



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/10-131/2024-25/CC/Gr.IV/NS-III/CAC/JNCH Date:- #approval date
SCN No. 1331 /2024-25/CC/Gr.IV/NS-III/CAC/JNCH dated 29.10.2024

DIN	: 20250778NX0000222772
आदेश की तिथि Date of Order	: 31.07.2025
जारी किए जाने की तिथि Date of Issue	: 31.07.2025
आदेश सं. Order No.	: 150/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 150/2025-26/Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by	श्री विजय रिशी SH. VIJAY RISI : आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	मेसर्स उदय उद्योग M/s. Udaya Udhyog

मूलआदेश

ORDER-IN-ORIGINAL

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

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

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

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

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Brief Facts of the Case

A show cause notice no. 1331/2024-25/CC/Gr.IV/NS-III/CAC/JNCH was issued to **M/S Udaya Udhyog (IEC: 0300018754)** situated at 30 Lifescapes Nilay, 2nd Floor, 11/43, Dr. B. Jaykar Marg, Mumbai, Maharashtra-40002 (hereinafter referred as 'the Importer') had imported consignments of items namely 'ALUMINIUM CLADDED CIRCLES-TRIPLY' of various grades under CTH 73269070 (hereinafter referred to as 'the said goods') as detailed below in Annexure A

ANNEXURE A

ANNEXURE-A															
Sr.No.	BE No.	BE Date	Item No.	Description of Goods	Assassable Value	BCD Paid (@10%)	SWS Paid	IGST Paid	Total Duty Paid	BCD Payable (@7.5%)	SWS Payable	CVD Applicable @ 18.95% of Landed Value	IGST applicable	Total Duty Payable	Differential Duty
1	6820346	10.02.2020	1	SS Triply Circle	4776071	477607	47761	954259	1479627	358205	35821	972945	1105748	2472719	993092
2	9449470	04.11.2020	1	ALUMINIUM CLADDED CIRCLES - TRIPLY	4866107	486611	48661	972248	1507520	364958	36496	991287	1126593	2519333	1011813
3	9648694	21.11.2020	1	ALUMINIUM CLADDED CIRCLES - TRIPLY	4621275	462128	46213	923331	1431671	346596	34660	941411	1069910	2392576	960905
4	9972884	15.12.2020	1	ALUMINIUM CLADDED CIRCLES - TRIPLY	4988288	498829	49883	996660	1545372	374122	37412	1016177	1154880	2582590	1037218
5	2110581	25.12.2020	1	ALUMINIUM CLADDED CIRCLES - TRIPLY	3585712	358571	35857	716425	1110854	268928	26893	730454	830158	1856434	745580
6	2110581	25.12.2020	2	ALUMINIUM CLADDED CIRCLES - TRIPLY	92306	9231	923	18443	28596	6923	692	18804	21371	47790	19193
7	2110581	25.12.2020	3	ALUMINIUM CLADDED CIRCLES - TRIPLY	109418	10942	1094	21862	33898	8206	821	22290	25332	56649	22751
8	2110581	25.12.2020	4	ALUMINIUM CLADDED CIRCLES - TRIPLY	212376	21238	2124	42433	65794	15928	1593	43264	49169	109953	44159
9	2110581	25.12.2020	5	ALUMINIUM CLADDED CIRCLES - TRIPLY	264558	26456	2646	52859	81960	19842	1984	53894	61250	136970	55010
10	2110581	25.12.2020	6	ALUMINIUM CLADDED CIRCLES - TRIPLY	246587	24659	2466	49268	76393	18494	1849	50233	57089	127666	51273
11	2110581	25.12.2020	7	ALUMINIUM CLADDED CIRCLES - TRIPLY	305431	30543	3054	61025	94622	22907	2291	62220	70713	158131	63508
12	2110581	25.12.2020	8	ALUMINIUM CLADDED CIRCLES - TRIPLY	232351	23235	2324	46424	71982	17426	1743	47333	53793	120295	48313
13	2110581	25.12.2020	9	ALUMINIUM CLADDED CIRCLES - TRIPLY	132816	13282	1328	26537	41146	9961	996	27056	30749	68763	27616

14	6089841	01.11.2021	1	ALUMINIUM CLADDED CIRCLES - TRIPLY	5731456	573146	57315	1145145	1775605	429859	42986	1167569	1326937	2967351	1191746
15	6408465	25.11.2021	1	ALUMINIUM CLADDED CIRCLES - TRIPLY	6009720	600972	60097	1200742	1861811	450729	45073	1224255	1391360	3111417	1249606
16	7353254	03.02.2022	1	ALUMINIUM CLADDED CIRCLES - TRIPLY	5974657	597466	59747	1193737	1850949	448099	44810	1217112	1383242	3093264	1242315
				Total	42149129	4214913	421491	8421396	13057800	3161185	316118	8586304	9758293	21821900	8764100

29/10/2024
By: [Signature]
Asst. Commr. NH

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

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

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

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

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

1.3.1.1. Chapter Heading in CTH 72

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

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

1.3.1.2. Chapter Heading in CTH 73

Chapter Heading	Description of goods
7301	SHEET PILING OF IRON OR STEEL, WHETHER OR NOT DRILLED, PUNCHED OR MADEFROM ASSEMBLED ELEMENTS; WELDED ANGLES, SHAPES AND SECTIONS, OF IRON OR STEEL
7302	RAILWAY OR TRAMWAY TRACK CONSTRUCTION MATERIAL OF IRON OR STEEL, THEFOLLOWING: RAILS, CHECK-RAILS AND RACK RAILS, SWITCH BLADES, CROSSING FROGS, POINT RODS AND OTHER CROSSING PIECES, SLEEPERS (CROSS-TIES), FISH-PLATES, CHAIRS, CHAIR WEDGES, SOLE PLATES (BASE PLATES), RAIL CLIPS, BEDPLATES, TIES AND OTHER MATERIAL SPECIALIZED FOR JOINTING OR FIXING RAILS.

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7303	TUBES, PIPES AND HOLLOW PROFILES, OF CAST IRON
7309	RESERVOIRS, TANKS, VATS AND SIMILAR CONTAINERS FOR ANY MATERIAL (OTHER THAN COMPRESSED OR LIQUIFIED GAS), OF IRON OR STEEL, OF A CAPACITY EXCEEDING 300L, WHETHER OR NOT LINED OR HEAT-INSULATED, BUT NOT FITTED WITH MECHANICAL OR THERMAL EQUIPMENT.
7316	ANCHORS, GRAPNELS AND PARTS THEREOF, OF IRON OR STEEL
7319	SEWING NEEDLES, KNITTING NEEDLES, BODKINS, CROCHET HOOKS, EMBROIDERY STILETTOS AND SIMILAR ARTICLES, FOR USE IN THE HAND, OF IRON OR STEEL; SAFETY PINS AND OTHER PINS OF IRON OR STEELS, NOT ELSEWHERE SPECIFIED OR INCLUDED
7323	TABLE, KITCHEN OR OTHER HOUSEHOLD ARTICLES AND PARTS THEREOF, OF IRON OR STEEL; IRON OR STEEL WOOL; POT SCOURERS AND SCOURING OR POLISHING PADS, GLOVES AND THE LIKE, OF IRON OR STEEL.

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

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

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

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

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

- (i) PRIMARY MATERIALS PRODUCTS IN GRANULAR OR POWDER FORM (CTH 7201 TO 7205)
- (ii) IRON AND NON-ALLOY STEEL (7206 TO CTH 7217)
- (iii) STAINLESS STEEL (CTH 7218 TO CTH 7227)

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

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

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

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

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

1 (ij) Semi-finished products:

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

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

These products are not presented in coils.

1 (k) Flat-rolled products:

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

–Coils of successively superimposed layers, or

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

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

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

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

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

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

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

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

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

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

1.5.1 Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on imported goods by the importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service center, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry in this instant case, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.5.2 Relevant Legal Provisions: After the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including

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Classification and calculation of duty, but in the instant case the subject goods have been misclassified and IGST amount has not been paid correctly.

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

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

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

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

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

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

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

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

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

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

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

1.6.3 SECTION 28AA- Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 2, shall, in addition

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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.

1.6.4 SECTION 46 *Entry of goods on importation, subsection 46(4) reads as:*

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

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

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

"Any person,-

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

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

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

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

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

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

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

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

Provided also in case where the duty or interest determined to be applicable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the

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interest so increased, along with the interest payable thereon under section 28AA, and twenty – five percent of the consequential increase of the order by which such increase in the duty or interest takes effect.:

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

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

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

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

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

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

1.7 Acts of omission and commission by the Importer:

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

1.7.2. It appeared that the Importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable Customs Duty on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appeared that the Importer has rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appears liable to penal action under Section 112(a) and/ or Section 114A of the Customs Act, 1962. As the Importer deliberately and knowingly mis-declared and mis-classified the impugned goods to evade the Countervailing Duty leviable under Notification No.01/2017-Cus dated 07.09.2017. Accordingly, the Importer also appeared liable to penal action under Section 114 AA of the Customs Act, 1962.

1.7.3 The impugned item is partially described as the goods based upon cladding material i.e. Aluminum and not upon base material i.e. Stainless Steel. Thus, the Importer deliberately and knowingly mis-declared and mis-classified the impugned goods to evade the Countervailing Duty

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

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

1.9 Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, **M/s Udaya Udhyog (IEC: 0300018754)** situated at 30 Lifescapes Nilay, 2nd Floor, 11/43, Dr. B. Jaykar Marg, Mumbai, Maharashtra-40002, were called upon to Show Cause to the Commissioner of Customs, NS-III, Jawaharlal Nehru Custom House, Nhava Sheva, Tal-Uran, Dist.- Raigad, Maharashtra-400707 within 30 days of the receipt of this notice as to why:

- (i)The classification of the imported goods declared as ‘Aluminum Cladded Circles-Tripily’ under the Bills of Entry as mentioned in Annexure A under CTH 73269070 should not be rejected and the same should not be re-classified under CTH 72199090.
- (ii)Differential duty amounting **Rs. 87,64,100/- (Rupees Eighty-Seven Lakh Sixty-Four Thousand and One Hundred only)** for Bills of Entry as mentioned in Annexure-A should not be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- (iii)The subject goods valued at **Rs. 4,21,49,129/- (Rupees Four Crore Twenty-One Lakh Forty-Nine Thousand One Hundred and Twenty-Nine)** should not be confiscated under section 111(m) of the Customs Act,1962.
- (iv)Penalty should not be imposed on them under Section112(a) and/or 114A and Section 114AA of the Customs Act, 1962.

1. WRITTEN REPLY/SUBMISSION OF THE IMPORTER

A. PRELIMINARY SUBMISSIONS:

A.1. At the outset, the Noticees has vehemently refuted each and every allegation in the SCN and submit that the proposals made in the SCN are totally untenable in law and on facts. The SCN is full of incorrect allegations without any factual or legal basis.

A.2. The Noticees submit that the present SCN has been issued without attempting to understand the nature of the imported goods. The SCN has completely ignored the submissions made by the Noticees in response to the CL justifying the classification and how the imported goods do not fall within the ambit of the CVD Notification. On this ground itself, the present SCN is liable to be dropped.

A.3. The entire SCN is based on assumptions and presumptions of the Ld. Commissioner of Customs. The subject goods have always been classified under Tariff Item 7326 90 70 of the Customs Tariff and no dispute whatsoever has been raised by the Customs department that too after raising queries in respect of few of the bills of entry.

A.4. In this regard, reliance is placed on the decision of the Hon’ble Tribunal in **Elektronik Lab Vs. CC – 2005 (187) ELT 362**, wherein penalty was set aside on the ground that the same cannot be imposed based on presumptions and assumptions. The Hon’ble Tribunal further held that such presumptions and assumptions, however strong, cannot be a substitute for evidence.

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A.5. In the present case, SCN dated 29.10.2024 proposes demand of differential duties on the basis of disbelief and assumptions. It is submitted that someone's disbelief and assumptions cannot be a ground for proposing differential duties demand or imposition of penalty on the Noticees, especially in the absence of any evidence. Reliance is also placed on **Govind Laskar Vs. CCE - 1991 (52) ELT 529, para 8.**

A.6. Further, in the present case, the Customs department had issued a CL in April 2022, even then the present SCN has been issued invoking extended period of limitation. It is submitted that pre-consultation notice has to be issued wherein demand is within normal period of limitation. Therefore, having conducted the pre-consultation, the Customs department ought to have issued the SCN under Section 28(1) i.e., within normal period of limitation and not by invoking extended period of limitation under Section 28(4) of the Customs Act, 1962.

Without prejudice, demand in respect of 3 Bill(s) of Entry filed during the period 01.11.2021 to 03.02.2022 in question is unwarranted and unsustainable.

A.7. The present SCN proposes to levy CVD in terms of Sr. No. 1 of the Notification on subject goods imported vide 7 Bill(s) of Entry filed during the period 10.02.2020 to 03.02.2022. In this regard, the Noticees submit that the demand in respect of the 2 Bill(s) of Entry filed on 01.11.2021 and 25.11.2021 is illegal and unsustainable as the Notification No. 01/2017-Cus.(CVD) dated 07.09.2017 (*as amended vide Notification No. 02/2021-Cus. (CVD) dated 01.02.2021 and Notification No. 5/2021-Cus.(CVD) dated 30.09.2021*) states that CVD under the Notification shall not be levied for the period commencing from 02.02.2021 till 31.11.2022. Since the 2 Bill(s) of Entry referred above fall within the exempted period starting from 02.02.2021 till 31.11.2022, proposal to levy CVD on the said 2 Bill(s) of Entry is bad in law and liable to be dropped.

A.8. It is a well-established principle of law that any levy or imposition of duty must strictly adhere to the statutory provisions and notifications in force at the relevant time. Therefore, any attempt to levy CVD on imports made during the exempted period contravenes the express provisions of the Notification and is, therefore, ultra vires.

A.9. Further, in respect of the Bill of Entry dated 03.02.2022, the Noticees submit that the Notification was rescinded vide Notification No. 01/2022-Cus. (CVD) dated 01.02.2022. Therefore, the proposal to levy CVD on Bill of Entry filed on 03.02.2022, i.e., after rescission of the Notification, is incorrect and illegal.

A.10. The principle of law dictates that any imposition of duty must be grounded in the legal framework that is in effect at the time of the transaction. When a notification or statutory provision is rescinded, it ceases to have any legal effect from the date of rescission. Consequently, any attempt to levy a duty based on a rescinded Notification is inherently flawed and lacks legal validity. This is because the legal basis for such a levy no longer exists, rendering any such imposition ultra vires and void ab initio. Therefore, the proposal to levy a duty under these circumstances is not only procedurally improper but also substantively invalid, as it contravenes the fundamental principles of legal certainty and non-retroactivity.

A.11. In view of the above submissions, the Noticees submit that on this ground alone, the present SCN is bad in law and is liable to be dropped.

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B. THE SUBJECT GOODS ARE NOT FLAT ROLLED PRODUCTS OF STAINLESS STEEL AND ARE DOWNSTREAMED GOODS. THEREFORE, THEY FALL OUTSIDE THE SCOPE OF THE NOTIFICATION AS WELL AS THE FINAL FINDINGS ISSUED BY DGAD IN THE INVESTIGATION CONCERNING IMPORT OF FLAT ROLLED PRODUCTS OF STAINLESS STEEL, ORIGINATING IN OR EXPORTED FROM CHINA PR. HENCE, IT IS NOT A PRODUCT UNDER CONSIDERATION AND CVD CANNOT BE LEVIED ON THESE GOODS.

B.1. The Notification seeks to levy CVD @18.95% on '*Flat-rolled products of Stainless Steel*'. The Note of the Notification specifically states as under :

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

B.2. From the above, it is evident that only flat rolled products as defined in the above note shall be covered by the Notification and will attract the levy of CVD. In view of this, the Noticees submit that the subject goods in question do not qualify as 'Flat-Rolled Products of Stainless Steel' as defined in the Notification. This is corroborated by the mill test certificate (*Annexure – I*). The subject goods are produced by combining one Aluminum Coil (AL 1050) with two Stainless Steel Coils (SUS 304 and SUS 430). These three coils are mechanically bonded/cladded under high pressure to form a single sheet, which is then cut into circles of the required sizes. Given this manufacturing process and the presence of an aluminum sheet, it is evident that the subject goods cannot be classified as 'Flat-Rolled Products of Stainless Steel' under the terms of the Notification.

B.3. The definition of '*Flat-Rolled products of Stainless Steel*' as provided in the Notification specifies that it includes '***hot rolled or cold rolled products of all grades/series***'. The Noticees assert that the language of the Notification is unequivocal, limiting the imposition of CVD to all grades of hot rolled or cold rolled products of stainless steel.

B.4. Although the imported goods in question include two grades of stainless steel together, namely SUS 304 and SUS 430, along with a grade of aluminum (i.e., AL 1050). Consequently, the subject goods cannot be classified as "Flat-Rolled Products of Stainless Steel" particularly when these goods are imported as a cladded circular sheet comprising of both aluminum and stainless steel which is more than the Flat Rolled products under the Notification.

B.5. The fundamental basis for any product to be classified as 'Flat-Rolled Products of Stainless Steel' is that the product must be made of 'Stainless Steel'. In this context, the Noticees contend that the subject goods are not solely composed of stainless steel, as they also incorporate an aluminum sheet sandwiched between two flat-rolled stainless-steel sheets. This inclusion significantly alters the essential character and intended use of the goods.

B.6. To better understand what are 'Flat-rolled products of Stainless Steel' and how they differ from the subject goods, it is essential to examine the manufacturing process of flat-rolled products of stainless steel:

As per **William F. Hosford's Iron and Steel**, "*Stainless steels are characterized by a very good aqueous corrosion resistance and by a very good resistance to oxidation at high temperatures. All stainless steel contain at least 11% Chromium. Many contain nickel as well.*

...

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As the billets leaves the mold, it is sprayed with water to solidify it before it is cut into slabs, billets, or blooms by a moving oxyacetylene torch.

Hot Rolling

*Continuously cast billets are generally cut into lengths that are then hot rolled, either into final shapes or into plate. Shapes such as rail-road rails, I beams, and bars are rolled through reversing mills, with each pass progressively shaping the product. **Flat products are rolled continuously through a series of rolls, which gradually reduce the thickness.***

***Hot rolling is defined as rolling above the recrystallization temperature.** For steel, it is usually started at 1100° C but finishes at a much lower temperature. After hot rolling, the steel is pickled to remove oxide scale.*

For some products, such as I beams, railroad rails, reinforcing rod, and plates, the last processing step is the hot rolling. However, most steel is cold rolled into sheet.

Cold Rolling

It is common practice to hot roll steel to a thickness of about 0.25 in. Hot rolling has the advantage of lower rolling forces, but for thinner plates and sheets, frictional forces become important, and lubrication is not possible. Below thickness of about 0.25 in, further reduction is usually done cold to the final desired thickness.** Thickness reductions of 85% result in the gauges most widely used for automobiles and appliances. **Cold rolling produces a very good surface finish. ...

*As per John E. Neely's Practical Metallurgy and Materials of Industry, "**Cold-rolled sheet makes up a large part of steel production. Hot-rolled sheet is cleaned with an acid dip called pickling, followed by a dip in lime water. The sheet is then cold rolled under very heavy pressure, after which it is wound into coils. Some of this sheet is used to produce household appliances such as ranges, washers, and dryers, while a vast tonnage of it is used for auto bodies. Vary narrow sheets, or strip steel, are usually wound on a roll and used for such manufacturing purposes as press work.***

Flat sheet stock is rolled without reheating, a process that permanently deforms and elongates the grain structure of the steel. This process toughens and strengthens the metal and gives it a smooth, bright metallic finish but reduces its ductility, that is, its ability to be deformed or stretched without breaking. The grains are elongated in the direction of the rolling, making the metal more ductile in one axis than the other. This characteristic of cold-rolled metals makes them more liable to crack when they are bent in a small radius along the direction of rolling than across the direction of rolling.

B.7. In view of the above, the Noticees submit that the manufacturing process of flat-rolled stainless-steel products typically involves either hot rolling or cold rolling. Hot rolling is performed at high temperatures, which makes the steel easier to shape and form. Cold rolling, on the other hand, is done at or near room temperature, resulting in a product with a smoother finish and tighter tolerances.

B.8. Once the hot or cold rolling process is completed, the resulting product is a flat-rolled stainless-steel sheet or coil. According to the Notification, these flat-rolled products are covered and shall be liable to CVD. However, in some cases, additional processes are applied to enhance the properties or functionality of the steel or to manufacture a desired product.

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B.9. One such process is cladding, which involves bonding a layer of aluminium to the stainless-steel sheet. Cladding can be achieved through various methods, such as roll bonding, explosive welding, or laser welding. This process not only improves the corrosion resistance and aesthetic appeal of the product but also combines the beneficial properties of both materials.

B.10. Due to these additional processes in the present case, the final product is no longer a simple flat-rolled stainless-steel product as defined in the Notification but a more complex composite material which is a downstream product. As a result, it falls outside the scope of the Notification, which only covers flat-rolled products of hot or cold rolled stainless steel without further processing.

The basic production process provided in the final findings issued by the DGAD does not mention the cladding process of flat-rolled stainless-steel products with aluminum sheets.

B.11. Paragraph 9(iii) of the final findings outlines the production process of the product under consideration and describes it as follows:

*“The basic production process involved in the production of the product under consideration involves **melting the raw materials, scrap (alloy and non-alloy) and ferro-alloys in an electric arc furnace, where powerful electric arcs start to melt the scrap and alloys. The hot rolling process begins at the reheat furnace where the slabs are heated to between 1100 and 1300°C, depending on the stainless steel grade. The hot rolled products are softened (annealed) and descaled (pickled with acids). Cold rolling of the Hot rolled stainless steel takes place in Sendzimer mills (Z-mills), which produce smooth, shiny finished, cold rolled stainless steel by rolling the HR steel. The product is first produced in hot rolled form. It can thereafter be sold in the market, or cold rolled further. ...**”*

B.12. It is evident from the production process that, upon the completion of hot rolling, the product may either be sold as is or subjected to further cold rolling, subsequently being sold as cold rolled stainless steel sheet.

B.13. As the manufacturing process of the product under consideration does not include the cladding of aluminum sheets with stainless steel sheets, followed by the stamping of the clad metals into circles, the subject goods in question, which are manufactured by cladding and stamping, do not fall under the product under consideration. In fact, such products were never considered in the Final Findings at all. Therefore, the subject goods are not liable to CVD in terms of the Notification.

The imported clad circular sheets of metal are manufactured using a grade of aluminum that is outside the scope of the final findings issued by the DGAD.

B.14. In paragraph 537 of the final findings, the authority determined the magnitude of injury and the injury margin. While determining the injury margin, the authority referred to all grades of stainless-steel sheets under consideration for the investigation. Notably, SUS 304 and SUS 430 are included in the list of grades under consideration; however, there is no reference to AL 1050, which constitutes a significant portion of the imported goods in question.

B.15. Since the subject goods are not merely a grade of stainless steel as covered under the Final Findings and the Notification and are further clad with aluminum sheet and stamped to make the final product, they fall outside the scope of the final findings. Therefore, the subject goods in question are not covered by the Notification levying CVD on the Flat-Rolled Products of Stainless Steel.

As per Harmonized System of Nomenclature Explanatory Note to Chapter 72, the process of cladding falls under the category of subsequent manufacture and finishing and the same finds no mention in the Notification or final findings.

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B.16. The Harmonized System of Nomenclature (“**HSN**”) Explanatory Note to Chapter 72 discusses the complete process starting from conversion of iron ore to production of finished goods. At first, the iron ore is converted to pig / cast iron by either using the blast furnace process or in direct reduction plants. Subsequently, certain additives (including quick-lime, fluorspar, de-oxidants, and various alloying elements) are added to the pig / cast iron (molten / solid form) to finally produce steel. The molten steel is cast into semi-finished products such as ingots or other primary forms. Thereafter, the process of producing the finished products starts. Relevant portion of the General HSN Explanatory Note to Chapter 72 is reproduced below to understand the process of producing the finished products:

“(IV) Production of finished products

Semi-finished products and, in certain cases, ingots are subsequently converted into finished products.

These are generally subdivided into **flat products** ("wide flats", including "universal plates", "wide coil", sheets, plates and strip) and **long products** (bars and rods, hot-rolled, in megularly wound coils, other bars and rods, angles, shapes, sections and wire).

These products are obtained by plastic deformation, either hot, directly from ingots or semi-finished products (by hot-rolling, forging or hot-drawing) or cold, indirectly from hot finished products (by cold-rolling, extrusion, wire-drawing, bright-drawing), followed in some cases by finishing operations (e.g., cold-finished bars obtained by centre-less grinding or by precision turning).

...

(A) Hot plastic deformation

(1) Hot-rolling means rolling at a temperature between the point of rapid recrystallisation and that of the beginning of fusion. The temperature range depends on various factors such as the composition of the steel. As a rule, the final temperature of the work-piece in hot-rolling is about 900 °C.

...

(B) Cold plastic deformation

(1) Cold rolling is carried out at ambient temperatures, i.e., below the recrystallisation Temperature.

...

(C) Subsequent manufacturing and finishing

The finished products may be subjected to further finishing treatments or converted into other articles by a series of operations such as:

- (1) Mechanical working, i.e., turning, milling, grinding, perforation or punching, folding, sizing, peeling, etc.; however, it should be noted that rough turning merely to eliminate the oxidation scale and crust and rough trimming are not regarded as finishing operations leading to a change in classification.
- (2) **Surface treatments or other operations, including cladding, to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc.** Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. They include:

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...

(e) Cladding, i.e., the association of layers of metals of different colours or natures by molecular interpenetration of the surface in contact. This limited diffusion is characteristic of clad products and differentiates them from products metallised in the manner specified in the preceding paragraphs (e.g., by normal electroplating).

The various cladding processes include pouring molten cladding metal on to the basic metal, followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition or superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (e.g., electro-cladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold-rolling.

...”

B.17. In view of the above process, the Noticees submit that there is a clear difference between manufacturing of flat products of stainless steel using hot / cold rolling method as covered by the Notification, and subsequent manufacturing by carrying out surface treatments such as cladding.

B.18. Neither the Notification nor the final findings refer to or take into consideration subsequent manufacturing on the hot/cold rolled stainless steel. The final findings and Notification restrict the scope of PUC to hot/cold rolled products of stainless steel and does not include products that are further worked upon or subsequently manufactured by mechanical working or surface treatments (*including cladding*).

B.19. The Noticees also submit irrespective of the classification of the subject goods in question, CVD cannot be levied on the subject goods as these goods do not fall within the scope of the final findings or the Notification. These subject goods are obtained by undertaking further surface treatment i.e., cladding therefore, these are not covered by the scope of flat rolled products under the Notification. Once the subject goods fall out of the scope of the Notification, CVD cannot be imposed, irrespective of the classification.

B.20. In view of the above, it is also submitted that the levy of duty cannot traverse beyond the scope of the Product Under Consideration and the Recommendation of DGAD. In this regard, reliance is placed on the decision of the Hon’ble CESTAT in **Mascot International Vs. CC- 2014 (300) E.L.T. 545 (Tri. - Mumbai)** whereby the Hon’ble Tribunal has categorically held that the goods which are excluded from the Product Scope cannot be liable to duty.

B.21. The Hon’ble CESTAT, New Delhi bench in the case of **Mahle Anand Thermal Systems Vs. DGTR - 2023 (385) ELT 565 (Tri. - Del.)** has modified the Notification levying ADD to remove ‘clad with compatible non-clad aluminium foil’ from the scope of the Notification, since such product was never the product under consideration before the DGTR. This shows that the scope of product has to be limited to what has been considered in the Final Findings. Since, in the present case, the subject goods are more than flat rolled products simpliciter as also defined in the Notification, CVD cannot be imposed on them. The SCN has failed to provide any evidence as to how these products satisfy the requirement to be covered by the Notification.

B.22. In fact, if the allegation in the SCN is accepted, then all kinds of flat rolled products, even if not specifically considered by the DGAD, will attract levy of CVD, which is completely bad in law.

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B.23. In view of the above submissions, the Noticees submit that the subject goods are not liable to CVD in terms of the Notification. On this ground alone, the present SCN is liable to be dropped.

C. IMPORTED TRIPLY ARE CLADDED METAL SHEET OF STAINLESS STEEL AND ALUMINIUM AND ARE CORRECTLY CLASSIFIABLE UNDER TARIFF ITEM 7326 90 70.

C.1. Classification of goods under the Customs Tariff is done as per the General Rules of Interpretation (“GIR”). Rule 1 of the GIR provides that the goods under consideration should be classified in accordance with the terms of the heading or relevant Section or Chapter Notes. Relevant extract of the GIR 1 is extracted below:

“1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, **classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes** and, provided such headings or Notes do not otherwise require, according to the following provisions”

... (Emphasis Supplied)

C.2. Rule 1 also states that in the event that the goods cannot be classified solely on the basis of Rule 1 and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in a sequential order.

C.3. The Section Notes Chapter Notes and Sub-Notes give detailed explanation as to the scope and ambit of the respective Sections and Chapters. These notes have been given statutory backing and have been incorporated at the top of each Chapter. Refer: The Larger Bench of Tribunal in the matter of **Saurashtra Chemicals Vs. CC – 1986 (23) ELT 283 (Tri-LB)** which was approved by the Hon’ble Supreme Court of India in **1997 (95) ELT 455 (SC)**.

C.4. To further interpret the relevant Headings, Sub-Headings and Section Notes, reliance can also be placed on the Explanatory Notes to the Harmonized Commodity Description and Coding System, generally referred to as HSN. The HSN is a multipurpose international product nomenclature governed by ‘The International Convention on the Harmonized Commodity Description and Coding System’ and developed by the World Customs Organization. It comprises of various commodity groups, each identified by a six-digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification.

C.5. Reliance is placed on the decisions of the Hon’ble Supreme Court in the cases of **Collector of Central Excise, Shillong Vs. Wood Craft Products – 1995 (77) ELT 23 (SC) at Para 18** and **Collector Vs. Business Forms – 2002 (142) ELT 18 (SC) at Para 2** wherein, it has been held that HSN Explanatory Notes are safe guide for interpretation of Customs Tariff in classification of the goods.

C.6. Heading 73.26 of the Customs Tariff covers ‘*Other articles of iron or steel*’. Relevant portion of the Heading 73.26 of the Customs Tariff is extracted below:

Tariff Item		Description
(1)		(2)
7326		OTHER ARTICLES OF IRON OR STEEL
	-	<i>Forged or stamped, but not further worked:</i>
		...
7326 90	-	<i>Other:</i>
7326 90 70	---	Articles of clad metal

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C.7. Heading 73.26 of the Customs Tariff includes other articles of iron or steel that are forged or stamped, but not further worked and Tariff Item 7326 90 70 specifically includes articles of clad metal that are forged or stamped, but not further worked upon. In this regard, the Noticees relies on the production process of the subject goods in question. As mentioned in the preceding paragraphs, the subject goods are made from cladding of stainless-steel sheets and aluminum sheets. Subsequent to the cladding, the clad metal sheet is stamped into circular sheets, and they are not worked upon to be shaped into the desired product (i.e., utensil). Post stamping, these goods are imported as it is to further manufacture utensils by carrying out manufacturing activities on these goods.

C.8. Considering the terms of the heading itself, the subject goods are correctly classifiable as ‘Article of clad metal’ under Tariff Item 7326 90 70 of the Customs Tariff.

Even otherwise, classification under specific entry always prevail over general entry.

C.9. Rule 3(a) of the GIR provides that “the heading which provides the most specific description shall be preferred to headings providing a more general description”. Relevant extract of the GRI is reproduced for ready reference:

“**Rule 3** – When by application of Rule 2(b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows:

a. **The heading which provides the most specific description shall be preferred to heading providing a more general description.** However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods”

... (Emphasis supplied)

C.10. In the present instance, it is submitted that the subject goods are articles produced by cladding stainless-steel sheets and aluminum sheets and thereafter stamped into circles of desired sizes. Therefore, the said goods are more specifically covered by the description under Heading 73.26 i.e., “Other articles of iron or steel” and Tariff Item 7326 90 70 as ‘Articles of clad metal’.

C.11. In view of the above, the subject goods are not classifiable under Heading 72.19, which is a general entry and covers only ‘Flat-Rolled Products of Stainless Steel’.

Classification based on distinction between primary/semi-finished products and finished products is incorrect.

C.12. At paragraph 3.1. – 3.2., the SCN has alleged that the Chapter 72 of the Customs Tariff consists of primary, semi-finished products (such as ingots, granules, flat-rolled products of stainless steel) whereas Chapter 73 of the Customs Tariff consists of finished products which can either be used independently or joined/fixed together to make structures. Since the subject goods require further processing to get the desired article, the said goods cannot be termed as ‘complete articles’ classifiable under Chapter 73.

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C.13. In this regard, the Noticees submit that the customs department has failed to follow/refer to the HSN Explanatory Notes to Chapter 72 before suggesting the distinction between the goods classified under Chapter 72 and Chapter 73.

C.14. First and foremost, the Noticees submit that as per HSN Explanatory Notes to Chapter 73, *'the General Explanatory Note to Chapter 72 applies, mutatis mutandis, to this Chapter'*.

C.15. General HSN Explanatory Note to Chapter 72 discusses the complete process starting from conversion of iron ore to production of finished products. It further refers to production of finished products which includes 'Flat Hot/Cold Rolled Products of Stainless Steel' and subsequently manufactured / finished products (which includes cladded metal sheet that are further worked upon after hot/cold rolling). Therefore, not only the cladded metals are termed as finished products but flat rolled products of stainless steel are also considered as finished products. If logic of the Department is accepted then none of the flat rolled products will fall under Chapter 72, which will render the Chapter obsolete.

C.16. The Customs department has failed to give any evidence whatsoever in support of the allegation that only finished articles are classifiable under Chapter 73. Therefore, goods cannot be re-classified basis Customs department's assumption.

C.17. In view of the above, the Noticees submit that the SCN incorrectly draws the distinction between goods classifiable under Chapter 72 and Chapter 73. Further, it also incorrectly considers the subject goods as semi-finished products classifiable under Chapter 72. Since the basis for distinction in goods classifiable under Chapter 72 and Chapter 73 is incorrect, the ground for alleged reclassification is also invalid and bad in law.

C.18. In view of the above submissions, the Noticees submit that the subject goods are correctly classifiable under Tariff Item 7326 90 70 of the Customs Tariff. On this ground alone, the present SCN is liable to be dropped.

D. THE SUBJECT GOODS ARE NOT CLASSIFIABLE UNDER TARIFF ITEM 7219 90 90 AS 'OTHER – FLAT-ROLLED PRODUCTS OF STAINLESS STEEL'.

The subject goods are not classifiable under Heading 72.19 of the Customs Tariff in terms of Note 1(k) to Chapter 72.

D.1. The SCN refers to Note 1(k) to Chapter 72 of the Customs Tariff to allege that subject goods fit into the definition of flat-rolled products provided therein. Therefore, the said goods are correctly classifiable under Heading 72.19 of the Customs Tariff.

D.2. Note 1(k) to Chapter 72 of the Customs Tariff is reproduced below for reference:

"Flat-rolled products:

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

- *coils of successively superimposed layers, or*

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

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

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

D.3. First and foremost, the Noticees submit that the definition of Flat-rolled products rather supports the classification of subject goods as adopted by the Noticees. The above definition specifically states that ‘***Flat Rolled Products are rolled products of solid rectangular***’ and ‘***... include those with patterns in relief derived directly from rolling (for example, grooves, ribs, chequers, tears, buttons and lozenges) and those, which have been perforated, corrugated or polished***’. The above definition clearly states that flat rolled products are those ***solid rectangular*** products that may have patterns derived directly from rolling. Pertinently, it does not include products that have been further worked upon by cladding and subsequent stamping of clad metals. Therefore, the subject goods cannot be classified as ‘*Flat-Rolled Products*’ and would directly fall outside the scope of Heading 72.19, which only includes ‘*Flat-Rolled Products of Stainless Steel*’.

D.4. Further, the HSN Explanatory Notes to Chapter 72 itself consider ‘*Flat-Rolled Products*’ to be different from products that have been further worked upon by mechanical working or other surface treatments (including cladding), therefore, the subject goods in question cannot be termed as ‘*Flat-Rolled Products*’.

D.5. In any case, the Notification in question specifically refers to ‘*Flat-Rolled Products of Stainless Steel*’ and not all ‘*Flat-Rolled Products*’. Therefore, the above definition is inapplicable in the present case, when the Notification only considers those Flat-Rolled Products which are made of Stainless Steel. The subject goods being made of a sheet of Aluminum sandwiched between the two Stainless-Steel Sheets, assume the character of articles or products of Tariff Item 7326 90 70. Therefore, the subject goods are not classifiable under Heading 72.19.

Even in light of Note 7 to Chapter XV, the subject goods have been correctly classified by the Noticees.

D.6. The SCN alleges that in light of Note 7 to Chapter XV of the Customs Tariff, the subject goods should be classified as product of Stainless Steel because Stainless Steel predominates in weight over Aluminium and the subject goods shall be classifiable under Chapter 72 of the Customs Tariff. However, the SCN fails to give any evidence in support of this allegation. The goods have never been tested by the Customs department. In any case, the classification declared by the Noticees is also for articles or iron and **steel** and not as articles of Aluminium. Therefore, this allegation is completely baseless.

D.7. In view of the above allegations, the Noticees submit that even after considering Note 7 to Chapter XV, the subject goods in question have been correctly classified by the Noticees. In the present matter, the Noticees have classified the subject goods as ‘***Other articles of iron or steel***’ and not as ‘*Other articles of Aluminium*’. Therefore, the above allegation that since Stainless Steel

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predominates in weight over Aluminium, the subject goods should be classified as articles of steel has been complied with. In view of the above, the Noticees submit that present classification under Tariff Item 7326 90 70 is correct, and the subject goods cannot be reclassified based on Note 7 to Chapter XV. In fact, this allegation shows that the Customs department is unclear on the allegations being put forth by them and the same has been done just for the sake of raising a demand. This is completely perverse and bad in law.

D.8. In view of the above submissions, the subject goods are not classifiable under Heading 72.19.

E. BURDEN OF PROOF LIES ON THE DEPARTMENT WHO WISHES TO RE-CLASSIFY THE SUBJECT GOODS UNDER A DIFFERENT HEADING. CUSTOMS DEPARTMENT HAS FAILED TO DISCHARGE THE ONUS.

E.1. The proposed change in classification in the SCN is put forth only as a matter of opinion and interpretation of the Customs Tariff. The SCN has not put forth any evidence towards discharging the onus cast upon it for such proposed reclassification. No conclusive evidence has been placed on record to allege that the imported goods are indeed 'Other – Flat-Rolled Products of Stainless Steel' classifiable under Tariff Item 7219 90 90.

E.2. The Noticees humbly submit that burden of proof lies upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. This rule, derived from the maxim of Roman Law, *ei qui affirmat, non ei qui negat, incumbit probatio*, is adopted partly because it is but just that he who invokes the aid of the law should be the first to prove his case; and partly because, in the nature of things, a negative is more difficult to establish than an affirmative.

E.3. The phrase 'burden of proof' is used in two distinct meanings in the law of evidence, viz., the burden of establishing a case and burden of introducing evidence. The burden of establishing a case remains throughout the trial where it was originally placed; it never shifts. The burden of producing evidence may shift constantly as the evidence is introduced by one side or the other. The burden of producing evidence is also known as 'onus of proof'. In support of this, the Noticees place reliance on the decision of **Rajendra Jagannath Parekh and Ajay Shashikant Parekh Vs. CC - 2004 (175) ELT 238 (Tri-Mum.)**. In that case, the Hon'ble Tribunal referred to various judgments of Hon'ble Supreme Court and observed as follows:

"26. There is an essential difference between "burden of proof as a matter of law and pleading and as a matter of adducing evidence. The burden in the former sense is upon the party who invites a decision in the existence of certain facts which he asserts. This burden is constant and never shifts. But the burden to prove in the sense of adducing evidence, i.e. onus of proof shifts from time to time having regard to the evidence adduced by one party or the other, or the presumption of fact or law raised in favour of the one or the other. Such shifting of onus is a continuous process in the evaluation of evidence. When sufficient evidence either direct or circumstantial in respect of its contention is disclosed by the revenue adverse inference could be drawn against the assessee if he fails to rebut it by materials in his exclusive possession. It is only on the application of the principles of shifting onus, the rule relating to burden of proof in Section 106 and the presumption that may be drawn under Section 104 of the Evidence Act can sustain (AIR 1961 SC 1474; AIR 1964 SC 136; AIR 1966 1867 SC; AIR 1972 SC 2136; AIR 1974 SC 859; AIR 1975 SC 182; AIR 1975 SC 2083 and 1983 (13) ELT 1620 referred to)."
... (Emphasis Supplied)

E.4. It is submitted that the parties, on whom 'onus of proof' lies must, in order to succeed, establish a *prima facie* case. On the other hand, the burden of proof should be strictly discharged. In

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other words, one has to prove the point which he asserts on his own evidence and not by any weakness in the case of the defendant. Further, it is a settled legal position that the burden of proof never shifts. Therefore, in a matter where Revenue has raised demand of duty by alleging short/non-levy, the burden of proof is always on Revenue to prove such allegations/assertions and it never shifts.

E.5. Based on the foregoing, it is submitted that the department has failed to discharge the burden of proof with respect to the classification of the subject goods under Tariff Item 7219 90 90.

E.6. Reliance is placed on the case of **H.P.L Chemicals Vs. CCE - 2006 (197) ELT 324 (SC)**, wherein it was held that classification of goods is a matter relating to chargeability and burden of proof is squarely upon Revenue. It was further held by the Hon'ble Supreme Court that if the department intends to classify goods under a particular heading or sub-heading different from that claimed by assessee, department must adduce proper evidence and discharge burden of proof.

E.7. Further, the Hon'ble Supreme Court in the case of **UOI Vs. Garware Nylons Limited – 1996 (87) ELT 12 (SC)**, has well laid down that the burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them.

E.8. In the present case, SCN has utterly failed to provide any evidence in furtherance to classifying the subject goods under Heading 72.19. Therefore, SCN has not discharged the burden cast upon it to reclassify the subject goods. Accordingly, classification as declared by the Noticees under Tariff Item 7326 90 70 cannot be disputed.

F. THE NOTIFICATION NO. 01/2017-CUS. (CVD) DATED 07.09.2017 WAS A TEMPORARY/SECONDARY/DELEGATED LEGISLATION. HENCE, THIS NOTIFICATION DOES NOT EXIST IN THE EYES OF LAW AFTER ITS EXPIRY/REPEAL, EXCEPT FOR THE THINGS PAST & CLOSED.

F.1. Section 9(1) of the Customs Tariff Act, 1975 empowers the Central Government to impose CVD on any article exported from any country or territory to India by a notification in the Official Gazette.

F.2. In the present case, CVD has been proposed to be levied on "*Flat-rolled products of Stainless Steel*" in terms of Notification No.1/2017-Cus. (CVD) dated 07.09.2017. This Notification has been issued in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, and it came into effect from 07.09.2017, i.e., also the date of imposition.

F.3. Section 9(6) provides that CVD imposed under Section 9(1) shall cease to have effect on the expiry of five years from the date of such imposition. However, in the present case, the Notification was rescinded prior to the date of its expiry of five years vide Notification No. 1/2022-Cus. (CVD) dated 01.02.2022. Therefore, the Notification ceased to exist on 01.02.2022.

F.4. In view of the above, the Noticees submit that the common law rule is that if an Act or a piece of delegated legislation expires on its own or is repealed, in absence of provision to the contrary, it should be regarded as having never existed, except as to matters and transactions that are past and closed. The Noticees rely on the following books and judgments:

(a) **Craies on Statute Law**: Seventh edition

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“Repeal without savings before the Interpretation Act, 1889

The effect of a repeal before 1890 without any express savings was thus states by Tindal C.J. in *Kay v. Goodwin*, where he said: **“I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.”** And in *Surtees v. Ellison*, Lord Tenterden said: “It has long been established that, when a Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. ...”

(b) **Maxwell on The Interpretation of Statutes: Twelfth Edition**

“Repeal

...

The common law rule was that **if an Act expired or was repealed it was regarded, in the absence of the provision to the contrary, as having never existed, except to matters and transactions past and closed.** Where, therefore, a penal law was broken, **the offender could not be punished under it if it expired before he was convicted, although the prosecution began while the Act was still in force.**

...”

... (Emphasis Supplied)

(c) **Kolhapur Canesugar Works Ltd. Vs. UOI – 2000 (119) ELT 257 (SC)**

“37. In the case in hand Rule 10 or Rule 10A is neither a “Central Act” nor a “Regulation” as defined in the Act. It may be a Rule under Section 3(15) of the Act. Section 6 is applicable where any Central Act or Regulation made after commencement of the General Clauses Act repeals any enactment. It is not applicable in the case of omission of a “Rule”.

38. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

39. In the present case, as noted earlier, Section 6 of the General Clauses Act has no application. There is no saving provision in favour of pending proceeding. Therefore

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action for realisation of the amount refunded can only be taken under the new provision in accordance with the terms thereof. ...”

... (Emphasis Supplied)

F.5. In view of the above, the Noticees submit that the Notification No. 1/2022-Cus. (CVD) dated 01.02.2022 rescinded Notification No. 1/2017-Cus. (CVD) dated 07.09.2017, in absence of provision to the contrary. As the Notification of 2022 did not explicitly contain any savings clause which would save any liability acquired, accrued or incurred under the Notification so rescinded, no demand of CVD can be made post such rescission.

F.6. The said Notification of 2022 only contained “*except as respect things done or omitted to be done before such rescission*” which indicates that the rescission (cancellation or annulment) of the Notification does not affect actions that were taken or not taken before the rescission occurred. In other words, any actions or omissions that happened before the recession remain valid and are not undone by the recession. Therefore, since the SCN was not issued prior to the recession i.e., the Customs department omitted to issue any SCN and pass an order during the existence of the Notification, no demand of CVD can be made post such recession as is being done in the present case.

F.7. In other words, since no action was taken against the Noticees prior to rescission of Notification of 2017, the initiation of the present proceedings after the expiry/repeal of the Notification of 2017 is invalid when there is no savings clause in the rescinding Notification of 2022.

F.8. Furthermore, the saving clause provided under Section 159A of the Customs Act, 1962 and Section 6 of the General Clauses Act, 1897 would not be applicable to the present case for the following reasons:

- (a) Section 159A of the Customs Act, 1962 is inapplicable to the Notification(s) in question as the said Section is only applicable to rule, regulation, notification or order made or issued under the Customs Act, 1962. Since the Notification(s) in question have been issued in terms of the Customs Tariff Act, 1975, Section 159A of the Customs Act, 1962 will be inapplicable to the Notification(s).
- (b) Section 6 of the General Clauses Act, 1897, is also inapplicable to the Notifications in question, as this Section pertains exclusively to any Central Act or Regulation and does not extend to Notifications issued as delegated legislation. This interpretation has been affirmed in the case of **Kolhapur Canesugar Works *supra***.

F.9. Furthermore, reliance is placed on the judgment of the Hon’ble Supreme Court in **S. Krishnan Vs. State of Madras – AIR 1951 SC 301**, wherein the Petitioners were detained in pursuance of orders for detention made under Section 3(1)(a)(ii) of the Preventive Detention Act, 1950. This 1950 Act was to expire on 31.3.1951. The maximum period of detention under the 1950 Act was one year. On 22.2.1951, while they were still under detention, the Preventive Detention (Amendment) Act, 1951 came into force. This 1951 Act, inter alia, continued the operation of the 1950 Act until 31.3.1952. The Supreme Court dismissed the challenge of the Petitioners and upheld the validity of the 1951 Act under Article 22(4)(b). While upholding the validity under Article 22(4)(b), the Supreme Court held that although the 1951 Act does not expressly provide for a period for which any person may be detained [which is a pre-requisite for Article 22(4)(b)], it fixes, by extending the duration of the 1950 Act till 31.3.1952, an overall time limit beyond which preventive detention cannot be continued. The

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Supreme Court held that detention under the temporary statute after the expiry is illegal. The relevant portion of the judgment is reproduced below:

“.... **The general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires** (*Craies on Statutes*, 4th Edn., p. 347). Preventive detention which would, but for the Act authorising it, be a continuing wrong, cannot, therefore, be continued beyond the expiry of the Act itself. ...”
... (Emphasis Supplied)

F.10. The Noticees also rely upon the judgment of Hon’ble Bombay High Court in the case of **Sparkling Waters Pvt. Ltd. Vs. Union of India – Order dated 23.3.2010 in Writ Petition No. 410 of 2010** where the ratio in S. Krishnan’s case has been applied in case of Anti-dumping Duty matter.

F.11. Importantly, reliance is also placed on the decision of the Hon’ble CESTAT, Bangalore in **Trivandrum Rubber Works Vs. CC(Appeals) - 2007 (211) E.L.T. 116 (Tri. - Bang.)**, wherein the Hon’ble Tribunal upheld the decision of the Ld. Commissioner (Appeals) which held as follows:

12. When a statute is repealed except as to transactions past and closed, is as completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute. [*Keshavan v. State of Bombay*, AIR 1951 (SC) 128 PP 131]. **Confusion resulting from all these consequences gave rise to the practice of inserting saving clause in repealing statutes, and later on to obviate the necessity of inserting a saving clause in each and every repealing statute, a general provision as made in Section 6 of Central General Clauses Act and it applies to all types of repeals. However, this Section is not applicable to Rules, since the Rule made under an Act is not a Central Act or Regulation.** Hence, when a rule is repealed by another rule, Section 6 of General Clauses Act will not be of any help. **Thus, in the absence of a saving clause in the repealed rule, except the cases where proceedings were commenced, prosecuted, and brought to finality before the repeal, cannot be continued.**

... (Emphasis Supplied)

F.12. The Noticees submit that the term transactions past and closed in light of the decisions means the initiated proceedings which have been adjudicated/prosecuted and brought to finality before the repeal / expiry.

F.13. In view of the above submissions, the Noticees submit that, in the absence of any savings clause in the Notification of 2022, the Notification of 2017 ceased to have effect on the date of its repeal. Consequently, any proceedings initiated subsequent to the repeal of the Notification of 2017 are unsustainable in law and should be dismissed.

G. EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4) OF THE CUSTOMS ACT CANNOT BE INVOKED IN THE PRESENT CASE.

G.1. The Noticees submit that the customs department has issued the present SCN by invoking extended period of limitation in terms of Section 28(4) of the Customs Act, 1962 for the imports for the period 10.02.2020 to 03.02.22 on the ground that the subject goods imported by the Noticees are liable to CVD in terms of Sr. No. 1 of the Notification. The SCN alleges that the Noticees have mis-declared and suppressed the facts to evade payment of CVD.

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G.2. The Noticees submit that going by the date of SCN, entire demand from 10.02.2020 to 03.02.22 is barred by extended period of limitation under Section 28 of the Customs Act, 1962. Section 28 provides for demand of duty for past imports, covering a maximum period of five years from the date of service.

G.3. There is no dispute as far as the description of the subject goods made in the Bill(s) of Entry, at the time of import is concerned. The Noticees have made full and proper disclosure of the nature of the subject goods. The sole issue is regarding the classification of the subject goods and consequent levy of CVD. There is no dispute that the description made in the subject Bill(s) of Entry corresponds with the description of the goods made in the supplier's invoice.

G.4. Therefore, the Noticees humbly submit that there can be no allegation of "misdeclaration" by any stretch of imagination. Specifically, the primary allegation on the basis of which the SCN has invoked extended period of limitation is that the Noticees have incorrectly classified the imported goods.

G.5. The Courts have time and again held in respect of invocation of extended period of limitation under indirect tax laws that something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability beyond the period of normal period of limitation had to be established. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful mis-statement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. Reliance is placed on the following decisions:

a. **Padmini Products Vs. CC – 1989 (43) ELT 195 (SC);**

b. **CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)**

G.6. It is submitted that the Noticees in the present case have never held any information from the department. In fact, the Noticees have always submitted all the import related documents before the customs authorities. Therefore, it is submitted that there was no collusion, mis-declaration or wilful suppression on part of the Noticees while importing the goods and hence invocation of extended period of limitation is not sustainable.

G.7. The Hon'ble Supreme court in **Northern Plastic Vs. CCE – 1998 (101) ELT 549 (SC)** has held that mere classification under the bill of entry does not amount to mis-declaration under the Act. The relevant extract of the decision is reproduced below:

"22.....While dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.

23. We, therefore, hold that the appellant had not mis-declared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the

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imported goods....”

... (Emphasis Supplied)

G.8. Reliance is also placed on following cases, wherein the extended period was not invoked in case of a classification issue even in cases where goods were self-assessed:

- a. **Sirthai Superware India Vs. CC – 2019 (10) TMI 460 – CESTAT Mumbai;**
- b. **Raghav Industrial Vs. CC – 2019-TIOL-2559-CESTAT-DEL at para 6 – 9;**
- c. **Lewek Altair Vs. CC – 2019 (366) ELT 318 (Tri.-Hyd.) at para 7, Affirmed in Hon’ble Supreme Court 2019 (367) ELT A328 (SC); and**
- d. **Kohler India Vs. CC – 2017 (1) TMI 584 – CESTAT NEW DELHI at para 4.**

G.9. Therefore, to say that the Noticees have resorted to any form of mis-representation or suppression is incorrect. Hence, it is submitted that there was no collusion, mis-declaration or wilful suppression on part of the Noticees while importing the goods and hence invocation of extended period of limitation is not sustainable.

G.10. Consequently, the proposal to demand duty by invoking extended period of limitation is not sustainable.

G.11. Moreover, the documents based on which the Noticees have classified the subject goods were always within the knowledge and possession of the customs department. Pertinently, queries were also raised in respect of 3 Bill(s) of Entry and the Noticees also prepared responses to the said queries. Therefore, what is being done now could have been done at an earlier stage or within the normal period of limitation and not at the brink of expiry of the extended period of limitation.

G.12. Therefore, it is submitted that there was no collusion, mis-declaration or wilful suppression on part of the Noticees and extended period of limitation cannot be invoked in the present case. These submissions are elucidated in detail in the subsequent paragraphs:

Extended period of limitation is not invokable in case of disclosure of primary facts.

G.13. It is submitted that extended period cannot be invoked in cases wherein the primary facts have been disclosed in the Bill(s) of Entry. In this regard, reliance is placed on the case of **Maruti Udyog Limited Vs. CCE, Delhi – 2002 (147) ELT 881 (Tri. – Del.)**, wherein it was held as under:

“7. ... The reply of the Assistant Commissioner dated 30-4-86 to audit would show that the matter was being brought to the notice of higher authorities of the Department. Therefore, the Department was clearly aware of the marketing pattern followed by the assessee. **When the basic and primary fact namely that the assessee is taking booking deposit from the customer and that a portion of the interest is appropriated by the assessee were known to the Revenue, it cannot be contended that the assessee is guilty of any wilful mis-statement or suppression of facts.** Whether the price of the cars will be affected by such interest accrued on the deposit is a matter to be examined by the Revenue on the basis of the facts available. Ld. Counsel for the appellant correctly placed reliance on a decision of the Supreme Court in ITO v. Lakhmani Mewal Das - 1996 (103) ITR 437

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in support of the assessee's contention.”

... (Emphasis Supplied)

G.14. In the present case, the description in the Bill(s) of entry and classification under Heading 73.26 is the disclosure of basic and primary facts, which was done by the Noticees at the time of import and thus, suppression cannot be attributed to them. It is submitted that the subject goods have been described correctly as per the Supplier's invoice and the product catalogue. In any case, the assessee / importer is required to declare the primary facts. Accordingly, once primary facts have been disclosed, extended period of limitation is not invokable.

G.15. The Noticees have historically classified the subject goods under Heading 73.26 and no objection was ever raised by the customs department in the past. Therefore, the present matter is nothing but a mere change of opinion and no misrepresentation/mis-statement/suppression of facts can be alleged on part of the Noticees.

Extended period cannot be invoked in cases if different interpretations on classification of a particular product are made.

G.16. The Noticees submit that there is no allegation in the SCN of misdeclaration as far as description and value is concerned. The only allegation is of 'mis-classification' for invoking extended period of limitation under Section 28(4) of the Customs Act. It is submitted that claim to a classification is a matter of *bona fide* belief of the importer. Therefore, indicating a classification which is not correct as per the customs department can at best be a case of wrong classification and certainly not a case of mis-classification.

G.17. The Noticees also submit that the extended period of limitation cannot be invoked in its case as the issue is one of classification of a particular product. For this, reliance is placed on the case of **Coastal Energy Vs. CCE & ST, Guntur – 2014 (310) ELT 97 (Tri-Bang)**, wherein the Hon'ble Tribunal was tasked with determining the correct classification of coal imported by the assessee. In this regard, the Hon'ble Tribunal had dropped the demand made under the extended period of limitation on the ground that the issue involved classification of the imported coal. Relevant portions of the decision are extracted below for ready reference:

“75. Finally we come to the points as to whether the extended period could have been invoked in this case for demanding duty. The volume of data that we had to consider and the arguments that were advanced on either side on the issue would clearly show that the issue is highly debatable. Further it is also not in dispute that in trade parlance, the coal imported by the appellants is steam coal. In any case this has not been contested. Further even if the exemption notification was issued, for quite some time, the Department had not taken up the issue which would also show that even Departmental officers did not think of the issue in the beginning. **All these aspects show that the issue is one of classification, technical in nature and therefore mens rea to evade payment of duty cannot be alleged. Therefore extended period cannot be invoked and no penalty could have been levied and can be levied on the appellants even in respect of demand for normal period.** In the result, we confirm the view that the products imported by the appellants if they are as per the definition of bituminous coal, the question of going into trade parlance or consider the item as steam coal does not arise and therefore the differential duty demand in respect of coal imported which are according to definition of bituminous coal has to be upheld. Similarly, we also make it clear that appellants are not eligible for the benefit of CVD at lower rate as per the Notification No. 12/2012-C.E.”

... (Emphasis Supplied)

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G.18. The Hon'ble Courts (including the CESTAT) without any deviation have been holding that claim of particular classification does not amount to mis-declaration. The Noticees place reliance on the Hon'ble Supreme Court decision in the case of **Northern Plastic** *supra*

G.19. The Hon'ble Tribunal in the case of **GV Exim Vs. CC – 2003 (160) ELT 900**, has held that wrong claim of classification does not amount to mis-statement. The Hon'ble Tribunal in **National Radio and Electronics Company Vs. CCE – 2000 (119) ELT 746 (Tri.)** has held as under:

“3. We see force in the submissions of the learned Counsel that the demand is entirely barred by limitation. The appellants clearly described the goods in dispute in their classification list as peripherals and parts for computers and also attached a list of all the peripherals and parts. It is not the case of the Department that the goods did not correspond to the description given in the list. The only ground on which the extended period of limitation has been held to be applicable is that the appellants did not declare the correct nature of the peripherals and parts and their functions, giving an impression that peripherals and parts are automatic data processing unit and, therefore, they had suppressed the fact and misdeclared peripherals and parts for business systems computers as falling under Heading 84.71 which were in fact classifiable under Heading 84.73. We fail to understand how the Department gathered such an impression, in the face of the clear description and details of the various items in dispute. **Claiming a classification different from what is ultimately approved by the Department, does not amount to suppression. It is open to an assessee to claim classification under any Heading and it is the responsibility of the Revenue to arrive at the correct classification after examination of full facts. The allegation and finding of suppression and misdeclaration is, therefore, unfounded and unsustainable and we set aside the same.** In the result, we set aside the impugned order holding that the demand is entirely barred by limitation and allow the appeal on this ground, without going into the issue of correct classification of the disputed goods.”

... (Emphasis Supplied)

G.20. This principle is also recently followed in the self-assessment regime in the decision of **Lewek Altair Vs. CC – 2019 (366) ELT 318 (Tri.-Hyd.) at para 7 Affirmed in Hon'ble Supreme Court 2019 (367) ELT A328 (SC). Relevant portion is reproduced below:**

7. We find that confiscation of vessels under Section 111(m) was only on the ground that the bill of entry claimed under Customs Tariff Heading which, according to the Commissioner, was incorrect. It was therefore held that in the entry made under Customs Act viz.; Bill of Entry, the Customs Tariff Heading was not correct and therefore the goods are liable to be confiscated under Section 111(m). As we have held that the goods in question are classifiable as claimed by the appellant, under CTH 8901 90 00, this allegation does not survive. Even otherwise, we find it hard to hold that an assessee who filed bill of entry with a Customs Tariff Heading which is not correct, will render his goods liable to confiscation under Section 111(m). **The Customs Tariff Heading indicated in the Bill of Entry is only a self assessment by the appellant as per his understanding which is subject to re-assessment by the officers if necessary. Therefore, an assessee, not being an expert in the Customs law can claim a wrong tariff or an ineligible exemption notification and such claim does not make his goods liable to confiscation.** It is a different matter if the goods have been described wrongly or the value of the goods has been incorrectly declared. In this case, although there was an allegation in the show cause notice that the invoices were initially submitted for a lower value and thereafter were revised for higher amount, the confiscation in the impugned orders were only on the ground that CTH in the bill of entry was incorrect. **In our view, this cannot form the basis for confiscation of goods under Section 111(m). Therefore, the confiscations and the redemption fines need to be set aside and we do so. Consequently no penalties are imposable under Section 112(a).** As far as the penalties under Section 114AA are concerned, these are imposable if a person knowingly or intentionally makes, signs or uses

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or causes to be made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. Ld. Commissioner held “considering the facts of the case, it has to be held that on the ground of wilful misstatement regarding classification and availing of notification, I am constrained to hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962.” Thus holding, he imposed a penalty of Rs. 1.00 crore on the appellant in each of the impugned orders. **In our considered view, claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of the Customs Act, 1962.** Further, in these cases, we have already upheld the classification claimed by the appellant and therefore find that no penalty is imposable on the appellant. ... (Emphasis Supplied)

G.21. Reliance is also placed on following cases, wherein the Hon’ble CESTAT has held that since the issue is only of classification and there is no mis-declaration as far as description of the subject goods is concerned, demand cannot be confirmed by invoking extended period of limitation, even in cases where goods were self-assessed:

- a. **KMS Medisurgi Vs. CC – 2022-VIL-358-CESTAT-MUM-CU at para 12;**
- b. **Natraj Stationery Products Vs. CCE – 2017 (348) ELT 568 (T) at para 11-13;**
- c. **Komal Trading Co. Vs. CC – 2014 (301) ELT 506 (T) at para 4, 10; and**
- d. **Automark Technologies Vs CCE – 2019 (370) ELT 1232 (Tri. – Mumbai) at paras 6-7.**

G.22. Thus, in light of the above decisions of the Hon’ble Supreme Court, and various High Courts and Tribunals, it is submitted that the present demand cannot be sustained as claiming another classification under *bona fide* belief of the importer would not *per se* amount to suppression.

Extended period not invokable as the issue involves an interpretation of the law.

G.23. Issue raised in the present SCN is classification i.e., interpretation of the entries of the First Schedule to the Customs Tariff. Therefore, extended period cannot be invoked in the present case. The Noticees place reliance on the following in support of the contention:

- a. **Singh Brothers Vs. CCE – 2009 (14) STR 552;**
- b. **Steelcast Ltd. Vs. CCE – 2009 (14) STR 129;**
- c. **P.T. Education & Training Services Ltd. Vs. CCE – 2009 (14) STR 34; and**
- d. **K.K. Appachan Vs. CCE – 2007 (7) STR 230.**

G.24. In the light of the foregoing, no *mala fide* can be attributed to the Noticees, especially when the classification adopted by them was as per the classification declared by the Supplier in the Supplier’s invoice, and under a *bona fide* belief.

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G.25. Thus, the department has erred in invoking the extended period of limitation and on this ground itself, the impugned SCN is liable to be dropped.

Extended period cannot be invoked as the customs department was always aware regarding the practices of the Noticees.

G.26. The SCN at paragraph 6 alleges that since the imports have taken place post the introduction of self-assessment, it was incumbent on the Noticees to correctly declare all the necessary particulars.

G.27. In this regard, the Noticees submit that Para 2.7 of Chapter 3 of the CBEC Manual on Procedure for clearance of imported and export good, states that while filing an EDI bill of entry, all the necessary declarations have to be made electronically. The original documents such as signed invoice, packing list, certificate of origin, test report, technical write-up etc. are required to be submitted by the importer at the time of examination. The importer/CHA also needs to sign on the final documents before customs clearance.

G.28. This situation did not change after introduction of 'self-assessment' in the Customs laws by Finance Act, 2011 on 08.04.2011 by amendment of Section 17 of the Customs Act

G.29. The self-assessment only requires (as in the case of Central Excise – Self Removal Procedure), that the importer must himself indicate the classification of the imported goods in the Bill of Entry. This does not mean that in every case of self-assessment, the department is entitled to invoke the extended period of limitation as provided in Section 28(4) of the Customs Act. Hence the department cannot make the self -assessment done by the Noticees as the excuse to invoke the extended period citing mis-declaration or suppression of facts as a reason.

G.30. It is mandatory on the part of the department to prove that the assessment of the imported goods at the time of import was obtained by mis-declaration or suppression of facts etc. – whether it is a self-assessed bill of entry or customs system assessed bill of entry or officer-assessed bill of entry.

G.31. The Hon'ble CESTAT, New Delhi Bench in **Midas Fertchem Impex Vs. Pr. CC – 2023 (1) TMI 998**, at paragraph 50 has held as under:

50. In practice, the importer makes an entry under section 46 and also self-assesses duty under section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer mis-declared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter

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of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under section 28. Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression.

... (Emphasis Supplied)

G.32. Even, in **Challenger Cargo Carriers Vs. Pr. CC – 2022 (12) TMI 621**, at paragraph 13, the Hon'ble CESTAT New Delhi has held as under:

13. ... Section 17 requires the importer to self-assess duty and empowers the officer to re-assess the duty so self-assessed by the importer. There is no separate mechanism or procedure or form in which the importer can self-assess duty. It is part of the Bill of Entry itself. Assessment of Customs duty involves classification of the goods under the CTH, their valuation as per Section 14 and Customs Valuation Rules and application of the exemption notifications. These fields, when filled in the Bill of Entry filed under section 46 by the importer (or his agent) complete the self-assessment of duty. Evidently, these are not facts but are views. While the importer is required to subscribe to the truth of the contents of the Bill of Entry, it refers to facts and not opinions. There cannot be any absolute true or false views. The importer may self-assess the duty under a particular tariff heading as per its view and understanding, the officer re-assessing the Bill of Entry may take hold a different view. In the subsequent chain of appeals through Commissioner (Appeals), Tribunal and Supreme Court, different views may be taken and at any point of time, the view of the higher judicial/ quasi-judicial authority prevails over the view of the lower authority. There could be some situations, where the reassessment of duty by the officer is necessitated not just because he is of a different view but because the facts disclosed in the Bill of Entry were not correct – such as the quantity or description or the specifications of the imported goods being found on examination or testing to be different from what is declared or the actual transaction value is more than what is declared, etc. However, as far as mere classification, exemption notifications, etc. are concerned, they are just matters of self-assessment by the importer.

... [Emphasis Supplied]

G.33. It is submitted that in the present case, the SCN has not proved any conscious or intentional act of collusion, wilful misstatement or suppression of fact on the part of the Noticees. Therefore, the SCN should be dropped on this ground itself.

G.34. It is a settled legal position that in case of any delay in the issuance of a show cause notice by the department, after having knowledge about the alleged transactions, extended period of limitation cannot be invoked. In support of the above contention the Noticee relies on the case of **Orissa Bridge & Construction Corp. Vs. CCE, Bhubaneshwar -- 2011 (264) ELT 14 (SC)**. Here, the Hon'ble Supreme Court held that the extended period of limitation would not be applicable, under Central Excise Salt Act, when the show cause notice was issued two years after the activities of the assessee were detected. In the present case, the CL was issued way back in April 2022, even then it took the Customs department almost two years to issue the present SCN. Therefore, delay was completely on the part of the Customs department and demand cannot be made by invoking extended period of limitation. On this ground itself, the SCN is liable to be dropped.

H. INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT NOT RECOVERABLE AS DUTY DEMAND ITSELF IS NOT SUSTAINABLE.

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H.1. The SCN has also proposed to impose interest under Section 28AA of the Customs Act, 1962. In this regard, it is respectfully submitted that the question of levy of interest arises only if the demand of duty is sustainable. As submitted in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of levy of any interest under Section 28AA on such duty would not arise.

H.2. The Hon'ble Supreme Court of India in the case of **Prathibha Processors Vs. UOI – 1996 (88) ELT 12 (SC)**, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest, either. Relevant portions from the judgment are extracted below for your ready reference:

“14.... The “interest” payable under Section 61(2) of the Act is a mere “accessory” of the principal and if the principal is not recoverable/payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable.

... (Emphasis Supplied)

H.3. In view of the above, it is submitted that the SCN has incorrectly proposed and demanded interest in terms of Section 28AA of the Customs Act.

I. ENTIRE EXERCISE OF DEMANDING IGST NOW IS REVENUE NEUTRAL.

I.1. Due to addition of the proposed CVD in determining the IGST amount, the present SCN demands differential IGST amounting to Rs. 13,36,897/-. As submitted in the foregoing paragraphs that since the demand of CVD against the Noticees is not sustainable, the question of differential IGST would not arise.

I.2. In any case, the proposal to demand of differential IGST is incorrect as the Noticees are entitled to avail credit of the IGST paid and the same would result in a revenue neutral situation.

I.3. The Noticees rely on the recent decision of the Hon'ble CESTAT, Ahmedabad in the case of **Himadri Speciality Chemical Vs. CC – 2024 (4) TMI 383**. The Hon'ble CESTAT held as under:

“12. Having considered the rival contentions, **we find that it is not disputed that, had the appellant paid the IGST at the time of import they would have been eligible for input tax credit.** Further, admittedly the goods have been used as inputs for manufacture of other goods which have undisputedly been exported to Hindalco. Admittedly, DGFT have issue ‘Export Obligation Discharge Certificate’ to the appellant We further take notice that it is not the policy of the Government to export taxes. We further find that it is a case of contributory negligence on the part of Revenue also, as inspite of having registered the Advance Authorisation and the entitlement of the appellant to exemption under Notification No. 21/2015–CUS, have allowed the exemption of IGST also as applicable under Notification No. 18/2015– CUS. **However, in the facts and circumstances, the situation being revenue neutral undisputedly, no case of malafide is made out against the appellant. In this view of the matter, following the ruling of the Apex Court in the Nirlon Ltd., (supra), we hold that the demand is not invokable by invocation to extended period of limitation. Accordingly, we allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits in accordance with law.**”

... [Emphasis Supplied]

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I.4. Further, the Hon'ble Supreme Court in the following decisions has held that when the confirmation of duty demand would result in a revenue neutral situation, then such duty demand is not sustainable:

- a) **CCE & C (Appeals) Vs. Narayan Polyplast – 2005 (179) ELT 20 (SC);**
- b) **CCE Vs. Narmada Chematur Pharmaceuticals – 2005 (179) ELT276 (SC);**
- c) **CCE Vs. Textile Corporation – 2008 (231) ELT 195 (SC);**
- d) **CCE Vs. Jamshedpur Beverages – 2007 (214) ELT321 (SC);**
- e) **CCE Vs. Coca Cola India – 2007 (213) ELT 490 (SC);**

I.5. The above submission is also supported by the following decisions of the Hon'ble CESTAT wherein the demand raised was set aside on the ground that the assessee is a manufacturer and the duty paid would anyway be available to him/her as credit:

- a) **Accurate Chemicals Industries Vs. CCE – 2014 (300) ELT 451 (Tri. - Del.),
Affirmed in CCEx. Vs. Accurate Chemical Industries – 2014 (310) ELT 441 (All.);
and**
- b) **Suntex Mercantiles Vs. CCE – 2014 (313) ELT 809 (Tri. - Mumbai).**

I.6. However, as has been stated above through various judgments of the Supreme Court, in cases where there is a revenue-neutral situation, then there is no need to pay the duty. In view of the above, the demand of differential IGST is unsustainable and liable to be dropped.

J. SECTION 3(12) OF THE TARIFF ACT DOES NOT BORROW INTEREST AND PENALTY PROVISION FROM CUSTOMS ACT. IN ABSENCE OF ANY MACHINERY PROVISION, INTEREST CANNOT BE RECOVERED AND PENALTY CANNOT BE IMPOSED ON THE NOTICEES IN RESPECT OF THE IGST DEMAND.

J.1. The SCN proposed to demand and recover differential IGST of Rs.13,36,897/- along with interest in terms of Section 28(4) and Section 28AA of the Customs Act and imposition of penalty under Section 112(a), Section 114A and Section 114AA of the Customs Act.

J.2. It is submitted that IGST is levied under Section 5 of the Integrated Goods and Services Tax Act, 2017 in terms of Section 3(7) of the Customs Tariff Act, 1975. However, the Customs Tariff Act has limited provisions, and it borrows various provisions from the Customs Act, for implementation of its provisions.

J.3. It is submitted that Section 3(12) of the Customs Tariff Act, which is the borrowing provision with regard to IGST, does not borrow provision for demand of IGST with interest or penalty from the Customs Act. Therefore, it is submitted that demand of IGST along with interest has been incorrectly proposed to be recovered. Also, penalty has been incorrectly proposed to be imposed on the Noticees so far as the IGST component of the demand is concerned and no interest can be recovered.

J.4. Section 3(12) of the Tariff Act is extracted below for ease of reference:

“(12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.”

J.5. The Hon'ble Bombay High Court in the case of **Mahindra and Mahindra Vs. UOI – 2022-VIL-690-BOM-CU**, had held that interest on delayed payment of duty is applicable only for customs

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duty leviable under Section 12 of Customs Act, 1962. Charging section for levy of additional duty is not Section 12 of the Customs Act, but is Section 3 of CTA, 1975. The Hon'ble Bombay High Court further held that there is no substantive provision in Section 3 of CTA, 1975 requiring payment of penalty or interest. Therefore, in absence of specific provisions for levy of interest or penalty, same cannot be levied/charged. This decision of the Hon'ble Bombay High Court has been maintained by the Hon'ble Supreme Court reported at **2023-VIL-72-SC-CU**. Thereafter, the department also filed a review petition before the Hon'ble Supreme Court which stands dismissed vide Order dated 09.01.24.

J.6. Also refer : (a) **Acer India Vs. CC - 2023-VIL-998-CESTAT-CHE-CU** and (b) **Philips India Limited Vs. CC – Final Order No. A/86879/2024 dated 18.07.24 in Customs appeal no. C/87594/2023**.

J.7. In addition, the Hon'ble Supreme Court in **India Carbon Vs. State of Assam, (1997) 6 SCC 479**, relied upon the earlier five-judge bench decision in the case of **J.K. Synthetics Vs. CTO, (1994) 4 SCC 276** and held that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. This position of law was approved and reiterated by the constitution bench in the case of **V.V.S. Sugars Vs. Govt. of A.P. & Ors., (1999) 4 SCC 192**.

J.8. A similar question relating to liability of the plant, machinery etc. to confiscation and liability of the assessee to penalty under Rule 9(2) and Rule 173Q of the Central Excise Rules, 1944, for non-payment of the additional duty in terms of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, by taking recourse to the provisions of the Central Excise Rules, 1944, came up for consideration before the Hon'ble High Court of Delhi in the case of **Pioneer Silk Mills Vs. UOI – 1995 (80) ELT 507 (Delhi)**. The Revenue sought to invoke the provisions of the Central Excise Rules, 1944, relying on the provisions of Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, which read as under:

“(3) The provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1).”

J.9. The provisions of Section 3(3) above, are somewhat similarly worded as the provisions of Section 3(6) of the CTA. The claim of the petitioners in that case was that under Section 3 of the Additional Duties Act, only those provisions of the Central Excises Act and Rules made thereunder, which pertain to the levy and collection of the duties of excise under the Central Excise Act have been borrowed and therefore, no penalty can be imposed. Relying inter alia, on the order in **In re: Khemka & Co. (Agencies) – 1995 (76) ELT 235 (GOI)**, the Hon'ble High Court of Delhi upheld the contention that there was no provision in the Additional Duties Act which created a charge in the nature of penalty and that the term “levy and collection” in Section 3(3) of the Additional Duties Act has a restricted meaning in view of the use of the words “including those relating to refund and exemptions from duty”, otherwise these words were rather unnecessary. The Hon'ble High Court also rejected the contention of the Revenue that since Chapter II of the Central Excises Act deals with levy and collection of duty, and this Chapter also contains provisions for offences and penalties, all sections under that Chapter would be applicable. This judgment of the Hon'ble High Court of Delhi was approved by the Hon'ble Supreme Court in **2002 (145) ELT A74 (SC)**.

J.10. Reliance is also placed on the case of **Bajaj Health & Nutrition Vs. CC – 2004 (166) ELT 189**, wherein the Hon'ble Tribunal, set aside the interest and penalty on evasion of anti-dumping duties on the reasoning that the provisions of Customs Act relating to non-levy, short-levy, and refunds were borrowed only for the purpose of chargeability to anti-dumping duty under Sec. 9A(8) of

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the CTA and the provisions of the Customs Act relating to confiscation, interest and penalty were not borrowed.

J.11. Even in the case of **Tonira Pharma Ltd. vs. CC – 2009 (237) ELT 65 (Tribunal)** the Hon’ble Tribunal held as under:

“16. In the light of the above, we set aside the imposition of penalty for evasion of anti-dumping duty, CVD and SAD. The same reasoning applies to levy of interest – although the applicants did not contest Commissioner’s direction for recovery of interest – the error in upholding the levy of interest is required to be rectified, as it is contrary to the provisions of the statute and finding rendered contrary to statutory provisions amounts to an error apparent from the record, in the light of the decision of the Tribunal in *Super Pack v. CCE, Raipur* [(2004 (175) E.L.T. 712)], relying upon the Apex Court judgment in *M.K. Venkatachalam, Income Tax Officer & another v. Bombay Dyeing & Mfg. Co. Ltd.* [1958 (34) ITR 143 (S.C)] and *Karamchand Premchand P. Ltd. v. Commissioner of Income Tax* [(1993 (200) ITR 268 (SC)] and the Larger Bench of the Tribunal in *Hindustan Lever Ltd v. CCE, Mumbai* [2006 (202) E.L.T. 177 (T)] and in *MRF Ltd. v. CCE, Goa* [2007 – TIOL-1254 and we accordingly set aside the levy of interest. We also set aside the interest levied and penalty imposed for non-payment of surcharge of customs leviable under Sec. 90 of the Finance Act, 2000 since Section 90(4) did not borrow the provisions of the Customs Act, 1962 relating to the charging of interest or imposition of penalty.”

J.12. On a similar issue, the Hon’ble Tribunal in **Siddeshwar Textile Mills Vs. Commissioner – 2009 (248) ELT 290 (Tribunal)** has followed the case of **Tonira Pharma (supra)**.

J.13. It is therefore submitted that when there is no charge for recovery of interest and imposition of penalty, the same cannot be imposed/recovered from the Noticees in the absence of machinery provisions for assessment and collection of interest.

J.14. Thus, the duty demand along with interest as proposed to be recovered under the SCN is liable to be dropped.

K. THE SUBJECT GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(m) OF THE CUSTOMS ACT.

K.1. The SCN proposes to hold the subject goods liable for confiscation under Section 111(m) of the Customs Act. Relevant portion of the Section reads as under:

“**Section 111. Confiscation of improperly imported goods, etc. –**

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

...

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

K.2. The Noticees submit that confiscation provisions under Sections 111 of the Customs Act can be pressed into service only in cases where the assessee has acted with a *mala fide* intention, and it is

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proved beyond doubt that there was *mens rea* on part of the assessee. *Bona fide* conduct on part of the assessee does not entail the goods liable for confiscation. Reliance is placed on the following cases:

- a. **Northern Plastic Vs. CCE – 1998 (101) ELT 549 (SC) at paras 19, 20;**
- b. **Allseas Marine Contractors S.A. Vs. CC – 2011 (272) ELT 619 (Tri.-Del.) at paras 7, 8; and**
- c. **Sutures India Vs. CC – 2009 (245) ELT 596 (Tri.-Bang) at Para 10.5; Affirmed by Hon'ble Supreme Court in 2010 (255) ELT A85 (SC).**

K.3. Further reliance is placed on the judgment of the Hon'ble CESTAT in **Kirti Sales Corpn. Vs. CC – 2008 (232) ELT 151 (Tri.-Del.)**. Relevant portion of the judgment is extracted below:

“6. We are inclined to accept the case of the Revenue that the goods imported were texturized fabric. However, whether the declaration in the Bill of Entry amounts to ‘misdeclaration’ so as to attract the provisions of Section 111(m) of the Customs Act in a given case depend upon the facts of the case. To constitute ‘misdeclaration’, the declaration must be intentional. Misdeclaration cannot be understood as same as wrong declaration, of course, made bona fide, the possibility of which cannot be ruled out altogether. The question, therefore, is whether the appellant had intentionally and deliberately mis-declared the goods as non-texturized fabric rather than texturized fabric. On this point, we are inclined to accept the case of the appellant that the declaration had been made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part so as to attract the mischief of Section 111(m) of the Customs Act.”

...

(Emphasis Supplied)

K.4. In **Ace Kargoways Vs. CC – 2003(158) ELT 505 at para 9**, it was held by the Tribunal that claiming benefit of notification by itself is not an offence calling for confiscation of the goods and imposing fine and penalty and that the assessee-importer had no intent to circumvent the law. The relevant portion of the abovesaid judgment is set forth herein below:

“9.The only question that requires consideration is as to whether the goods which did not satisfy the terms of the notification could be confiscated and penalty be imposed. For imposition of penalty, it has to be established by the Department that the appellant had committed an act with an intention to evade duty. The Revenue has not shown that the importers had committed such an act and there is nothing in the statements to indicate that there was a collusion, fraud, misrepresentation with a view to evade customs duty. They had declared the entire item to be as scrap and claimed the benefit of notification.The contract documents and all documents disclosed the item to be scrap which has been correctly described in the bill of entry. Therefore claiming the benefit of the notification per se by itself is no mis-declaration in the present set of facts and circumstances and as held by the Apex Court in the case of *Densons Pultretaknik v. CCE* as reported in 2003 (155) E.L.T. 211 (SC).”

...(Emphasis Supplied)

K.5. Furthermore, in the case of **CC Vs. Maruti Udyog – 2002 (141) ELT 392**, the Hon'ble Tribunal observed that where the assessee-importer had given all the details of the goods, he cannot be held guilty of mis-declaration and consequently. Therefore, the Hon'ble Tribunal set aside the confiscation and penalty imposed on the assessee. Relevant portion of the above said decision is as follows:

“4. As regards the appeal by the Revenue, we find no merit. The facts in the present case clearly show that there is no mis-declaration on the part of the appellant. **Once all the required**

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details of the goods imported are given the party cannot be held guilty of mis-declaration only for the reason they put forward an untenable claim for exemption from duty. The Commissioner (Appeals) has come to the correct conclusion on this point and it was totally unnecessary on the part of the Revenue to have filed this appeal.”
... (Emphasis supplied)

K.6. As established in the preceding paragraphs, the SCN has not established any *mala fides* on part of the Noticees. The SCN does not dispute any description or declaration made by the Noticees. Therefore, the subject goods are not liable for confiscation.

K.7. Without prejudice to the above, it is respectfully submitted that Section 111 of the Customs Act provides for liability for confiscation of the improperly imported goods. It is therefore, respectfully submitted that only imported goods can be confiscated under Section 111 of the Customs Act. Section 2(25) of the Customs Act, defines the imported goods as under:

“imported goods” means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption”

K.8. In the case of **Bussa Overseas & Properties Vs. C.L. Mahar, ACC —2004 (163) ELT 304 (Bom.)**, the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act, and consequently are not liable to confiscation under Section 111 of the Customs Act. The Hon'ble High Court held as under:

“7. ... The learned counsel urged that once the goods are cleared for home consumption, then the goods covered by the consignments cease to be imported goods in accordance with the definition of expression 'imported goods' under Section 2 of the Act and consequently such goods are not liable for confiscation. There is considerable merit in the submission of the learned counsel. **The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled...**”

... (Emphasis

Supplied)

K.9. Therefore, the imported goods, which have already been cleared for home consumption, are not liable to confiscation under the provisions of Section 111 of the Customs Act and the SCN is liable to be dropped.

L. NO PENALTY IS IMPOSABLE UNDER SECTION 112(a) OF THE CUSTOMS ACT IN THE PRESENT CASE.

L.1. The Noticees submit that in the present case, imposition of penalty in terms of Section 112(a) of the Customs Act is untenable. For ease of reference, relevant portion of this Section is extracted below:

“**SECTION 112 - Penalty for improper importation of goods, etc.** – Any person, 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

...

shall be liable -,

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;” ... (Emphasis supplied)

L.2. As per the provisions of Section 112(a) of the Customs Act, penalty is imposable on any person 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. However, in the present case, none of the act or omission by the Noticees rendered the imported goods liable for confiscation. Detailed submission in this regard has already been made in the foregoing paragraphs.

L.3. Section 112 (a) is invokable if any of the following two conditions are satisfied. Firstly, a person does or omits to do any act which render the goods liable for confiscation or secondly, if a person abets the doing or omission of such an act.

L.4. The Noticees further submit that the penalty under this sub-Section is linked to the liability of the goods to confiscation. The Noticees have neither done nor omitted to do any act which act, or omission has rendered the goods liable to confiscation nor has the Noticees abetted the doing or omissions of such an act. In fact, for the reasons explained in the foregoing paragraphs, the goods are not liable for confiscation. Hence, application of Section 112 is itself legally unsustainable. Therefore, no penalty under this sub-Section ought to be imposed on the Noticees. Reliance in support of this proposition is placed on the following:

a. **Sona Casting Vs. CC – 2006 (205) ELT 249 (Tri.-Del.) para 4; and**

b. **Eastern Silk Industries Vs. CC – 2007 (207) ELT 714 (Tri.- Kol) para 3.5.**

L.5. It is submitted that *mens rea* is a necessary requirement for imposition of penalty under Section 112, vide the decision in **Sij Electronics Comp Tech Vs. CC – 2001 (129) ELT 528 (Tri)**. It is submitted that in the issue at hand, the element of *mens rea* is absent as the Noticees have declared the correct details of the subject goods in the subject Bill(s) of Entry.

L.6. The Noticees submit that their conduct was totally *bona fide* and in the absence of any *mala fide* on their part, no penalty is imposable. Further, the Noticees submit that there has been no breach of any provisions of the Customs Act. Without prejudice, the Noticees place reliance on the case of **Hindustan Steel Ltd. Vs. State of Orissa – 1978 (2) ELT (J159) (SC)**, where the Hon’ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions, or where the breach flows from the bonafide belief. Following the above judgment, in the case of **Cement Marketing Co. of India Vs. Assistant Commissioner of Sales Tax – 1980 (6) ELT 295 (SC)**, the Hon’ble Supreme Court held that penalty cannot be imposed when the assessee raises a contention of *bona fide* belief. The conduct of the Noticees in the present case was totally *bona fide* and therefore penalty cannot be imposed on the Noticees.

L.7. As submitted in the preceding paragraphs, goods are not liable for confiscation. Further, there is no duty demand in the present case as the entire duty, albeit provisionally, has already been

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discharged by the Noticees. For the same reasons, no penalty under Section 112(a) is sustainable. Refer to the decisions of the Hon'ble Supreme Court in **CCE Vs. H.M.M. Limited – 1995 (76) ELT 497 (SC)** and **CCE Vs. Balakrishna Industries – 2006 (201) ELT 325 (SC)**, wherein the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.

M. NO PENALTY IS IMPOSABLE UNDER SECTION 114A OF THE CUSTOMS ACT IN THE PRESENT CASE.

M.1. The Noticees submit that penalty cannot be imposed under Section 114A when no *mala fides* on the part of the assessee has been established. In the present case, the Noticees have declared all particulars fully and truly in the subject Bill(s) of Entry. The Noticees are of the *bona fide* belief that the subject goods merit classification under Heading 73.26 of the Customs Tariff.

M.2. The Noticees submit that it is now a well settled law that the burden of proving a classification is on the department, as also explained *supra* in detail. The Noticees have made true and full description of the subject goods. Consequently, at most, the present dispute can be one of interpretation of the Customs Tariff entries and the Noticees have every right to believe that the classification sought by it is correct.

M.3. For ease of reference, Section 114A of the Customs Act has been reproduced herein below:
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.”
... (Emphasis Supplied)

M.4. The Noticees submit that penalty under Section 114A of the Customs Act is imposable where any duty of customs has not been levied or paid or has been short levied or short paid by reason of collusion or any wilful mis-statement or suppression of facts. It is settled law that in order to impose penalty under Section 114A, an assessee should have engaged in collusion or wilful misstatement or suppression of facts with an intent to evade payment of duty.

M.5. The Noticees in this respect submit that, it is clear that the demand is not sustainable in the present case and that there has been no suppression or mis-statement of facts as the Notice is under *bona fide* belief that the goods were rightly classifiable under Heading 73.26. Detailed submissions in this regard have been made *supra*.

M.6. In sum, the ingredients of Section 114A of the Customs Act are not satisfied in the instant case.

M.7. The Hon'ble Supreme Court in **Anand Nishikawa Vs. CCE – (2005) 7 SCC 749** has held that mere failure to declare, without any positive act from the side of the assessee, would not amount to wilful suppression of facts.

M.8. Similarly, the Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC)** has held as under:

“4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an

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exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding, it is not different than what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact, it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.**”

... (Emphasis supplied)

M.9. The Hon’ble Supreme Court in the case of **Aban Lloyd Offshore Vs. CC – 2006 (200) ELT 370 (SC)** has held that the word ‘wilful’ implies that there has to be an intention to evade duty on part of the assessee.

M.10. Based upon the above referred judgments, it can be said that to invoke penalty provisions under Section 114A of the Act, it has to be proved that there was a conscious or intentional act of collusion, wilful mis-statement, or suppression of fact, on the part of the importer. The intention or deliberate attempt, on the part of importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of Section 114A of the Customs Act.

M.11. The Noticees most humbly submit that the present case does not involve any wilful mis-statement or suppression of facts from the Department. The subject goods were correctly declared by the Noticees in the subject Bill(s) of Entry. As such, it is not a case of wilful mis-statement or suppression of facts. Hence, on the same grounds, penalty under Section 114A is also not imposable. Reliance is placed on the Hon’ble Supreme Court in **Tamil Nadu Housing Board Vs. CCE – 1994 (74) ELT 9 (SC)**, and **CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)**. The Noticees also rely on the decision of the Hon'ble Supreme Court in the case of **Hindustan Steel Vs. The State of Orissa reported in AIR 1970 (SC) 253**.

M.12. The Noticees rely on the following decisions wherein it was held that penal action is not permissible in absence of *mens rea*:

- a. **CC Vs. Kamal Kapoor – 2007 (216) ELT 21 (P & H) paras 13, 14;**
- b. **CC Vs. Surbhit Impex Pvt. Ltd. – 2012 (286) ELT 500 (Bom.) para 11-13;**
- c. **Ghanshyam Metal Udyog Vs. CC – 2008 (229) ELT 631 (Tri. -Ahm) para 2.**

M.13. As has been demonstrated by the Noticees in their submissions above, the extended period of limitation cannot be invoked in the present case in the absence of any wilful mis-statement or suppression of facts. Hence, by virtue of the same, penalty along with interest under Section 114A has been wrongly imposed on the Noticees.

N. NO PENALTY IS IMPOSABLE UNDER SECTION 114AA IN THE PRESENT CASE.

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N.1. For ease of reference, Section 114AA of the Customs Act has been reproduced herein below:

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

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

... (Emphasis Supplied)

N.2. From a perusal of the aforesaid provision, it is clear that penalty under Section 114AA of the Customs Act, 1962 can be imposed in cases where person knowingly or intentionally makes, signs or uses or causes or made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. 1962.

N.3. The Noticees submit that penalty under Section 114AA of the Customs Act, 1962 is not sustainable as the Noticees have not made any declaration, statement or document which is false or incorrect in any material particular in classifying the imported goods. The Noticees had sufficient grounds to believe that they have rightly classified the goods. The Noticees themselves possess limited knowledge about the subject goods. Further, all the documents provided by the supplier including the Certificate of Origin, described the goods as ‘*Aluminum Cladded Circles - Triply*’ and classified the said goods under Tariff Item 7326 90 70. Hence, the Noticees classified the goods under Tariff Item 7326 90 70 under a bona fide belief that the same is correct.

N.4. Without prejudice, it is submitted that penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument, reliance is placed on the **27th Report of the Standing Committee of Finance** wherein insertion of Section 114AA was discussed at paragraph 62. For the ease of perusal, the entire discussion is reproduced below:

“Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows:

After section 114A of the Act, the following section shall be inserted, namely:—

“114AA. Penalty for use of false and incorrect material.—if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”

63. The information furnished by the Ministry states as follows on the proposed provision:

“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.”

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of

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summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under:

“The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case.”

65. The Ministry also informed as under:

“The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes.”

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offence involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.”

... (Emphasis Supplied)

N.5. The aforesaid extract from the report of the standing committee explains the purpose for which section 114AA has been inserted in the Customs Act, 1962. The purpose is to punish those people who avail export benefits without exporting anything. Such cases involve serious criminal intent, and it cannot be equated with the cases of duty evasion.

N.6. Relying on the above standing committee report, the Hon'ble CESTAT has also held that penalty under Section 114AA of the Customs Act, 1962 can only be imposed in cases of fraudulent exports where no goods are exported and it's only a paper trail transaction. The present case is not even of export, let alone fraudulent export. Therefore, penalty cannot be imposed under Section 114AA. Reliance is placed on the following decisions in this regard :

- a. **CC Vs. Sri Krishna Sounds and Lightings - 2018 (7) TMI 867- CESTAT Chennai; and**
- b. **Access World Wide Cargo Vs. CC - 2022 (379) ELT 120**

N.7. The Noticees submit that mischief rule of interpretation is applicable in the present case. Under mischief rule of interpretation, intention of legislature is to be seen by way of finding out the mischief which the legislature sought to remove.

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N.8. The perusal of the aforesaid extract makes it clear that Section 114AA was inserted to penalize in circumstances where export benefits are availed without exporting any goods. According to the legislature, Section 114AA of the Customs Act, 1962 provided penalty for improper exportation of goods and it was not covering situations of import of goods. Therefore, penalty under section 114AA is imposable only in those circumstances where export benefits are availed without exporting any goods.

N.9. Even if, by any stretch of imagination, Section 114AA is held to cover imports as well, this Section would only apply to those grave and fraudulent misdemeanors where deliberate offences are committed by the importers with a view to evade customs duty. In the present case, the Noticees were bona fide and all proper declarations were made by them as per the documents (including test certificates, commercial invoices, packing lists, certificate of origin) provided to them by the foreign suppliers. The Noticees were not involved in any manipulation or fraudulent activities nor have raised any false declarations or made any willful mis-statement. Therefore, Section 114AA of the Customs Act, 1962, cannot be invoked.

N.10. Reliance is also placed on the case of **Singh World Vs. CC – 2017 (353) ELT 243 (Tri.-Del.)**, wherein the Hon'ble Tribunal held that penalty under Section 114AA can be waived in the case where bona fide belief is available and no mala fide intention was there for committing the fraud.

N.11. At paragraph 8.2 of the SCN, the customs department proposes imposition of penalty on the Noticees under Section 114AA of the Customs Act, 1962 on the ground that the Noticees deliberately and knowingly mis-classified and mis-declared the subject goods to evade CVD in terms of Sr. No. 1 of the Notification. In this regard, the Noticees submit that all the declarations were made on the bona fide belief that the classification adopted by the foreign supplier was correct. Even otherwise, the subject goods are articles made by cladding sheets of aluminum and stainless steel.

N.12. In view of the above submissions, no penalty is imposable on the Noticees under Section 114AA of the Customs Act, 1962 and on this ground, the present SCN is liable to be dropped.

O. THE PRESENT SCN IS INVALID IN ABSENCE OF AN APPEAL AGAINST THE OUT OF CHARGE ORDER / BILL(S) OF ENTRY.

O.1. It is submitted that the subject goods imported by the Noticees were cleared for home consumption on the strength of duly assessed Bill(s) of Entry and 'Out of Charge' orders issued by the proper officer under the authority of the provisions of Section 17 and Section 47 of the Customs Act, 1962. There is no dispute on this factual position. It is submitted that these orders were passed on the satisfaction of the proper officer that the said goods have been properly assessed before clearance for home consumption. In fact, the goods were properly verified and examined by the proper officer before granting Out of Charge.

O.2. It is further submitted that the aforesaid orders (Out of Charge), being quasi-judicial orders, can only be set aside by an order of the competent appellate authority in appellate proceedings. It is submitted that quasi-judicial orders cannot be sought to be set aside by mere issuance of a show cause notice, which has proposed to declare the goods to be liable for confiscation.

O.3. This position has been affirmed in the case of **CCE, Kanpur Vs. Flock (India) – 2000 (120) ELT 285 (SC)**. The Hon'ble Supreme Court maintained that if an order appealable under the Act is not challenged, then the order is not liable to be questioned and the matter is not to be reopened in a separate proceeding. In this case, the Hon'ble Court observed as under:

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“10. Coming to the question that is raised, there is little scope for doubt that in a case where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order. If this position is accepted then the provisions for adjudication in the Act and the Rules, the provision for appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant.”

... (Emphasis Supplied)

O.4. The above judgment was relied upon by the Hon’ble Supreme Court in respect of a refund claim arising under the provisions of the Customs Act in the case of **Priya Blue Industries Vs. CC(Preventive) – 2004 (172) ELT 145 (SC)** wherein the finality of the assessment order was confirmed. It is submitted that the ratio of these judgments of the Apex Court are equally applicable to an ‘Out of Charge’ order passed under Section 47 of the Customs Act.

O.5. The Hon’ble Supreme court has once again affirmed this position in the case of **ITC Vs. CCE - 2019-VIL-32-SC-CU**, wherein the court has specifically held that the order of self-assessment is also an assessment order appealable by any person, revenue as well as assessee. Relevant portion of the judgement is extracted below for ready reference:

“43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment...”

... (Emphasis Supplied)

O.6. Also, in the case of **Vitesse Export Import Vs. CC (EP), Mumbai reported at 2008 (224) ELT 241 (Tri. -Mumbai)**, it was held that once the shipping bills have been assessed, they attain finality and cannot be re-assessed on the grounds of mis-declaration. Relevant portion of the judgment has been reproduced below:

“In the present case before us, where it is a case of export, the assessment have become final, as the shipping bills were assessed, FOB value and PMV was reduced by the assessing officer. If this assessment is not challenged by the Revenue by way of filing an appeal, it attained finality and by invoking the charge of mis-declaration, the Revenue cannot ask for re-assessment of the consignment. Respectfully following the decision of the Division Bench in the case of Commissioner of Customs (Imports), Mumbai v. Lord Shiva Overseas (supra), we hold that the confiscation of the consignment by the authorities is not correct and the same is set aside. Since confiscation is set aside, the consequent penalties imposed on the appellant are also liable to be set aside and we do so.”

... (Emphasis Supplied)

O.7. Further, the Hon’ble Ahmedabad Tribunal held in the case of **Ashok Khetrapal Vs. CC, Jamnagar - 2014 (304) ELT 408 (Tri.-Ahmedabad)** that once the bills of entry have been assessed, they gain finality and assessment cannot subsequently be reopened by the Revenue by way of demand under Section 28 of the Customs Act by invoking extended period.

O.8. Furthermore, in order to substantiate that an out of charge order passed under Section 47 of the Customs Act, 1962 amounts to quasi-judicial order, the case of **CC, Cochin Vs. Arvind Export - 2001 (130) ELT 54 (Tri. -LB)** may be taken into consideration, wherein a Larger Bench (of 5 Members) of the Hon’ble Tribunal held as under:

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“we find that the scope of Section 47 of Customs Act is interpreted by the Division Bench of Hon’ble Madras High Court in the case of Best & Crompton Engineering v. C.C., Madras reported in 1997 (93) E.L.T. 21 (Mad.) that **the order passed under Section 47 of the Act permitting clearance brings about certain inevitable consequences in law with certain mutual obligations and rights both for the revenue and for the importer. In passing an order under Section 47 of the Act, the proper officer is obliged to verify whether the goods said to be imported correspond to the description in the licence and whether the conditions imposed in the licence and reported to be complied with by the importer, and if it is found that the above aspected are in the affirmity, the proper officer is bound to allow the goods to be cleared on payment of duty.** In a case where the proper officer found that the import was in contravention of the provisions of the Act, the proper officer can confiscate the goods and allow the clearance on payment of fine and duty. **The exercise of power under Section 47 of the Act either way has the consequences of conferring or denying the rights to an importer and correspondingly certain rights or obligations vest with the revenue and exercise of power with such consequences has necessarily to be viewed as a quasi-judicial exercise of power and in the absence of any specific provision or power conferred upon such officer to review or alter or cancel the said order, such order cannot be said to be an administrative order.**”

... (Emphasis Supplied)

O.9. Similarly, in the case of **Neelkanth Polymers Vs. CC - 2009 (90) RLT 188 (Tri. -Ahmd.)**, in the context of demand under Section 28 of the Customs Act for recovery of additional duty of Customs not levied, Hon’ble Tribunal held that the demand of duty is not sustainable when the bill of entry is not challenged.

O.10. It is submitted that ratio of the aforesaid judgments is equally applicable to the case of the Noticees. In the present case also, the customs department has sought to propose a demand without challenging the Bill(s) of Entry and the resultant Out of Charge orders. In absence of any appeal against the said Out of Charge orders / Bill(s) of Entry which have been assessed by proper officers, it must be understood that the assessment has gained finality, which cannot be challenged or negated by issuance of the SCN, this is so especially when there is no misdeclaration or mis-representation at the end of the Noticees. Hence, on this ground alone, the SCN is liable to be dropped.

P. The Noticees also crave leave to add, amend or modify any of the grounds mentioned in this reply before passing of the order. In view of the foregoing submissions, they have prayed that the Ld. Commissioner of Customs, may be pleased to:

- (a) drop the proceedings initiated vide the Show Cause Notice No.1331/2024-25/CC/Gr.IV/NS-III/CAC/JNCH dated 29.10.2024 with consequential relief to the Noticees;
- (b) grant personal hearing to the Noticees before passing any order in this case; and
- (c) any other suitable order as deemed fit may be passed so as to grant complete relief to the Noticees in the interest of justice.

3 RECORDS OF PERSONAL HEARING

A personal hearing in this matter has been granted to the Noticees for which Adv Apoorva Parihar appeared on 09.07.2025 and had submitted the following:

- (a) Demand in respect of the 2 Bills) of Entry filed on 01.11.2021 and 25.11.2021 is illegal and unsustainable as the Notification No. 01/2017-Cus.(CVD) dated 07.09.2017 (as amended vide Notification No. 02/2021-Cus. (CVD) dated 01.02.2021 and Notification No. 5/2021-Cus. (CVD)

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dated 30.09.2021) states that CVD under the Notification shall not be levied for the period commencing from 02.02.2021 till 31.11.2022. Since the 2 Bill(s) of Entry referred above fall within the exempted period starting from 02.02.2021 till 31.11.2022, proposal to levy CVD on the said 2 Bills) of Entry is bad in law and liable to be dropped.

(b) Demand in respect of the Bill of Entry dated 03.02.2022 is incorrect and illegal as the Notification No. 01/2017-Cus. (CVD) dated 07.09.2017 was rescinded vide Notification No. 01/2022-Cus. (CVD) dated 01.02.2022. Therefore, the proposal to levy CVD on Bill of Entry filed on 03.02.2022, i.e., after rescission of the Notification, is incorrect and illegal.

(c) In any case, imposition of CVD is determined by the Product Scope determined in the Final Findings of the DGAD and the Notification issued thereafter. CVD cannot be levied on goods which are excluded from the Product Scope. In the present case, the imported goods i.e.,

'Aluminium Cladded Circles - Triply' are not merely Flat Rolled Products but cladded article obtained subsequently in the form of circles which is the process beyond hot rolling/ cold rolling. Accordingly, these are not covered by the scope of the CVD Notification and demand of CVD is completely bad in law. Reliance is placed on the decisions cited at Serial No. 12 - 13 of the Compilation.]

(d) They relied upon the certificate issued by the chartered engineer to submit that the subject goods are not merely Flat Rolled Products of stainless steel as enumerated within the Notification. These goods are Tri-Ply Aluminium clad circles. They are not merely flat rolled products but involve process more than flat rolling such as cladding and stamping / blanking. Therefore, these goods are more than flat rolled products of stainless steel as defined within the Notification and are not covered by the scope of the Notification.

Accordingly, CVD cannot be demanded. [Refer Annexure-7 to the reply dated 19.03.25.)

Burden of proof lies on the department who wishes to re-classify the subject goods under a different heading. The customs department has failed to discharge the onus in the present case. Reliance is placed on the decisions cited at Serial No. 14 - 15 of the Compilation.]

(1) Notification No. 01/2017-Cus., (CVD) dated 07.09.2017 was temporary secondary/delegated legislation. Hence, this Notification does not exist in the eyes of law after its expiry/repeal, except for the things past & closed. Reliance is placed on the decisions cited at Serial No. 16 - 20 of the Compilation.)

(g) Claim to a particular classification is a matter of bonafide belief of the importer and legal interpretation. There is no allegation of misstatement or suppression by the Noticees as far as description or any other material particular is concerned. In fact, the present proceeding is initiated by audit section basis the description given in the bills of entry. In such cases, there cannot be any suppression.

(h) It is a settled legal position that in case of any delay in the issuance of a show cause notice by the department; after having knowledge about the alleged transactions, extended period of limitation cannot be invoked. In fact, customs department had raised query in respect of Bills) of entry no. 2110581 dated 25.12.2020, 9648694 dated 21.11.2020, and dated 9972884 dated 15.12.2020 in dispute and the same were cleared after being satisfied by the Noticees' response. This shows that the department was always aware of the declarations made by the Noticees and also agreed with them. Such a situation is not more than a change of opinion within different set of custom officials. Therefore, invocation of extended period is completely bad in law. Reliance is placed on the decisions cited at Serial No. 21 - 24 of the Compilation.]

(i) Section 3(12) of the Customs Tariff Act does not borrow interest and penalty provision from the Customs Act. In absence of any machinery provision, interest cannot be recovered, and penalty cannot be imposed on the Noticees in respect of the IGST demand. Reliance is placed on the decisions cited at Serial No. 25 - 26 of the Compilation.]

i) Without prejudice, no redemption fine can be imposed under Section 125 of the Customs Act since the imported goods are not available for confiscation. Reliance is placed on the decisions cited at Serial No. 27 - 28 of the Compilation.]

(k) All the submissions in the reply were reiterated.

They had nothing further to add.

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4.1 I have carefully gone through the Show Cause Notice (SCN) and its Relied Upon Documents (RUDs), Defence submissions, material on record and facts of the case. Before going into the merits of the case, I would like to discuss whether the case has reached finality for adjudication.

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) the Customs Act, 1962 and in terms of the principle of natural justice, a **Personal Hearing was attended by the legal representative of the noticee on 09.07.2025**. The Legal Representatives of Noticee appeared for the hearing and submitted their earlier submissions and they confirmed that nothing more to add to their submissions. 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 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 classification of the imported goods declared as 'Aluminum Cladded Circles-Triply' under the Bills of Entry as mentioned in Annexure -A above under CTH 73269070 should be rejected and the same should not be re-classified under CTH 72199090.
- (ii)As to whether the differential duty amounting **Rs. 87,64,100/- (Rupees Eighty-Seven Lakh Sixty-Four Thousand and One Hundred only)** for Bills of Entry as mentioned in Annexure-A should be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- (iii)As to whether the subject goods valued at **Rs. 4,21,49,129/- (Rupees Four Crore Twenty-One Lakh Forty-Nine Thousand One Hundred and Twenty-Nine)** should not be confiscated under section 111(m) of the Customs Act,1962.
- (iv)As to whether penalty should be imposed on them under Section112(a) and/or 114A and Section 114AA of the Customs Act, 1962.

4.4 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 Noticee's written submission and documents / evidences available on record.

A. Now I take up the first question whether or not the classification of the imported goods declared as 'Aluminum Cladded Circles-Triply' under the Bills of Entry as mentioned in Annexure A above under CTH 73269070 should be rejected and the same should not be re-classified under CTH 72199090.

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

5.1 I observe that **'SS Triply Circles'** are **'Flat-Rolled'** base metal product of Stainless Steel. These are imported in Circle form. Flat-Rolled products are produced from slabs/thin slabs of base metals in rolling mills using flat rolls. In its simplest form, a rolling mill consists of two driven rolls in a mill stand with a screw down. The work piece to be rolled is passed through the rotating rolls to get

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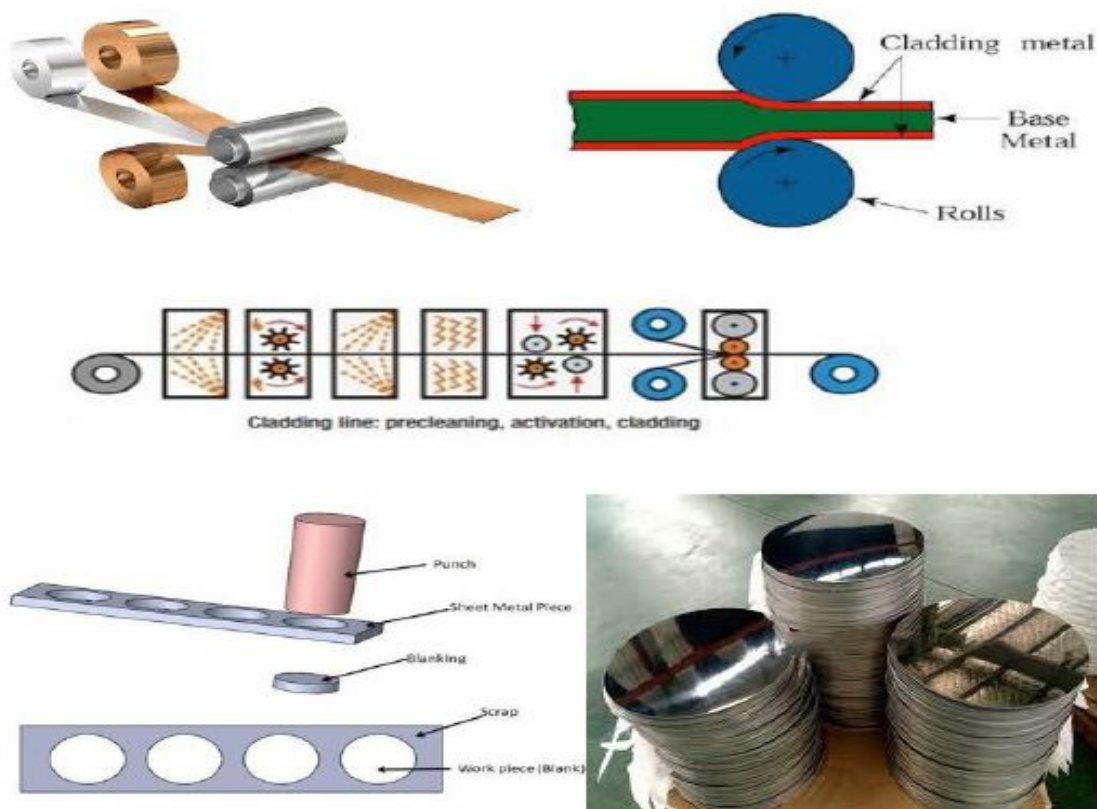
the desired shape. Sometimes even heat may be applied to get the desired product. ‘Triply’ is the name given to this product as ‘aluminium layer’ is sandwiched between two stainless steel layers, through the process of Cladding. Though there are numerous uses of cladded products but in this case, the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

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

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

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

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



5.3. I observe that Chapter 72 and chapter 73 both are covered under Section XV i.e. (BASE METALS AND ARTICLES OF BASE METAL) of Customs Tariff consists of two chapters of Iron and Steel. Chapter 72 covers Iron and Steel and Chapter 73 covers Articles of Iron and Steel. It consists of primary Material, Semi-Finished products and Flat rolled products of Iron and different types of Steel (Non-alloy/Stainless/Other Alloys). Further, I find that goods included in Chapter 73 are sheet piling, tubes, pipes, anchors, sewing needle, kitchen articles of iron or steel etc. All these products have their direct end use and can be used independently without being further worked upon. An article under Chapter 73 has to be a finished product which either can be used independently or to be joined or fixed together to make structures etc.

5.4 I observe that the item ‘SS Triply Circle’ or ‘Aluminium cladded circles 3 Ply SS304 + AL + SS430’ is a composite product of two base metals viz. Stainless Steel and Aluminium and it should be

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classified as product of stainless Steel as Stainless Steel predominates the weight. **I find that it is also an undisputed fact that the stainless steel is predominating by the weight in the imported item.** As per Note 7 to Chapter XV of Customs Tariff Act, 1975,

“7. Classification of composite articles:

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

For this purpose:

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

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

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

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

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

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

iii. In this way the product, which due to conversion of flat rolled products does not result in to ‘articles of steel’, will merit classification under CTH 721990. Since, the cladding does not result into conversion of clad metals into articles of steel, the clad metal/steel i.e. TriPly circles merit classification under CTH 73269070. All such products of stainless steel, which are the results of any

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such process like cladding which do not transform the base metals/ clad metals or any other metal which does not convert into an article of steel, will qualify under the mischief of CTH 7219.90.

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

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

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

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

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

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

5.7 I observe that Rule 1 of the GIR provides that the goods under consideration should be classified in accordance with the terms of the heading or relevant Section or Chapter Notes. However, on applying the provisions of rule of 1 GIR, I find that good merit classification under CTH 7219.90 due to the following reasons:-

5.7.1 As per rule 1 of GIR *"for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes"*. In the scheme of chapter 72, Custom Tariff Heading 7219.90 is for further worked flat rolled Stainless-steel products like cladded products. It is because entire CTH 7219 is divided into two parts, one for **"not further worked flat rolled stainless steel products"** and **"further worked flat rolled stainless steel products"**. Whereas CTHs 7219.11, 7219.14, 7219.31 are for **"not further worked flat rolled stainless steel products"**, CTH 7219.90 is for others. It clearly shows that CTH 7219.90 is for **"further worked flat rolled stainless steel products"**. In this context, cladded flat rolled stainless steel has been provided with a very clear and unambiguous Custom Tariff Heading in terms of CTH 7219.90. Therefore, the same merits classification under CTH 7219.90 in terms of general rules of interpretation. Further, cladding is a process where a layer of one material is bonded to other by welding, rolling, laser base techniques.

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

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

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

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

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

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

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

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

(C) V.R. FORGINGS (P) LTD. Versus COLLECTOR OF CENTRAL EXCISE, MEERUT- 1995 (80) E.L.T. 562 (Tribunal)

"4. We have carefully considered the submissions made by both the sides. On prima facie view of the issue under dispute, we are inclined prima facie to agree with the submissions made by the Learned DR that the goods in this case would appear to be in a semi-finished

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stage and in such a condition their classification under Chapter 72 would prima facie appear to be more appropriate.”

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

“LAW AND ANALYSIS:

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

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

HOLDING:

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

5.11 The noticee has contended the subject goods are not flat rolled products of stainless steel and are down streamed goods and are clad metal sheet of stainless steel and aluminum therefore are correctly classifiable under tariff item 7326 90 70 and fall outside the scope of the CVD notification.

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

- In this regard I reiterate my findings at para 5 to 5.8 wherein it has been established that the imported goods should be classified under CTH 7219.
- The Subject **CVD notification no. 01/2017 – Customs (CVD) dated 07.09.2017** as amended, clearly imposes CVD on all the products under CTH 7219/7220 at four digit level.
- The Department’s case relies on the contention, that the Imported goods falls under CTH 7219 instead of CTH 7326. Therefore, the levy of CVD in the instant case entirely depends upon the basic question, as to whether the subject imported goods are covered under CTH 7219 or CTH 7326. As per the detailed findings at para 5 to 5.8 above, it has been clearly established that imported goods falls squarely within the scope of CTH 7219.90.
- The ‘SS Triply Circle’ merits classification as a product of Stainless Steel and it is also an admitted fact that the item has to be processed before using in manufacturing of cooking wares, hence, I find that the item is not having the essential shape of finished articles, they have not assumed the character of articles of chapter 73 or of other headings, i.e., heading 7326 and the item ‘SS Triply circles’, neither have any independent function or use nor they can be used by joining or fixing together, therefore, I am of the opinion that it doesn’t merit to be classified in chapter 73 for the reasons. Further, it is a flat-rolled product, which is to be further worked upon to get a desired article. Therefore, it fulfils the criteria to be classified under Chapter 72

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only and the possibility of its classification under chapter 73 stands ruled out, it merits classification under Chapter 72.

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

5.12 The noticee has further contended that the burden of proof lies on the department who wishes to re-classify the subject goods under a different heading. Customs department has failed to discharge the onus. However I find no merit in the contention of the noticee because of the following reasons :-

- There is no dispute in the instant case that subject Bills of Entry are Self Assessed Bills without any re-assessment by the department. Further, this is a case of classification dispute wherein facts of the case are not in dispute and the classification depends on the basis of description of the goods, heading and sub heading as provided in the Customs Tariff Act and General Rules of Interpretation. Therefore, the matter does not involve any documentary or oral evidence but the application of the law enshrined in the Customs Tariff on the facts of the case. The question involved in the instant case is a question of law and not a question of fact wherein one has to discharge any burden of proof.
- In any case, after the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including Classification and calculation of duty, but in the instant case the subject goods have been mis-classified and CVD amount has not been paid correctly. Relevant legal provisions for recovery of duty that appears to be evaded are reproduced here for the sake of brevity which is applicable in the instant case:
- I find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by M/S Udaya Udhyog In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importers while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the description, country of origin and assessable value while being presented to the Customs.
- **I place my reliance on the following case law:** The department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue.” Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon’ble CESTAT, South Zonal Bench, Chennai has held as under: -
- *“Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof*

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remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means.

5.13 The Noticee has contended that the Customs countervailing duty imposed under notification no. 01/2017-Cus (CVD) dated 07.09.2017 has been rescinded with issue of Customs Notification no. 01/2022 (CVD) dated 01.02.2022. Therefore, the same has no effect for period from 07.09.2017 to 01.02.2022 and department can not change any CVD for the same after the date of rescincy of this notification. The Noticee has relied on the Hon'ble Supreme Court decision in case of Kolhapur Canesugar Works Ltd. Vs. UOI – 2000 (119) ELT 257 (SC). However, there is no merit in the contention of the noticee because of following reasons :-

- i. The notification no. 01/2022 (CVD) dated 01.02.2022 contains a saving clause as the said notification has been rescinded '**except as respect things done or omitted to be done before such rescission**'. Since, the charge of non-payment CVD on part of the noticee would constitute a clear omission on their part, the demand of CVD in the instant case can not be dropped merely on account of rescinding of CVD imposing notification because it has been rescinded with the proper saving clause.
- ii. Otherwise also as per the scheme of CVD, section 9(6) of the Customs Tariff act, 1985 clearly provides for applicability of any CVD notification during its currency or continuity and its effect ceases only from the date of its rescinding. Therefore, during the subject period from 07.09.2017 to 01.02.2022, the demand of applicable CVD has to be raised.
- iii. The facts of Kolhapur Canesugar Works Ltd. Vs. UOI – 2000 (119) ELT 257 (SC) are entirely different because in that case Rule 10 and Rule 10A of the Central Excise Act, 1994 were omitted. In that case, said rules were held different from the Central Act and held to be covered under section 3(51) of General Clauses Act. However, in the present case of CVD, notification No. 01/2017 dated 07.09.2017 has been issued in terms of the provisions of Section 9 of the Customs Tariff Act, 1985 which is a Central Act and the said notification has to be tabled before the Parliament as per section 9(8) of the Customs Tariff Act, 1985. Therefore, the provisions of Section 6 of the General Clause Act, 1897 are also available in the instant case as Rules have to be differentiated from a CVD notification. In any case, the notification no. 01/2022 itself contains suitable saving clause.

5.14 I further observe that noticee has placed huge relevance on the Rule 1 of the General rules of Interpretation claiming that CTH 7326.90 for 'articles of clad metals' is most appropriate as per the said heading of CTH 73269070 being 'articles of clad metals' Triply steel is classifiable under CTH 73269070 in terms of Rule 1 of General Rules of Interpretation. However, I find no merit in the said line of argument because of the following reasons :-

- i. It is evident by the wording of the heading of CTH 73269070 that there is difference between 'articles' and 'clad metals'. Since this heading is for articles of steel, the same does not qualify for only any 'article' or only any 'clad metal'. It may be seen that an article may be made of many materials or metals. However, all such articles would not merit classification under CTH 73269070 if they are not 'made' of 'clad metal'. Similarly, there may be many instances of 'clad metals' any different variations of clad steel like clad mild steel or clad stainless steel would not qualify under CTH 73269070 because they are only clad metal/steel. Sheer reading of the heading of CTH 732670, it is clear that such clad metals of stainless or mild steel will have to be first converted into an article and only thereafter, said article of clad metal/steel could qualify classification under CTH 73269070.
- ii. However, it has already been discussed with recorded detailed findings as to how clad metal/steel will merit classification under CTH 7219.90. It is clearly brought out in the findings at para 5 that CTH 7219 covers both '**non further worked than hot/cold rolled**' steel and '**further worked in addition to hot/cold rolling like cladding of steel product**'. On seeing the provisions of CTH 721911, 721914, 721931 it would transpire that all these

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heads are for only hot or cold rolled stainless steel. Whereas CTH 721990 is for other than, aforesaid 'not further worked' stainless steel. Therefore, it is evident that 'further worked on stainless less' like clad steel/ metals will merit classification under CTH 7219.90. In this way, since there is a clear, apparent an unequivocal tariff heading provided for clad metals/steel in tariff in form of CTH 721990. Therefore, the clad metal/steel are more specifically and more appropriate classifiable under CTH 7219.90. Therefore, there is no need of forcing the classification of subject 'clad metal/steel' or Tri-Ply steel under CTH 73269070 which is not meant for 'clad metal/steel' but for 'articles of clad metals'

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

iv. The clad metals/steel not be classified under CTH 73269070 only because of the usage of the phrase 'clad metals' because sheer reading of CTH 73269070, it is clear that a product has to fulfil both criteria namely i) the criterion of being 'an article' and ii) criterion of being made from 'clad metal'. The notice claim is based on gross and stock misinterpretation and myopic reading of the phrase 'articles of clad steel' wherein the notice has conveniently forgot the subject TriPly is merely a 'clad steel' not an 'article of steel'. Therefore, it will merit classification under CTH 72199090 and not under 73269070.

5.15 The Noticee has produced a chartered engineers certificate claiming that subject TriPly of Stainless Steel are classifiable as articles of steel under CTH 73269070. However, there is no merit in the contention of the notice because of the following reasons:-

i. The detailed findings at para 5 as to how the subject imported TriPly of Stainless Steel are classifiable under 72199090.

ii. The detailed findings at para 5 as to how the subject imported TriPly of Stainless Steel does not qualify under 73269070.

iii. There is no dispute about the fact that the said chartered engineer has been post facto appointed by the noticee on payment of the charges. Therefore, a conflict of interest clearly exists whereby the noticee is attempting to derive personal benefit by the help of chartered engineer who has been hired by the noticee against certain pecuniary benefits.

i. In any case, as per the professional qualification and expertise, a chartered engineer can at best comment upon the physical feature of the product i.e. TriPly of the Stainless Steel. However, as far as physical features are concerned, there is no dispute that the products are two layers of flat rolled stainless steel with a layer of aluminum sandwiched in between one. The material fact about the physical feature of the imported TriPly are neither in dispute nor under any confusion, therefore, the attempt of bringing a chartered engineer certificate by the notice is of no practical use.

ii. The instant case involves a legal question as to whether the imported Triply i.e. flat rolled clad product of two layers of stainless steel with a layer of aluminum merit classification under CTH 72199090 or 73269070. In absence of any dispute about facts, this is purely a question of law which has to be decided in terms of

- General rules of Interpretation
- Tariff Headings and
- Section Notes and Chapter Notes.

In this background, I find the attempt of notice to bring out a chartered engineer certificate is unnecessary and infructuous for the present proceedings.

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5.16 The Noticee has contended that classification of goods under the Customs Tariff is done as per the General Rules of Interpretation (“**GIR**”). Rule 1 of the GIR provides that the goods under consideration should be classified in accordance with the terms of the heading or relevant Section or Chapter Notes.

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

5.16.1 As per rule 1 of GIR *“for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”*. In the scheme of chapter 72, Custom Tariff Heading 7219.90 is for further worked flat rolled Stainless-steel products like cladded products. It is because entire CTH 7219 is divided into two parts, one for **“not further worked flat rolled stainless steel products”** and **“further worked flat rolled stainless steel products”**. Whereas CTHs 7219.11, 7219.14, 7219.31 are for **“not further worked flat rolled stainless steel products”**, CTH 7219.90 is for others. It clearly shows that CTH 7219.90 is for **“further worked flat rolled stainless steel products”**. In this context, cladded flat rolled stainless steel has been provided with a very clear and unambiguous Custom Tariff Heading in terms of CTH 7219.90. Therefore, the same merits classification under CTH 7219.90 in terms of general rules of interpretation. Further, cladding is a process where a layer of one material is bonded to other by welding, rolling, laser base techniques.

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

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

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

li Now I take up the next question as to whether the differential duty amounting Rs. 87,64,100/- (Rupees Eighty-Seven Lakh Sixty-Four Thousand and One Hundred only) for Bills of Entry as mentioned in Annexure-A should be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

6. To decide applicability of CVD under Notification No. 01/2017-Customs (CVD) dated 07.09.2017, it would be prudent to reproduce relevant part of the Notification, as under: -

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

TABLE

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

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

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

6.2 As per my detailed findings in **Para 5 above**, the item – “SS Triply Circles” is Flat-rolled products of stainless steel and rightly classifiable under 72199090 and it is also a fact that the item has been imported from China, therefore, I further find that CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 for the relevant period is leviable for the goods imported vide Bills of Entry mentioned in Annexure-A.

6.3. Further, the noticee has submitted that 'the subject goods are not flat rolled products and are down streamed goods' and will not be eligible to CVD. I agree with the submissions of the noticee that not all products covered under the chapter heading 7219 and 7220 are liable for CVD. The CVD will not be applicable on products which are excluded from the scope of product. In the subject case, as per Notification No. 1/2017-Cus. (CVD) dated 07.09.2017, scope of product specifically excludes “razor blade grade steel.” Since, the goods i.e. SS Triply Circles are not razor blade grade steel, CVD as per Notification No. 1/2017-Cus. (CVD) dated 07.09.2017, was applicable to these goods. Hence, I do not find any force in the submission of the Noticee and hence, rejected.

6.4. Further, the noticee has submitted that product, which is not manufactured in India cannot attract any ADD/CVD etc. since there is no loss to domestic industry. The noticees submit that the triply circles are not at all produced in India, and if imported from outside India, will not cause any harm to the domestic industry. They further submit that other sheets/coils of different dimensions were discussed in the final findings by Designated Authority, however, no comments are offered thereon by the DA with respect to triply circles. However, I observe that the submission of the noticee is not acceptable, since, they themselves accept the fact that this does not mean that anything not produced in India can be subjected to CVD levy at all. Further, I observe that the CVD is leviable on the “Flat Rolled Products of Stainless Steel” and I have come to conclusion after detail discussion in **para 5 above**, that the SS Triply Circles are Flat Rolled Products of Stainless Steel and are not in exclusion list, therefore, the CVD under Notification No. 1/2017-Customs (CVD) dated 07.09.2017 is applicable on the “triply circles”.

6.5. Further, I observe that the noticee has in their submission mentioned that the Instruction F. No.

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354/5/2012-TRU, dated 8-5-2012, in the context of ADD, clearly specified that SS circles, even if classified under CTH 7219/7220, is not ipso facto covered under ADD levy, since such product was never envisaged by the designated authority for this purpose. I find that the importer has himself here accepted the two things and contradicted their stand that Circles cannot be classified under chapter heading 7219/7220. The above-said Board Instruction dated 08.05.2012, has clearly affirm the stand of the department that the Stainless-Steel Circles are classifiable under chapter heading 7219/7220 even if these are produced by cutting/punching of the flat rolled products. Further, I observe that the Board had made it clear that the SS Circles were not covered under the scope of the ADD, therefore, by issuing Instruction, the same was clarified. However, in case of SS Triply Circles, this is not the case. If the said SS Triply Circles was out of the scope of the CVD, the Board has must clarified the same by way of issuing instruction or by including the same in the exclusion list, but it is not the case. Therefore, I find that the CVD under Notification No. 1/2017-Customs (CVD) is applicable on the product SS Triply Circles.

6.6 I find that the Noticee has contended that demand in respect of 3 Bill(s) of Entry filed during the period 01.11.2021 to 03.02.2022 in question is unwarranted and unsustainable. I find merit in the contentions of the Noticee as:-

- The demand in respect of the 2 Bill(s) of Entry no 6089841 dated 01.11.2021 and b/e no 6408456 dated 25.11.2021 is unsustainable as the Notification No. 01/2017-Cus.(CVD) dated 07.09.2017 (*as amended vide Notification No. 02/2021-Cus. (CVD) dated 01.02.2021 and Notification No. 5/2021-Cus.(CVD) dated 30.09.2021*) states that CVD under the Notification shall not be levied for the period commencing from 02.02.2021 till 31.11.2022. Since the 2 Bill(s) of Entry referred above fall within the exempted period starting from 02.02.2021 till 31.11.2022, proposal to levy CVD on the said 2 Bill(s) of Entry is liable to be dropped. Further, in respect of the Bill of Entry no 7353254 dated 03.02.2022, the Notification was rescinded vide Notification No. 01/2022-Cus. (CVD) dated 01.02.2022. Therefore, the proposal to levy CVD on Bill of Entry filed on 03.02.2022, i.e., after rescission of the Notification, is liable to be dropped. **In this way the said CVD notification no 01/2017 remained effective from 07.09.2017 to 01.02.2021.** Since the period of aforesaid three bills of entry falls outside the effective period of the said notification, the demand of CVD related to the said 3 B/E's is liable to be dropped.

Sr No	Notification No	Effect	Period Excluded from the scope of 1/2017-Customs (CVD) dated 07.09.2017
1	1/2017-Customs (CVD) dated 07.09.2017	Applicable for 5 years w.e.f. 07.09.2017	As detailed at Sr no 2, 3 & 4 of this table.
2	02/2021-Cus. (CVD) dated 01.02.2021	Excludes certain period from the applicability of Notfn 01/2017-Customs (CVD) dated 07.09.2017	02.02.2021 to 30.09.2021
3	5/2021-Cus.(CVD) dated 30.09.2021	Excludes certain period from the applicability of Notfn 01/2017-Customs (CVD) dated 07.09.2017	30.09.2021 to 31.01.2022
4	01/2022-Cus. (CVD) dated 01.02.2022	Rescinds Notfn 01/2017-Customs	Rescinded w.e.f

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	(CVD) dated 07.09.2017	01.02.2022
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6.7 In view of the facts and findings above, I further find that differential duty (CVD) amounting to Rs. 87,64,100/- (Rupees Eighty-Seven Lakh Sixty-Four Thousand and One Hundred only) however the said demand shall be reduced to the tune of differential duty mentioned below:-

Bill of Entry No	Date	Differential duty demanded
6089841	01.11.2021	11,91,746/-
6408465	25.11.2021	12,49,606/-
7353254	03.02.2022	12,42,315/-
Total		36,83,667/-

6.8 Therefore, the amount of Rs 36,83,667/- shall be reduced from the total demand. In view of above, demand of Rs 50,80,433/-, is required to be demanded and recovered from the importer, M/s Udaya Udhog Ltd. under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under the provisions of Section 28AA of the Customs Act, 1962. In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)] is aptly applicable in the instant case on the ground of mis-statement and suppression of facts.

(iii) NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER THE SUBJECT GOODS VALUED AT RS. 4,21,49,129/- (RUPEES FOUR CRORE TWENTY-ONE LAKH FORTY-NINE THOUSAND ONE HUNDRED AND TWENTY-NINE) SHOULD BE CONFISCATED UNDER SECTION 111(M) OF THE CUSTOMS ACT,1962.

7.1 I observe 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.

7.2 I also observe 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. Udaya Udyog. 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.

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

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

any goods which do not correspond in respect of value or in any other particular] [Substituted by Act 36 of 1973, Section 2, for certain words (w.e.f. 1.9.1973).] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54] [Substituted by Act [27 of 1999](#), Section 108, for " in respect thereof," (w.e.f. 11.5.1999).]

7.4 I have already held in foregoing paras that the importer had wilfully evaded correct Customs duty by intentionally mis-classifying the goods to circumvent the applicable CVD. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible Nil rate of duty. Therefore, on account of the aforesaid mis-declaration / mis-statement in the aforementioned Bills of Entry, the impugned goods having a total Assessable Value of **Rs. 4,21,49,129/- (Rupees Four Crore Twenty-One Lakh Forty-Nine Thousand One Hundred and Twenty-Nine)** are liable for confiscation under Section 111(m) 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(m) of the Customs Act, 1962.

7.5 I also observe that the case is established on documentary evidences in respect of past imports, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon’ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon’ble CESTAT, South Zonal Bench, Chennai has held as under: -

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

7.6 I therefore hold that the said imported goods are liable for confiscation under the provisions of Section 111(m) 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

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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).”

7.6.1 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.).

7.6.2 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.

7.6.3 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 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.”

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7.6.4 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.

7.7 I reiterate my findings at para 6.6 & 6.7 where it has been clearly established that the demand of differential duty in respect to Bill(s) of Entry no 6089841 dated 01.11.2021, 6408456 dated 25.11.2021 and 7353254 dated 03.02.2022 has been dropped. As the demand of differential duty has been dropped, accordingly the proposal of confiscation under section 111(m) of the Customs Act, 1962 against the the said 03 Bills of Entry has to be dropped and the assessable value of these three bill to be excluded from total assessable value for confiscation.

Sr.No	Bill of Entry No	Date	Differential duty demanded	Assessable Value
1	6089841	01.11.2021	11,91,746/-	57,31,456/-
2	6408465	25.11.2021	12,49,606/-	60,09,720/-
3	7353254	03.02.2022	12,42,315/-	59,74,657/-
	Total		36,83,667/-	1,77,15,833/-

As detailed above, the total assessable value of the 03 Bills of Entry is Rs. 1,77,15,833/- which has to be adjusted from the total assessable value of Rs. 4,21,49,129/-. Therefore, the total assessable value of the remaining 13 Bills of Entry is Rs. **2,44,33,296/-**. In view of above facts, findings and legal provisions, I find that it is an admitted fact that the Noticee had willfully mis classified the goods the circumvent the applicable CVD. Therefore, I hold that the acts and omissions of the importer, by way of collusion and wilful mis-statement of the imported goods, have rendered the goods valued at Rs. 2,44,33,296/- liable for confiscation under section 111(m) 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.**

(IV). NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER PENALTY SHOULD BE IMPOSED ON THEM UNDER SECTION 112(A) AND/OR 114A AND SECTION 114AA OF THE CUSTOMS ACT, 1962.

8. As per my detailed findings in paras 5 and 6 above, I observe that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

8.1. I reiterate my findings from paras 5 and 6 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section 114 A / 112 (a) of the Customs Act, 1962 are reproduced as under: -

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

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable

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to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

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

***Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :*

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

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

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

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

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

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

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

“31. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is**

also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].

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

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

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

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

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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. Pavunnyy.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."

8.3 As explained above, it is conclusively established that the importer M/s. Udaya Udhyog has misclassified the goods under Chapter 73 to evade appropriate CVD. Thus, the importing firm has deliberately misclassified the goods and evaded the duty of Rs. 50,80,433/- which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962. Consequently, the importing firm are liable for penalty under Section 114A of the Customs Act, 1962.

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

8.5 Furthermore, I find that Penal Action under Section 114 AA of the Customs Act has also been proposed against M/s. Udaya Udhyog.

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

114AA Penalty for use of false and incorrect material –

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

I reiterate my findings from paras 5 and 6 for the question of penalty also as the same appears *mutatis mutandis* to this also.

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

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

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

- iii. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- iv. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)

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v. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

8.8 As observed in paras 5 and 6 above, in the instant case, there is clear evidence of fraud and suppression of facts. The M/s. Udaya Udhyog has cleared the imported goods by misclassifying them to avail the benefit of CVD. Therefore, I hold that M/s. Udaya Udhyog is liable for imposition of penalty under Section 114AA *ibid*.

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

ORDER

- (i) I reject the declared classification of goods i.e. “SS Triply Cladded Circles” under CTIs 73269070, imported vide Bills of Entry mentioned above in Annexure A above and order to classify the same under CTI 72199090 with applicable duties;
- (ii) I confirm the demand of differential duty with respect to Bills of Entry at Sr.No. 1 to 13 of Annexure A of **Rs. 50,80,433/- (Rs. Fifty Lakhs Eighty Thousand Four hundred and Thirty-Three only)** in respect of goods cleared by M/s Udaya Udhyog, under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest leviable under Section 28AA of the Customs Act, 1962 and I order to drop the demand of differential duty of Rs. **36,83,667/- (Rs. Thirty-Six Lakhs Eight Three Thousand Six Hundred Sixty-Seven Only)** as per findings at para 6.6, 6.7 and 6.8 of this order with respect to 03 Bills of Entry at Sr. No. 14 to 16 of Annexure A.
- (iii) I order confiscation of the imported goods vide Bills of Entry listed in ‘Annexure- A at Sr. No 1 to 13’ above, valued at **Rs. 2,44,33,296/- (Rupees Two Crore Forty-Four Lakh Thirty-Three Thousand Two Hundred and Ninety-Six Only)** under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and impose redemption fine of **Rs. 65,00,000/- (Rs. Sixty-Five Lakhs only)** on M/s Udaya Udhyog in respect of these goods (both cleared in past and provisionally released) for their redemption u/s 125 of the Customs Act, 1962.
- iv. I impose a penalty equivalent to differential duty of **Rs. 50,80,433/- (Rs. Fifty Lakhs Eighty Thousand Four hundred and Thirty-Three only)**, and interest accrued there upon on the importing firm M/s Udaya Udhyog under section 114A of the Customs Act, 1962.
- In terms of the first and second proviso to Section 114A *ibid*, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- v. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty-Lakhs Only)** M/s Udaya Udhyog under Section 114 AA of the Customs Act, 1962

Digitally signed by
Vijay Risi
Date: 31-07-2025
18:04:12
(VIJAY RISI)
COMMISSIONER OF CUSTOMS
NS-III, JNCH

To,

M/s Udaya Udhyog (IEC: 0300018754)
30 Lifescapes Nilay, 2nd Floor, 11/43,

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S/10-131/2024-25/CC/Gr.IV/NS-III/CAC/JNCH

Dr. B. Jaykar Marg, Mumbai,
Maharashtra-40002

Copy to:

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4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section for uploading on the website.
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8. The Assistant Commissioner of Customs, D-3 Circle, Audit, JNCH, Nhava Sheva