as follows :-

Sr. No	Case Law	Reason for non admissibility
1	the Hon'ble Supreme Court in Commissioner of Customs (Imports),	The facts of the case are entirely different because "- (i) It is not the case of misdeclaration & undervaluation

	Mumbai v. M/s Ganpati Overseas [2023 LiveLaw (SC) 864]., and Commissioner of Central Excise and Service Tax, Noida Vs. Sanjivani Non-Ferrous Trading Pvt. Ltd. MANU/SC/1456/2018 And Hon'ble CESTAT, New Delhi, in M/s Mittal Appliances Ltd. vs. Commissioner of Customs (Customs Appeal No. 51888 of 2021). And Deeplalit Enterprise Pvt. Ltd. & Lilaram Arjandas Asudani vs. Commissioner of Customs, Ahmedabad (Customs Appeal Nos. 11063-11064 of 2016), And the Hon'ble Supreme Court in COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, NOIDA V. M/S. SANJIVANI NON-FERROUS TRADING PVT. LTD.,	of goods (ii) It is a case of fraudulent COO certificate wherein the Importer has declared the authenticity of such certificate in the body of bills of entry. (iii) The Importer has failed entirely to ensure due diligence.
2	Commissioner of Customs (Imports), Mumbai Vs. Ganpati Overseas and Ors. MANU/SC/1089/2023	The facts of the case are entirely different because "- (i) The importer did not respond to any summons issued during the investigation, therefore his statement was not recorded in this case. (ii It is a case of fraudulent COO certificate wherein the Importer has declared the authenticity of such certificate in the body of bills of entry. (iii) The Importer has failed entirely to ensure due diligence.
3	M/S. WELLWORTH PROJECT DEVELOPERS PRIVATE LIMITED V. COMMISSIONER OF CGST Service Tax Appeal No. 50259 of 2024, And M/S. T.S. MOTORS INDIA PVT. LTD. VS. COMMISSIONER OF CGST & CENTRAL EXCISE, LUCKNOW (Service Tax Appeal No. 70377 of 2018), And PUSHPAM PHARMACEUTICALS CO. VS. COLLECTOR OF CENTRAL EXCISE (1995) AND UNIWORTH TEXTILES LTD. VS. COMMISSIONER OF CENTRAL EXCISE (2013), And f M/S. PREMIER POWER PRODUCTS (CAL) PVT. LTD., Excise Appeal No. 70222 of 2013	The facts of the case are entirely different because (i) The intent is more than established in the instant case. (ii) There is no dispute about the fact that the importer specifically declared in the bill of entry that they have completed all the provisions of notfn no 189/2009 inspite of the they have failed to obtain essential information about COO. (iii) Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions ; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility.

5. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

ORDER

i. I deny the duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(I) and I order levy of CVD @18.95% on landed value, as per Notification No. 1/2017-Customs (CVD) dated 07.09.2017 against Bills of Entries mentioned in Table-A.

ii. I confirm the demand of Differential Duty amount of Rs. **79,60,198/- (Rupees Seventy-Nine Lakhs Sixty Thousand One Hundred and Ninety-Eight only)** under Section 28 (4) of the Customs Act, 1962 and I order to recover the same from the Importer M/s. Aaryan Overseas along with applicable interest under Section 28AA of the Customs Act, 1962.

iii. Even though the goods are not available, I hold the impugned goods having total re-determined Assessable value of Rs.**2,45,76,673/- (Rupees Two crore forty-five lakh seventy-six thousand six hundred and seventy-three only)** imported vide Bills of Entry (details as per Table-A) liable for confiscation under Section 111(q) of the Customs Act, 1962. However, I impose a redemption fine of **Rs 61,00,000/- (Rupees Sixty-One Lakhs Only)** on M/s Aaryan Overseas in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

iv. I impose a penalty equivalent to differential duty of Rs. **79,60,198/- (Rupees Seventy-Nine Lakhs Sixty Thousand One Hundred and Ninety-Eight only)** with interest accrued there upon on the importing firm, M/s. Aryan Overseas 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. Aaryan Overseas under Section 114 AA of the Customs Act, 1962.

vi. I impose a penalty of **Rs. 5,78,000/- (Rupees Five Lakhs Seventy-Eight Thousand Only)** on M/s. Ashapura Logistics (for the bills of entry filed by them), Custom Broker, under Section 112(a) of the Customs Act, 1962.

vii. I impose a penalty of **Rs 1,45,000/- (Rupees One Lakhs Forty-Five Thousand Only)** on M/s Sevenways Shipping Services (for the bills of entry filed by them), Custom Broker, under Section 112(a) of the Customs Act, 1962.

viii. I impose a penalty of **Rs 72,400/- (Rupees Seventy-Two Thousand Four Hundred Only)** on M/s P.V. Ramana Murthy Son (for the bills of entry filed by them), Custom Broker, under Section 112(a) of the Customs Act, 1962.

Signed by
Vijay Risi
Date: 28-05-2025 17:32:13

(VIJAY RISI)
COMMISSIONER OF CUSTOMS
NS-III, JNCH

To,

M/s. Aaryan Overseas (IEC-0514011343)

C-11/1, Wazirpur Industrial Area,
New Delhi-11052.

M/s. Aashapura Logistics (C.B.)
C-304, 3rd Floor, Shivparvati Complex,
N.S.S. Road, Asalpha, Ghatkoper West-400084.

M/s Sevenways Shipping Services (C.B.)
86/99, 2nd Floor, Armenian Street,
Chennai-600001.

M/s. P.V. Ramana Murthy Son (C.B.)

Copy to :

1. The Pr. Commissioner of Customs (General), Customs Broker Section, New Custom House, Ballard Estate, Mumbai.
2. AC/DC, concerned Group.
3. The Deputy Director, Directorate of Revenue Intelligence, New Delhi.
4. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to upload the OIO in DIGIT.
5. AC/DC, Chief Commissioner's Office, JNCH
6. AC/DC, Centralized Revenue Recovery Cell, JNCH
7. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.

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