



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/10-079/2024-25/Commr/Gr.IV/NS-III/CAC/JNCH

Date:- #approval date

SCN No. 724/2024-25/Commr/Gr.IV/NS-III/CAC/JNCH dated 11.07.2024

DIN	:	DIN-20250578NX0000777BE4
आदेश की तिथि	:	22.05.2025
Date of Order	:	
जारी किए जाने की तिथि	:	29.05.2025
Date of Issue	:	
आदेश सं.	:	51/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच
Order No.	:	51/2025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता	:	श्री विजय रिशी
Passed by	:	SH. VIJAY RISI
	:	आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा
	:	Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम	:	मेसर्स मैफ्टन इंटरनेशनल्स
Name of Party/ Noticee	:	M/s. Mafton Internationals

मूलआदेश

ORDER-IN-ORIGINAL

- इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क 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.
- 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.
- 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.

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BRIEF FACTS

Inputs received by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU) indicated that M/s. Mafton Internationals, Mumbai (IEC-0316509094) is engaged in import of Stainless-Steel Welded Tubes/Pipes & Stainless Steel ERW Tube from **M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd Malaysia**, by wrongly availing Country of Origin preferential tariff benefit under notification no. 46/2011-Customs dated 01.06.2011 as amended.

1.1 Notification No. 46/2011-Customs dated 01.06.2011(as amended), issued in supersession of Notification No. 153/2009-Customs dt 31.12.09, prescribes the effective rate of duty for specified goods imported from ASEAN countries, if the goods in respect of which such benefit or exemption is claimed are proven to be of origin of the country specified in Appendix to the notification, in accordance with the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments or Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009. AIFTA refers to the ASEAN India Free Trade Area under the Framework Agreement. The ASEAN comprise Brunei Darussalam, Kingdom of Cambodia, Republic of Indonesia, Lao Peoples Democratic Republic (Laos), Malaysia, Union of Myanmar, Republic of Philippines, Republic of Singapore, Kingdom of Thailand and Socialist Republic of Vietnam.

1.2 Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nation (ASEAN) and the Republic of India] Rules, 2009 [hereinafter referred to as “Rules of Origin”] were notified vide Notification No. 189/2009-Cus. (N.T.) dated 31-12-2009 as amended.

1.3 In terms of Rule-5 read with Rule-3 of the said “Rules of Origin” for the products not wholly produced or obtained in the exporting party (of the Agreement), to qualify for the preferential tariff under the said Preferential Tariff Agreement, the goods must have at least 35% RVC and non-originating materials must have undergone processing to warrant change in CTSH level (6 digits) with final process of manufacture within territory of export. Rule-3 and Rule-5 of the said “Rules of Origin” read as follows: -

Rule 3. Origin criteria. -

“The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following. –

- a. products which are wholly obtained or produced in the exporting party as specified in rule 4, or*
- b. products not wholly produced or Obtained in the exporting party provided that the said product. are eligible under rule 5 or 6*

Rule 5. Not wholly produced or obtained products. - For the purpose of clause (b) rule 3. a product shall be deemed to be originating. if-

- a. the AIFTA content is not less than 35 percent of the FOB value - and*
- b. the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) Level i.e. at six digit of the Harmonized System.*

Rule 13 of the Customs Tariff (ASEAN -India) Rules. 2009, has laid down that ‘Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be

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supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures, issued by a Government authority designed by the exporting party noticed to the other parties in accordance with the Operational Certification Procedures as set out in Annexure-III of these Rules.”

- 1.4 Enquiries indicated that the M/s. Mafton Internationals, Mumbai located at Office No-4, Ground Floor, Gagangiri Tower, Dr. Deshmukh Lane, V. P Road, Mumbai - 400004 (hereinafter referred to as ‘the importer’) had imported Stainless Steel Welded Tubes/Pipes & Stainless Steel ERW Tube from suppliers **M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia**, The goods have been classified under CTH 73069019, which carries a tariff rate of BCD @15% in terms of First Schedule or the Customs Tariff Act, 1975. Further, as per Notification 50/2017-CUS, Sl. No 377 the effective rate of BCD is @10%.
- 1.5 However, in terms of Sr. No. 968(1) of Notification No 46/2011 dated 01.06.2011 all goods imported from Malaysia falling under Chapter 73, including Stainless Steel Welded Tubes/Pipes & Stainless Steel ERW Tube falling under Customs Tariff Heading 73069019, are completely exempt from BCD. Accordingly, the importer had claimed the benefit of Notification No. 46/2011 dt 01.06.2011 and cleared the goods on payment of Nil BCD, Nil SWS & IGST @18%.
- 1.6 Since the intelligence indicated that the benefit of Notification No. 46/2011 dt 01.06.2011 had been inappropriately claimed by M/s. Mafton Internationals, Mumbai (IEC- 0316509094) in relation to the goods manufactured by M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia, enquiries were initiated in relation to the said imports.
- 1.7 During the course of the enquiry Shri Dhiraj Kumar Chhajer, Proprietor of M/s. Mafton International, submitted documents relating to import of Stainless Steel Welded Tubes/Pipes & Stainless Steel ERW Tube from M/s. MH Megah Maju Enterprise, Malaysia. M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia.
- 1.8 Scrutiny of the documents submitted by the importer, confirmed that consignments of Stainless-Steel Welded Tubes/Pipes & Stainless Steel ERW Tube had been imported by the said importer from M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia, at Nhava Sheva (INNSAI) and Mundra Port (INMUN1) and the benefit of Notification No.46/2011-Cus (Sr No. 968(I)) dated 01.06.2011 had been availed by the importer on the strength of Certificates of Origin.
- 1.9 In response to summons dated 17.05.2024 issued under the provisions of section 108 of the Customs Act, 1962, Shri Dhiraj Kumar Chhajer, Proprietor of M/s. Mafton International appeared to the DRI office on 29.05.2024 and his statement was recorded under Section 108 or the Customs Act, 1962. In his statement Shri Dhiraj Kumar Chhajer inter-alia, stated that –
 - M/s. Mafton International started in the year 2016 and is into business of trading of stainless-steel welded pipes which is imported from other countries;
 - The goods are sold to the trader only such as Rajasthan Pipes n tubes, Veer rattan steel, Nageshwar metals etc;
 - Stainless steel welded pipe were imported from overseas suppliers depending upon the customer requirements i.e. length, thickness and grade of the steel pipes, M/s Mafton International have 8-9 overseas suppliers and on the basis of the demand they place the order for import from the overseas suppliers who give them the best price and quality;
 - Overseas supplier are inter alia, M/s. MH Megah Maju Enterprise, Cekap Prima Sdn Bhd, Jentayu Industry etc;

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- Communication with Mr. June or M/s. Jentayu Industry, Mr. Tom of MH Megah Maju Enterprise and Mr. Eddy of Cekap Prima Sdn Bhd was majorly done through WhatsApp call and normal phone call and all the orders were placed orally on WhatsApp.
- He had not taken any extra measures to verify the suppliers and started placing order.
- During the time of import the customs had cleared goods without any customs duty. Therefore, he thought that the COO's are genuine and continued importing products from the same companies.

1.10 The details of the Country-of-Origin Certificates submitted by the importer for the consignments under investigation are as under: -

Table-1

Sr. No.	Bill of Entry No & Date	Date of out of charge	COO No. & Date	Consignor/ Manufacturer as per COO
1	3900159 dt 02.07.2019	15.07.2019 (INNSA1)	KL-2019-AI-21- 058447 dt 28.06.2019	MH Mehga Maju Enterprise
2	6932902 dt 18-02-2020	24.02.2020 (INSSA1)	KL-2020-AI-2 1-006633 dt 13.02.2020	Cekap Prima Sdn Bhd
3	7646645 dt 12-05-2020	22.05.2020 (INSSA1)	KL-20 I 9-AI-21- 014533 dt 10.04.2020	Cekap Prima Sdn Bhd
4	7661974 dt 14-05-2020	23.05.2020 (INSSA1)	KL-2020-AI-21-014540 dt 10.04.2020	Cekap Prima Sdn Bhd
5	8192657 dt 17-07-2020	24.07.2020 (INSSA1)	KL-2020-AI-2 1-024624 dt 13.07.2020	Cekap Prima Sdn Bhd
6	8416369 dt 09-08-2020	19.08.2020 (INSSA1)	KL-2020-AI-21-030499 dt 05.08.2020	Cekap Prima Sdn Bhd
7	8544974 dt 21-08-2020	02.09.2020 (INSSA1)	KL-2020-AI-21-033105 dt 21.08.2020	Cekap Prima Sdn Bhd
8	8594541 dt 26-08-2020	02.09.2020 (INSSA1)	KL-2020-AI-21-033472 dt 24.08.2020	Cekap Prima Sdn Bhd
9	- 8861070 dt 18-09-2020	23.09.2020 (INMUN1)	KL-2020-AI-21-036026 dt 14.09.2020	Cekap Prima Sdn Bhd
10	9013836 dt 01-10-2020	16.10.2020 (INMUN1)	KL-2020-AI-21-085246 dt 22.09.2020	Jentayu Indu
11	9081853 dt 06-10-2020	14.10.2020 (INSSA1)	KL-2020-AI-21- 039284 dt 05.10.2020	Cekap Prima Sdn Bhd
12	- 9216931 dt 17-10-2020	28.10.2020 (INSSA1)	KL-2020-AI-21- 092214 dt 15.10.2020	Jentayu Indu
13	9217558 dt 17-10-2020	28.10.2020 (INSSA1)	KL-2020-AI-21-092195 dt 15.10.2020	Jentayu Indu
14	9301103 dt 24-10-2020	02.11.2020 (INSSA1)	KL-2020-AI-21-093328 dt 21.10.2020	Jentayu Indu
15	9449874 dt 01-11-2020	10.11.2020 (INNSA1)	KL-2020-AI-2 1 - 039284 dt 02.11.2020	Cekap Prima Sdn Bhd
16	9880623 dt 08-12-2020	11.12.2020 (INNSA1)	KL-2020-AI-21-099253 dt 08.12.2020	Jentayu Indu
17	2606689 dt	06.02.2021	KL-2021-AI-21- 003673 dt	Jentayu Indu

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	04-02-2021	(INNSA1)	27.01.2021	
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1.11 Verification of certain Country-of-Origin certificates issued by authorities in Malaysia was conducted by the *Free trade Agreement (FTA) Cell, Directorate of International Customs, Central Board of Indirect Taxes & Customs*, Department of Revenue, Ministry of Finance. Subsequent to the said verification the FTA cell vide letter dated: 27.04.2021 inter-alia, intimated that the certain COOs issued in relation to ***the exporter (overseas supplier M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia were not authentic and that the same had not been issued by the Ministry of International Trade and Industry (MITI), Govt of Malaysia. The said letter dated 27.04.2021 further informed that the MITI have never received any COO application from M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sein Bhd, Malaysia.***

1.12 The Country of Origin Certificate number mentioned in Table- 1 above were also checked on the online platform or Electronic Preferential Certificate of Origin (ePCO), a web based preferential certificate of origin application and approval system with a COO Verification System for Free Trade Agreements including AIFTA (ASEAN India FTA) hosted on the web portal or the Ministry of Investment, Trade and Industry (MITI) (earlier Ministry of International Trade and Industry) of the Government of Malaysia. On accessing the said system, the following results were obtained:

Table - 2

Sr. No.	COO Certificate No.	CCO Certificate date	Remark shown in CO Verification System
1	KL-2019-AI-21-058447	28.06.2019	Endorsement No. does not exist
2	KL-2020-AI-21-006633	13.02.2020	Endorsement No. does not exist
3	KL-2019-AI-21-014533	10.04.2020	Endorsement No. does not exist
4	KL-2020-AI-21-014540	10.07.2020	Endorsement No. does not exist
5	KL-2020-AI-21-024624	13.07.2020	Endorsement No. does not exist
6	KL-2020-AI-21-030499	05.08.2020	Endorsement No. does not exist
7	KL-2020-AI-21-033105	21.08.2020	Endorsement No. does not exist
8	KL-2020-AI-21-033472	24.08.2020	Endorsement No. does not exist
9	KL-2020-AI-21-036026	14.09.2020	Endorsement No. does not exist
10	- KL-2020-AI-21-085246	22.09.2020	Endorsement No. does not exist
11	KL-2020-AI-21-039284	05.10.2020	Endorsement No. does not exist
12	KL-2020-AI-21-092214	15.10.2020	Endorsement No. does not exist
13	KL-2020-AI-21-092195	15.10.2020	Endorsement No. does not exist
14	KL-2020-AI-21-093328	21.10.2020	Endorsement No. does not exist
15	KL-2020-AI-21-039284	02.11.2020	Endorsement No. does not exist
16	KL-2020-AI-21-099253	08.12.2020	Endorsement No. does not exist
17	KL-2021-AI-21-003673	27.01.2021	Endorsement No. does not exist

1.13 Printout of the web pages in relation to the above mentioned COO certificate indicating that “Endorsement No. does not exist”. From the above it can be seen that the ‘Country of Origin’ certificates submitted by the importer were not reflected in the CO Verification System implying that the same had not been issued by the Government authority (Ministry of Investment, Trade and Industry) of the exporting country (Malaysia). Accordingly, it appeared that the 'Country of Origin' certificates submitted by importer during the clearance of the said consignment were not genuine/ authentic.

1.14 **Legal provisions applicable in the case**

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A. Customs Act, 1962 –

- a. **Section 2 - Duties specified in the schedule to be levied.** - The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.
- b. **Section 2(16) - "entry"** in relation to goods mean an entry made in bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84.
- c. In terms of sub-section 2 of section 2 of the Customs Act, 1962, "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act. 1975 (51 of 1975) or under any other law for the time being in force, with reference to-
 - a) the tariff classification of such goods as determined in accordance with the provisions or the Customs Tariff Act;
 - b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
 - c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
 - d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
 - e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount or duty, tax, cess or any other sum is affected by the origin of such goods;]
 - f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;"
- d. **Section 17-** (1) An importer entering any imported goods under section 46, or an exporter entering any export good under section 50, shall, save as otherwise provided in section 85, self-asses the duty if any, leviable on such goods.
 - (2). The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test an) imported goods or export goods or such part thereof as may be necessary.
 - (3) The purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
 - (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
 - (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall

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pass a speaking order on the re-assessment within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

e. Section 28(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.

f. Section 28(5) - *Where any duty has not been levied or not paid or has been short-levied or short-paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper office, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under Section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper office of such payment in writing*

g. Section 28(6) - *Where the importer or the exporter or the agent or the employee of the importer or exporter, as the case may be, has paid duty with interest and penalty under sub-section (5). the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion -*

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

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

h. Section 28 - Explanation 1: *For the purposes of section 28, "relevant date" means,-*

(a) in a case where duty is not levied or not paid or short-levied or short paid or interest is not charged, the date on which the proper officer makes an order for the clearance of goods:

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(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

- i. Section 28AA-** *(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.*
- j. Section 46(1)** - *the importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:*
"entry" as defined in section 2(16) of the Customs Act, 1962, in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84.
- k. Section 46(4)** - *The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth or 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. The importer who presents a bill of entry shall ensure the following, namely: -*
 - a. the accuracy and completeness of the information given therein;*
 - b. the authenticity and validity of any document supporting it; and*
 - c. compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*
- l. Section 111** - *Confiscation or improperly imported goods, etc.-The following goods brought from a place outside India shall be liable to confiscation: -*
(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (l) of section 54;
- m. 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 (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, to penalty.
- n. Section 114A** - *Penalty for short-levy or non-levy of duty in certain cases-where the duty has not been levied or has not 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*

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case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined.

B. Circular No. 17/2011- Customs dated 8th April, 2011 issued by the Ministry of Finance, specified that Section 17 of the Customs Act, 1962 provided for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. The importer or exporter at the time of self-assessment was to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill. The Bill of Entry or Shipping Bill self-assessed by importer or exporter. as the case may be, could be subject to verification with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. For the purpose of verification, the proper officer was also required to order for examination or testing of the imported or export goods, production of any relevant document or ask the importer or exporter to furnish any relevant information.

C. Customs (Administration of Rules of Origin and Trade Agreements) Rules, 2020 [CAROTAR Rules, 2020 in force w.e.f 21st day of September, 2020]:-

Rule 4. of the CAROTAR Rules, 2020 in relation to origin related information to be possessed by importer, specified that - 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.

1.15 The Bills of Entry as mentioned in Table- 1 above, filed by the said importer, had been self-assessed. Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. Further, in terms of Rule 4 of the CAROTAR Rules, 2020 it is mandatory for the importer to possess information, to demonstrate the manner in which country of origin criteria, are satisfied, and to keep all supporting documents.

1.16 In the present case it is apparent that M/s Mafton International had claimed duty exemption under Notification o. 46/2011 dated 01.06.2011. In order to correctly self-assess the duty on the goods it was mandatory for the importer to ensure that the goods actually qualified for duty exemption in terms of the said notification dated 01.06.2011. In the case of consignment imported subsequent to the implementation of the CAROTAR Rules, 2020, it was further mandatory for the importer to ensure the accuracy and truthfulness of the relevant information and documents, including the Certificates of Country of Origin. The enquires conducted in this regard however indicate that the importer had not taken any extra measures to verify the suppliers and continued importing the products.

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1.17 Section 46(4) of the Customs Act. 1962, specifies that, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content 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. From the verification report discussed above, it appeared that the importer has mis-represented the relevant facts of the Country-of-Origin Certificate and evaded Customs duty on the impugned goods and hence, contravened the provisions of section 46 of the Custom Act, 1962.

1.18 By not self-assessing the subject goods properly, it appeared that the importer had evaded Customs duty on the impugned good by wrongly availing the benefit of exemption Notification on the basis of fake/fabricated/unverified Country of Origin Certificates. Therefore, it appeared that the importer had incorrectly availed the exemption Notification on the good manufactured by M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia. It is thus apparent that the importer has made use of fake/fabricated/ unverified Country-of-Origin Certificates and that in order to wrongly avail duty exemption benefit under Notification no. 46/2011 dated 01.06.2011 the facts regarding the origin of the goods had been mis-represented by the importer in the Bills of Entry filed at JNCH. Accordingly, the differential duty appears liable to be demanded under Section 28(4) of the Customs Act, 1962.

1.19 **DIFFERENTIAL DUTY** - It was apparent that the importer had wrongly availed the benefit of Notification no.46/2011-Cus dated 01.06.2011 (Sr no 968(1)), as amended, on the goods imported vide bill of entries mentioned below and short paid the Customs duties to the extent of Rs. **71,19,734/-** (Rupees Seventy-One Lakhs Nineteen Thousand Seven Hundred and Thirty-Four Only) as summarized as below:

Table-3 (Summary of Duty Involvement)

Sr.no	Bill of Entry No. & Date	Assessable value	BCD foregone	SWS foregone (10%)	Applicable GST	IGST Paid at time of import	IGST Foregone	Total differential duty payable
	1	2	3	4	5	6	7	8=(3+4+7)
1	3900159 dt 02.02.2019	2702854	270785	27079	541029	487414	53616	351479
2	6932902 dt 18.02.2020	4421309	442131	44213	883377	795836	87542	573886
3	7646645 dt 12.05.2020	4210140	421014	42101	841186	757825	83361	546476
4	7661974 dt 14.05.2020	4872598	487260	48726	973545	877068	96477	632463
5	8196369 dt 09.08.2020	2770763	277076	27708	553598	498737	54861	359645

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6	8416369 dt 09.08.2020	26603 93	266039	26604	531547	478871	52676	345319
7	8544974 dt 21.08.2020	26494 41	264944	26494	529358	476899	52459	343897
8	8594541 dt 26.08.2020	44333 82	443338	44334	885790	798009	87781	575453
9	8861070 dt 18.09.2020	24845 16	248452	24845	496406	447213	49193	322490
10	9013836 dt 01.10.2020	25180 86	251809	25181	503114	453256	49858	326848
11	9081853 dt 06.10.2020	40942 56	409426	40943	818032	736966	81066	531434
12	9216931 dt 17.10.2020	24222 33	242223	24222	483962	436002	47960	314406
13	9217558 dt 17.10.2020	28493 29	284933	28493	569296	512879	56417	369843
14	9301103 dt 24.10.2020	22921 18	229212	22921	457965	412581	45384	297517
15	9449874 dt 04.11.2020	44469 10	444691	44469	888493	800444	88049	577209
16	9880623 dt 08.12.2020	23360 25	233603	23360	466738	420485	46253	303216
17	2606689 dt 04.02.2021	28622 22	268222	26822	535908	482800	53108	348152
TOTAL		54851 573	548415 7	548516	1095934 4	987328 3	108606 1	7119734

1.20 For the imported goods to be eligible for preferential tariff under Notification No. 46/2011 dated 01.06.2011 as amended the said consignments were required to be **supported by Certificate of Origin issued by a Government authority** designated by the Exporting country and notified to the Country of Import in accordance with Rule 13 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, read with the Operational Certification Procedures as set out in Annexure-III of the said Rules which stipulates in Point-1

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(Authorities) that 'The AIFTA Certificate of Origin shall be issued by the Government authorities (issuing authority) of the exporting party (country).

On the basis of the statement recorded, scrutiny of documents and verification carried out, it appeared that the Certificates of Origin as mentioned in Table-1, used for the import Stainless Steel Welded Tubes/Pipes & Stainless Steel ERW Tube from **M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia were not authentic.**

1.21 Verification report issued by the Ministry of International Trade and Industry (MITI), Govt of Malaysia has stated that the COO of the above mentioned overseas suppliers are not issued by the MITI, Govt. of Malaysia. Furthermore, the MITI has never received any COO application for the said supplier who have supplied the goods to the importer. Consequently, the benefit of FTA tariff Notification No. 46/2011-Customs dated 01.06.2011 (Sr No 968(I)) for exemption from Basic Customs Duty (BCD) does not appear to be admissible to the said imports.

1.22 The Certificates of Origin listed in Table-1 above, submitted by M/s Mafton International during the import of Stainless-Steel Welded Tubes/Pipes & Stainless Steel ERW Tube vide the corresponding Bill of Entries Mumbai, are not genuine.

1.23 The importer M/s. Mafton International is not eligible to avail the duty exemption benefit of Notification No. 46/2011-Customs dated 01.06.2011 (SR No. 968(1)) as amended, against the import of goods under Bills of Entry listed in Table-1.

1.24 It therefore appeared that

a) The importer has imported Stainless Steel Welded Tubes/Pipes & Stainless Steel ERW Tube from M/s. MH Megah Maju Enterprise, Malaysia, M/s. Jentayu Industry, Malaysia and M/s. Cekap Prima Sdn Bhd, Malaysia by claiming the benefit of FTA tariff Notification No. 46/2011-Customs dated 01.06.2011 (Sr No 968(I)) as amended. However, the Certificates of Origin listed in Table-1 above are not genuine and the importer M/s. Mafton International is not eligible to avail the duty exemption benefit of Notification No. 46/2011-Customs dated 01.06.2011 (SR No. 968(I)) as amended, against the import of goods under Bills of Entry listed in Table- 1.

b) The goods under Bills of Entry listed in Table-1 appear liable to confiscation under the provisions of section 111(m) of the Customs Act, 1962 and the importer appears liable for imposition of penalty in terms of section 112 (a) of the Customs Act, 1962.

c) The differential duty amounting Rs. **71,19,734/-** (Rupees Seventy One Lakhs Nineteen Thousand Seven Hundred and Thirty Four Only) as detailed in Table-3, short-levied as a result of undue availment of the benefit of BCD exemption vide Notification No. 46/2011-Customs dated 01.06.2011 appears liable to be demanded under Section 28(4) of the Customs Act, 1962.

d) The importer appears liable to interest under Section 28AA of the Customs Act, 1962.

e) The importer also appears liable to penalty under Section 114(A) of the Customs Act, 1962.

1.25 Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, M/s Mafton International, Mumbai (IEC No. 0316509094) is hereby called upon to show cause to the Commissioner of Customs, NS-III, JNCH, Nhava Sheva, Taluka - Uran, District - Raigad, Maharashtra - 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. 968(1) should not be denied and Differential Duty amount of Rs. **71,19,735/-** (Rupees Seventy One Lakh Nineteen Thousand Seven Hundred and Thirty Five Only) as

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detailed in Table-3 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-3 to this notice having a total assessable value of Rs. **5,48,51,573/- (Rupees Five Crore Forty Eight Lakh Fifty One Thousand Five 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 of the Customs Act, 1962

iv. Penalty should not be imposed on the importer under Section 114A and of the Customs Act, 1962.

Written Submission

2. The noticee no. 1 M/s Mafton International has not submitted any reply to SCN nor made any written submissions attended the personal hearing.

RECORDINGS OF PERSONAL HEARING:

3. A personal hearing in this matter had been granted to the Noticee on 08.01.2025, 05.02.2025, 25.03.2025 and 19.05.2025 for which no one appeared on behalf of noticee on all the opportunities given.

4. DISCUSSION AND FINDINGS:

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

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 in this matter had been granted to the Noticee on 08.01.2025, 05.02.2025, 25.03.2025 and 19.05.2025 for which no one appeared on behalf of notice no 1 on all the opportunities given.

As enough opportunities had been given to the noticee, considering the time limit of the adjudication, further opportunity for personal hearing was not given to the noticee.

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.)]

4.3 Issue in brief

The Show Cause Notice (SCN) alleges the importation of Stainless-Steel welded Tubes/Pipes & Stainless Steel ERW Tube by M/s. Mafton International under preferential tariff treatment claimed under **Notification No. 46/2011-Customs dated 01.06.2011** as amended, based on ingenuine Certificates of Origin (COOs) from Malaysia. **Investigations have revealed that the COOs submitted were forged.**

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 10%** on the goods imported, thereby defrauding the government of customs revenue amounting to **Rs. 71,19,734/-**. The investigation by **Special Investigation & Intelligence Branch (SIIB), JNCH** confirmed that (i) MH MEGAH MAJU ENTERPRISE, (ii) M/s JENTAYU INDUSTRY (iii) M/s CEPAC PRIME SDN BHD the purported suppliers, were **not registered in the Malaysian ePCO**

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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 noticee.

4.4 Noticee's contention

In response to the SCN the noticee has not made any written submissions nor contended the Show Cause Notice.

4.5 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 the duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 968(I) should be denied and on leviability of BCD, differential Duty amount of **Rs. 71,19,735/- (Rupees Seventy One Lakh Nineteen Thousand Seven Hundred and Thirty Five Only)** as mentioned in Table-3 above, 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. As to whether the subject goods as detailed in Table-3 above, having a total assessable value of Rs. **5,48,51,573/- (Rupees Five Crore Forty Eight Lakh Fifty One Thousand Five 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 Mafton International under Section 112 (a) and 114A of the Customs Act, 1962.

4.6 After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as evidences available on record.

A. As to whether the duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 968(I) should be denied and on leviability of BCD, Differential Duty amount of Rs. 71,19,735/- (Rupees Seventy One Lakh Nineteen Thousand Seven Hundred and Thirty Five Only) as mentioned in Table-3 above, 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.

4.6.1 I Find that the Importer M/s. Mafton International, imported Stainless Steel welded Tubes/Pipes & Stainless Steel ERW tubes declared to be falling under CTH 73069019. On the said Import of Stainless Steel welded Tubes/Pipes & Stainless Steel ERW tubes of CTH 73 BCD @ 10 % is levied as per Serial No. 377 of the notification no. 50/2017 – Customs dated 30.06.2017. Further, IGST is also chargeable @18% as per serial no 220 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 welded Tubes/Pipes & Stainless Steel ERW tubes are eligible for a concessional rate of “NIL” BCD as per Sl no. 968 (I) of Customs Tariff notification no. 46/2011 dated 01.06.2011. I observe at some places in the SCN **46/2011 dated 01.06.2011 under Sr. No. 967(I)** is quoted which appears to be a typographic error and same may be read as 46/2011 dated 01.06.2011 under Sr. No. 968(I) and duty computation is also to be done accordingly.

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)

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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.

4.6.2 I observe that in the instant case, the Importer has filed 17 Bills of entries, out of 17 Bill of entries, 15 Bills of Entries were filed at INNSA 1 port and 2 Bills of Entries were filed at INMUN1 port.

In this background of Concessional NIL rate of BCD on Stainless Steel welded Tubes/Pipes & Stainless Steel ERW tubes imported from ASEAN Countries including Malaysia, the Importer in has filed 17 Bills of Entry through while claiming concessional NIL rate of BCD on the basis of Importer's 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 has 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 has 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"

4.6.3 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) the 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."

4.6.4 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 .-

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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 Importer has 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 has to submit the genuine certificate.
- 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

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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 (ASEAN) 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.”

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 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.

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 Importer in case of claiming benefit of concessional rates of NIL BCD on import of subject goods 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 certificates used by the Importer are unauthentic. Further, I find that during the course of investigation Importer has 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	Statement of Sh. Dhiraj Kumar Chhajer, Proprietor M/s Mafton International dated 29.05.2024.
RUD-2	Details of Country of Origin Certificate
RUD-3	FTA cell letter dated 27.04.2021
RUD-4	Web pages in relation to the subject COO certificate indicating that “Endorsement No. does not exist”

4.7 I find that, the authenticity of the Country of Origin (COO) certificates was disputed and the same also checked on the online platform of Electronic Preferential Certificate of Origin (ePCO),

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a web based preferential certificate of Origin application and approval system with COO verification system hosted on web portal of the Ministry of Investment, Trade and Industry (MITI) of Government of Malaysia. On checking the details of the subject COO certificates it was showing that “**Endorsement no. does not exist**”, which indicates that the subject COO certificates were inauthentic.

4.8 I further find that the letter from the FTA Cell, Directorate of International Customs, CBIC, dated 27.04.2021 explicitly stated that all 87 Country of Origin (COO) Certificates issued by nine Malaysian suppliers were found to be unauthentic. The supplier **(i) MH MEGAH MAJU ENTERPRISE, (ii) M/s Jeyantu Industry and (iii) CEKAP PRIMA SDN BHD** were among them. The said letter clearly that they MITI has never received any COO application from the respective suppliers. This conclusive finding confirmed the widespread fraudulent activity, where fake COO certificates were used to claim undue benefits.

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.

4.9 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 supplier (i) MH MEGAH MAJU ENTERPRISE, (ii) M/s Jeyantu Industry and (iii) CEKAP PRIMA SDN BHD were established to supply fake COO certificates. This modus operandi enabled the companies to exploit the Free Trade Agreement (FTA) between India and Malaysia, thereby evading payment of applicable duties.

4.10 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.

*** 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.”

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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...*

4.11 I have also seen the Tariff Notification No. 046/2011 dated 01.06.2011 as amended vide notification no 82/2028 which is applicable for giving duty exemption benefits to specific goods when imported into India from Malasiya 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. (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 1975) 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
956	730110 to 731814	All goods	5.0

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

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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 1stJune, 2011, namely: -In the said notification, for the Table, the following Table shall be substituted, namely: -

<i>Sr.No.</i>	<i>Chapter or heading or subheading or tariff item</i>	<i>Description</i>	<i>Rate</i>
968	730110 to 731814	All goods	0

4.12 In this case, M/s Mafton International availed duty exemption benefits under Customs Tariff Notification No. 46/2011 dated 01.06.2011 (Sr. No. 968(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, inputs from DRI Mumbai indicated that the importer has submitted wrongly claimed benefits under Notification No. 46/2011, which pertains to the ASEAN-India Free Trade Agreement. The importer allegedly used fake Certificates of Origin (COO) to avail preferential tariff treatment. As per the FTA cell letter dated 27.04.2024 the Suppliers who has supplied the said goods to M/s Mafton International, were found to be issuing fake COO certificates on the basis of which Importer was claiming the preferential tariff treatment. 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.

4.13 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 (i) MH MEGAH MAJU ENTERPRISE, (ii) M/s Jeyantu Industry and (iii) CEKAP PRIMA SDN BHD 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.

4.14 In view of the above, I hold that basic custom duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 968(I) should be denied against Bills of Entries mentioned in Table- I above.

4.15 The Show Cause Notice proposed the demand and recovery of differential duty of amount Rs. **71,19,735/-**based on ineligible duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 968(I), 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

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(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.

4.16 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 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. Mafton International, in collusion with their 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. 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. Therefore, the goods declared in the subject Bills of Entry mentioned in Table I above are liable for a higher rate of duties i.e Basic Customs Duty (BCD) at 10%, SWS at 10% and IGST at 18% for CTI 7306. Consequently, the Differential Duty amount of Rs. **71,19,735/-** should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962.

4.17 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.

4.18 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;

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- (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;

4.19 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.

4.20 In view of the facts and findings in above paras, I hold that total differential duty of Rs. **71,19,735/-** as detailed in table 3 above, should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from M/s. Mafton International along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

B. As to whether the subject goods as detailed in Table-3 above, having a total assessable value of Rs. 5,48,51,573/- (Rupees Five Crore Forty Eight Lakh Fifty One Thousand Five Hundred and Seventy Three Only) should be held liable for confiscation under Section 111(q) of the Customs Act, 1962.

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4.21 I reiterate my findings from paras 4.6 to 4.19 for the question of confiscation also as the same are mutatis mutandis applicable to this issue also.

4.21.1 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.

4.22 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 Mafton International 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.

4.23 I find that at Para 5 (A) (l) and Para 9 (b) of the said SCN its mentioned section 111 (m) of the Customs Act, 1962 and in the Charging Para 10 (ii) of the SCN confiscation is proposed in section 111 (q) of the Customs Act, 1962. Provisions of these Sections of the Act, are reproduced herein below:

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

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

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

I find that in cases where the value of the goods is under dispute the goods are confiscated under section 111 (m) of the Customs Act, 1962. In this case I find that goods imported are cleared under preferential rate of duty and the Charging para of the SCN also proposes confiscation under Section 111(q). Therefore, it appears to be typographical mistake at Para 5 (A) (l) and Para 9 (b) of the said SCN where section 111 (m) is written in place of Section 111 (q) of the Customs Act, 1962.

4.24 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

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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 **5,48,51,573/- (Rupees Five Crore Forty-Eight Lakh Fifty-One Thousand Five 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.

4.25 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 undischarged 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. ‘

4.26 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).”

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4.27.1 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.).

4.27.2 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.

4.27.3 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.”

4.27.4 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.

4.28 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 and submitted fake COO certificate of the impugned goods. Therefore, I hold that the acts and omissions of the importer, by way of

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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.**

C. As to whether Penalty should be imposed on M/s Mafton International under Section 112 (a) and 114 A of the Customs Act, 1962.

4.29 I reiterate my findings from paras 4.6 to 4.19 for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section 114 A and 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;*

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(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

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

*“31. ”Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].*

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

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

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: S.P. 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

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representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

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

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

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

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

4.31 As explained above, it is conclusively established that the importing firm M/s. Mafton International, in collusion with their 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. 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. Therefore, the importing firm evaded the duty of Rs. **71,19,735/-** 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.

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4.32 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. Mafton International, in terms of the fifth proviso to Section 114A of the Act ibid.

4.33 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.

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

- i. I deny the duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 against Bills of Entries mentioned in Table-I.
- ii. I confirm the demand of Differential Duty amount of Rs. **71,19,735/- (Rupees Seventy-One Lakh Nineteen Thousand Seven Hundred and Thirty-Five Only)** under Section 28 (4) of the Customs Act, 1962 and I order to recover the same from the Importer M/s. Mafton International 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. **5,48,51,573/- (Rupees Five Crore Forty-Eight Lakh Fifty-One Thousand Five Hundred and Seventy-Three Only)** imported vide Bills of Entry (details as per Table-I of the subject SCN) liable for confiscation under Section 111(q) of the Customs Act, 1962. However, I impose a redemption fine of **Rs 1,37,00,000/- (Rupees One Crore Thirty-Seven Lakhs Only)** on M/s Mafton International in lieu of confiscation under Section 125(1) of the Customs Act, 1962.
- iv. I impose a penalty equivalent to differential duty of **71,19,735/- (Rupees Seventy-One Lakh Nineteen Thousand Seven Hundred and Thirty-Five Only)** along with the applicable interest thereon, on M/s Mafton International 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.

Signed by
Vijay Risi

Date: 22-05-2025 15:43:40
(VIJAY RISI)

COMMISSIONER OF CUSTOMS
NS-III, JNCH

To, M/s Mafton International
Office No. 04, Gagangiri Tower, Ground Floor,
Dr. Deshmukh Lane, V.P. Road, Mumbai – 400004.

Copy to :

1. AC/DC, concerned Group.
2. The Deputy Director, Directorate of Revenue Intelligence, New Delhi.
3. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to upload the OIO in DIGIT.
4. AC/DC, Chief Commissioner's Office, JNCH

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