



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

Adj. File No: S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN File No: CUS/APR/SCN/292/2023-Group 4-O/o Commissioner

Date: 19.02.2026

SCN No: 779/2025-26/CC/Gr.IV/NS-III/CAC/JNCH dated 03.09.2025  
SCN is issued by Appraising Group-IV, NS-III, JNCH

DIN: 20260278NX0000555C25

आदेश की तिथि Date of Order	:	19.02.2026
जारी किए जाने की तिथि Date of Issue	:	19.02.2026
आदेश सं. Order No.	:	397/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 397/2025-26/Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by	:	श्री विजय रिशी SH. VIJAY RISI प्रधान आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा Pr. Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	:	मेसर्स अग्रवाल ट्रेड लिंक्स। M/s. Agarwal Trade Links.

मूलआदेश

**ORDER-IN-ORIGINAL**

- इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।  
The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
- इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।  
Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.
- अपील दाखिल करने संबंधी मुख्य मुद्दे:-  
Main points in relation to filing an appeal:-

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

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

The proceedings of the present case emanate out of **Show Cause Notice no. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025** (hereinafter called in short as the “SCN”) read with CORRIGENDUM dated 09.01.2026 issued by the Pr. Commissioner/ Commissioner of Customs, NS-III, JNCH, Mumbai Customs Zone-II vide F. No. CUS/APR/SCN/292/2023-Group 4-O/o-Commissioner to M/s. **Agarwal Trade Links (IEC: 0815001592)** having address **219, 2<sup>nd</sup> Floor Devashish Arcade, Opp. Guruwdara, Odhav, Ahmadabad, Gujarat, 382415** (hereinafter referred to as the “Noticee” or “Importer”);

**BRIEF FACTS OF THE CASE**

1. M/s. Agarwal Trade Links (IEC: 815001592) had imported consignments of items namely 'Aluminium Cladded Circles' (hereinafter also referred to as 'SS Triply Circles') of various grades under CTH 73269070 (hereinafter also referred to as ‘the said goods’) as detailed in Table-I below:

**Table-I**

BE No	BE Date	CTH	Item Description	Qty	Unit	Assess Val
8568823	24.08.2020	73269070	ALUMINIUM CLADDED TRIPLY CIRCLES (SIZE AS PER PL)	26,897	KGS	₹ 5,307,854
8857488	18.09.2020	73269070	ALUMINIUM CLADDED TRIPLY CIRCLES (SIZE AS PER PL)	27,479	KGS	₹ 5,329,827
9248748	20.10.2020	73269070	ALUMINIUM CLADDED CIRCLES-TRIPLY (SIZE AS PER INVOICE)	27,549	KGS	₹ 4,847,866
9248753	20.10.2020	73269070	ALUMINIUM CLADDED CIRCLES-FIVE PLY (SIZE AS PER INVOICE)	18,429	KGS	₹ 8,141,408
			Total			₹ 23,626,955

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

3. In order to arrive at proper CTH for ‘SS triply Cladded circle’, it is necessary to understand the scheme of distribution of different items under Chapter 72 and 73 of Section XV of the Customs Tariff Act, 1975:

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

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

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

**3.1.1. Chapter Heading in CTH 72**

Chapter Heading	Description of Goods
7201	PIG IRON AND SPIEGELEISEN IN PIGS, BLOCKS OR OTHER PRIMARY FORMS
7203	FERROUS PRODUCTS OBTAINED BY DIRECT REDUCTION OF IRON ORE AND OTHER SPONGY FERROUS PRODCUTS, IN LUMPS, PELLETS OR SIMILAR FORMS, HAVING A MINIMUM PURITY BY WEIGHT OF 99.94% IN LUMPS, PELLETS OR SIMILAR FORMS.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

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 IRON OF 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 seems apparent that neither of the goods qualify as finished product. It consists of primary material, semi-finished products and flat-rolled products of iron and different type of steel (Non-alloy/Stainless/Other Alloys)

### 3.1.2. Chapter Heading in CTH

Chapter Heading	Description of Goods
7301	SHEET PILING OF IRON OR STEEL, WHETHER OR NOT DRILLED, PUNCHED OR MADE FROM ASSEMBLED ELEMENTS, WELDED ANGLES, SHAPES AND SECTIONS, OF IRON OR STEEL
7302	RAILWAY OR TRAMWAY TRACK CONSTRUCTION MATERIAL OF IRON OR STEEL, THE FOLLOWING: RAILS, CHECK-RAILS AND RACK RAILS, SWITCH BLADES, CROSSING FROGS, POINT RODS AND OTHER CROSSING PIECES, SLEEPERS (CROSS-TIES), FISH-PLATES, CHAIRS, CHAIR WEDGES, SOLE PLATES (BASE PLATES), RAIL CLIPS, BEDPLATES, TIES AND OTHER MATERIAL SPECIALIZED FOR JOINTING OR FIXING RAILS
7303	TUBES, PIPES AND HOLLOW PROFILES, OF CAST IRON
7309	RESERVOIRS, TANKS, VATS AND SIMILAR CONTAINERS FOR ANY MATERIAL (OTHER THAN COMPRESSED OR LIQUIFIED GAS), OF IRON OR STEEL, OF A CAPACITY EXCEEDING 300L WHETHER OR NOT LINED OR HEAT-INSULATED, BUT NOT FITTED WITH MECHANICAL OR THERMAL EQUIPMENT
7316	ANCHORS, GRAPNELS AND PARTS THEREOF, OF IRON OR STEEL
7319	SEWING NEEDLES, KNITTING NEEDLES, BODKINS, CROCHET HOOKS, EMBROIDERY STILETTOS AND SIMILAR ARTICLES, FOR USE IN THE HAND, OF IRON OR STEEL, SAFETY PINS AND OTHER PINS OF IRON OR STEELS, NOT ELSEWHERE SPECIFIED OR INCLUDED
7323	TABLE, KITCHEN OR OTHER HOUSEHOLD ARTICLES AND PARTS THEREOF, OF IRON OR STEEL, IRON OR STEEL WOOLL; POT SCOURERS AND SCOURING OR POLISHING PADS, GLOVES AND THE LIKE, OF IRON OR STEEL

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

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

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

3.4 Further, the SS Triply Circle is a composite product of two base metal viz. Stainless Steel and Aluminum, yet it should be classified as product of Stainless Steel (Not aluminum) as Stainless Steel

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

predominates weight of Aluminum. As per Note 7 to Section XV of the Customs Tariff Act, 1975, *"Classification of composite articles: except where the heading otherwise requires, articles 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 metals.."* Based on above note, the 'SS Triply Circle merits classification as a product of Stainless Steel under Chapter 72.

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

- i. PRIMARY MATERIALS PRODUCTS IN GRANULAR OR POWDER FORM (CTH 7201 TO 7205)
- ii. IRON AND NON-ALLOY STEEL (7206 TO CTH 7217)
- iii. STAINLESS STEEL (CTH 7218 TO CTH 7227)
- iv. OTHER ALLOY STEEL, HOLLOWDRILL BARS AND RODS OF ALLOYS OR NON-ALLOY STEEL (CTH 7228 TO 7229)

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

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

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

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

**1 (j) 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 conform to the definition at (1j) 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.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

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

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

Chapter heading 7219 reads as Flat-rolled products of Stainless Steel of a width of 600mm or more. As the import product is a 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:

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

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

4. In view of above facts, it appeared that mis-classification of Stainless Steel Triply Circle under Customs Tariff heading 76069210 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. Duty Short levied/ short paid appeared as Rs. 57,33,549/-, as per Table-II below:

**TABLE-II**

Sr. No.	BE No.	B/E date	Ass. Value (Rs.)	BCD (Rs.)	SWS (Rs.)	Landed cost (Rs.)	CVD (@18.95%) (Rs.)	IGST payable (@ 18%) (Rs.)	Diff. duty (Rs.)
1	8568823	24.08.2020	5,307,853	265,392	26,539	5,599,784	1,061,159	191,009	1,252,168
2	8857488	18.09.2020	5,329,826	266,491	26,649	5,622,966	1,065,552	191,799	1,257,351
3	9248748	20.10.2020	4,847,866	484,786	48,479	5,381,131	1,019,724	183,550	1,203,275
4	9248753	20.10.2020	8,141,407	814,140	81,414	9,036,961	1,712,504	308,251	2,020,755
		<b>TOTAL</b>	<b>23,626,952</b>	<b>1,830,809</b>	<b>183,081</b>	<b>25,640,842</b>	<b>4,858,939</b>	<b>874,609</b>	<b>5,733,549</b>

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

5. Accordingly, a Consultative Letter CL No. 8/2022-23 (C2) vide F. No. S/2-Audit-Gen-476/2021-22/JNCH (C-2) dated 07.04.2022 was issued to the importer advising for payment of differential duty along with applicable interest and penalty. However, importer has neither made any payment nor has given any documentary evidence or reply to the CL till date.

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

**7. Relevant Legal Provisions:**

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

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

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

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

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

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

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

paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

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

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

**7.5. Section 111** (Confiscation of improperly imported goods etc.) reads as:

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

(m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.

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

"Any person, -

i. 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, -

ii. 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,

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

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

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

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

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

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

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

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 under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President,

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

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

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

**7.9. SECTION 117. Penalties for contravention, etc., not expressly mentioned.**

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

**8. Acts of omission and commission by the Importer:**

**8.1. As per section 17(1) of the Act,** "An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods". Thus, in this case the importer had self-assessed the Bills of Entry and appeared to have Non-levy/Short levy of Customs Duty and/or IGST due to mis-classification. As the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by willful mis-classification of the said goods in the Bills of Entry during self-assessment. Therefore, differential duty, as mentioned in Table-II, 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.

**8.2.** It appeared that the Importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable Customs Duty on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appeared that the Importer has rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation Accordingly, the Importer also appeared liable to penal action under Section 112(a) and/or Section 114A and/or Section 117 of the Customs Act, 1962.

**9.** From the foregoing, it appeared that the importer has willfully mis-classified the goods; that the Importer has submitted a false declaration under section 46(4) of the said Act. Due to this act of

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

omission of Importer, there has been loss to the government exchequer equal to the differential duty mentioned in Table-II.

10. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, read with Corrigendum to the SCN dated 09.01.2026, **M/s. Agarwal Trade Links (IEC: 815001592) situated at 219 2nd Floor Devashish Arcade, Opp Guruwdar, Odhav, Ahmadabad, Gujarat, 382415** were called upon to Show Cause to the Pr. Commissioner/ 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:

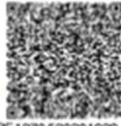
- (i) Differential duty amounting **Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine only)** for Bills of Entry as mentioned in Table-II should not be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- (ii) The subject goods valued at **Rs. 2,36,26,952/- (Rupees two crores thirty-six lakhs twenty-six thousand nine hundred fifty-two only)** should not be confiscated under section 111(m) of the Customs Act,1962.
- (iii) Penalty should not be imposed on them under Section 112(a) and/or 114A.

10.1 Screenshot of Bills of Entry for import of goods ‘Stainless Steel Cold Rolled Circles Grade J3’ filed by the Importer and supporting documents uploaded in e-Sanchit are as follows:

**Bill of Entry No. 7370334 Dated 30.03.2020**

Master Invoice Items Dept comments Exam order Queries iGM Cont eXAm_instr liceNce dUty Grp7_dutyfg Others									
* view_be									
11/02/2026 Indian Customs EDI System - Imports V1.5 04:41:56 pm									
JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707 V 2.0.0.1									
BE Management. View BE									
Enter BE No :	7370334	Date :	30/03/2020	CC :	N	Type :	H	AG :	4
Importer :	AGARWAL TRADE LINKS					Queried :	N	ACTIVE	
CHA Name :	*****					First Chk :	N	Digitally Signed	Y
IEC :	0815001592	Country of origin :	VN	KBE :	N	Payment Method :	Transaction		
CHA :	*****	Country of Cons. :	VN	Govt :	Pvt	WBE No :			
Sender :	RES Package	Prior BE :	No	Dip/Def :		BE Date :			
Invoice Value(Rs) :	5812601	Port of Ship :	VNHPH	Sec. 48 :	N	XHSS Load Rate :			
Assess. Value(Rs) :	5812601	No of Invoices :	1	HSS :	N	XHSS Load Amts :			
Total Duty(Rs) :	1046268	No of Items :	1	Green Channel :	X	Misc Load Rate :			
Gross Weight :	55449	No of IGMS :	1	Misc Load Amts :					
Appraising :	27/05/2020	10012307	Inward Date :	28/03/2020	Out of Charge :	27/05/2020			
Audit :	31/03/2020	SYSTEM	Assessment Date :	27/05/2020	Assesment :	Final			
Asst. Comm :	27/05/2020	10039440	No of Challans :	1	Amnt Collected :	1057447			
VAO :			Challan No :	2030776264	Payment Date :	27/04/2020			
VDC :			Short Paid :	0	Goods Regn. Dt. :	27/05/2020			
PCCV :			Regularisation Dt. :		Amount Adjusted :	0			
WH Date/WH Code :			H BE Amt to be Deposited :	0	CFS/Custodian CD :	INNSA1NCL3			
			XBond Duty FG Interest :	0					
AO (Final) :			Final Assessment No. :		Orig. Ass. Dt. :	31/03/2020			
AC/DC (Final) :			Final Ass. Date :		Orig. OOC Dt. :				
Closure Dtls :			Reason :		Comment :				
EXIT									

S-10-160/2025-26/Adj./Commr./Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

 		Port Code	BE No	BE Date	BE Type						
		INNSA1	7370334	30.03/2020	H						
IEC/Br	0815001592/0		OOC COPY								
GSTIN TYPE	24AESP87580A1ZNIG										
CB CODE	AACCC9742NCH001										
TYPE	INV	ITEM	CONT								
Nos	1	1	2								
PKG	16	G.WT (KGS)	55449								
BE 1270 520201929											
<b>INDIAN CUSTOMS</b>											
PORT : JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707											
BILL OF ENTRY FOR HOME CONSUMPTION											
<b>PART - II - INVOICE &amp; VALUATION DETAILS (Invoice 1/1 )</b>											
A. INVOICE	1.S.NO	2.INVOICE NO. & DT.	3.PURCHASE ORDER NO & DT	4.LC NO & DATE	5.CONTRACT NO & DATE						
	1	PHOENIXFEB201010 22-FEB-20									
B. TRANSACTING PARTIES	1.BUYER'S NAME & ADDRESS			2.SELLER'S NAME & ADDRESS							
	AGARWAL TRADE LINKS 219 2ND FLOOR, DEVASHISH ARCADE,OPP GURUWADARA ODHAV AHMEDABAD, GUJARAT 382415										
	3.SUPPLIER NAME & ADDRESS			4.THIRD PARTY NAME & ADDRESS							
	PHOENIX INOX COMPANY LIMITED KM 92, HIGHWAY5, HUNG VUONG WARD HONG BANG DISTRICT, HIPHONG CITY										
	VIETNAM			5. AD CODE 0510312							
	5.AEO										
C. VALUATION	1.INV VALUE	2.FREIGHT	3.INSURANCE	4.HSS.	5.LOADING	6.COMMN	7.PAY TERMS	8.VALUATION METHOD			
	76734						OTH	RULE4 - TRANSACTION VALUE			
	14.Cur USD						9.RELTD	10.SVB CH	11.SVB NO	12.DATE	13.LOA
15.Term CIF						No					
D. COST & SERVICES	1.C&B	2.CoC	3.CoP	4.HND CHG	5.G&S	6.DOC. CH					
	7.COO	8.R & LF	9.OTH COST	10.LD / ULD	11.WS	12.OTC		13.MISC CHARGE	14.ASS. VALUE	5812600.5	
E. ITEM DETAILS	1.S NO.	2.CTH	3.DESCRPTION	4.UNIT PRICE	5.QUANTITY	6.UQC	7.AMOUNT				
	1	72209090	STAINLESS STEEL COLD ROLLED CIRCLES GRADE J3 (SIZE AS PER INVOICE)	1.400000	54810.000000	KGS	76734.00				
<b>GLOSSARY</b>											
A : LC - Letter of Credit; B : AD - Authorized Dealer; C : HSS - High Sea Sale; D : C&B Commission & Brokerage, CoC - Cost of Container, CoP - Co of Packing, HND CHG - Handling Charges, G&S - Goods and Service input cost, DOC CH - Document Charges, CoO - Country of Origin Certificate, R&LF - Royalty and Licence Fees, LD/ULD - Loading Unloading Charges, WS - Warranty Services, OTC - Other Costs, CTH - Customs Tariff Head, UQC - Unit Quantity Code											

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) PHOENIX INOX COMPANY LIMITED KM 92 HIGHWAY 5, HUNG VUONG HAIPHONGCITY, VIETNAM 201892737		Reference No. <b>VN-IN 20/05/00489</b> ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)			
2. Goods consigned to (Consignee's name, address, country) AGARWAL TRADE LINKS 219 DEVASHISH ARCADE, OPP GURUDWARA ODHAV, AHMEDABAD 382415 INDIA		FORM AI Issued in <b>VIETNAM</b> (Country) See Notes Overleaf			
3. Means of transport and route (as far as known)  Departure date <b>BY : SEA</b> <b>FROM : HAIPHONG, VIETNAM</b> <b>FEB.26.2020</b>  Vessel's name/Aircraft etc. <b>WAN HAI 222 N333</b> B/L NO: <b>A62AA00596</b>  Port of Discharge <b>NHAVA SHEVA, INDIA</b>		4. For Official Use  <input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-India Free Trade Area Preferential Tariff  <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)  Signature of Authorised Signatory of the Importing Country			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1 2 3 4 5 6 7		COLD ROLLED STAINLESS STEEL CIRCLE 0.4 x 330 COLD ROLLED STAINLESS STEEL CIRCLE 0.4 x 355 COLD ROLLED STAINLESS STEEL CIRCLE 0.5 x 305 COLD ROLLED STAINLESS STEEL CIRCLE 0.5 x 355 COLD ROLLED STAINLESS STEEL CIRCLE 0.64 x 305 COLD ROLLED STAINLESS STEEL CIRCLE 0.64 x 355 COLD ROLLED STAINLESS STEEL CIRCLE 0.64 x 381 TOTAL NET WEIGHT: 54,810 Kgs TOTAL GROSS WEIGHT: 55,449 Kgs TOTAL PACKAGES: 16 Packages  HSCODE: 7220.9090	RVC 38.79% + CTSH RVC 38.79% + CTSH	Net weight FOB 7587 Kgs/USD 10643.23 9090 Kgs/USD 12636.10 9086 Kgs/USD 12629.54 4393 Kgs/USD 6196.27 5069 Kgs/USD 7323.91 9079 Kgs/USD 12618.42 10237 Kgs/USD 14229.43	PHOENIX INOX FEB 22 2020
11. Declaration by the exporter  The undersigned hereby declares that the above details and statements are correct that all the goods were produced in VIETNAM  and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to AT HAIPHONG authorised signatory			12. Certification <b>ISSUED RETROACTIVELY</b>  It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.  AT HAIPHONG, VIETNAM ON <b>06 MAR 2020</b> Place and date, signature and stamp of certifying authority		
13. Where appropriate please tick: <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation					

Scanned with CamScanner

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

# PHOENIX INOX COMPANY LIMITED

Km 92, HIGHWAY 5, HUNG VUONG WARD, HONG BANG DISTRICT, HAIPHONG CITY - 181080, VIETNAM  
 Phone: +84-0225.883.2961 Fax : +84-0225.883.2961  
 EMAIL: phoenix@phoenixchina.com

## COMMERCIAL INVOICE

<b>MESSERS:</b> AGARWAL TRADE LINKS 219 DEVASHISH ARCADE, OPP GURUDWARA, ODHAV AHMEDABAD- 382415 Email :- rahul@agarwaltradelinks.com IEC :- 0815001592 Pan:- AESP87580A	<b>COMMERCIAL INVOICE NO.:</b> PHOENIX/MARCH/20/1013 <b>DATED :</b> 04-03-2020 <b>PROFORMA INVOICE NO.:</b> PHOENIX/DEC/19/1022 <b>DATED :</b> 20-12-2019 <b>PORT OF SHIPMENT:</b> HAIPHONG, VIETNAM <b>PORT OF DESTINATION :</b> NHAVASHEVA, INDIA <b>CONSIGNEE :</b> AGARWAL TRADE LINKS <b>NOTIFY PARTY :</b> SAME AS CONSIGNEE <b>VESSEL NAME &amp; VOYAGE NO.:</b> WANHAI 175 & 5035 <b>FCL NO.:</b> IAAU 2697049 <b>SEAL:</b> IAAE544495 <b>BL NO.:</b> A62AA00872 <b>DATED :</b> 6-03-2020
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SL NO.	DESCRIPTION	QUANTITY		Price/Unit	AMOUNT		HS CODE
		Units	Tot. Units	In USD	CIF MAINPORT INDIA		
<b>STAINLESS STEEL COLD ROLLED CIRCLES GRADE J3</b>							
1	0.40MM X 305MM	MT	11.150	\$ 1,400	\$	15,610	7220.9090
2	0.40MM X 330MM	MT	0.900	\$ 1,400	\$	1,260	7220.9090
3	0.50MM X 305MM	MT	3.069	\$ 1,400	\$	4,297	7220.9090
4	0.50MM X 355MM	MT	4.611	\$ 1,400	\$	6,455	7220.9090
5	0.64MM X 305MM	MT	7.153	\$ 1,400	\$	10,014	7220.9090
<b>TOTAL:</b>		<b>MT</b>	<b>26.883</b>		<b>\$</b>	<b>37,636.20</b>	

**SHIPPING MARK :** NO MARKS  
**SHIPMENT :** BY SEA

**TERMS OF PAYMENT**  
TELEGRAPHIC TRANSFER

**SPECIAL CONDITION NOTES:**

- This proforma is covered by "Fores Majeure" clause
- The Letter of Credit should be at sight irrevocable permitting negotiation through any bank
- Please mail copy/ photocopy of L/C to enable us for prompt shipment
- Transaction under this proforma invoice is subject to Rules Of Arbitration of the Vietnamese council of arbitration
- Country of origin: VIETNAM
- We declare that this pro-invoice show the actual price of the goods described and that all particulars are true and correct.

**FOR SELLER:**  
  
SEAL & AUTHORISED SIGNATURE

**Bank Details:**  
**Beneficiary name :** PHOENIX INOX COMPANY LIMITED  
**Beneficiary bank :** HDBANK HAI DANG TRANSACTION OFFICE- HAI PHONG BRANCH  
**Address :** NO.2 LOT 22A LE HONG PHONG STREET, DONG KHE WARD, NGO QUYEN DISTRICT, HAI PHONG CITY  
**Account no.:**   
**Swift code :**

## PHOENIX INOX COMPANY LIMITED

KM 92 HIGHWAY 5, HUNG VUONG WARD, HONG BANG DISTRICT, HAIPHONG CITY, VIETNAM  
TAX NUMBER 0201892737

Date of issued 04-03-2020

### TEST CERTIFICATE- INSPECTION CERTIFICATE

Customer	AGARWAL TRADE LINKS																			
Manufacturer	PHOENIX INOX COMPANY LIMITED																			
Description of Goods	COLD ROLLED STAINLESS STEEL CIRCLE																			
Test Certificate No.	PHOENIXMARCH201013																			
CONTAINER & SEAL	Our Ref	Grade	Thick(mm)	diamets(mm)	N.W.(MT)	Packages No.	Contract No.	Heat No.	C	SI	Mn	P	S	Ni	Cr	Cu	Hardness(HV)	Yield Strength	Tensile Strength	EL%
IAAU 2697049 / IAAE544495	1	J3	0.4	305	3.3	PH-361	PHOENIXMARCH 20/1013	PHAP20-044	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	2	J3	0.4	305	3.12	PH-362		PHAP20-044	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	3	J3	0.4	305	3.224	PH-363		PHAP20-045	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	4	J3	0.4	305	1.496	PH-364		PHAP20-046	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	5	J3	0.5	355	4.611	PH-365		PHAP20-047	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	6	J3	0.5	305	3.069	PH-366		PHAP20-047	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	7	J3	0.64	305	2.982	PH-367		PHAP20-048	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	8	J3	0.64	305	3.249	PH-368		PHAP20-049	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500	>24%
	9	J3	0.64	305	0.922			PH-369	PHAP20-049	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.4-0.7%	220-240	>200	>500

**Remarks:**  
 1) Actual test result may +/-10% from above figures

Through inspection and testing, the quality of these products conform to the stimulations of the related contract and standard(s)

Statement

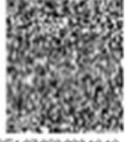
Confirmed by Quality Department:

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

**Bill of Entry No. 7678222 Dated 16.05.2020**

Master Invoice Items Dept comments Exam order Queries iGM Cont eXAm_instr liceNce dUty Grp7_dutyfg Others									
view_be									
11/02/2026		Indian Customs EDI System - Imports V1.5					04:41:56 pm		
		JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707					V 2.0.0.1		
BE Management. <span style="float:right">View BE</span>									
Enter BE No :	7678222	Date :	16/05/2020	CC :	N	Type :	H	AG :	4
Importer :	AGARWAL TRADE LINKS					Queried :	N	ACTIVE	
CHA Name :	*****					First Chk :	N	Digitally Signed	Y
IEC :	0815001592	Country of origin :	VN	KBE :	N	Payment Method:	Transaction		
CHA :	*****	Country of Cons. :	VN	Govt :	Pvt	WBE No :			
Sender :	RES Package	Prior BE :	No	Dip/Def :		WBE Port :			
Invoice Value(Rs) :	2886697	Port of Ship :	VNHPH	Sec. 48 :	N	XHSS Load Rate :			
Assess. Value(Rs) :	2886697	No of Invoices :	1	HSS :	N	XHSS Load Amts :			
Total Duty(Rs) :	519605	No of Items :	1	Misc Load Rate :					
Gross Weight :	27227	No of IGMS :	1	Green Channel	X	Misc Load Amts :			
		KGS							
Appraising:	16/05/2020	10012307	Inward Date :	18/04/2020	Out of Charge:	27/05/2020			
Audit:	18/05/2020	SYSTEM	Assessment Date :	18/05/2020	Assesment :	Final			
Asst. Comm:	18/05/2020	10039440	No of Challans :	1	Amnt Collected:	519819			
VAO :			Challan No :	2031061925	Payment Date:	20/05/2020			
VDC :			Short Paid :	0	Goods Regn. Dt.:	27/05/2020			
PCCV :					Regularisation Dt.:				
WH Date/WH Code :			H BE Amt to be Deposited :	0	Amout Adjusted :	0			
			XBond Duty FG Interest :	0	CFS/Custodian CD	INNSA1ACL1			
AO (Final):			Final Assessment No. :		Orig. Ass. Dt.:	18/05/2020			
AC/DC (Final) :			Final Ass. Date :		Orig. OOC Dt.:				
Closure Dtls:			Reason:		Comment:				
EXIT									

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

 		Port Code	BE No	BE Date	BE Type	
		INSA1	7678222	16/05/2020	H	
EC/Br	0815001992/0		OOC COPY			
GSTIN TYPE	24AESPB7580A1ZNG					
CB CODE	AACCC9742NCH001					
TYPE	INV	ITEM	CONT			
No.s	1	1	1			
PKG	9	GWT (KGS)	27227		SE1 27 052 020 19 18	

**INDIAN CUSTOMS**

PORT : JNCH, NHAVA SHEVA, TAL:URAN, DIST:RAIGAD-400707  
 BILL OF ENTRY FOR HOME CONSUMPTION

**PART - II - INVOICE & VALUATION DETAILS (Invoice 1/1 )**

A. INVOICE	1.S.NO	2.INVOICE NO. & DT.	3.PURCHASE ORDER NO & DT	4.LC NO & DATE	5.CONTRACT NO & DATE						
	1	MARCH/20/1013 04-MAR-20									
B. TRANSACTING PARTIES	1.BUYER'S NAME & ADDRESS			2.SELLER'S NAME & ADDRESS							
	AGARWAL TRADE LINKS 219 2ND FLOOR DEVASHISH ARCADE OPP GURJUDARA ODHAV AHMEDABAD,GUJARAT 382415										
	3.SUPPLIER NAME & ADDRESS			4.THIRD PARTY NAME & ADDRESS							
	PHOENIX INOX COMPANY LIMITED KM 92, HIGHWAYS, HUNG VUONG WARD HONG BANG DISTRICT, HIPHONG CITY VIETNAM										
	5.AEO			5. AD CODE	9510312						
C. VALUATION	11.V VALUE	2.FREIGHT	3.INSURANCE	4.HSS.	5.LOADING	6.COMMN	7.PAY TERMS	8. VALUATION METHOD			
	37636.2						OTH	RULE4 - TRANSACTION VALUE			
	14.Cur	15.Term	15.CIF				9.RELTD	10.SVR CH	11.SVR NO	12.DATE	13.LOA
D. COST & SERVICES	1.C&B	2.CoC	3.CoP	4.HND CHG	5.G&S	6.DOC. CH					
	7.COO	8.R & LF	9.OTH COST	10.LD / ULD	11.WS	12.OTC		13.MISC CHARGE	14.ASS. VALUE		2886696.54
E. ITEM DETAILS	1.S NO.	2.CTH	3.DESCRPTION	4.UNIT PRICE	5.QUANTITY	6.UQC	7.AMOUNT				
	1	72209090	STAINLESS STEEL COLD ROLLED CIRCLES GRADE J3 (SIZE AS PER INVOICE)	1.400000	26883.000000	KGS	37636.20				

**GLOSSARY**

A : LC - Letter of Credit; B : AD - Authorized Dealer; C : HSS - High Sea Sale; D : C&B Commission & Brokerage; CoC - Cost of Container; CoP - Co of Packing; HND CHG - Handling Charges; G&S - Goods and Service Input cost; DOC CH - Document Charges; CoO - Country of Origin Certificate; BALF - Royalty and Licence Fees; LD/ULD - Loading/Unloading Charges; WS - Warranty Services; OTC - Other Costs; CTH - Customs Tariff Head; UQC - Unit Quantity Code

S-10-160/2025-26/Adj./Commr./Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

1. Goods consigned from (Exporter's business name, address, country)		Reference No. <b>VN-IN 20/05/00541</b>			
<b>PHOENIX INOX COMPANY LIMITED</b> KM 92 HIGHWAY 5, HUNG VUONG HAIPHONGCITY, VIETNAM 201892737		<b>ASEAN-INDIA FREE TRADE AREA</b> <b>PREFERENTIAL TARIFF</b> <b>CERTIFICATE OF ORIGIN</b> (Combined Declaration and Certificate)			
2. Goods consigned to (Consignee's name, address, country) <b>AGARWAL TRADE LINKS</b> 219 DEVASHISH ARCADE ,OPP GURUDWARA ODHAV, AHMEDABAD 382415 INDIA		<b>FORM AI</b> Issued in <b>VIETNAM</b> (Country) See Notes Overleaf			
3. Means of transport and route (as far as known) Departure date <b>BY : SEA</b> <b>FROM : HAIPHONG, VIETNAM</b> <b>MAR.06.2020</b>		4. For Official Use <input type="checkbox"/> Preferential Tariff Treatment Given Under <b>ASEAN-India Free Trade Area Preferential Tariff</b>  <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)			
Vessel's name/Aircraft etc. <b>WAN HAI 175 S035</b> B/L NO: <b>A62AA00872</b>		Port of Discharge <b>NHAVA SHEVA, INDIA</b>			
Signature of Authorised Signatory of the exporting Country		Signature of Authorised Signatory of the importing Country			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1		COLD ROLLED STAINLESS STEEL CIRCLE 0.4 x 305	RVC 38.35% + CTSH	11150 Kgs/USD 15387	
2		COLD ROLLED STAINLESS STEEL CIRCLE 0.4 x 330	RVC 38.35% + CTSH	900 Kgs/USD 1242	
3		COLD ROLLED STAINLESS STEEL CIRCLE 0.5 x 305	RVC 38.35% + CTSH	3089 Kgs/USD 4235.25	
4		COLD ROLLED STAINLESS STEEL CIRCLE 0.5 x 355	RVC 38.35% + CTSH	4611 Kgs/USD 6363.15	
5		COLD ROLLED STAINLESS STEEL CIRCLE 0.64 x 305	RVC 38.35% + CTSH	7153 Kgs/USD 9871.14	
		<b>TOTAL NET WEIGHT: 26,883 Kgs</b>			
		<b>TOTAL GROSS WEIGHT: 27,227 Kgs</b>			
		<b>TOTAL PACKAGES: 9 Packages</b>			
		<b>HSCODE: 7220.9090</b>			
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in <b>VIETNAM</b> and the specific Trade (Importing Country) <b>AT HAIPHONG, VIETNAM ON MAR.16,2020</b> Place and date, signature of authorised signatory			12. Certification <b>ISSUED RETROACTIVELY</b> It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. (Official Seal and Signature) <b>TIÊU VĂN DŨNG</b> AT HAIPHONG, VIETNAM ON <b>18 MAR 2020</b> Place and date, signature and stamp of certifying authority		
13. Where appropriate please tick:					

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

# PHOENIX INOX COMPANY LIMITED

Km 92, HIGHWAY 5, HUNG VUONG WARD, HONG BANG DISTRICT, HAIPHONG CITY - 181080, VIETNAM

Phone: +84-0225.883.2961 Fax : +84-0225.883.2961

EMAIL: phoenix@phoenixincchina.com

## COMMERCIAL INVOICE

**MESSERS:**  
 AGARWAL TRADE LINKS  
 219 DEVASHISH ARCADE,  
 OPP GURUDWARA, ODHAV  
 AHMEDABAD- 382415  
 Email :-rahul@agarwaltradelinks.com  
 IEC :-0815001592  
 Pan:- AESPB7580A

**COMMERCIAL INVOICE NO.:** PHOENIX/MARCH/20/1013 **DATED:** 04-03-2020  
**PROFORMA INVOICE NO.:** PHOENIX/DEC/19/1022 **DATED:** 20-12-2019  
**PORT OF SHIPMENT:** HAIPHONG, VIETNAM  
**PORT OF DESTINATION:** NHAVASHEVA, INDIA  
**CONSIGNEE:** AGARWAL TRADE LINKS  
**NOTIFY PARTY:** SAME AS CONSIGNEE  
**VESSEL NAME & VOYAGE NO.:** WANHAI 175 & S035  
**FCL NO.:** IAAU 2697049 **SEAL:**IAAE544495  
**BL NO.:** A62AA00872 **DATED:** 6-03-2020

SL NO.	DESCRIPTION	QUANTITY		Price/Unit In USD	AMOUNT CIF MAINPORT INDIA	HS CODE
		Units	Tot. Units			
<b>STAINLESS STEEL COLD ROLLED CIRCLES GRADE J3</b>						
1	0.40MM X 305MM	MT	11,150	\$ 1,400	\$ 15,610	7220.9090
2	0.40MM X 330MM	MT	0,900	\$ 1,400	\$ 1,260	7220.9090
3	0.50MM X 305MM	MT	3,069	\$ 1,400	\$ 4,297	7220.9090
4	0.50MM X 355MM	MT	4,611	\$ 1,400	\$ 6,455	7220.9090
5	0.64MM X 305MM	MT	7,153	\$ 1,400	\$ 10,014	7220.9090
<b>TOTAL:</b>		<b>MT</b>	<b>26,883</b>		<b>\$ 37,636.20</b>	

**SHIPPING MARK :** NO MARKS  
**SHIPMENT :** BY SEA

**SPECIAL CONDITION NOTES:**  
 1. This proforma is covered by " Force Majeure" clause  
 2. The Letter of Credit should be at sight irrevocable permitting negotiation through any bank  
 3. Please mail copy/ photocopy of LC to enable us for prompt shipment  
 4. Transaction under this proforma invoice is subject to Rules Of arbitration of the Vietnamese council of arbitration  
 5. Country of origin :VIETNAM  
 6. We declare that this pro-invoice show the actual price of the goods described and that all particulars are true and correct.



**Bank Details:**

**Beneficiary name :** PHOENIX INOX COMPANY LIMITED  
**Beneficiary bank :** HDBANK HAI DANG TRANSACTION OFFICE- HAI PHONG BRANCH  
**Address:** NO.2 LOT 22A LE HONG PHONG STREET, DONG KHE WARD, NGO QUYEN DISTRICT, HAI PHONG CITY  
**Account no.:** 203840070000096  
**Swift code :** HDBCVNVX



Customer		Manufacturer		Description of Goods		Certificate No.		Lot No. & SEAL		TEST CERTIFICATE- INSPECTION CERTIFICATE												
AGARWAL		PHOENIX INOX		COLD ROLLED STAINLESS STEEL CIRCLE		PHOENIX/MARCH/20/1013		697049 / 544495														
Order Ref	Thickness (mm)	Diameter (mm)	N.W (MT)	Package No.	Contract No.	Heat No.	C	SI	Mn	P	S	Ni	Cr	Cu	Hardness(HV)	Yield Strength	Tensile Strength	E.L%				
1	0.4	305	3.3	PH-361	PHOENIX/MARCH/20/1013	PHAP20-044	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%				
2	0.4	305	3.12	PH-362		PHAP20-044	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%				
3	0.4	305	3.234	PH-363		PHAP20-045	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%				
4	0.4	305	1.496	PH-364		PHAP20-046	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%				
5	0.5	355	4.611	PH-365		PHAP20-047	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%				
6	J3	0.5	305	3.069		PH-366	PHAP20-047	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%			
7	J3	0.64	305	2.982		PH-367	PHAP20-048	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%			
8	J3	0.64	305	3.249		PH-368	PHAP20-049	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%			
9	J3	0.64	305	0.822		PH-369	PHAP20-049	<0.12	<1	>9	>0.03	<0.03	>1%	>13%	0.40.7%	220-240	>200	>500	>24%			

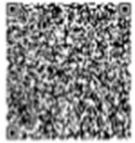
Test result may +/-10% from above figures  
 Through inspection and testing, the quality of these products conform to the stipulations of the related contract and standard(s)  
 Department: \_\_\_\_\_  
 (Red circular stamp: CÔNG TY TNHH PHOENIX INOX, THANH PHO HAI PHONG)

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

**Bill of Entry No. 9121872 Dated 09.10.2020**

Master Invoice Items Dept comments Exam order Queries iGM Cont eXAm_instr liceNce dUty Grp7_dutyfg Others												
view_be												
19/02/2026 Indian Customs EDI System - Imports V1.5 11:03:40 am												
JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707 V 2.0.0.1												
BE Management. View BE												
Enter BE No :	9121872	Date :	09/10/2020	CC :	N	Type :	H	AG :	4	Queried :	N	ACTIVE
Importer :	AGARWAL TRADE LINKS						First Chk :	N	Digitally Signed :	Y		
CHA Name :	*****						Payment Method :	Transaction				
IEC :	0815001592	Country of origin :	VN	KBE :	N	WBE No :						
CHA :	*****	Country of Cons. :	VN	Govt :	Pvt	BE Date :						
Sender :	RES Package	Prior BE :	No	Dip/Def :		WBE Port :						
Invoice Value(Rs) :	489167	Port of Ship :	VNHPH	Sec. 48 :	N	XHSS Load Rate :						
Assess. Value(Rs) :	489167	No of Invoices :	1	HSS :	N	XHSS Load Amt :						
Total Duty(Rs) :	88050	No of Items :	1			Misc Load Rate :						
Gross Weight :	4750	KGS	No of IGMs :	1	Green Channel :	X	Misc Load Amt :					
Appraising :	04/12/2020	10012307	Inward Date :	01/10/2020	Out of Charge :	28/01/2021						
Audit :	04/12/2020	SYSTEM	Assessment Date :	04/12/2020	Assesment :	Provisional						
Asst. Comm :	04/12/2020	10051742	No of Challans :	1	Amnt Collected :	133195						
VAO :	02/11/2020	10017919	INPTL6	Challan No :	2032617371	Payment Date :	07/11/2020					
VDC :	02/11/2020	10053628	INPTL6	Short Paid :	0	Goods Regn. Dt. :	31/12/2020					
PCCV :						Regularisation Dt. :						
WH Date/WH Code :			H BE Amt to be Deposited :	0	Amout Adjusted :	0						
			XBond Duty FG Interest :	0	CFS/Custodian CD :	INNSA1GDL1						
AO (Final) :			Final Assessment No. :		Orig. Ass. Dt. :	02/11/2020						
AC/DC (Final) :			Final Ass. Date :		Orig. OOC Dt. :							
Closure DtIs :			Reason :		Comment :							
										EXIT		

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

 		Port Code	BE No	BE Date	BE Type					
		INNSA1	9121872	09/10/2020	H					
IEC/Br	0815001592/0		OOC COPY							
GSTIN/TYPE	24AESP7580A1ZN/G									
CB CODE	AAFCA3808ACH001									
TYPE	INV	ITEM	CONT							
Nos	1	1	1							
PKG	1	G.WT (KGS)	4750		BE1290120210147					
<b>INDIAN CUSTOMS</b> PORT : JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707 BILL OF ENTRY FOR HOME CONSUMPTION										
<b>PART - II - INVOICE &amp; VALUATION DETAILS (Invoice 1/1 )</b>										
A INVOICE	1.S.NO	2.INVOICE NO. & DT.	3.PURCHASE ORDER NO & DT	4.LC NO & DATE		5.CONTRACT NO & DATE				
	1	PHOENIX/20/1021 24-AUG-20								
B TRANSACTIONING PARTIES	1.BUYER'S NAME & ADDRESS			2.SELLER'S NAME & ADDRESS						
	AGARWAL TRADE LINKS 219 2ND FLOOR DEVASHISH ARCADE,OPP GURUWDARA ODHAV AHMEDABAD,GUJARAT 382415									
	3.SUPPLIER NAME & ADDRESS			4.THIRD PARTY NAME & ADDRESS						
	PHOENIX INOX COMPANY LIMITED KM 92, HIGHWAY 5, HUNG VUONG WARD,H ONG BANG DISTRICT, HAIPHONG CITY-18 1080,VIETNAM, DEMOCRATIC REP. OF VIETNAM, DEMOCRATIC REP.									
	5.AEO			6. AD CODE	0510312					
C VALUATION	1.INV VALUE	2.FREIGHT	3.INSURANCE	4.HSS.	5.LOADING	6.COMMN	7.PAY TERMS	8. VALUATION METHOD		
	6566						OTH	RULE 4 (TRANSACTION VALUE)		
	14.Cur USD						9.RELTD	10.SVB CH	11.SVB NO	12.DATE
15.Term CIF							No			
D COST & SERVICES	1.C&B	2.CoC	3.CoP	4.HND CHG	5.G&S	6.DOC. CH				
	7.COO	8.R & LF	9.OTH COST	10.LD / ULD	11.WS	12.OTC	13.MISC CHARGE		14.ASS. VALUE	
										489167
E ITEM DETAILS	1.S NO.	2.CTH	3.DESCRPTION		4.UNIT PRICE	5.QUANTITY	6.UQC	7.AMOUNT		
	1	72209090	COLD ROLLED STAINLESS STEEL CIRCLES GRADE J3 (SIZE 0.40 MM X305 MM)(NICKEL BELOW 1.5%) (SIMS REG NO. STL153198)		1.400000	4690.000000	KGS	6566.00		
<b>GLOSSARY</b> A : LC - Letter of Credit; B : AD - Authorized Dealer; C : HSS - High Sea Sale; D : C&B Commission & Brokerage, CoC - Cost of Container,CoP - Co of Packing, HND CHG - Handling Charges, G&S - Goods and Service input cost, DOC CH - Document Charges, CoO - Country of Origin Certificate, R&LF - Royalty and Licence Fees, LD/ULD - Loading Unloading Charges, WS - Warranty Services, OTC - Other Costs, CTH - Customs Tariff Head, UQC - Unit Quantity Code										

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

1. Goods consigned from (Exporter's business name, address, country)		Reference No. <b>VN-IN 20/05/01384</b>			
PHOENIX INOX COMPANY LIMITED KM 92 HIGHWAY 5, HUNG VUONG HAIPHONGCITY, VIETNAM 201892737		ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)			
2. Goods consigned to (Consignee's name, address, country)		FORM AI			
AGARWAL TRADE LINKS 219 DEVASHISH ARCADE, OPP GURUDWARA ODHAV, AHMEDABAD-382415, INDIA		Issued in <b>VIETNAM</b> (Country) See Notes Overleaf			
3. Means of transport and route (as far as known)		4. For Official Use			
Departure date <b>BY : SEA</b> <b>FROM : HAIPHONG, VIETNAM</b> <b>AUG.29,2020</b>		<input type="checkbox"/> Preferential Tariff Treatment Given Under <b>ASEAN-India Free Trade Area Preferential Tariff</b>			
Vessel's name/Aircraft etc. <b>UNI-PRUDENT 0181-337S</b> B/L NO: <b>P2008281HNHS</b>		<input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)			
Port of Discharge <b>NHAVA SHEVA, INDIA</b>		Signature of Authorised Signatory of the importing Country			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
	FOR AGARWAL TRADE LINK	COLD ROLLED STAINLESS STEEL CIRCLE 0.4 x 305  TOTAL NET WEIGHT: 4,690 Kgs TOTAL GROSS WEIGHT: 4,750 Kgs TOTAL PACKAGES: 1 Packages HSCODE: 7220.9090	RVC 38.94% + CTS-H	Net weight/ FOB 4690 Kgs/USD 6472.20	PHOENIX/20/1021 AUG 24 2020
11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct: that all the goods were produced in the territory of the exporting Party and that they are eligible for the preferential tariff treatment specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to INDIA.					
and that they are eligible for the preferential tariff treatment specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to INDIA.			12. Certification <b>ISSUED RETROACTIVELY</b> It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.		
(Importing Country) AT HAIPHONG, VIETNAM ON SEP.21, 2020 Place and date, signature of authorised signatory <i>Nguyen Duy Khanh</i>			(Certifying Authority) AT HAIPHONG, VIETNAM ON 23 SEP 2020 Place and date, signature and stamp of certifying authority <i>TIEU VAN DUNG</i>		
13. Where appropriate please tick:					

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

# PHOENIX INOX COMPANY LIMITED

Km 92, HIGHWAY 5, HUNG VUONG WARD, HONG BANG DISTRICT, HAIPHONG CITY - 181000, VIETNAM

Phone: +84-0225.883.2961 Fax : +84-0225.883.2961

EMAIL: phoenix@phoenixinox.com

## COMMERCIAL INVOICE

**MESSERS:**

AGARWAL TRADE LINKS  
 219 DEVASHISH ARCADE,  
 OPP GURUDWARA, ODHAV  
 AHMEDABAD- 382415  
 Email :- rahul@agarwaltradelinks.com  
 IEC :- 0815001592  
 Pan:- AESPB7580A

COMMERCIAL INVOICE NO.: PHOENIX/20/1021 DATED :24-08-2020  
 PROFORMA INVOICE NO.: PHOENIX/DEC/19/1022 DATED : 20-12-2019  
 PORT OF SHIPMENT: HAIPHONG, VIETNAM  
 PORT OF DESTINATION : NHAVASHEVA, INDIA  
 CONSIGNEE : AGARWAL TRADE LINKS  
 NOTIFY PARTY : SAME AS CONSIGNEE  
 VESSEL NAME & VOYAGE NO.: UNI-PRUDENT0181-3375  
 BL NO: P2008281HNHS DATE : 29/08/2020

SL NO.	DESCRIPTION	QUANTITY		Price/Unit In USD	AMOUNT CIF MAINPORT INDIA	HS CODE
		Units	Tot. Units			
1	STAINLESS STEEL COLD ROLLED CIRCLES GRADE J3 0.40MM X 305MM	MT	4.69	\$ 1,400	\$ 6,566	7220.9090
<b>TOTAL:</b>		MT	4.69		\$ 6,566.00	

SHIPPING MARK : NO MARKS  
 SHIPMENT : BY SEA

TERMS OF PAYMENT  
 BALANCE ON FAX COPY OF B/L

- SPECIAL CONDITION NOTES:**
- This proforma is covered by "Force Majeure" clause
  - The Letter of Credit should be at sight irrevocable permitting negotiation through any bank
  - Please mail copy/ photocopy of L/C to enable us for prompt shipment
  - Transaction under this proforma invoice is subject to Rules Of arbitration of the Vietnamese council of arbitration
  - Country of origin: VIETNAM
  - We declare that this pro-invoice show the actual price of the goods described and that all particulars are true and correct.



**Bank Details:**  
 Beneficiary name : PHOENIX INOX COMPANY LIMITED  
 Beneficiary bank : HDBANK HAI DANG TRANSACTION OFFICE- HAI PHONG BRANCH  
 Address: NO.2 LOT 22A LE HONG PHONG STREET, DONG KHE WARD, NGO QUYEN DISTRICT, HAIPHONG CITY  
 Account no.: 203840070000096  
 Swift code : HDBCNVVX



S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

# PHOENIX INOX COMPANY LIMITED

Km 92, HIGHWAY 5, HUNG VUCNG WARD, HONG BANG DISTRICT, HAIPHONG CITY - 181000, VIETNAM

Phone: +84-0225.883.2961 Fax : +84-0225.883.2961

EMAIL: phoenix@phoenixincchins.com

## PACKING LIST

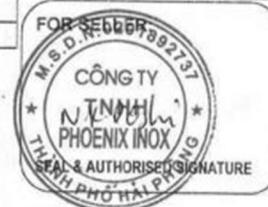
**MESSERS:**

AGARWAL TRADE LINKS  
 219 DEVASHISH ARCADE,  
 OPP GURUDWARA ,ODHAV  
 AHMEDABAD- 382415  
 Email : rahul@agarwaltradelinks.com  
 IEC :-0815001592  
 Pan:- AESPB7580A

COMMERCIAL INVOICE NO.: PHOENIX/20/1021  
 PROFORMA INVOICE NO.: PHOENIX/DEC/19/1022  
 PORT OF SHIPMENT: HAIPHONG, VIETNAM  
 PORT OF DESTINATION : NHAVASHEVA, INDIA  
 CONSIGNEE : ARARWAL TRADE LINKS  
 NOTIFY PARTY : SAME AS CONSIGNEE  
 VESSEL NAME & VOYAGE NO.: UNI-PRUDENT 0181-3375  
 BL NO.: P2008281HNHS DATE: 29/08/2020

DATED :24-8-2020  
 DATED : 20-12-2019

SL NO.	DESCRIPTION	Detail packing	Unit	Total Unit	QUANTITY		WEIGHT IN KG		CBM
					Units	Tot. Units	GROSS	NET	
<b>COLD ROLLED STAINLESS STEEL CIRCLES</b>									
1	0.40MM X 305MM	PH-467	PKG	1	MT	3	4750	4690	20.00
	TOTAL						4,750.00	4,690.00	
SHIPPING MARK: NO MARKS									
SHIPMENT: BY SEA ( LCL)									



S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

**10.2 Screenshot of the Corrigendum dated 09.01.2026 to the SCN: SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

	<p>OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III सीमा शुल्क आयुक्त का कार्यालय, एनएस-III CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707 न्हावा शेवा, तालुका-उरण, जिला -रायगड, महाराष्ट्र- 400 707</p>
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File No. CUS-APR/SCN/292/2023-Group 4- O/o Commissioner-  
SCN.: 779/2025-26 /CC/ Gr. IV/NS-III /CAC/JNCH dated 03.09.2025  
DIN- 20260178 NX 000000AIA 2

Date: 09.01.2026

**CORRIGENDUM**

**Subject:** Corrigendum to Show Cause Notice No. 779/2025-26 /CC/ Gr. IV/NS-III /CAC/JNCH dated 03.09.2025 issued by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva in the case of M/s. Agarwal Trade Links (IEC: 815001592)- reg.

Attention is invited to the above-mentioned Show Cause Notice No dated 03.09.2025 issued by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva. In the above-mentioned Show Cause Notice: -

• **In Para 10**

"Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962; M/s Agarwal Trade Links (IEC: 815001592) situated at 219 2nd Floor Devashish Arcade, Opp Gurudwara Odhav, Ahmadabad, Gujarat, 382415 is hereby called to Show Cause to the Assistant Commissioner of Customs, Gr. IV/IVA, JNCH, Nhava-Sheva, Tal-Uran Distt. Raigad, Maharashtra- 400707 within 30 days of the receipt of this notice as to why:

- i. Differential duty amounting Rs. 57,33,549/(Rupees fifty seven lakhs thirty three thousand five hundred forty nine 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.
- ii. The subject goods values at Rs. 2,36,26,952/- (Rupees two crores thirty six lakhs twenty six thousand nine hundred fifty two only)-should not be confiscated under section 111(m) of the Customs Act, 1962.
- iii. Penalty should not be imposed on them under Section 112(a), 114A and Section 117 of the Customs Act, 1962."

may be read as

"Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962; M/s Agarwal Trade Links (IEC: 815001592) situated at 219 2nd Floor Devashish Arcade, Opp Gurudwara Odhav, Ahmadabad, Gujarat, 382415 is hereby called to Show Cause to the Pr. Commissioner /Commissioner of Customs, Gr. IV/IVA, JNCH, Nhava-Sheva, Tal-Uran Distt. Raigad, Maharashtra- 400707 within 30 days of the receipt of this notice as to why:

Page 1 of 2

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

File No. CUS-APR/SCN/292/2023-Group 4- O/o Commissioner  
SCN.: 779/2025-26 /CC/ Gr. IV/NS-III /CAC/JNCH dated 03.09.2025

- i. Differential duty amounting Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine 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.
- ii. The subject goods values at Rs. 2,36,26,952/- (Rupees two crores thirty-six lakhs twenty-six thousand nine hundred fifty-two only)-should not be confiscated under section 111(m) of the Customs Act, 1962.
- iii. Penalty should not be imposed on them under Section 112(a), 114A and Section 117 of the Customs Act, 1962."

  
(VIJAY RISI)  
Pr. Commissioner of Customs,  
NS-III, JNCH

**To:**

M/s. Agarwal Trade Links  
219 2nd Floor Devashish Arcade,  
Opp Guruwdara Odhav,  
Ahmadabad, Gujarat, 382415

**Copy to-**

- i. The Asstt./Dy. Commissioner of Customs, CAC, JNCH
- ii. The Asstt./Dy. Commissioner of Customs, Circle-A-3, Audit, JNCH
- iii. Office Copy
- iv. Notice Board (CHS Section for display).

**DEFENCE's REPLY**

11. Noticee vide e-mail dated 12.01.2026 submitted written reply dated 06.01.2026 to the SCN and submitted as follows:

***"B. SUBMISSION***

***A) The imported goods i.e., "Aluminum Cladded Circle-Triply", as mentioned in 'Annexure A' to this Notice should not be re-classified and re-assessed under CTH 72199090 and accordingly the duty, interest and Penalty payable to be determined.***

1) *The Importer is respectfully stating that the same product "Aluminum Cladded Triply Circle" Imported by the same Importer i.e. M/S Agarwal Trade Link (IEC-08150015952) Address- 219, Devashish Arcade, Opp. Gurudwara, Odhav, Ahemadabad, Gujarat-382415 under CTH- 7326 90 70. There was a SCN have issued vide SCN No. F. No. VIII/10-92/ICD-Tumb/O & A/HO/2020-21 dated 21.04.2022 on same products imported & the department was allegation on HSN 7219/7220. But the importer have submitted the reply of the above SCN & received O-I-O in favour of the Importer. Against the SCN the Importer have received an O-I-O vide number 02/AKS/ADC/VALSAD/2022-23 dated 13.01.2023 in favour of the Importer. A copy of the O-I-O is enclosing herewith for your reference as **Annexure-A***

2) *At the outset, it is submitted that the proposed demand CVD in Show Cause Notice in Wrong allegation. Hence, the same is liable to be dropped on following submissions.*

3) *Regarding the above Show Cause Notice the importer is respectfully state that M/s Agarwal Trade Link vide IEC No. 0815001592 have imported 26.942 KGs of "Aluminum Cladded Triply Circles" having Assessable Value of Rs. 39,74,888 under Bill of Entry No. 7473462 dated 18.04.2020 at ICD, Tumb classifying the said imported goods under CTH-73269070. The department issued SCN on same allegation that the goods should be classify under CTH-72199090. That means same allegation on same products & on same importer.*

*The importer replied to the SCN & the department (The Additional Commissioner, Customs, Surat, Shree Abilash K. Sreenivasan sir) have positive opinion with our submission & issued an Order in favour of the Importer. The Order details is as under;*

*Order No. F. No. VIII/10-92/ICD-Tumb/ O & A/ HQ/2021-22 dated 13.02.2023 vide DIN-20230171MN0000999F53 dated 13.02.2023. O-I-O No. 02/AKS/ADC/VALSAD/2022-23 DATED 13.01.2023. The above order we have mention in our point NO. 1 is enclosed as Annexure-A. We are humbly requesting to refer the same.*

*We further submit that the said Judgment has binding precedence and has been accepted by the Department. The Order is being relied upon by us.*

4) *The importer M/s Agarwal Trade Link, 219, 2nd Floor, Devashish Arcade, Opp. Gurudwara, Odhav, Ahmedabad, Gujarat-382415 [hereinafter referred to as the importer] had imported goods. The details is enclosed herewith for your reference as **Annexure-B***

5) *From the whole SCN it can be proved that the Department has only made allegations. It has not mentioned any evidence in support of its view. This can be proved mainly from following;*

a) *Department has done argument regarding CTH -7219 or 7220 point No.3.6. But no evidence regarding the weight of individual metal has been mentioned. Hence there is no evidence.*

b) *The Department at point no.3.5.3 & 3.6 classifies the Product "Considering the shape of the SS Triply Circles / Aluminum Cladded Triply Circles as round/ circles if fits in to the definition of Flat-rolled product of a width of 600 mm or more as per notes 1(k) of Chapter 72 of the Customs Tariff Act,*

1975. Thus, SS Triply circles merits classifiable under CTH-7219 as Flat rolled Product of stainless steel but in B.O.E it classifies as "Aluminum cladded circle-triply". Both the products are completely different and classified differently. They can be viewed from the pictures presented by the importer in SCN reply. Apart from mere statement the Department has not presented any evidence.

6) "Aluminum Cladded Circles Triply" basically (called in Hindi Tawa) used for making Chapattis (Roti). It is an independent finished product. The "Aluminum Cladded Circles Triply" of various sizes was imported by Importer.

7) The department classification of product under CTH-7219900 Iron & Steel manufactured & qualify under Customs Tariff Heading -7219 is completely wrong.

8) As per Customs Tariff Act, 1975 the Chapter Heading for 7219 is prescribed as under;  
**"Flat-rolled product of stainless steel, of a width of 600 mm or more"**

Not further worked than hot-rolled, in coils

9) The Customs Tariff Act, 1975 prescribed the Chapter Heading 7326 as under

**"Other article of iron or steel"**

**Forged or stamped, but not further worked**

**7326 90 70 -Article of clad metals**

**Hence the importer correctly classifies the CTH-7326 90 70**

**From the above Customs Tariff definition it is proved that the Imported "Aluminum Cladded Circles -Triply" cannot be classify under CHT-7219 90 90.**

10) Point No 3.5.2 of SCN provided reference of the relevant part of Note 1 to Chapter 72 of Customs Tariff Act, 1975 is reproduced as below;

**1(i) Semi-Finished products:**

Continuous cast products of solid section, whether or not subject to primary hot-rolling; and other products of solid section, which have not been further worked than subject to primary hot rolling or roughly sharpened by forging, including blanks for angles. Sharps or sections.

These products are not presented in coils.

**1(k) Flats-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:

i. Coil of successively superimposed layers., or

ii. 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 a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at list twice the thickness.

Flat-rolled products including those with patterns in relief derived directly from rolling (for example 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 they do not assume the character of articles or products of other heading.

3.5.3. Considering the shape of the "SS Triply Circles/Aluminium 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 merits classifiable under CTH 7219.

Chapter heading 7219 reads as Flat-rolled products of Stainless Steel of a width of 600 mm 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 7219900. Where as in terrified CTH-73269070- Articles of clad metal**

11) The 'Aluminum Cladded Circle- Triply is a composite product of two base metals viz. Stainless Steel and Aluminum, yet it should be classified as product of stainless Steel (Not Aluminum) as Stainless Steel pre-dominates weight of Aluminum. As per Note 7 to Chapter XV of Customs Tariff Act, 1975,

"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.

Based on above note, it appears that the Aluminum Cladded Circle- Triply' merits classification as a product of Stainless Steel and as the **possibility** of its classification under chapter 73 is already ruled out it merits classification under Chapter 72.

**Importer Submission:** As per Note 7 to Chapter XV of Customs Tariff Act, 1975, Classification of composite articles:

**"Except where the headings otherwise require".**

## 12) **Burden to Prove Classification is of the Department**

a) It has been held that burden to prove is primarily on the authorities to establish whether particular products falls under one tariff heading or other when the manufacturer has classified the product in a particular tariff heading and the department intends to classify it in different heading.

b) The Department must produce enough evidence to substantiate that the product must classify differently. In other words the burden of proof of particular classification is on the department. The Department has failed in its duty to present evidence in this SCN.

c) Union of India vs. Garware Nylons Ltd. 1996 (87) ELT 12 (S.C.) - 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. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority.

d) Commissioner of Central Excise, Nagpur vs. Vicco Laboratories 2005 (179) ELT 17 (S.C.) - The Court reaffirmed the test as categorically laid down in Shree Baidyanath, namely, that the burden of proof that a product is classifiable under a particular tariff head is on the revenue and must be discharged by proving that it is so understood by consumers of the product or in common parlance.

e) State of Madhya Pradesh vs. Marico Industries Ltd. 2016 (338) ELT 335 (S.C.) - 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. There should be material to enter appropriate finding

*in that regard and the material may be either oral or documents and it is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority.*

*f) In the SCN the Department has not provided any evidence for classification of the product. Hence the SCN is liable to be dropped based on the failure of burden to prove.*

**13) *If any CTH not available readily of any product of base metal than (including articles of mixed materials treated as articles of base metal under the Interpretation Rules) with the help of chapter note 7 can be classify the product under CTH.***

***In the case the product is an independent product & correctly classify under CTH-7326 90 70.***  
*Hence in the case CTH 72199090 is not applicable as per Note 7 of Chapter XV of Customs Act, 1975.*

**14) *Principle of Beneficial Classification***

*a) Though in our case there are no ambiguity regarding the classification of Product, had there been ambiguity of classification, it is well settled judiciary under the Principle of Beneficial Classification.*

*b) It is well established principle that when the goods are classified under two different items or said items or ambiguous sentences leave reasonable doubt about its meaning, then benefit of doubt is given to the manufacturer and the classification should be adopted which is beneficial to the manufacturer. This is based on the principle that when the legislature has not clearly laid down the provisions of law benefit of doubt is given to the manufacturer.*

*c) The Hon. Bombay High Court in the case of Garware Nylons Ltd. v. UOI 1980 (6) ELT 249 (Guj) has held that the classification beneficial to the assessee should be adopted.*

*d) As per Commissioner of Central Excise, Mumbai-II Vs. Capsulation Services Ltd - 2007 (216) E.L.T 346(S.C) - According to the Department, it is well settled rule of interpretation that when the subject-item falls within the specific entry then general or residuary entry cannot be invoked.*

*e) Commissioner of Central Excise, Bhopal Vrs. Minwool Rock Fibres ltd. - 2012 (278) E.L.T. 581 (S.C.) had held that Classification of goods - Two competitive headings of Excise/Customs Tariff - Heading beneficial to assessee to be adopted. [para 13]*

**15) *WHEN TWO VIEWS ARE POSSIBLE, ONE WHICH FAVOURS THE ASSESSEE SHOULD BE ADOPTED***

**a) *Poulose and Mathen vs CCE [1997 (90) ELT 264 (SC)]***

*15. One aspect deserves to be noticed in this context. The earlier tariff advice No. 83/81 on the basis of which trade notice No. 220/81 was issued by the Collector of Central Excise and Customs is binding on the department. It should be given effect to. There is no material on record to show that this has been rescinded or departed from, and even so, to what extent. Even assuming that the later tariff advice No. 6/85 has taken a different view - about which there is no positive material - the facts point out that the concerned department itself was having considerable doubts about the matter. The position was not free from doubt. It was far from clear. In such a case, where two opinions are possible, the assessee should be given the benefit of doubt and that opinion which is in its favour should be given effect to. In the light of the above, it is unnecessary to adjudicate the other points involved in the appeal on the merits.*

**b) *Mauri Yeast India Pvt. Ltd vs CCE [2008 (225) ELT 321 (SC)]***

*40. It is now a well settled principle of law that when two views are possible, one which favours the assessee should be adopted. [See: Bihar State Electricity Board and Another v. M/s. Usha Martin Industries and Another : (1997) 5 SCC 289. It is not a case where application of a commercial meaning or trade nomenclature runs contrary to the context in*

which the word was used as was the case in *Akbar Badrudin Givani v. Collector of Customs* : (1990) 2 SCC 203.

c) **Commissioner of Central Excise, Bhopal v. Minwool Rock Fibres Ltd. - 2012 (278) E.L.T. 581 - In case of classification, entry which is beneficial to the assessee requires to be applied.**

d) **Commissioner of Trade Tax, U.P.v. S.S. Ayodhya Distillery [2009] 19 VST 251 (SC); [2009] 233 ELT 146 (SC) - "If an entry contained in a notification imposing tax is ambiguous, the assessee cannot suffer therefor".** Furthermore, if there is a doubt or dispute as to whether paddy husk or the rice husk denotes the same commodity or not, the benefit thereof shall be given to the assessee.

e) **Alladi Venkateswarlu v. Government of AP -[1978] 41 STC 394** - when it comes to the question of classification or categorisation unless the Legislature has consciously picked out and specified an item very clearly that it would not be proper to deny the assessee the benefit that could accrue by ensuring that the item comes under the next best of closest entry provided it is not doing violence to the law or to science. It is unfair to so interpret a taxing statute as to impute an intention to the Legislature to go on taxing what is virtually the same product in different forms over and over again. Such a result would be contrary to basic axioms of taxation. Unless the language of the taxing statute was absolutely clear, it should not be given an obviously unfair interpretation against the assessee.

f) **Sunder India Ltd. and others V. Commissioner of Commercial Taxes, Ezhilagam, Chennai and others -[2011]38 VST 124(Mad)** - it is also well-settled that if there is ambiguity with regard to the rate of tax to be collected, the benefit should go to the assessee.

16) **For classification of the product in 72199090 technical ground mentioned in SCN at Point No. 3.5.2 from Chapter Note 72 is as under;**

a) **(ii) Semi-Finished products:**

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

*Other products of solid section, which have not been further worked than subject to primary hot rolling or roughly sharpened by forging, including blanks for angles. Sharps or sections.*

*These products are not presented in coils.*

b) **Note 1(k) of Chapter 72 of Customs Tariff - "Flat rolled products":**

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

*Coil 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 including 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**

c) *For classification of goods under statutes for taxation of commercial supplies thereof, the primary test is their identity in the market, or in other words, their common parlance in the market. What is important to be seen is how the consumer looks at a product. The user's understanding is a*

*strong factor in determination of classification of the products. **The Product imported by Importer is not imported as Flat Rolled Product, but is imported as Aluminum Cladded Triply Circles.***

d) *CCE, New Delhi v. Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)] - In absence of statutory definition in precise terms, it is construction of words, entries and items in taxing statutes in terms of their commercial or trade understanding, or according to their popular meaning. It operates on standard of average reasonable person who is not expected to be aware of technical details of goods. It is construction in sense that people conversant with subject-matter of statute, attribute to it. Rigid interpretation in terms of scientific and technical meanings is to be avoided. However, when legislature has provided a statutory definition of particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with that meaning and not according to common parlance.*

e) *Commissioner of Central Excise vs. Wockhardt Life Sciences Ltd. 2012 (277) ELT 299 (S.C.) - There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the commercial usage test' are the most common. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the bases of the tangible material or evidence to determine how such as article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intension, when the statute was enacted.*

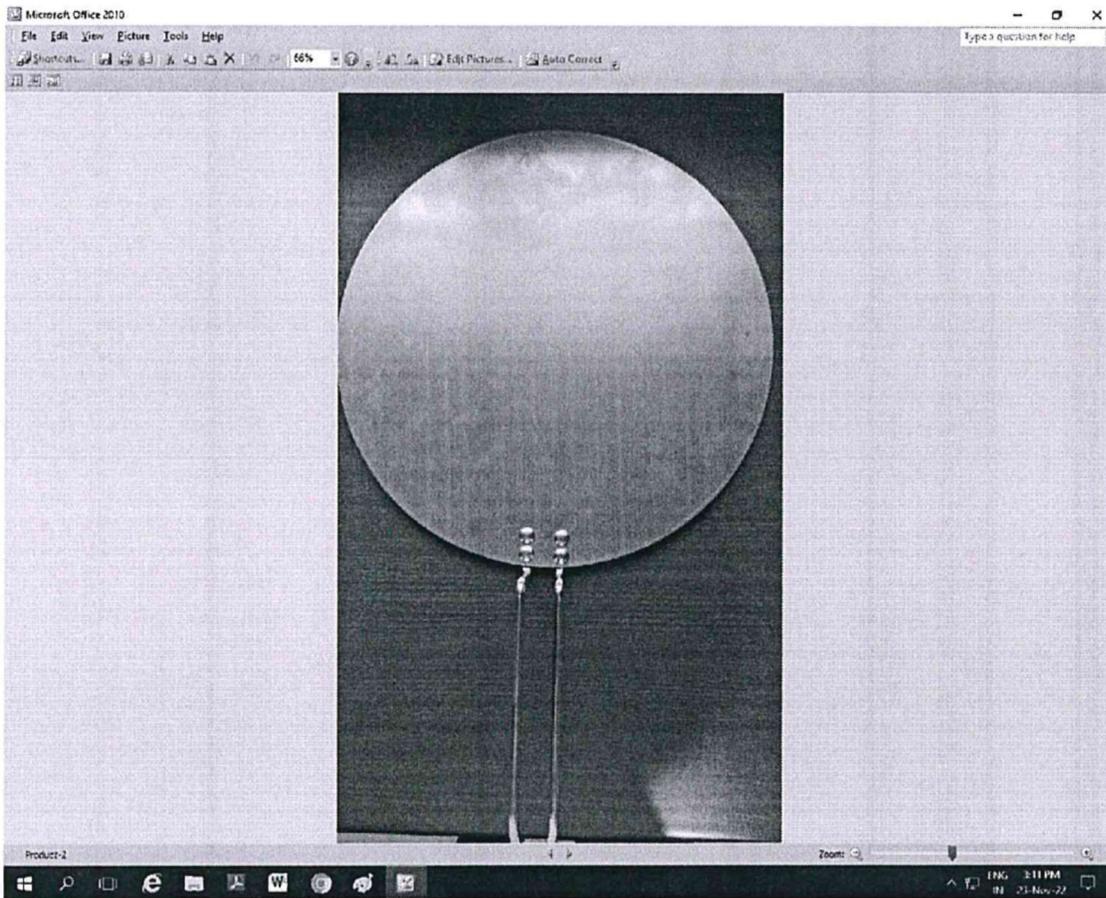
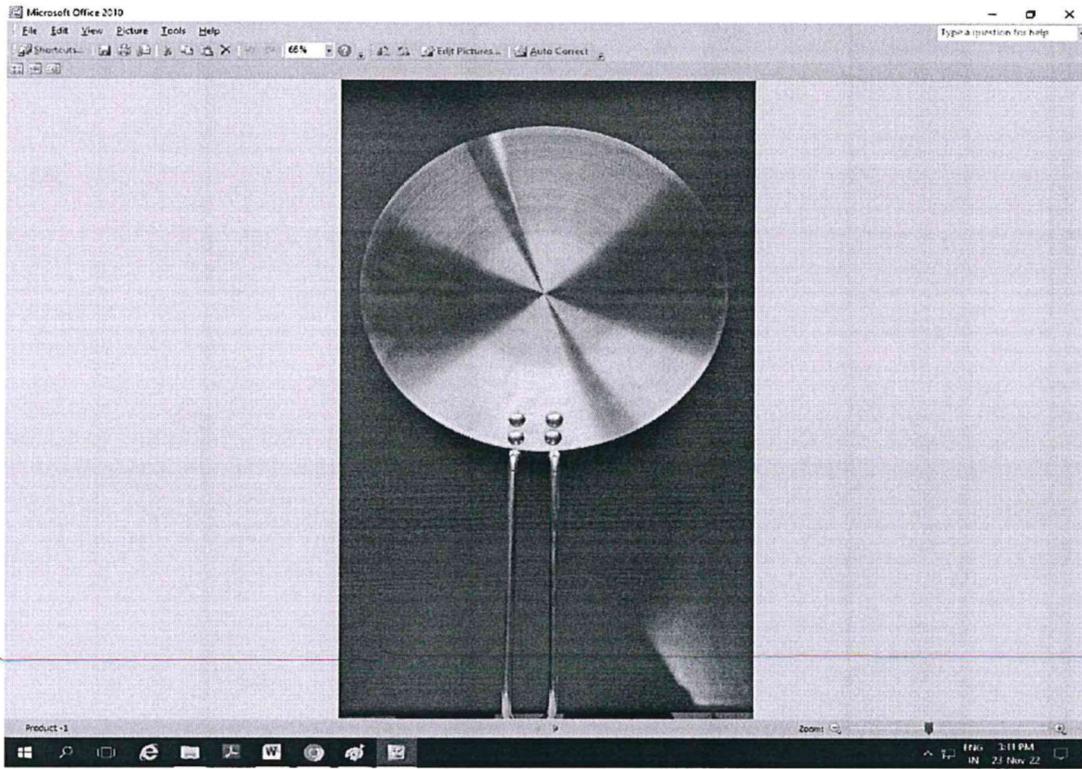
f) *Delhi Cloth General Mills Co. Ltd. v. State of Rajasthan & Ors. -1980 (6) E.L.T. 383 (S.C.): "In determining the meaning or which was connotation of words and expression describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principal fairly well settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted."*

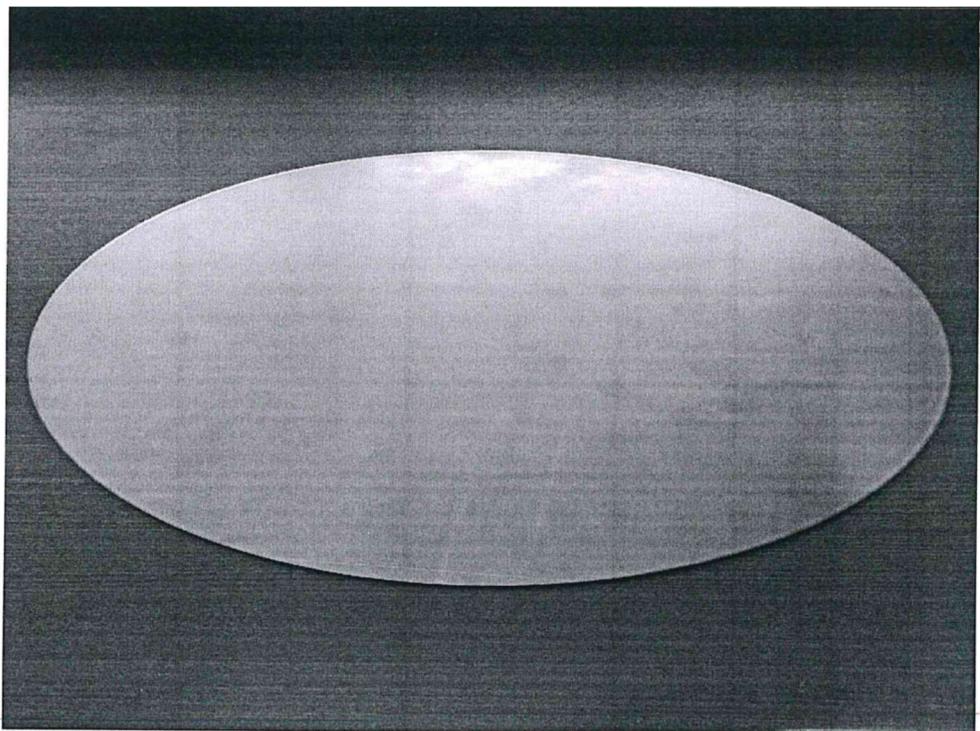
17) *From the above the department try to establish that the importer have import mixed flat product of above metals which width of 600 mm or more which is completely wrong.*

*The importer has not imported any product that has been mentioned above. In the case the importer have imported "Aluminum Cladded Circles -Triply" which has an independent Customs Tariff, which is correctly classified in CTH- 73269070.*

*"Aluminum Cladded Circles - Triply" is a finished product. We have provided some images of the products which have been imported under CTH-73269070 as under;*

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025





***The Assessee is relying on the following case laws;***

- a) *In the case of Sanjay Indl. Corpn. v. Commissioner - 2003 (158) E.L.T. A132 (S.C.) held that*
- (1) *Manufacture — Conversion of plain M.S. Plates into M.S. profiles, rings, circles, channels and angles through process of profile cutting by profile machines — Whether amounts to manufacture ?*
  - (2) *Marketability — Goods manufactured on orders of customers and sold — Whether marketable ?*
  - (3) *M.S. profiles, circles, squares and rings — Whether classifiable under Excise sub-heading 7326.90 ?*

*The Supreme Court Bench comprising Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice G.P. Mathur on 15-9-2003 admitted the Civil Appeal Nos. 6999-7000 of 2003 with C.A. No. 7142 of 2003 filed by Sanjay Indl. Corpn. and Another against the CEGAT Order Nos. 540-541/2003-WZB/C-II, dated 24-3-2003 and reported in 2003 (155) E.L.T. 369 (Tri. - Mumbai) (Sanjay Indl. Corpn. v. Commissioner).*

*The Appellate Tribunal in its impugned order had held that the activity of conversion of Plain M.S. plates in M.S. profiles, Rings, Circles, Channels and Angles certainly amounts to manufacture as a new and distinct commodity is produced by carrying out the process of profile cutting through profile machines.*

*The Tribunal while relying on an order of Apex Court in the case of A.P. State Electricity Board v. Commissioner [1994 (70) E.L.T. 3 (S.C.)] further held that the goods manufactured on the orders of customers and sold to them against payment are marketable.*

*The Tribunal also held that there was concealment of the true facts by the appellants to the Department and as such the extended period of limitation has been rightly invoked by the Department.*

- b) *In the case of SUNIL FORGING & STEEL IND. Versus COMMISSIONER OF CENTRAL EXCISE, BELAPUR 2016 (332) E.L.T. 341 (Tri. - Mumbai) IN THE CESTAT, WEST ZONAL BENCH, MUMBAI [COURT NO. I] in the Final Order Nos. A/3758-3759/2015-WZB/EB, dated 2-12-2015 in Appeal Nos. E/12 & 35/2011-Mum. held that “Iron and non-alloy steel articles - Forged with definite shape but not further worked upon - Classification - Appellant seeking classification of said products under Heading 72.14 of Central Excise Tariff as bars of aforesaid metal, forged without definite shape - Manufacturing process and photographs of articles, clearly showing that said items are not bars and rods of aforesaid metal but other articles having definite shape but not further worked upon - Said goods appropriately classifiable under Heading 73.26 ibid in terms of HSN explanatory notes to this heading - Explanatory note to HSN for Heading 72.14 ibid explicitly excluding pieces cut from bars and rods - Classification of goods with identical manufacturing process held to be under Heading 73.26 ibid in catena of decisions - Goods classified accordingly. [paras 6.1, 6.2, 6.3, 7.7]*

*Demand - Limitation - Extended period, whether invocable when comprehensive audit already conducted - Show cause notice issued on 30-4-2009 for demand period 1-3-2004 to 31-10-2004 - Undisputedly appellant classifying forged articles of Iron and non-steel alloy under Heading 72.14 of Central Excise Tariff since 1994 onwards - Although there was no system of approval of classification list during relevant period, Department cannot shirk away from their responsibility - Appellant filing monthly returns regularly showing classification as above and availing concessional rate of duty - Comprehensive, EA - 2000 audits also conducted during the period - Department cannot say that said audit was for procedural issues and not for seeing classification of product - Since appellant was availing concessional rate of duty, it was duty of audit team to verify classification - Demand badly hit by limitation and hence set aside on this ground - Section 11A of Central Excise Act, 1944. [paras 7.8, 7.9, 7.10, 7.11]*

*Appeal allowed*

*CASES CITED*

*BCL Forgings Ltd. v. Commissioner — 2008 (224) E.L.T. 286 (Tribunal) — Relied on [Paras 4, 6.4, 6.5]*

*Collector v. Jaypee Forges — 2003 (158) E.L.T. 560 (S.C.) — Relied on [Para 4]*

*Collector v. TISCO Ltd. — 2003 (156) E.L.T. A210 (S.C.) — Relied on [Para 4]*

*Sharda Forging Stampings Pvt. Ltd. v. Commissioner — 2004 (166) E.L.T. 357 (Tribunal) — Relied on [Paras 4, 7.6]*

*TISCO Ltd. v. Commissioner — 2001 (131) E.L.T. 253 (Tribunal) — Relied on [Paras 4, 6.4]*

*Trans Engineers India Pvt. Ltd. v. Commissioner — 2015 (40) S.T.R. 490 (Tribunal) — Relied on [Paras 3, 7.10]*

*REPRESENTED BY: Shri V.S. Sejpal, Advocate, for the Appellant.*

*Shri Ashutosh Nath, Asst. Commissioner (AR), for the Respondent.*

**[Order per: M.V. Ravindran, Member (J)].** - *These two appeals are directed against Order-in-Appeal No. PKS/345/BEL/2010, dated 5-7-2010.*

*c) In the case of **Collector v. TISCO Ltd. - 2003 (156) E.L.T. A210 (S.C.)** regarding Forged/Rolled rings and blanks — Classifiable under Excise sub-heading 7326.90 “The Supreme Court Bench comprising Hon’ble Mr. Justice M.B. Shah, Hon’ble Mr. Justice P. Venkatarama Reddi and Hon’ble Mr. Justice D.M. Dharmadhikari on 24-10-2002 **dismissed** the Civil Appeal No. 2658 of 1994 (with C.A. Nos. 2547-2551/1999 & C.A. No. 4083/2001) filed by Collector of Central Excise, Gujarat against the CEGAT Order No. 232-42/92, dated 23-8-1993 and reported in **2001 (131) E.L.T. 253 (Tri. - Kolkata)** (TISCO Ltd. v. Commissioner). While dismissing the civil appeal the Supreme Court passed the following order :-*

*“Heard the learned Counsel for the parties.*

*Considering the reasons recorded by the CEGAT as well as the order passed by this Court in Veekay Industries v. Collector of Central, New Delhi [1997 (94) E.L.T. 5 (S.C.)], in our view, there is no substance in these appeals. Hence, these appeals are dismissed. There shall be no order as to costs.”*

*The Appellate Tribunal in its order in question had held that the forged/rolled rings and blanks on which machining is undertaken to make them fit for further machining for purpose of converting them into parts of machine at customer's end, would be classifiable under sub-heading 7326.90 of Central Excise Tariff Act, 1985 and not under sub-heading 8483.00 *ibid*.*

*A report relating to admission of the said Civil Appeal was published in 2001 (133) E.L.T. A164 (S.C.).*

*d) In the case of Collector v. Jaypee Forges - 1996 (86) E.L.T. A77 (S.C), Forgings and Forged products of Steel — Motor Vehicle Parts — Classification*

*The Supreme Court Bench comprising of Hon’ble Mr. Justice J.S. Verma and Hon’ble Mr. Justice B.N. Kirpal on 6-5-1996 has admitted the Civil Appeal No. 5334 of 1996 filed by Collector of Central Excise, Bombay against the CEGAT Order No. E/394/95-B, dated 21-9-1995 and reported in 1996 (83) E.L.T. 49 (Tribunal) (Jaypee Forges v. Collector).*

*The Appellate Tribunal by a majority decision had held that Forgings and forged products of steel do not acquire the essential character as motor vehicle parts and would be classifiable as forgings under sub-heading 7224.00/7326.90 of the Central Excise Tariff and not under sub-heading 8708.00 *ibid*.*

*18. The department explained regarding Chapter Heading 7219 at Point No. 8.2 of SCN as under ;*

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

a) Chapter heading 7219 reads as – Flat –Rolled products of Stainless Steel of a width of 600 mm or more. As the import product is a cladded product, not specifically mentioned in any of the CTH under CTH 7219, it appears that the same merits classification under the category –“OTHERS“.

b) As per the above the department accepted that in 7219 chapter heading “Flat – Rolled products of Stainless Steel of a width of 600 mm or more. As the import product is a cladded product, not specifically mentioned in any of the CTH under CTH 7219.

c) Now question is if the Product is not specifically mentioned in any Chapter under 7219 than how the department assume that the same merits classification under the category – “OTHERS” i.e. 72199090.

d) On the basis of assumption Show Cause Notice has been issued for classification of the product under CTH 7219 9090 which is bad in law and needs to be set aside.

e) As per above Notification 1/2017-Cus (CVD) dated 07.09.2017 CVD applicable on CTH 7219 & 7220.

In the Notification it is clear with a Note:-

(i) Flat rolled Product 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 10.5mm 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.

The above conditions applicable on product classify under 7219 or 7220 in Customs Tariff Act, 1975.

As per Customs Tariff Act, 1975 the description of **CHAPTER -7219** prescribe “**Flat –Rolled products of Stainless Steel of a width of 600 mm or more, Not further worked than hot-rolled, in coils”**

f) From the above description it is clear that the product should be; **“Flat –Rolled products of Stainless Steel of a width of 600 mm or more, Not further worked than hot-rolled, in coils.**

g) But the Imported product does not match the CTH- 7219. Since the Imported products are “Aluminum Cladded Circle- Triply” is a independent finished product and qualify in CHT- 7326 90 90 not qualify CTH-7219. **Not only that, it is accepted by the Department & mentioned in SCN Point No. 8.2.** Hence the condition of the Notification 1/2017-Cus (CVD) dated 07.09.2017 not applicable in the case.

h) In Paragraph 9 of point No. 2 of SCN it is mentioned that M/s Agrawal Traders Links imported “Aluminum Cladded Circles – Triply” which was having thickness of 2.5MM and width of less than 600 MM and cold rolled products, **it may be classified under CTH 7212 90 90 as per Chapter note of 72.**

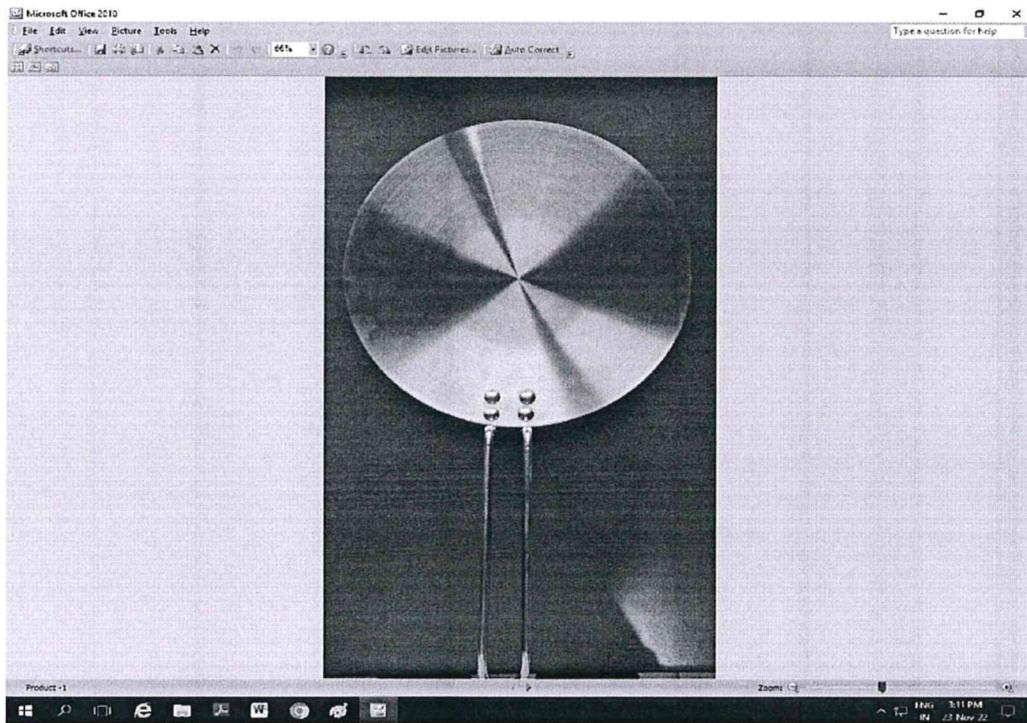
i. **First point is that the department refer chapter note 7 of Section XV of Customs Tariff, 1975 the chapter note is not applicable because the chapter not is applicable for “Except where the headings otherwise require”**

In the case “**Aluminum Cladded Circles – Triply**” already have a correct **CTH No. 7326 90 70 “Article of clad metal”.** Hence there is No need to follow the above chapter note.

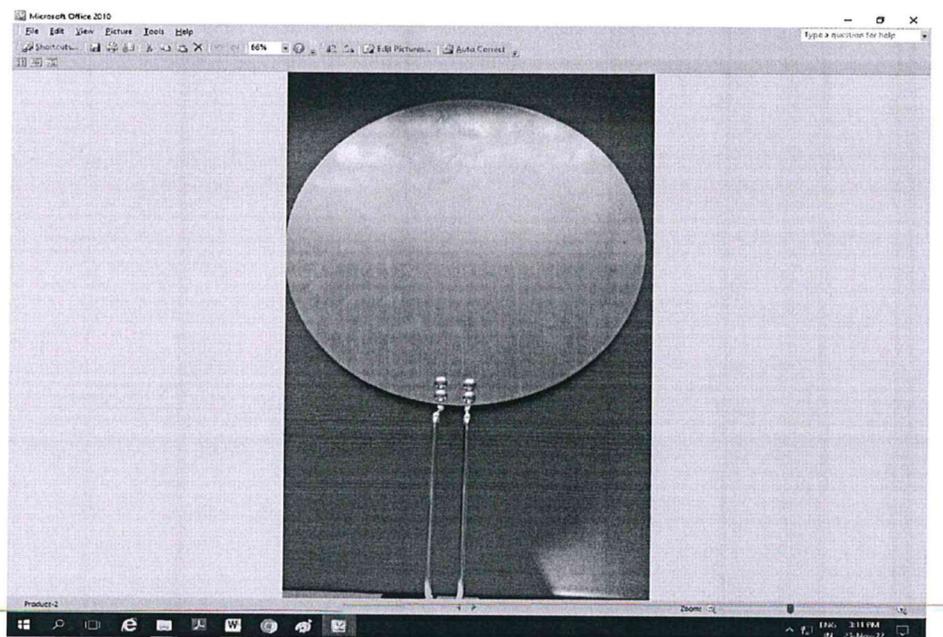
ii. **Second point is no where it has been mentioned that width of the product is less than 600 mm of imported product because it is not flat product of SS or coils or sheets. The product is in circle shape and independent final product. Some photo graphs of imported products are presented herewith for your reference are as under ;**

Product Type -1

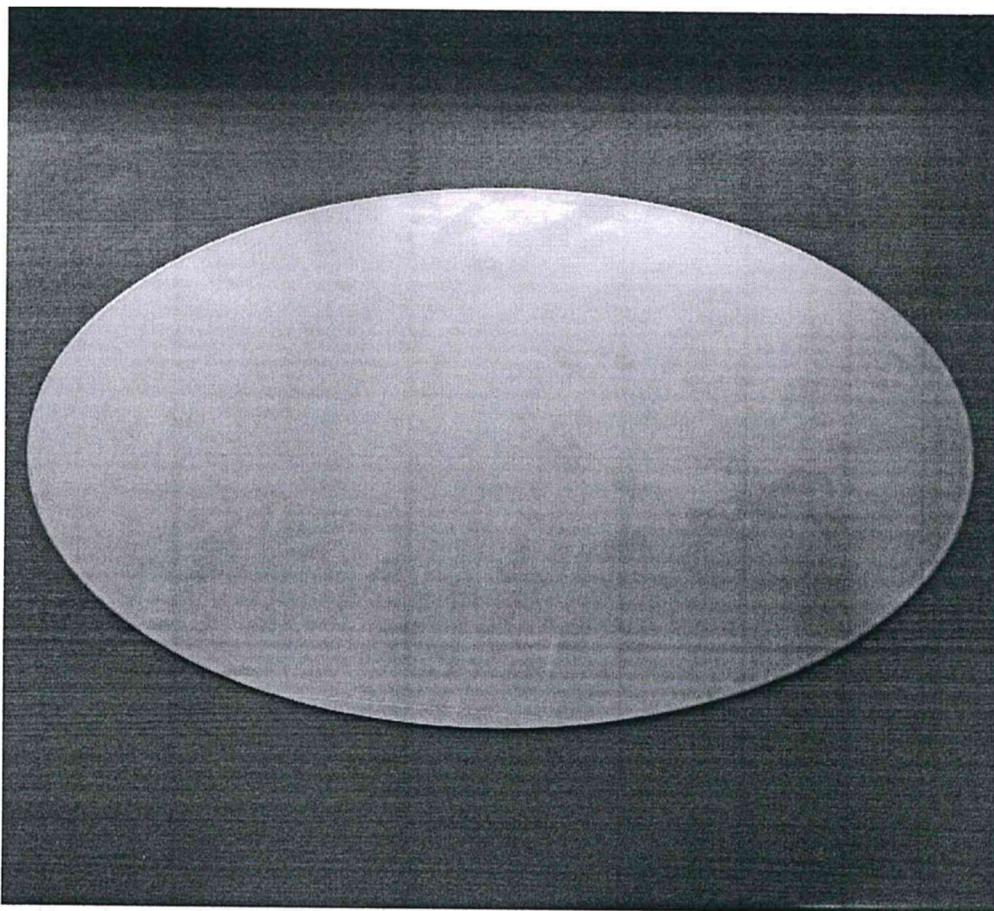
S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025



*Product Type -2*



*Product Type-3*



iii. Third point is the department assumed that "it may be classified under CTH 7212 90 90 as per Chapter note of 72" means the department also has doubt on their own assumption and therefore used the word "may be classified in CTH No. 7212 90 90 –others". It has to be proved in the SCN that the product may or may not be at any cost classified the product in CTH No. 7212.90.90. The department provided some photograph in page No. 7 of 20, 8 of page 20, 12 of page 20 & 13 of page 20 & 14 of page 20 which is not relevant comparison.

iv. Forth point what is prescribing the CTH 7219 as per Customs Tariff Act, 1975- "The CTH prescribing that "FLAT - ROLLED PRODUCTS OF STAINLESS STEEL, OF A WIDTH OF 600 MM OR MORE" not further worked than hot-rolled, in coils" The product as per the Assessee is classified under "Aluminium" and not under "Iron & Steel". In the absence of any evidence the Department cannot change the Classification merely to Demand CVD.

C. The 'Aluminum Cladded Triply Circles' imported vide Bill of Entry mentioned in Annexure-B' to this Notice, should not be recovered differential duty (CVD) amounting of Rs. 57,33,549 (Fifty Seven Lac Thirty Three Thousand Five Hundred Forty Nine Only) under section 28(4) Customs Act, 1962 along with applicable Interest under section 28AA of Customs Act, 1962.

- 1) Section 28(4) in the Customs Act, 1962 prescribed is as under;  
When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, by reason of,-
- a) collusion; or
  - b) any wilful mis-statement; or
  - c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within 5 years from 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.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

2) From the above it is clear that section 28(4) will be applicable "When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded".

The B.O.E wise details are as under;

Sr. No	B.O.E.	Date	CTH	Assessable Value	5 Years Completed on	SCN DATE
1.	8568823	24.08.2020	73269070	53,07,853	23.08.2025	28.11.2025
2.	8857488	18.09.2020	73269070	53,29,826	17.09.2025	28.11.2025
3.	9248748	20.10.2020	73269070	48,47,866	19.10.2025	28.11.2025
4.	8248753	20.10.2020	73269070	81,41,407	19.10.2025	28.11.2025

3) According to the above Bill of Entry date, as mention date in the column 3, the SCN has been issued on 28.11.2025 i.e. after 5 years.

4) As per Section 28(4) the SCN should have been issued within 5 years from the relevant date.

5) Not only that since there are no allegation of any duty has not been levied or has been short-levied, collusion or any willful mis-statement or suppression of facts proved, after submission of above reply. From the above facts the SCN is also time bared.

6) Relevant date ;

As per section 28(11) Explanation -1 For the purpose of this section, "relevant date" means,-

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

7) Based on this grounds itself the SCN should be set aside.

8) We have replied in our above that CVD is not applicable in the product because the product had imported with Correct Declaration in B.O.E details attached as Annexure-B fall in CTH. 7326 70 90 – "Aluminum Cladded Circles – Triply" and CTH -7219 not applied on the product as mentioned in SCN.

In this regards the importer is submitting their written submission and concluding that they have imported 'Aluminum Cladded Triply Circles' under HSN-7326 90 70 correctly as mentioned in Annexure-B and filed B.O.E correctly & paid correct applicable duty to the Customs Departments. Hence there is no duty liability on the Importer.

Since there is no liability to pay any duty, hence interest is also not applicable.

On the basis of the above submission the importer is requesting to set aside the SCN.

**D. The 'Aluminum Cladded Triply Circles' imported vide Bill of Entry mentioned in Annexure-B' to this Notice, having assessable value of Rs. 2,36,26,952/- (Rupees Two Crores Thirty Six Lakh Twenty Six Thousands Nine Hundred Fifty Two only), should not be confiscated under Section 111(m) of the Customs Act, 1962;**

1) The Customs Act, 1962 section 111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—

Sub sections (m) prescribe as under;

(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

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

*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*

2) *Form the above reply it is proved beyond doubt that the Product “Aluminum Cladded Circles Triply” under CTH No. 7326 90 70 by following B.O.E correctly classified at the time of Import.*

<i>Sr. No</i>	<i>B.O.E.</i>	<i>Date</i>	<i>CTH</i>	<i>Assessable Value</i>
<i>1.</i>	<i>8568823</i>	<i>24.08.2020</i>	<i>73269070</i>	<i>53,07,853</i>
<i>2.</i>	<i>8857488</i>	<i>18.09.2020</i>	<i>73269070</i>	<i>53,29,826</i>
<i>3.</i>	<i>9248748</i>	<i>20.10.2020</i>	<i>73269070</i>	<i>48,47,866</i>
<i>4.</i>	<i>8248753</i>	<i>20.10.2020</i>	<i>73269070</i>	<i>81,41,407</i>

3) *The meaning of Section 111(m) of Customs Act, 1962 if any goods do not correspond in respect of value or in any other particular not correctly declared in Bill of Entry at the time of Import (Customs clearance through customs frontier). In the case the Section 111(m) is not applicable because there is no dispute in CTH of the product which has been imported like “Aluminum Cladded Circles Triply” and there is no duty payable liability with the department, and correctly discharge duty liability before release the goods from Customs frontier.*

4) *The Assessee relies on the following case laws in support of its arguments;*

a) *In the case of COMMISSIONER OF CUS. (IMPORT), MUMBAI Versus P.N. SHAH ADHESIVES, 2017 (347) E.L.T. 333 (Tri. - Mumbai) it has been held that Confiscation and penalty - Mis-declaration of classification - It is not sustainable in absence of mala fide intent of importer in classifying imported goods under a wrong heading - Sections 111 and 112 of Customs Act, 1962. [para 4]*

b) *In the case of COMMR. OF CUS. (IMPORT), JNCH, NHAVA SHEVA Versus AMRIT CORP. LTD. 2016 (333) E.L.T. 340 (Tri. - Mumbai) it has been held that Confiscation, fine and penalty - Mis-declaration - Exemption from CVD claimed in Bill of Entry - Bona fide mistake admitted by respondent with request for assessment of goods on First Check Assessment - No case of mis-declaration or contumacious conduct on part of importer made out - Impugned order setting aside confiscation, fine and penalty upheld - Authority concerned directed to refund fine and penalty deposited by importer - Sections 111, 112 and 125 of Customs Act, 1962. [para 5]*

c) *JAYESH P. SURANA Versus COMMISSIONER OF CUSTOMS (IMPORTS), CHENNAI, 2009 (241) E.L.T. 87 (Tri. - Chennai) it has held that*

*Confiscation and penalty – Mis-declaration of description and classification - Description of goods entered as in purchase order placed on supplier - Conclusion of Commissioner that appellants had mis-declared description of goods imported as also classification with an intention to evade payment of duty, not substantiated by any evidence - Confiscation and penalty for declaring wrong classification, not sustainable - Sections 111 and 112 of Customs Act, 1962. [para 7]*

d) *SAINT GOBAIN GLASS INDIA LTD. Versus COMMR. OF CUS. (AIR), CHENNAI. 2014 (313) E.L.T. 680 (Tri. - Chennai) it has held that*

*Confiscation and penalty – Mis-declaration of tariff heading - Description given by appellants under the impugned Bill of Entry not questioned or changed by Customs authorities after examination and finalisation of assessment - Only the declared classification has been changed and claimed exemption has been denied - Determination of tariff heading and applicable rate*

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

*of duty is the ultimate job of Customs authorities and if an assessee tentatively indicates a wrong classification according to his understanding, then no motive can be attributed to him and neither the goods can be confiscated nor penalty can be imposed - Department need to bring suitable changes in the legislation if the intention is to cast some responsibility on assessee to indicate correct classification and rate of duty for quick clearance under the liberalised system specially made applicable to accredited clients of Department - Sections 111, 112 and 125 of Customs Act, 1962. [paras 6, 7]*

- e) *SATRON versus COMMISSIONER OF CUSTOMS (IMPORTS) JNCH, NHAVA SHEVA. 2020 (371) E.L.T. 565 (Tri. - Mumbai) it has held that*

*Confiscation - Misclassification vis-à-vis mis-declaration - Re-classification - Appellant importing incomplete Washing Machines by classifying same under Tariff Item 8450 90 10 of Customs Tariff Act, 1975 which were reclassified by assessing officer as complete machines under Tariff Item 8450 12 00 ibid in terms Rule 2(a) of Interpretative Rules because only knobs were missing from imported goods to make them a complete machine - Said re-classification only means that rate of duty pertaining to complete goods would be applicable and not as applicable to incomplete goods - In absence of any evidence of mis-declaration of description or value of goods, confiscation not sustainable for mere misclassification of goods and its change in terms of aforesaid interpretative rules - Section 111(m) of Customs Act, 1962. [para 5]*

- f) *ALSTOM TRANSPORT LTD. versus COMMISSIONER OF CUSTOMS, CHENNAI. 2007 (220) E.L.T. 312 (Tri. - Chennai) it has held that*

*Confiscation and penalty - Mis-declaration of description and classification - Description of goods entered as in purchase order placed on supplier - Conclusion of Commissioner that appellants had mis-declared description of goods imported as also classification with an intention to evade payment of duty, not substantiated by any evidence - Confiscation and penalty for declaring wrong classification, not sustainable - Sections 111 and 112 of Customs Act, 1962. [para 7]*

- 5) *From the above discussion we are concluding that the Section 111(m) of Customs Act, 1962 is not applicable and the goods cannot be confiscated.*

**E. The condition mentioned in Note 1 of Notification No. 1 /2017 –Customs (CVD). Date 07.09.2017 that**

*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 1.2mm to 10.5mm in case of hot rolled coils; 3mm to 105mm 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"*

*The above condition applicable only CTH 7219 OR 7220 because the above Notification applicable only CTH no 7219 or 7220.*

*Since Imported product is not fall under CTH No. 7219 or 7220 than CVD not applicable on the product "Aluminum Cladded Circles - Triply" imported by B.O.E as mentioned in Annexure-B fall under 7326 70 90.*

**Section 28AA of Customs Act, 1962 prescribe Interest on delayed payment of duty.-**

*Subsection (1) prescribe that 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*

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

*made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

*From the above it is clear that the person who is liable to pay duty in accordance with the provisions of section 28 of Customs Act, 1962.*

*In our above reply we have proved that the product "Aluminum Cladded Circles - Triply" fall under CTH 7326 70 90 and the department had issued SCN in wrong allegation. Hence there is no due any duties with the department. Where there is no dues of duty than there is no question arise of interest under Section 28AA of Customs Act, 1962.*

**F. Penalty should not be imposed on M/s Agarwal Trade Link under the provisions of Section 112 of the Customs Act, 1962.**

**1) Section 112 Custom Act 1962 prescribed as under;**

*Section 112(a) has two part and it is separated from word "or". First part is as follows; "provides for penalty against the 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.*

*As per intention of the legislature, this part of clause (a) is applicable to importer, exporter and/or beneficial owner, as any omission/ commission of conditions of Section 111, by them rendered the goods liable to confiscation.*

*In this regards we state that the department not produce any credence against allegation mentioned in the SCN. Without any evidence, the allegation has been mentioned in the SCN is not sustainable.*

**2) The Importer are relying on following Case Laws in support of our view;**

**a) In case of KAPILA KNIT FABRICS PVT. LTD. Versus COMM. OF CUS. (IMPORT), NHAVA SHEVA, RAIGAD. 2019 (28) G.S.T.L. 274 (Tri. - Mumbai) in the Final Order Nos. A/86062-86063/2019-WZB, dated 3-6-2019 in Appeal Nos. C/517-518/2009, held that**

*"Confiscation, redemption fine and penalty - Mis-declaration of woven fabric - Goods originally imported by another concern and description of goods were mixed fabrics and at the instance of appellant goods were put to test for ascertainment of its description and classification, that was done before the goods were cleared for home consumption - Entire case of Department based on collection of samples from appellant's warehouse on the basis of identification made by one employee, who was not subjected to cross-examination by appellant despite its request for such cross-examination - No other relationship was established by department to substantiate that goods seized by DRI was in fact related to goods cleared to appellant through the disputed Bill of Entry - DRI officials made visual examination of goods and ascertained that they comprised of seven different varieties/types of fabrics - Even then, Customs officials who drew the samples for first check examinations were not examined and reliance placed only on examination of appellant's staff to find out error in First Examination Report - Even in such situation, when two different opinions can be formed from contradictory evidence, the opinion that is favourable to offender is to be accepted - Veracity of statement of employee not tested through cross-examination nor any opportunity was provided to appellant to falsify such statement - Hence, no credence can be attributed to such a statement to penalize the appellant with additional burden of duty liability, penalty, etc. [paras 5, 6]"*

**b) In the case of DR. RAI MEMORIAL CANCER INSTITUTE Versus COMMISSIONER OF CUSTOMS, CHENNAI-VIII in the Final Order Nos. 40036-40037/2022, dated 3-2-2022 in Appeal Nos. C/40219 & 40191/2019 has held that**

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

*"Demand - Limitation - Bills of entry was filed in EDI system - Proper officer subjected goods to open examination and forwarded them for assessment - HELD : Bills of entry cannot be said to be subjected to self-assessment and that being case Department could not issue show cause notice invoking longer period alleging suppression, mis-declaration, etc. with intent to evade payment of duty - Exemption claim did not amount to suppression with intent to evade payment of duty - Sections 17 and 28 of Customs Act, 1962. [para 12]"*

**c) In the case of SATRON Versus COMMISSIONER OF CUSTOMS (IMPORTS) JNCH, NHAVA SHEVA in the Final Order No. A/88457/2018-WZB, dated 29-11-2018 in Appeal No. C/677/2011 has held that**

*"Confiscation - Misclassification vis-à-vis mis-declaration - Re-classification - Appellant importing incomplete Washing Machines by classifying same under Tariff Item 8450 90 10 of Customs Tariff Act, 1975 which were reclassified by assessing officer as complete machines under Tariff Item 8450 12 00 ibid in terms Rule 2(a) of Interpretative Rules because only knobs were missing from imported goods to make them a complete machine - Said re-classification only means that rate of duty pertaining to complete goods would be applicable and not as applicable to incomplete goods - In absence of any evidence of mis-declaration of description or value of goods, confiscation not sustainable for mere misclassification of goods and its change in terms of aforesaid interpretative rules - Section 111(m) of Customs Act, 1962. [para 5]"*

**d) In the Case of EFKON INDIA PVT. LTD. Versus COMMISSIONER OF CUS. (ACC & IMP), MUMBAI in Final Order Nos. A/85786-85787/2019-WZB, dated 22-1-2019 in Appeal Nos. C/94/2011 with Appeal No. C/129/2011**

*Import of Data Transfer Device - Wrong classification of goods as "Mobile Phone" instead of "Data Transfer Device" - Revenue contending case against importer not of misclassification simplicitor, but case of misdeclaration - HELD : Show cause notice not issued and matter adjudicated by Commissioner on the basis of waiver to show cause given by importer - Impugned order not referring even remotely to issue sought to be raised by Revenue in appeal - Such approach cannot be justified - However, issue regarding clearance of goods without licence as per Section 3 of Indian Wireless Telegraphy Act, 1933, read with Section 11 of Customs Act, 1962 squarely covered against Revenue in case of Reliance Communication Limited [2014 (301) E.L.T. 571 (Tribunal)] - No merit in appeal filed by Revenue. [paras 5.2, 5.3, 6.1]*

*Confiscation, redemption fine and penalty - Misclassification of goods in Bills of Entry - Bona fide error - Assessee's plea of improper classification of Data Transfer Device as Mobile Phone in Bill of Entry on account of bona fide error not supported by facts on record - Such description of goods not available in product catalogue or invoice - Argument made with regards to identical nature of imported goods and Mobile Phone also bereft of merits - Goods to be declared on Bill of Entry on basis of documents relating to importation of same and not on basis of physical examination of goods - When product catalogue and other documents in relation to imported goods do not describe goods as mobile phone, act of describing goods as "Mobile Phone" on Bill of Entry cannot be anything but case of deliberate mis-declaration - Case law relied on by assessee, not applicable - Also procedural relaxations and facilitation measures are for facilitating speedy clearance of imported goods and not for purpose of perpetuating fraud/mis-declaration - No infirmity in order of Commissioner in confiscating goods under Section 111(m) of Customs Act, 1962 - However, redemption fine imposed reduced from `15,00,000 to `10,00,000 - For various acts of omission and commission leading to confiscation of goods under Section 111(m) ibid importer liable for penalty under Section 112(a) ibid - No infirmity in order of Commissioner imposing penalty of `5,00,000 - Impugned order upheld with modifications - Sections 111(m) and 112(a) of Customs Act, 1962. [paras 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 6.2]*

*Assessee's appeal partly allowed/Department's appeal dismissed*

*From the above we are concluding that Section 112 of Customs Tariff Act, 1962 not applicable in the case.*

**G. Penalty not should be imposed on them u/s 114A of customs act 1962.**

*It is respectfully submitted that the provisions of section 114A of the Customs Act, 1962 are not attracted in the present case. Section 114A provides for the imposition of penalty only where duty has not been levied, has been short-levied, or interest has not been charged*

*or paid, or duty or interest has been erroneously refunded due to collusion, wilful misstatement, or suppression of facts. However, in the present facts, there is no liability to pay duty as the same has been discharged correctly, and there is no case of short-levy, non-levy, or erroneous refund. In the absence of any demand of duty or interest, the mandatory penalty under section 114A cannot be imposed, as held by various judicial pronouncements, including CESTAT and High Courts, which have consistently ruled that section 114A is inapplicable when there is no duty demand or when duty has been properly discharged.*

- i. *In the case of WRIGLEY INDIA PVT. LTD. Versus COMMISSIONER OF CUS. (IMPORT), CHENNAI IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI [COURT NO. I] vide Final Order Nos. 41336 & 41400/2013 reported on 2024 (390) E.L.T. 194 (Tri. - Chennai)*

*Sweet Pearl/Maltitol crystals - Classification - Importer claimed classification under Tariff Item 2905 49 00 of Customs Tariff - Importer's case was that impugned goods were (a) disaccharide alcohol produced from hydrogenation of maltose and polyhydric alcohol/polyol; (b) contain 99% Maltitol which was organic compound used as sugar substitute; and (c) similar goods were covered under Heading 2905 ibid. - Importer further claimed that since 2004 they were classifying sweet pearl under Tariff Item 2905 49 00 ibid - Revenue authorities, however, contented that impugned goods were artificial sweetener and food ingredient used in manufacture of chewing gum, qualifying them as food flavouring material under Tariff Item 2106 90 60 ibid - Revenue had sought opinion of (a) Expert Inspection Agency (EIA) who opined that sample were fit for use as food material; and (b) Central Food Laboratory, who opined that sample comprised of 99% Maltitol - However, adjudication order, without discussing how impugned goods were flavour enhancer, upheld classification under Tariff Item 2106 90 60 ibid. - HELD : Revenue had initial burden to disprove classification declared by importer and justify it under Tariff Item 2106 60 ibid. - Adjudication order had not considered EIA and CFL's expert opinions - Importer's claim was supported by CFL's report - Impugned goods chemical structure was  $C_2H_{42}O_{11}$ , which were separately defined chemical compounds classifiable under Chapter 29 alone - Product being polyol compound, had better claim to be classified under specific Heading 2905 ibid., more so, since Revenue had failed to establish its case - Hence, classification declared by importer was to be upheld Tariff Items 2106 90 60 and 2905 49 00 of Customs Tariff - Section 12 of Customs Act, 1962. [paras 6 to 9] Appeal dismissed against department*

**CASES CITED**

*H.P.L. Chemicals Ltd. v. Commissioner - 2006 (197) E.L.T. 324 (S.C.) - Relied on [Para 6]  
Parle Agro (P) Ltd. v. Commissioner of Commercial Taxes - 2017 (352) E.L.T. 113 (S.C.) - Relied on [Para 6]*

*Sunrise Traders v. Commissioner - 2022 (381) E.L.T. 393 (Tribunal) - Relied on [Para 10]  
Union of India v. Garware Nylons Ltd. - 1996 (87) E.L.T. 12 (S.C.) - Relied on [Para 6]*

- ii. *IN the case of Ajinomoto India Pvt. Ltd. Versus Commissioner of Customs, Chennai IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI vide Final Order No. 40364/2024 dated 28-03-2024 reported in 2024 (390) E.L.T. 325 (Tri. - Chennai) in Appeal No. C/40483/2023*

*Food flavouring material – Tariff Heading 2106 Exemption – Period 01-12-2017 to 29-10-2022 Ajitide I+G (disodium 5'-ribonucleotide) is a mixture of two chemically defined compounds viz. disodium inosinate and disodium guanylate. 'Flavour enhancers' have not been defined in Customs Tariff or HSN – As per open source, both terms deal with taste of food, odour, etc., and how they can be changed/enhanced but 'flavouring materials' enhance existing taste or impart or modify odour or depress certain undesirable taste/flavour. Imported goods impart flavour in food or odour – As per technical literature provided by importers, a unique taste called umami (pleasant savoury/meaty flavour/taste) and they also make food more palatable by acting synergistically with glutamates, while possessing characteristics of both 'food nutritional value of their own' and 'food flavour enhancers' – Hence imported goods are food flavouring materials. Food additives are generally known in market to be stabilizers, emulsifiers, antioxidants, preservatives etc., however, 'food flavouring materials' and 'food flavour enhancers' are not within the pale of definition of food additives as provided in Codex Alimentarius Commission and in Codex Alimentarius (Food Code) 2006 (FSSAI) – Well settled and also both sides agree that classification of impugned goods is to be done primarily as per their identity in common or commercial parlance or in HSN ingredients – In common parlance 'food preparation' refers to process of transforming edible ingredients into acceptable, delicious and safe food – Chemical mixtures which are added to food preparation or added – Flavourings – Imported goods are an essential edible component used in foods whether naturally present in foodstuffs either directly or after processing for human consumption adding flavour – They possess a flavour of their own and also enhance taste – They are used in food trade preparations and among people who use them as food flavouring materials – They are also known in food literature to confer umami taste provided by importers and also to enhance flavour of foods as is evident from technical preparations of their own and used in preparation – Further, imported food stuff covered under Section I to Section IV of Indian Customs Tariff, hence, as per Chapter Note 1(b) to Chapter 38, they are excluded from Chapter 38 and covered under Chapter 21 – Since imported goods were classifiable under Tariff Item 2106 90 60 – they were not eligible to Customs Duty exemption under Sl. No. 499(I) of Notification ibid – FSSAI's differentiating between flavour enhancers and food flavouring materials of different product codes for registration, which was relied on by importers by way of registration purposes – Their further reliance on only Codex Alimentarius, which was an administrative arrangement for specific INS number (INS 65) to subject goods as food additive, could also not be justified for deciding classification – Section 25 of Customs Act, 1962 – Section 2 read with Section 12 of Customs Tariff Act, 1975. [paras 2, 5 to 12]*

### **CASES CITED**

*Assistant Collector v. Bussa Overseas and Properties — 2004 (163) E.L.T. A160 (S.C.) — Relied on [Para 13.2]*  
*Associated Cement Companies Ltd. v. Commissioner - 2001 (128) E.L.T. 21 (S.C.) - Noted [Para 13.1]*  
*Banner Pharmacaps (India) Pvt. Ltd. v. Commissioner - 2005 (183) E.L.T. 151 (Tribunal) - Distinguished [Para 11]*  
*Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd. - (2003) 2 SCC 111 - Relied on [Para 11]*  
*Bussa Overseas and Properties Pvt. Ltd. v. Commissioner — 2004 (163) E.L.T. 304 (Bom.) - Relied on [Para 13.2]*  
*C.I.T. v. Taj Mahal Hotel Secunderabad — [1972] 1 SCR 168 — Relied on [Para 8.1]*  
*Commissioner v. International Flavours and Fragrances India Pvt. Ltd. — (2024) 14 Centax 66 (Tri. - Mad.) — Distinguished [Para 11]*  
*Commissioner v. SKF India Ltd. — 2009 (239) E.L.T. 385 (S.C.) — Relied on [Para 14]*  
*Hari Khemu Gawali v. Deputy Commissioner of Police — AIR 1956 SC 559 — Relied on [Para 9.1]*  
*Indo Nissin Foods Ltd. v. Commissioner — 2001 (133) E.L.T. 413 (Tribunal) - Distinguished [Paras 4.1, 6, 11]*

*Indo-International Industries v. Commissioner of Sales Tax — 1981 (8) E.L.T. 325 (S.C.) — Relied on [Para 8.1]*  
*Itspossible Marketing Ltd. v. Commissioner — 2018 (363) E.L.T. 683 (Tribunal) — Distinguished [Para 11]*

*Northern Plastic Ltd. v. Collector — 1998 (101) E.L.T. 549 (S.C.) — Relied on [Para 13.2]*  
*Plasmac Machine Manufacturing Co. Pvt. Ltd. v. Collector — 1991 (51) E.L.T. 161 (S.C.) — Relied on [Para 8.1]*

**H. Penalty should not be imposed on them u/s 117 of Customs Act, 1962.**

*Section 117 of the Customs Act, 1962 imposes penalties for contraventions of the Act that are not specifically covered under other penalty provisions. However, if there is no contravention of any provision of the Customs Act, 1962, then Section 117 is not applicable, and no penalty can be imposed under this section*

- i. *In the case of RAJAT INTERNATIONAL Versus COMMISSIONER OF CUSTOMS, MUNDRA IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD vide Final Order Nos. 11097-11100/2024-WZB/AHD, dated 17-5-2024 in Appeal Nos. C/10682-10685/2023 [COURT NO. I] reported on 2024 (389) E.L.T. 666 (Tri. - Ahmd.)*

*Broom sticks - Classification - Broom sticks were bound together in pack of 50 kg. each - Importer claimed exemption under Sl. No. 144 of Notification No. 2/2017-I.T. (Rate), dated 28-6-2017, which covered "Muddhas made of sarkanda and phool bahari jhadoo" under Heading 9603 and prescribes NIL IGST rate - Sl. No. 144 was substituted by Notification No. 28/2017-I.T. (Rate), dated 22-9-2017 with description "Muddhas made of sarkanda, Brooms or brushes, consisting of twigs or other vegetable materials, bound together, with or without handles" - Department claimed that item was covered under Sl. No. 260 of Notification No. 1/2017-I.T. (Rate), dated 28-6-2017 which covered "Broomsticks" under Tariff Item 9603 10 00 and attracted 5% IGST - Sl. No. 260 was amended by Notification No. 27/2017-I.T. (Rate), dated 22-9-2017 to effect that it covers "Broomsticks [other than brooms consisting of twigs or other vegetable materials bound together, with or without handles]" under "Heading 9603 [other than 9603 10 00]" - Commissioner (Appeals) found that importer had not contested classification and recorded submissions of parties, but did not deal with issue whether imported broom sticks were covered by Sl. No. 144 of Notification No. 2/2017-I.T. (Rate) or Sl. No. 260 of Notification No. 1/2017-I.T. (Rate) - HELD : Commissioner (Appeals) had not dealt with main issue - Hence, Order-in-Appeal was to be set aside and matter was to be remanded to Commissioner (Appeals) with direction to decide classification issue in view of statutory changes, before deciding other issues including limitation and re-assessment - Heading 9603 and Tariff Item 9603 10 00 of Customs Tariff - Section 12 read with Sections 28, 114A and 117 of Customs Act, 1962. [paras 4.1, 6, 6.3] Appeal allowed against department/matter remanded*

**CASES CITED**

*Aristoplast Products Pvt. Ltd. — 2019 (22) G.S.T.L. 139 (A.A.R. - GST) — Relied on [Para 6.2]*  
*ITC Limited v. Commissioner — 2019 (368) E.L.T. 216 (S.C.) — Referred [Para 2.2]*

**NOTIFICATIONS CITED**

*Notification No. 1/2017-I.T. (Rate), dated 28-6-2017 [Paras 2.1, 4, 4.1, 6, 6.2, 6.3]*  
*Notification No. 2/2017-I.T. (Rate), dated 28-6-2017 [Paras 2, 2.1, 2.4, 4, 4.1, 6, 6.2]*  
*Notification No. 27/2017-I.T. (Rate), dated 22-9-2017 [Paras 6, 6.2]*  
*Notification No. 28/2017-I.T. (Rate), dated 22-9-2017 [Paras 2.1, 6.2]*

- ii. ***In the case of TECH MAHINDRA LIMITED Versus COMM. OF CUS., CSI AIRPORT, MUMBAI IN THE CESTAT, WEST ZONAL BENCH, MUMBAI vide Final Order No. A/88584/2018-WZB, dated 4-5-2018 in Appeal No. C/422/2009 reported on 2020 (374) E.L.T. 792 (Tri. - Mumbai)***

*Valuation (Customs) - Undervaluation - Confiscation and penalty - Import by 100% EOU - Undisputedly, goods imported by EOU on rental basis from its parent company abroad to carry out project in India - Even if there is undervaluation of rental value by parent company, reassessment of imports have not led to recovery of differential duty - Thus enhancement of value for nominal purpose, would not lead to confiscation of goods and imposition of penalty - Impugned order set aside - Sections 14, 111 and 117 of Customs Act, 1962. [2016 (344) E.L.T. 1046 (Tri. - Mumbai) relied on] [paras 4, 5] Appeal allowed*

#### CASES CITED

*Commissioner v. ASB International Pvt. Ltd. — 2016 (344) E.L.T. 1046 (Tribunal) — Relied on [Paras 2, 4]  
Scorpien International v. Commissioner — 2017 (357) E.L.T. 1093 (Tribunal) — Referred [Para 2]*

*Since section 117 of Customs Act, 1962 prescribe Penalties for contravention, etc., not expressly mentioned.*

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

*In this regards the importer state the following;*

- i. *The allegation in the SCN is wrong. Already ICD, Tumb have issued a SCN against same allegation on same imported products on same importer. The importer have received a O-I-O in favour from Additional Commissioner of Customs Vide Order F. No. VIII/ 10-92 /ICD – Tumb/ O & A/ HQ/2021-22 dated 13.01.2023 & o-i-o No. 02/aks/adc/valsad/2022-23 dated 13.01.2023. Already copy is enclosed as Annexure-A. We are humbly requesting to refer the O-I-O.*
- ii. *As per the above section if any ***where no express penalty is elsewhere provided for such contravention or failure***. In the case the importer have not done any contravention of any act or rules of Customs department, hence the section is not applicable in the case.*
- iii. *In the SCN already imposed penalty U/S 112(a) & 114A, hence section 117 of Customs Act, 2017 cannot imposed. Hence the SCN needs to be set aside.*

#### I. PRAYER

*In view of the above submission contained in the preceding paragraph, the Assessee most respectfully and humbly pray before the Hon'ble Commissioner to make the following recommendation:*

- 1) *The Show Cause Notice is null & void since it is vague and issued on the basis of wrong Customs Tariff Heading and therefore has to be set aside.*
- 2) *The Classification has been correctly done by the Assessee. Hence re-classification of goods is not required.*
- 3) *SCN issued based on assumptions and presumptions are bad in law and need to be set aside.*

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

- 4) *Extended Period cannot be invoked.*
- 5) *Goods cannot be confiscated.*
- 6) *CVD is not payable.*
- 7) *Interest cannot be demanded since CVD is not payable.*
  
- 8) *Penalty is not applicable.*
- 9) *While passing of order, we request that all the issues raised in the SCN Reply should be considered in law and Spirit and the SCN to be set aside*
- 10) *Judicial Discipline must be followed while passing of order.*
- 11) *While passing of order, we request that all the issues raised in the Show Cause Notice Reply should be replied in law and Spirit and not with prejudice mind.*
- 12) *The Assessee would like to be heard in person before any order is passed on this Show Cause Notice.*
- 13) *The Assessee craves leave to add, amend, and delete the submissions.*
- 14) *Opportunity of Personal Hearing should be given before passing the Order.*

”

### **RECORDS OF PERSONAL HEARING**

12. In order to follow principle of natural justice, three opportunity of personal hearing (in virtual mode) was granted to Noticee on 25.11.2025, 09.12.2025 & 18.12.2025 vide this office letter dated 17.11.2025, 28.11.2025 & 11.12.2025 respectively. However, **neither** the Noticee **nor** any authorized representative on its behalf availed the same. Further, in pursuance of Corrigendum dated 09.01.2026, another opportunity of personal hearing (in virtual mode) was granted to Noticee on 12.01.2026 vide this office letter dated 09.01.2026. Same were also communicated to the Noticee on e-mail addresses: itsmerahul@yahoo.com (e-mail address of the Noticee) and kakaria.gst@gmail.com (e-mail address of Sh. Mr. Ranjan Dutta, GST Practitioner/ Kakaria & Associates LLP Chartered Accountants, Vapi). Sh. Mr. Ranjan Dutta, GST Practitioner (Kakaria & Associates LLP Chartered Accountants), appeared before this adjudicating authority virtually on 12.01.2026 and submitted that the written reply dated 06.01.2026 to be taken on record and re-iterated the submission made therein. Further in view of the said submission he requested that proceedings against the Noticee may be dropped and had nothing further to add.

### **DISCUSSION AND FINDINGS**

13. I have carefully gone through the Show Cause Notice (SCN), the applicable legal provisions, 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.

### **PRINCIPLE OF NATURAL JUSTICE**

14. Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity (in virtual mode) was granted to the Noticee on 25.11.2025, 09.12.2025 & 18.12.2025 vide this office letter dated 17.11.2025, 28.11.2025 & 11.12.2025 respectively. However, neither the Noticee nor any authorized representative on its behalf availed the same. Further, in pursuance of Corrigendum dated 09.01.2026, another opportunity of personal hearing (in virtual mode) was granted to Noticee on 12.01.2026 vide this office letter dated 09.01.2026. Same were also communicated to the Noticee on e-mail addresses: itsmerahul@yahoo.com (e-mail address of the Noticee) and kakaria.gst@gmail.com (e-mail address of Sh. Mr. Ranjan Dutta, GST Practitioner/ Kakaria & Associates LLP Chartered Accountants, Vapi). Sh. Mr. Ranjan Dutta, GST Practitioner (Kakaria & Associates LLP Chartered Accountants), appeared before this adjudicating authority virtually on 12.01.2026 and availed the personal hearing. Moreover, as per the provisions of Section 28(9) of the Customs Act, 1962, this adjudicating authority is under

strict legal obligation to complete the adjudication proceedings within a time bound manner. 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)]
- V. K. Thampi Vs. Collector of Customs and Central Excise, Cochin [1988 (033) EL T 0424], Hon'ble Tribunal held at Para 7 that "*an adjudicating authority is entitled to proceed ex-parte if the person concerned does not appear before it in response to a notice issued by them*".
- Modipon Ltd. vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]  
The Hon'ble High Court at Para 19 held as follows:

*"No doubt hearing includes written submissions and personal hearing as well but the principle of Audi Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners."*

### **FRAMING OF ISSUES**

15. 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:

- A. As to whether the impugned goods i.e. 'Aluminium cladded circles'/ SS Triply Circles, imported vide Bills of Entry as mentioned in Table-II above are rightly classifiable under CTI-72199090 as proposed in the Show Cause Notice or under CTH 73269070 as declared by the Noticee or otherwise;**
- B. As to whether the Differential Duty of Rs. 57,33,549/- (Rupees Fifty-Seven Lakhs Thirty-Three Thousand Five Hundred Forty-Nine Only) on leviability of CVD @ 18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 (for the relevant period) is recoverable under section 28(4) of the Customs Act, 1962 in respect of Bills of Entry as detailed in Table-II above along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise;**
- C. As to whether the goods imported in respect of Bills of Entry as detailed in Table-II above having declared Assessable Value of Rs. 2,36,26,952/- (Rupees Two Crores Thirty-Six Lakhs Twenty-Six Thousand Nine Hundred Fifty-Two Only) are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 or otherwise;**
- D. As to whether penalty under Section 112(a) and/or 114A, 114AA and Section 117 of the Customs Act, 1962 is liable to be imposed on M/s Agarwal Trade Links or otherwise.**

**A. NOW I TAKE UP THE FIRST QUESTION/ISSUE AS TO WHETHER THE GOODS 'ALUMINIUM CLADDED CIRCLES'/ SS TRIPLY CIRCLES, IMPORTED VIDE BILLS OF ENTRY AS MENTIONED IN TABLE-II ABOVE ARE RIGHTLY CLASSIFIABLE UNDER CTI-72199090 AS PROPOSED IN THE SHOW CAUSE NOTICE OR UNDER CTH 73269070 AS DECLARED BY THE NOTICEE OR OTHERWISE;**

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

### **COMPOSITION & MANUFACTURING PROCESS OF THE 'ALUMINIUM CLADDED CIRCLES'/ SS TRIPLY CIRCLES**

**16.1** I observe that 'Aluminium cladded circles'/ 'SS Triply Circles' are 'Flat-Rolled' base metal product of Stainless Steel. These are imported in Circle form. Flat-Rolled products are produced from slabs/thin slabs of base metals in rolling mills using flat rolls. In its simplest form, a rolling mill consists of two driven rolls in a mill stand with a screw down. The work piece to be rolled is passed through the rotating rolls to get the desired shape. Sometimes even heat may be applied to get the desired product. 'Triply' is the name given to this product as 'aluminium layer' is sandwiched between two stainless steel layers, through the process of 'Cladding'. Though there are numerous uses of cladded products but in this case, the said Triply circles are used for manufacture of utensils and kitchen items. The product under consideration is cladded with Aluminium as mentioned above. Cladding is a kind of surface treatment method and includes- (a) pouring molten cladding metal onto the basic metal, followed by rolling; (b) simple hot rolling of the cladding metal to the basic metal; (c) any other method of deposition of the cladding metal followed by any mechanical or thermal process to ensure welding (for example electro- cladding). These metal cladded products are mostly achieved through the process of roll bonding where layers of different metal sheets are passed through a pair of rollers under sufficient pressure to bond the metal layers. This process results in a Flat-rolled cladded product. The process of Cladding leads to the formation of a composite material.

**16.1.1** 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 *i.e.* – 2 layers of Stainless Steel and one layer of Aluminium.

**Layer-1-** Food Grade 18/8 stainless steel (also known as Type 304) 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.

### **BLANKING PROCESS**

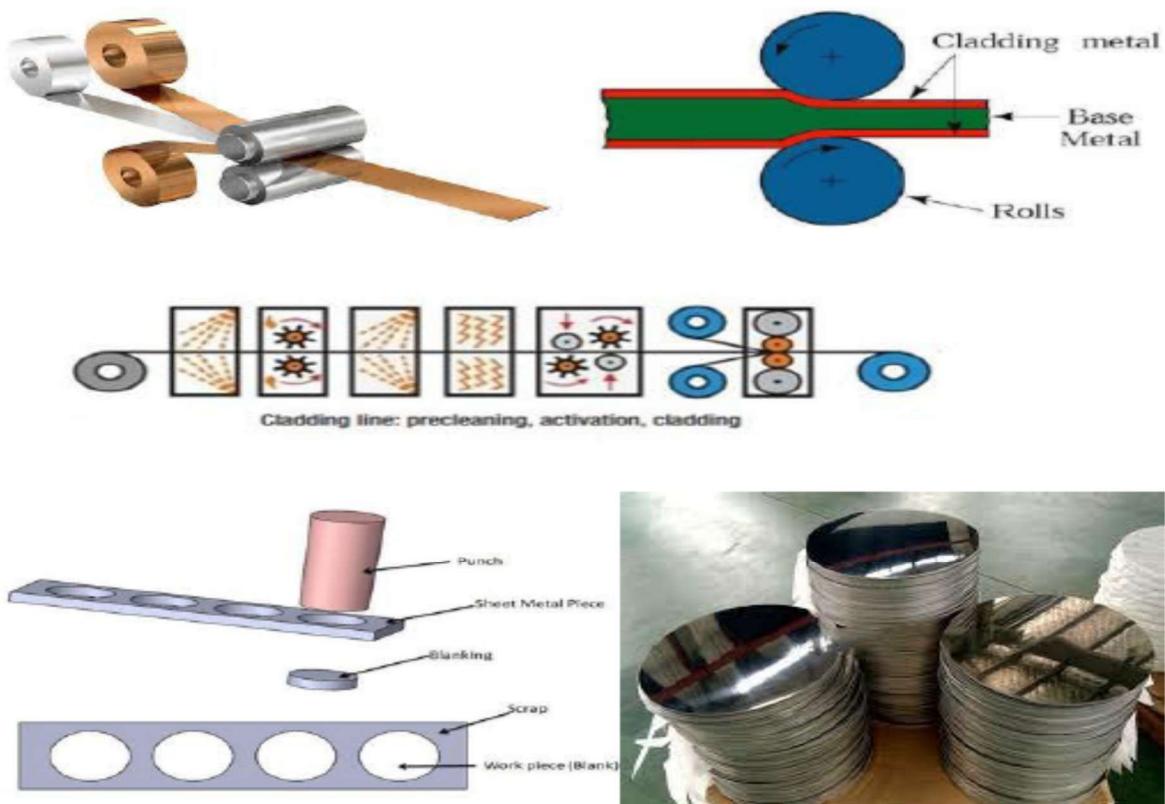
**16.1.2** From such flat-rolled sheets of composite material, circles are obtained with the help of a **blanking process**. In the steel industry, blanking is a sheet-metal cutting operation performed through a punch-and-die mechanism, whereby a predetermined profile is sheared out from a flat-rolled sheet or coil. In such operation, the cut-out portion constitutes the blank and is the intended product, while the surrounding material forms scrap. The process involves application of mechanical force resulting in

separation of material along the die contour, but it does not bring about any change in thickness, metallurgical structure, or intrinsic properties of the material.

**16.1.2.1** It is pertinent to note that blanking merely alters the outline of the flat-rolled sheet and produces a flat piece of defined dimensions. The resulting blank continues to remain a flat product without acquiring any three-dimensional shape, structural modification, or functional characteristics. No bending, forming, deep drawing, machining, welding, or assembly operations are undertaken at this stage. The blank thus requires further processing before it can assume the identity of a finished article.

**16.1.2.2** From a technical standpoint, therefore, blanking is distinguishable from forming or fabrication processes which impart shape and functionality. The operation is confined to cutting to shape and does not, by itself, result in the emergence of an article with independent use.

**16.1.2.3** Some of images, related to the product is as under: -

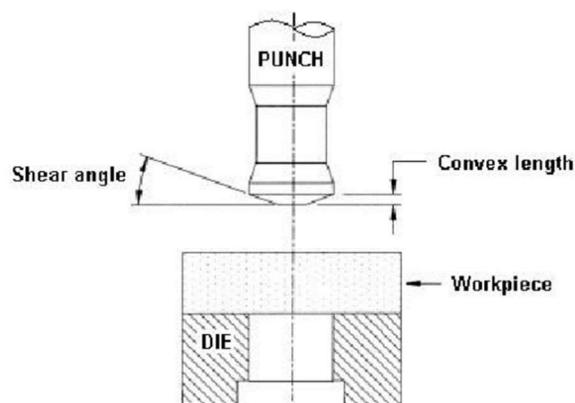
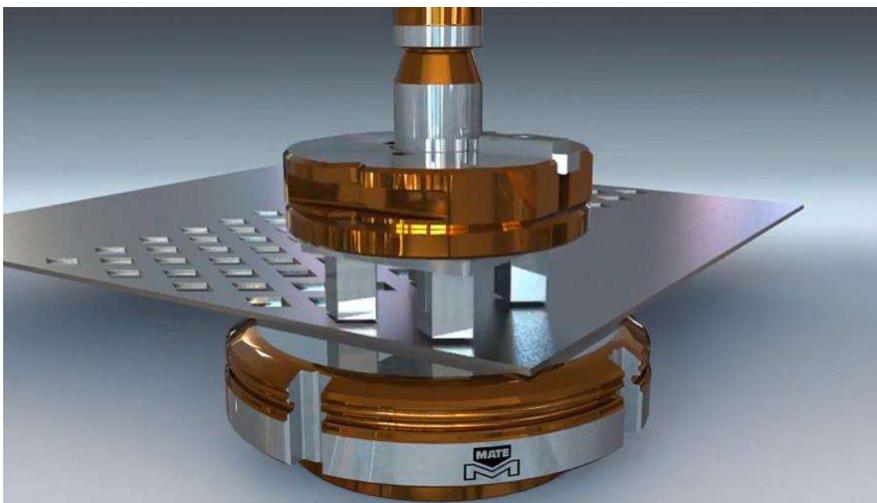


**16.1.3** It is also pertinent to mention here that **blanking is distinct from the punching process** undertaken in the steel industry. Though both operations involve shearing of sheet metal using a punch and die arrangement, **the essential difference lies in the intended product of the operation.** In blanking, the portion cut out from the flat-rolled sheet constitutes the desired product, commonly referred to as the “blank,” while the remaining surrounding material becomes scrap. Conversely, in punching, the sheet itself remains the principal product and the material removed in the form of holes or perforations is discarded as scrap. Technically, blanking is employed to obtain flat pieces of predetermined shape and size for further processing, whereas punching is undertaken to create apertures or perforations in a sheet without altering its overall identity as a flat product. Thus, while both are cutting operations, blanking results in the separation of a usable product, whereas punching merely modifies an existing sheet. This distinction is material in understanding the nature and extent of processing involved. A comparative Table of the above discussion is as follows:

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

<b>Comparative Table: Blanking vs Punching in Steel Industry</b>			
<b>Sr. No.</b>	<b>Particulars</b>	<b>Blanking</b>	<b>Punching</b>
1	Nature of operation	Shearing operation to cut out a predetermined external profile	Shearing operation to create holes or perforations in a sheet
2	Intended product	The cut-out portion (blank) is the useful product	The remaining sheet is the useful product
3	Scrap generated	Surrounding sheet skeleton becomes scrap	The punched-out pieces (slugs) become scrap
4	Change in product form	Produces a separate flat piece of defined shape and size	Sheet remains intact except for holes/perforations
5	Dimensional alteration	Alters external outline of the sheet	Does not alter overall outline; only internal removal
6	Functional transformation	No functional identity imparted; remains flat rolled product	No functional identity imparted; remains flat rolled sheet
7	Metallurgical change	None	None

**16.1.3.1** Some of images, related to the Punching is as under: -





### **USE OF 'SS TRI-PLY CIRCLES' OR ALUMINIUM CLADDED CIRCLES'**

**16.2** Now coming to the point of use of SS tri-ply circles and the subsequent article-forming steps, I am taking the manufacturing of a *tawa* as an illustrative example.

**16.2.1** The manufacturing process of a *tawa* from stainless steel blanks proceeds through identifiable and sequential stages, each contributing progressively to the development of the finished product.

- i. **SS tri-ply circles or Aluminium cladded circles or blanks:** At the stage of the product remains a flat disc of uniform thickness without curvature, rim formation, holes, or handle. The blank is incapable of being used as a cooking utensil and represents only an intermediate material intended for further processing.
- ii. **Stage I – Press Forming / Dishing:**  
The circular blank is thereafter subjected to forming operations in a hydraulic or mechanical press. Through controlled application of pressure, a shallow concave shape is imparted to the disc, thereby creating the basic cooking surface contour. While this operation alters the flat profile and introduces three-dimensional form, the product at this stage still lacks handling capability and remains incomplete.
- iii. **Stage II – Edge Trimming and Rim Formation:**  
Subsequent to forming, the edges of the shaped disc are trimmed and finished. Rim strengthening or rolling may be undertaken to enhance structural integrity and safety. These processes refine the shape and improve durability, but the product continues to remain without attachment mechanisms and is not yet capable of independent use.
- iv. **Stage III – Drilling and Handle Attachment:**  
In the next stage, holes are drilled at designated positions and a handle is affixed through riveting or welding. The attachment of the handle imparts handling capability and renders the product suitable for placement over a heat source and safe manual use. The product at this stage assumes the recognizable form of a *tawa* and becomes capable of functioning as a cooking utensil.
- v. **Stage IV – Surface Finishing and Polishing:**  
Finally, polishing, buffing, and surface finishing operations are carried out to enhance the aesthetic appeal and smoothness of the cooking surface. These finishing processes render the product commercially presentable and ready for sale in the market.
- vi. Thus, the transformation from a flat blank to a finished *tawa* is achieved through progressive forming, machining, assembly, and finishing operations, each stage contributing to the emergence of the final functional article.

**Not attaining the Essential Character of an Article**

**16.2.2** The emergence of essential character must be examined with reference to the progressive stages of manufacture. At the stage of SS tri-ply circles or aluminium-cladded blanks, the product remains a flat disc of uniform thickness without curvature, rim formation, holes, or handle attachment. At this point, the product does not possess the distinctive features associated with a tawa. Even after press forming or dishing, though a shallow concave contour is introduced, the absence of handling capability and structural completeness indicates that the essential character has not yet fully emerged. Similarly, edge trimming and rim formation improve durability and safety but do not impart functional identity. It is only at the stage where drilling and handle attachment are completed that the product assumes the recognizable shape and character of a tawa. The subsequent polishing and finishing operations enhance presentation but do not fundamentally alter the essential character already established upon handle attachment.

**Non-Usability as an Article**

**16.2.3** The usability of the product as a finished good depends upon its capability to perform the intended function without further processing. At the blank stage, the flat circular disc is incapable of being used as a cooking utensil and serves only as raw material. Following press forming and rim finishing, although the product begins to resemble a cooking surface, it still lacks handling capability and cannot be practically used over a heat source. The attachment of the handle marks the stage at which the product becomes capable of being placed on a stove and manually handled during cooking. Thus, usability as a finished cooking utensil arises only upon completion of handle attachment, whereas earlier stages represent incomplete and non-usable forms.

**Non-Marketability as an Article**

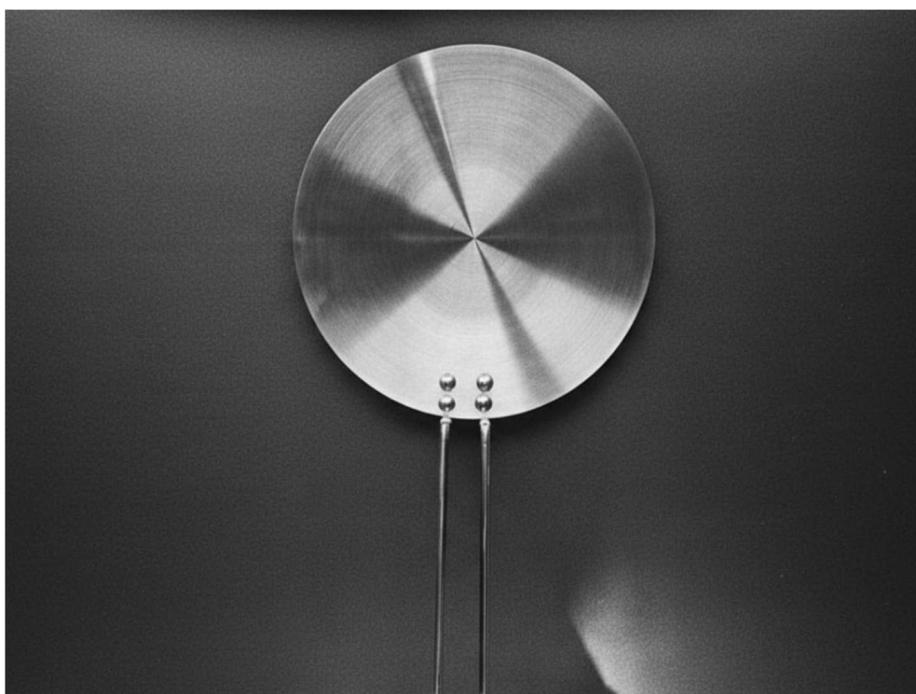
**16.2.4** Marketability as a finished article requires that the product be commercially recognizable and capable of being sold as such. The blank stage product is ordinarily traded, if at all, only as raw material and not as a cooking utensil. Even after forming and rim finishing, the product lacks functional completeness and is not typically marketed to end consumers as a tawa. Upon completion of drilling and handle attachment, the product acquires functional identity and becomes recognizable in commercial parlance as a tawa. The final polishing and surface finishing operations further enhance its commercial appeal and presentation, rendering it suitable for sale in the market as finished cookware. Accordingly, marketability as a finished good arises only after the stage of handle attachment and final finishing.

**16.2.5** Comparison at glance of ‘SS tri-ply circles’ or ‘Aluminium cladded circles’ or blanks v/s Tawa

<b>Core Legal Distinction</b>		
<b>Test</b>	<b>SS tri-ply circles or Aluminium cladded circles or blanks</b>	<b>Finished Tawa</b>
3D Shape	No	Yes
Functional Use	No	Yes
Marketability	No	Yes
Further Manufacturing Required	Yes	No
Identity as Article	No	Yes

**16.2.6** Illustrative image of finished tawa:

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025



### **SUMMARY**

**16.2.7** In view of the foregoing, I find that the process of blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles is a tariff-neutral operation. The said process merely involves cutting or shaping flat-rolled material into circular form and does not, by itself, result in the emergence of a new article.

**16.2.7.1** SS tri-ply circles or aluminium-cladded circles are mere blanks of flat-rolled products, being a flat disc without curvature, rim formation, holes, attachment features, or any other attributes that would impart the identity of a finished article. At this stage, the product does not acquire any essential character of a finished good.

**16.2.7.2** I further find that such blanks do not have any usability as finished articles, as they are incapable of performing any intended end-use function without undergoing substantial further manufacturing processes. They are meant for subsequent forming, machining, assembly, and finishing operations.

**16.2.7.3** It is also observed that SS tri-ply circles do not possess marketability as finished goods in commercial parlance. They are not ordinarily bought or sold as consumer articles, but only as inputs for further manufacture.

**16.2.7.4** I also find that an SS tri-ply circle does not have any specific or dedicated use corresponding to a particular finished article. Instead, it has a general use, comparable to that of flat-rolled products, and is capable of being utilized for the manufacture of a variety of articles depending upon subsequent processing.

**16.2.7.5** Accordingly, I hold that the blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles does not result in the emergence of a new article having a distinct identity, essential character, usability, marketability, or specific end-use as a finished good, and the said blanks remain comparable in nature and utility to flat-rolled products.

**FLAT ROLLED PRODUCTS**

**16.3** I observe the relevant part of Note 1 to the Chapter 72 of the Customs Tariff Act, 1975 is reproduced as below:

**1 (j) 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 conform to the definition at (1j) 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.”*

**16.3.1** I observe that for an item to be classified as a “flat-rolled product” under Chapter 72 of the Customs Tariff Act, 1975, the statutory definition contained in Note 1 to the Chapter assumes determinative importance. Note 1(j) defines “semi-finished products” as continuous cast products of solid section or other solid-section products not further worked than primary hot-rolling or roughly shaped by forging, including blanks for angles, shapes or sections, and expressly clarifies that such products are not presented in coils. This definition contemplates products which remain in primary or intermediate solid form and have not acquired the dimensional characteristics of flat-rolled products.

**16.3.1.1** In contrast, Note 1(k) defines “flat-rolled products” as rolled products of solid rectangular (other than square) cross-section which do not conform to the definition of semi-finished products under Note 1(j). Such products must be presented either in coils of successively superimposed layers or in straight lengths, subject to specified dimensional criteria. Where the thickness is less than 4.75 mm, the width must measure at least ten times the thickness; and where the thickness is 4.75 mm or more, the width must exceed 150 mm and measure at least twice the thickness. These dimensional thresholds serve to distinguish flat-rolled products from bars, rods, and other solid-section goods. The Note further clarifies that flat-rolled products may include products having patterns in relief derived directly from rolling, as well as those that have been perforated, corrugated, or polished, provided that such processes do not result in the goods assuming the character of articles or products of other headings. This is a significant statutory indication that minor or surface-level working does not, per se, remove goods from the ambit of flat-rolled products so long as the essential character remains unchanged.

**16.3.1.2** Additionally, Note 1(k) expressly provides that flat-rolled products of a shape other than rectangular or square are to be classified as products of a width of 600 mm or more, provided they do not assume the character of articles of other headings. This provision makes it clear that even non-rectangular shapes, including circular profiles obtained by blanking, may continue to qualify as flat-

rolled products, subject to retention of essential character and absence of transformation into distinct articles. Accordingly, from a conjoint reading of Notes 1(j) and 1(k), it emerges that classification as a flat-rolled product depends upon (i) the rolling origin of the product, (ii) satisfaction of prescribed dimensional parameters, (iii) presentation in coils or straight lengths (or equivalent non-rectangular forms treated as width  $\geq 600$  mm), and (iv) the product not having been further worked so as to assume the character of an article of another heading. The statutory framework thus draws a clear demarcation between semi-finished products, flat-rolled products, and finished articles.

**16.3.2 Upon examination of the statutory definitions contained in Note 1(j) and Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975, read with the factual particulars available on record, I find that the SS tri-ply circles / aluminium-cladded circles in question satisfy the essential requirements for classification as flat-rolled products and are clearly excluded from the ambit of semi-finished products under Note 1(j).**

**16.3.2.1** Note 1(j) defines “semi-finished products” as continuous cast products of solid section or other products of solid section not further worked than primary hot-rolling or roughly shaped by forging, including blanks for angles, shapes or sections. The defining characteristic of such products is that they are solid-section products which have not attained the dimensional and form characteristics of flat-rolled products. The subject goods ‘SS tri-ply circle’s / ‘aluminium-cladded circles’ are not continuous cast products nor solid-section products within the meaning of Note 1(j). They originate from rolled stainless steel composite sheets and possess the characteristics of flat-rolled products. Accordingly, I find that the goods are excluded from the scope of Note 1(j).

**16.3.2.2** Turning to Note 1(k), flat-rolled products are defined as rolled products of solid rectangular (other than square) cross-section which do not conform to the definition under Note 1(j), subject to specified dimensional criteria. It is not in dispute that the subject goods ‘SS tri-ply circle’s / ‘aluminium-cladded circles’ originate from flat-rolled stainless-steel composite sheets consisting of stainless-steel layers bonded with an aluminium core. These sheets are rolled products of rectangular cross-section prior to blanking. The subsequent process undertaken is limited to blanking, whereby circular discs are cut out from such flat-rolled sheets. As already discussed, blanking of Flat Rolled Products is a tariff neutral operation which does not alter the metallurgical composition, thickness, bonding structure, or essential character of the material, but merely changes the external outline from rectangular sheet form to circular profile.

**16.3.2.3** As per the invoices and packing list submitted by the importer (screenshot enclosed at Para 16.3.3), the goods have a thickness of less than 4.75 mm. Further, the width (diameter) of these circles is more than ten times their thickness. Therefore, it is an undisputed fact that the rectangular/square flat-rolled sheets from which these ‘SS tri-ply circles’ / ‘aluminium-cladded circles’ are blanked satisfy the prescribed criterion of having a width at least ten times the thickness. In terms of Note 1(k), where the thickness is less than 4.75 mm, the width must measure at least ten times the thickness. Although the dimensional formula is expressed with reference to rectangular cross-sections, **Note 1(k) further provides that flat-rolled products of a shape other than rectangular or square are to be classified as products of a width of 600 mm or more, provided they do not assume the character of articles of other headings. This clarification is significant in the present case, as it reflects the legislative intent that a mere change in external outline does not deprive the goods of their character as flat-rolled products.**

**16.3.2.4** The circles in question are obtained directly from rectangular flat-rolled sheets. The subsequent conversion into circular shape through blanking does not transform the goods into a new or distinct product category. The statutory intent, as reflected in Note 1(k), is to ensure that non-rectangular shapes derived from flat-rolled sheets do not lose their classification merely by reason of cutting to shape, so long as they retain the essential character of flat-rolled products and have not assumed the character of articles of other headings. I further observe that the subject goods ‘SS tri-ply circle’s / ‘aluminium-cladded circles’ remain flat, lack curvature, rim formation, holes, or handle

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

attachment, and are incapable of being used as semi-finished or finished utensils. They require further forming, machining, assembly, and finishing operations before acquiring independent functional identity. Consequently, they do not assume the character of articles of Chapter 73 or any other heading.

**16.3.2.5** Accordingly, I find that the subject goods 'SS tri-ply circle's / 'aluminium-cladded circles':

1. The subject goods are excluded from the scope of Note 1(j) relating to semi-finished products;
2. They satisfy the statutory criteria under Note 1(k) as flat-rolled products;
3. The process of blanking is tariff-neutral and does not alter their essential character; and
4. The SS tri-ply circles / aluminium-cladded circles, being blanked out of rectangular flat-rolled stainless-steel sheets satisfying the dimensional criteria under Note 1(k), and having undergone no further working beyond cutting to shape, continue to retain the essential character of flat-rolled products.

**16.3.3** Screen shot of invoice/ packing list of the impugned goods are reproduced for reference, as follows:

**Invoice of Bill of Entry No. 8568823 Dated 24.08.2020**

<b>COMET INTERNATIONAL LTD</b>											
FLAT/RM 720AB 7/F WANG CHEONG FACTORY ESTATE 781 LAI CHIKOK ROAD CHEUNG SHA WAN, KOWLOON, HONG KONG											
<b>Invoice Number:</b>	<b>CMTSZ-20260</b>	<b>BI Number:</b>	<b>OVG/NGB/NSA-10092/20</b>	<b>COMMERCIAL INVOICE</b>							
<b>Date</b>	21-Sep-20	<b>Shipping line / Vessel Name</b>	ONE CONTRIBUTION 043W	FOR ACCOUNT & RISK OF							
<b>Payment Term</b>	T/T	<b>Shipment Date:</b>	5-Oct-20	<b>AGARWAL TRADE LINKS,</b>							
<b>Currency</b>	USD	<b>Country of Origin</b>	CHINA	<b>OFF NO. 219, 2nd FLOOR, DEVASHISH ARCADE,</b>							
<b>Shipment Term</b>	CIF NHAVA SHEVA, INDIA	<b>Sales Contract No</b>	LIST	<b>OPP. ODHAV GURUDWARA,</b>							
<b>Port Of Loading</b>	NINGBO,CHINA	<b>L/C No.</b>		<b>ODHAV - AHMEDABAD - 382415,</b>							
<b>Port of Discharge</b>	NHAVA SHEVA, INDIA	<b>L/C Date</b>		<b>GST NO. 24AESP7580A1Z</b>							
<b>Place of Delivery</b>	NHAVA SHEVA, INDIA	<b>L/C Issuing Bank</b>		<b>EMAIL : iitsmerahul@yahoo.com</b>							
<b>Item Description</b>	5 PLY ALUMINIUM CLADDED CIRCLES			<b>IEC CODE - 0815001592</b>							
	HS CODE:73269070			<b>Tel - 0091-9909912092</b>							
				<b>PAN - AESPB7580A1</b>							
<b>Sr. No.</b>	<b>GRADE</b>	<b>FINISH</b>	<b>Thickness</b>	<b>Width</b>	<b>Length</b>	<b>Qty</b>	<b>Package No.</b>	<b>Contract NO.</b>	<b>Unit Price</b>	<b>Total Amount</b>	
1	Aluminium Cladded Circles	Mill finish	2.5	420	SHEET	2.172	1	CMT-20254	5,950.00	12,920.43	
2	Aluminium Cladded Circles	Mill finish	2.5	485	SHEET	2.844	1	CMT-20254	5,950.00	16,921.80	
3	Aluminium Cladded Circles	Mill finish	2.5	320	SHEET	1.178	1	CMT-20254	5,950.00	7,009.10	
4	Aluminium Cladded Circles	Mill finish	2.5	330	SHEET	1.271		CMT-20254	5,950.00	7,562.45	
5	Aluminium Cladded Circles	Mill finish	2.5	380	SHEET	0.866	1	CMT-20254	5,950.00	5,154.49	
6	Aluminium Cladded Circles	Mill finish	2.5	395	SHEET	1.851		CMT-20254	5,950.00	11,014.64	
7	Aluminium Cladded Circles	Mill finish	2.5	380	SHEET	0.866	1	CMT-20254	5,950.00	5,154.49	
8	Aluminium Cladded Circles	Mill finish	2.5	350	SHEET	1.422		CMT-20254	5,950.00	8,462.09	
9	Aluminium Cladded Circles	Mill finish	2.5	255	SHEET	0.777	1	CMT-20254	5,950.00	4,623.15	
10	Aluminium Cladded Circles	Mill finish	2.5	325	SHEET	2.484		CMT-20254	5,950.00	14,779.80	
11	Aluminium Cladded Circles	Mill finish	2.5	280	SHEET	2.697	1	CMT-20254	5,950.00	16,047.15	
										-	
										-	
										-	

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
 SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

**Invoice of Bill of Entry No. 8857488 Dated 18.09.2020**

		<b>PT. BINTANG ASIA USAHA</b> KAWASAN INDUSTRI TUNAS TIPE 1 G KEL. BELIAN, KEC. BATAM KOTA KOTA BATAM, PROP. KEPULAUAN RIAU KODE POS 29464, INDONESIA				
<b>COMMERCIAL INVOICE</b>						
<b>EXPORTER / BENEFICIARY:</b> PT. BINTANG ASIA USAHA KAWASAN INDUSTRI TUNAS TIPE 1 G KEL. BELIAN, KEC. BATAM KOTA KOTA BATAM, PROP. KEPULAUAN RIAU KODE POS 29464, INDONESIA NPWP: 82.616.985.6-225.000		<b>INVOICE NO. :      DATE :</b> BAU 0079/2020    18/08/2020  <b>AS PER COMMERCIAL CONTRACT No. &amp; DATE :</b> BAUSC-702001    28/05/2020				
<b>CONSIGNEE:</b> AGARWAL TRADE LINKS, OFF NO. 219, 2nd FLOOR, DEVASHISH ARCADE, OPP. ODHAV GURUDWARA, ODHAV - AHMEDABAD - 382415, GST NO. 24AESP87580A1ZN EMAIL : itsmerahul@yahoo.com IEC CODE - 0815001592 PAN NO. AESP87580A		<b>NOTIFY PARTY 1 :</b> AGARWAL TRADE LINKS, OFF NO. 219, 2nd FLOOR, DEVASHISH ARCADE, OPP. ODHAV GURUDWARA, ODHAV - AHMEDABAD - 382415, GST NO. 24AESP87580A1ZN EMAIL : itsmerahul@yahoo.com IEC CODE - 0815001592 PAN NO. AESP87580A				
<b>VESSEL NAME &amp; VOY NO. :</b> INFINITI 5 - V.92391N		<b>SAILING DATE :</b> 20-Aug-20				
<b>PORT OF LOADING :</b> BATU AMPAR - INDONESIA		<b>TRADE TERMS</b> CIF NHAVA SHEVA				
<b>PORT OF DISCHARGE :</b> NHAVA SHEVA		<b>TERMS OF PAYMENT</b> 100% THROUGH TT TRANSFER AFTER SHIPMENT				
<b>DESCRIPTION :</b> Aluminium Cladded Triply Circles		<b>PLACE OF FINAL DELIVERY :</b> NHAVA SHEVA				
<b>GRADE :</b>		<b>FINAL DESTINATION COUNTRY :</b> INDIA				
<b>FINISH :</b>						
HS CODE	DESCRIPTION OF GOODS		QUANTITY		UNIT PRICE	TOTAL AMOUNT
	DIAMETER IN MM	THICKNESS IN MM	N.WT. IN MT	G.WT. IN MT	CIF USD/MT	CIF US DOLLAR
7326.90.70	280	0.40	1.007	1.017	2,600	2,618.20
7326.90.70	285	0.25	2.780	2.800	2,600	7,228.00
7326.90.70	295	0.25	1.738	1.748	2,600	4,518.80
7326.90.70	330	0.25	3.816	3.856	2,600	9,921.60
7326.90.70	350	0.25	1.632	1.652	2,600	4,243.20
7326.90.70	355	0.25	4.847	4.907	2,600	12,602.20
7326.90.70	380	0.25	1.421	1.441	2,600	3,694.60
7326.90.70	395	0.25	3.698	3.738	2,600	9,614.80
7326.90.70	420	0.25	6.540	6.600	2,600	17,004.00
<b>SUB TOTAL</b>			<b>27.479</b>	<b>27.759</b>		<b>71,445.40</b>
IN WORDS : USD SEVENTY ONE THOUSAND AND FOUR HUNDRED FORTY FIVE POINT FORTY CENTS						
<b>OUR BANK DETAILS :</b> <b>BANK MANDIRI</b> JL. ENSKU PUTRI, KAWASAN TUNAS INDUSTRIAL 1A/9 BATAM 29464 ACC. NO : 1 [REDACTED] ACC. NAME : [REDACTED] SWIFT CODE : [REDACTED]						
WE CERTIFY THAT GOODS ARE OF INDONESIA ORIGIN  WE DECLARE THAT THIS INVOICE SHOWS THE ACTUAL PRICE OF THE GOODS DESCRIBED AND THAT ALL PARTICULARS ARE TRUE AND CORRECT.						
					<b>STAMP &amp; SIGNATURES :</b> 	



**CLASSIFICATION OF 'ALUMINIUM CLADDED CIRCLES' OR 'SS TRI-PLY CIRCLES'**

**16.4** 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 consist of two chapters of Iron and Steel. Chapter 72 covers Iron and Steel, whereas Chapter 73 covers Articles of Iron and Steel. Chapter 72 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.

**I. EXCLUSION FROM CTH 7326**

**16.4.1** I observe that the item 'SS Triply Circle' or 'Aluminium clad circles 3 Ply SS304 + AL + SS430' is a composite product of two base metals viz. Stainless Steel and Aluminium and it should be classified as product of stainless Steel as Stainless Steel predominates the weight. **I find that it is also an undisputed fact that the stainless steel is predominating by the weight in the imported item.**

**16.4.1.1** 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".*

**16.4.1.2** 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 layers 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.

**16.4.1.3** 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.

**16.4.1.4** I observe that the Explanatory Notes to CTH 7326 specify that as follows:

*"this heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note I to Section XV or included in **Chapter 82 or 83** or more specifically covered elsewhere in the Nomenclature."*

**16.4.1.5** I observe that Heading 7326 reads as “Other articles of iron or steel.” The use of the expression “Other articles” indicates that the heading is residuary in nature and is intended to cover only those articles of iron or steel which are not specifically covered elsewhere in Chapter 73 or in any other Chapter of the Tariff. The legal implication of this structure is that Heading 7326 operates only when the goods in question:

1. Qualify as “articles” of iron or steel;
2. Are not covered by any of the preceding headings of Chapter 73;
3. Are not excluded by Section Note 1 to Section XV; and
4. Are not more specifically covered elsewhere in the Tariff.

**16.4.1.6** 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.

**16.4.1.7** 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’. Since the impugned goods though made of ‘clad metal’ has not attained the essential characters of an articles, same can’t be classified under CTH 73269070.

**16.4.1.8** More importantly, they are specifically covered under Heading 7219 as flat-rolled stainless-steel products. Since they are more specifically described under Chapter 72, resort to Heading 7326, which is residuary and applicable only to “other articles,” is legally unsustainable.

**16.4.1.9** Thus, heading 7326 cannot be invoked to classify goods that:

- Do not qualify as articles;
- Are specifically covered elsewhere in the Nomenclature, particularly under Chapter 72.

**16.4.1.10** Accordingly, I observe that Heading 7326, being a residual entry, excludes goods that are not articles & covered by Section Note 1 to Section XV or are more specifically classifiable under other headings, including those of Chapter 72. Therefore, the impugned goods cannot be brought under CTH 7326.

## II. INCLUSION UNDER CTH 7219

**16.4.2** 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).

**16.4.2.1** I observe 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 to 721914, 721921 to 7421924, 721931 to 721935 it would transpire that all these heads are for only hot or cold rolled stainless steel, not further worked. 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.

**16.4.2.2** It is further observed that the Explanatory Notes to Headings 7208 to 7210 apply mutatis mutandis to products of Heading 7219. Heading 7210 specifically covers flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, which are clad, plated or coated. On a harmonious reading of the tariff structure and corresponding Explanatory Notes, it becomes evident that the scheme adopted for iron or non-alloy steel under Headings 7208 to 7210 is mirrored for stainless steel under Heading 7219. **Just as Heading 7210 is the specific entry for clad, plated or coated flat-rolled products of iron or non-alloy steel, Heading 7219, through subheading 7219.90, provides the corresponding classification for clad, plated or coated flat-rolled products of stainless steel.** Since subheadings 7219.11 to 7219.35 are confined to hot-rolled or cold-rolled stainless steel “not further worked”, subheading 7219.90 necessarily encompasses stainless steel flat-rolled products which have been further worked by cladding, plating or coating.

**16.4.2.3** 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’

**16.4.2.4** Since, the cladding does not result into conversion of clad metals into articles of steel, the clad metal/steel i.e. Triply circles do not 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.

**16.4.2.5** Further, as already discussed in the forgoing Para 16.3 supra the subject goods ‘SS tri-ply circle’s / ‘aluminium-cladded circles’ are excluded from the scope of Note 1(j) relating to semi-finished products and satisfy the statutory criteria under Note 1(k) as flat-rolled products. It is also held that the process of blanking is tariff-neutral and does not alter their essential character and that the SS tri-ply circles / aluminium-cladded circles, being blanked out of rectangular flat-rolled stainless-steel sheets satisfying the dimensional criteria under Note 1(k), and having undergone no further working beyond cutting to shape, continue to retain the essential character of flat-rolled products. In this context I observe that the Note 1(k) further provides that flat-rolled products of a shape other than rectangular or square are to be classified as products of a width of 600 mm or more, accordingly the impugned goods merit classification under CTH 7219 that covers Flat-Rolled Products of Stainless Steel, of a width of 600 mm or more.

**16.4.2.6** I further observe that subheading 7219.90 is subdivided into tariff items 7219.90.11 to 7219.90.13, which specifically pertain to clad stainless steel products presented in the form of sheets and plates. The residual tariff item 7219.90.90 covers “others” falling within the scope of 7219.90 but not specifically enumerated in the preceding entries. In the present case, the impugned goods are SS tri-ply / aluminium-cladded stainless-steel circles obtained by blanking from flat-rolled sheets. They are not presented as rectangular sheets or plates but as circular profiles. While they retain the essential character of flat-rolled stainless-steel products and fall squarely within subheading 7219.90 as clad stainless-steel products, they do not conform to the description of “sheets” or “plates” under tariff items 7219.90.11 to 7219.90.13. Accordingly, by application of the principle of specific enumeration followed by residual coverage within the same subheading, I find that the impugned circular clad stainless-steel products merit classification under tariff item 7219.90.90, being “other” clad flat-rolled stainless-steel products not specifically covered under 7219.90.11 to 7219.90.13.

### **Implementation of the General Rules for Interpretation (GRI)**

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

- (i) As per rule 1 of GIR “for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”. In the scheme of chapter 72, Custom Tariff Heading 7219.90 is for further worked flat rolled Stainless-steel products like clad products. It is because entire CTH 7219 is divided into two parts, one for “**not further worked flat rolled stainless steel products**” and “**further worked flat rolled stainless steel products**”. Whereas CTHs 721911 to 721914, 721921 to 7421924, 721931 to 721935 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**”. Further the Explanatory Notes to Headings 7208 to 7210 apply mutatis mutandis to products of Heading 7219. Heading 7210 specifically covers flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, which are clad, plated or coated. On a harmonious reading of the tariff structure and corresponding Explanatory Notes, it becomes evident that the scheme adopted for iron or non-alloy steel under Headings 7208 to 7210 is mirrored for stainless steel under Heading 7219. Just as Heading 7210 is the specific entry for clad, plated or coated flat-rolled products of iron or non-alloy steel, Heading 7219, through subheading 7219.90, provides the corresponding classification for clad, plated or coated flat-rolled products of stainless steel. In this context, clad flat rolled stainless steel has been provided with a very clear and unambiguous Custom Tariff Heading in terms of CTH 7219.90. Therefore, the same merits classification under CTH 7219.90 in terms of general rules of interpretation.
- (ii) Further, cladding is a process where a layer of one material is bonded to other by welding, rolling, laser base techniques. 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.

### 16.5 Above findings are supported by following case laws: -

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

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

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

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

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

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

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

**16.6 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.”*

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

- The preponderance of weight in the imported goods is of the steel and there is no dispute regarding the product being flat rolled product comprising of two layers of steel with a sandwiched layer of aluminum between them.
- The product squarely falls within the definition of Flat Rolled product of Stainless-Steel of a width of 600 mm or more, as per Rule 2(b) of the General Rules of Interpretation (GRI) read with Note 1(j) and Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975. The process of cladding with aluminum neither changes the nature of the imported product as semi-finished product nor makes it as a finished article of steel. There is no dispute about the fact that imported products are not rectangle or square in shape of any size. Therefore, in view of the relevant Chapter Note's they do not assume the characteristics of a finished article, merely because of cladding a layer of aluminum.

## SUMMARY

16.8 Upon careful consideration of the nature of the product and the processes undertaken, I find that the impugned goods, namely “Aluminium Cladded Circles” / “SS Tri-Ply Circles,” are flat-rolled stainless steel products. The product is manufactured by cladding, wherein an aluminium layer is metallurgically bonded between two stainless steel layers through roll bonding. This process results in the formation of a composite material, combining the properties of stainless steel and aluminium, while retaining the essential character of a flat-rolled stainless-steel product.

16.8.1 **Cladding** is a recognized surface treatment process and does not alter the fundamental classification of the product as a flat-rolled item. The tri-ply configuration enhances functional properties such as heat distribution and durability, but the product continues to remain a flat-rolled composite metal sheet within the meaning of Chapter 72. The subsequent operation undertaken is **blanking**, whereby circular profiles are cut out from the flat-rolled composite sheets. Blanking is a sheet-metal shearing operation performed using a punch-and-die mechanism. In this process, the circular cut-out portion constitutes the intended product (blank), while the surrounding sheet skeleton becomes scrap. The operation merely changes the external outline from rectangular to circular shape and does not affect thickness, metallurgical structure, bonding characteristics, or intrinsic properties of the composite material. It is important to distinguish blanking from punching. In punching, the sheet remains the principal product and only perforations are created, with the removed slugs treated as scrap. In blanking, however, the cut-out portion is the usable product and the remaining material becomes scrap. Nevertheless, in both operations, there is no functional transformation. In the present case, blanking does not impart any curvature, rim formation, holes, handle attachment, or three-dimensional form. The circles remain flat and lack independent functional identity. Thus, the SS tri-ply / aluminium-cladded circles retain their identity as flat-rolled stainless-steel composite products and do not emerge as articles merely by virtue of blanking.

16.8.2 In view of the foregoing, I find that the process of blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles is a tariff-neutral operation. The said process merely involves cutting or shaping flat-rolled material into circular form and does not, by itself, result in the emergence of a new article. SS tri-ply circles or aluminium-cladded circles are mere blanks of flat-rolled products, being a flat disc without curvature, rim formation, holes, attachment features, or any other attributes that would impart the identity of a finished article. At this stage, the **product does not acquire any essential character** of a finished good. I further find that such **blanks do not have any usability as finished articles**, as they are incapable of performing any intended end-use function without

undergoing substantial further manufacturing processes. They are meant for subsequent forming, machining, assembly, and finishing operations. It is also observed that SS tri-ply circles **do not possess marketability as finished goods** in commercial parlance. They are not ordinarily bought or sold as consumer articles, but only as inputs for further manufacture.

I also find that an SS tri-ply circle **does not have any specific or dedicated use corresponding to a particular finished article. Instead, it has a general use**, comparable to that of flat-rolled products, and is capable of being utilized for the manufacture of a variety of articles depending upon subsequent processing. Accordingly, I hold that the blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles does not result in the emergence of a new article having a distinct identity, essential character, usability, marketability, or specific end-use as a finished good, and the said blanks remain comparable in nature and utility to flat-rolled products.

**16.8.3** Upon examination of Note 1(j) and Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975, read with the undisputed factual matrix, I find that the impugned SS tri-ply circles / aluminium-cladded circles are flat-rolled stainless-steel composite products and are clearly excluded from the scope of “semi-finished products” under Note 1(j). The goods originate from rectangular flat-rolled sheets satisfying the prescribed dimensional criteria, and the subsequent process of blanking is merely a tariff-neutral cutting operation that changes the external outline without altering thickness, composition, bonding structure, or essential character. **Note 1(k) specifically provides that flat-rolled products of shapes other than rectangular or square are to be classified as products of a width of 600 mm or more, provided they do not assume the character of articles of other headings. This clarification is significant in the present case, as it reflects the legislative intent that a mere change in external outline does not deprive the goods of their character as flat-rolled products.** The impugned goods remain flat, lack independent functionality, and have not acquired the character of articles under Chapter 73. Accordingly, I hold that the goods retain the essential character of flat-rolled products and are rightly classifiable under Heading 7219

**16.8.4** I observe that Chapter 72 of the Customs Tariff covers iron and steel in their primary, semi-finished and flat-rolled forms, whereas Chapter 73 covers finished articles of iron and steel having definite shape, independent function and direct end use. The impugned SS Triply / Aluminium Cladded Circles are composite products in which stainless steel predominates by weight and, in terms of Section Note 7 to Section XV, are to be treated as stainless steel products. At the stage of importation, the goods are merely flat blank circles requiring substantial further processing and do not possess independent functionality, finished shape, or direct usability. They therefore do not qualify as “articles” under Chapter 73. Heading 7326, being a residuary entry covering “other articles of iron or steel,” can be invoked only where goods qualify as articles and are not more specifically covered elsewhere in the Tariff. Since the impugned goods are specifically covered under Heading 7219 as flat-rolled stainless-steel products and have not assumed the essential character of articles, classification under CTH 7326 stands excluded.

**16.8.5** The impugned goods, namely SS Triply / Aluminium Cladded Circles, are products of stainless steel and fall within Sub-Chapter III (Headings 7218–7227) of Chapter 72 dealing with stainless steel. The relevant competing headings are 7219 (for width 600 mm or more) and 7220 (for width less than 600 mm). In terms of Note 1(k), flat-rolled products of non-rectangular shape are to be classified as products of width 600 mm or more. The circles are blanked from rectangular flat-rolled sheets, and blanking being a tariff-neutral operation does not alter their essential character. The goods therefore retain the character of flat-rolled stainless-steel products. Heading 7219 covers flat-rolled stainless-steel products of width 600 mm or more, and subheadings 7219.11 to 7219.35 cover stainless steel not further worked beyond hot or cold rolling. The impugned goods are clad stainless-steel products and are therefore “further worked.” Subheading 7219.90 specifically covers other flat-rolled stainless-steel products, including clad products. The Explanatory Notes to Headings 7208–7210 apply mutatis mutandis to Heading 7219, and just as Heading 7210 covers clad flat-rolled products of iron or non-alloy steel, heading 7219.90 covers clad stainless steel. The tariff scheme clearly segregates not-further-worked and further-worked stainless steel products. Cladding does not convert the goods into

articles of steel, and they remain flat-rolled composite stainless-steel products. Tariff items 7219.90.11 to 7219.90.13 apply to sheets and plates, whereas the impugned goods are circular profiles and not sheets or plates. Therefore, they fall under residual tariff item 7219.90.90. Accordingly, by application of GRI Rules 1, 2(b), 3(a) and 6, the goods are correctly classifiable under CTH 7219.90.90.

**16.8.6 In view of above facts, findings, Chapter Notes, Section Notes, General Rule of Interpretation, I hold that the item – 'Aluminium Cladded Circles'/ 'SS Triply circles' imported vide Bills of Entries mentioned above in Table-II, is rightly classifiable under CTH 72199090.**

### **REBUTTAL OF DEFENCE SUBMISSIONS**

**16.9** Noticee has contended that in the identical matter an O-I-O vide number 02/ AKS/ ADC /VALSAD / 2022-23 dated 13.01.2023 is in favor of the Importer and the said Judgment has binding precedence.

**16.9.1** In this context, I observe that the Order-in-Original No. 02/AKS/ADC/VALSAD/2022-23 dated 13.01.2023, passed by the Additional Commissioner of Customs, Surat, does not have binding precedential value upon this adjudicating authority. It is a settled principle of law that an Order-in-Original passed by a co-ordinate adjudicating authority is not binding on another adjudicating authority, particularly when the issues are required to be examined independently on the basis of the facts, evidence, and statutory provisions applicable in the present case. Each adjudication must be based on the specific factual matrix and legal provisions governing the matter under consideration. Further, upon examination, I find that the said order suffers from inherent legal infirmities and does not correctly appreciate the statutory scheme of Chapter 72 vis-à-vis Chapter 73, the scope of Note 1(k) to Chapter 72, the nature of blanking as a tariff-neutral operation, and the distinction between flat-rolled products and articles. Same has been discussed in detail in the foregoing Para 16 to 16.8. Therefore, the reliance placed by the Noticee on the said Order-in-Original is misplaced and untenable, and the same cannot be treated as binding precedent in the present proceedings.

**16.9.2** Noticee has further contended that "Aluminum Cladded Circles Triply" basically is also called in Hindi Tawa, is used for making Chapattis (Roti). It is an independent finished product and the "Aluminum Cladded Circles Triply" of various sizes was imported by Importer.

**16.9.2.1** I find the said contention of the Noticee is totally flawed and mis-leading. In this context, I reiterate my findings recorded in para 16.2 supra, which are mutatis mutandis applicable to the issue at hand.

**16.9.2.2** Now coming to the point of use of SS tri-ply circles and the subsequent article-forming steps, I am taking the manufacturing of a *tawa* as an illustrative example.

**16.9.2.3** The manufacturing process of a tawa from stainless steel blanks proceeds through identifiable and sequential stages, each contributing progressively to the development of the finished product.

- i. **SS tri-ply circles or Aluminium cladded circles or blanks:** At the stage of the product remains a flat disc of uniform thickness without curvature, rim formation, holes, or handle. The blank is incapable of being used as a cooking utensil and represents only an intermediate material intended for further processing.
- ii. **Stage I – Press Forming / Dishing:**  
The circular blank is thereafter subjected to forming operations in a hydraulic or mechanical press. Through controlled application of pressure, a shallow concave shape is imparted to the disc, thereby creating the basic cooking surface contour. While this operation alters the flat profile and introduces three-dimensional form, the product at this stage still lacks handling capability and remains incomplete.
- iii. **Stage II – Edge Trimming and Rim Formation:**  
Subsequent to forming, the edges of the shaped disc are trimmed and finished. Rim strengthening or rolling may be undertaken to enhance structural integrity and safety. These processes refine the

shape and improve durability, but the product continues to remain without attachment mechanisms and is not yet capable of independent use.

iv. **Stage III – Drilling and Handle Attachment:**

In the next stage, holes are drilled at designated positions and a handle is affixed through riveting or welding. The attachment of the handle imparts handling capability and renders the product suitable for placement over a heat source and safe manual use. The product at this stage assumes the recognizable form of a tawa and becomes capable of functioning as a cooking utensil.

v. **Stage IV – Surface Finishing and Polishing:**

Finally, polishing, buffing, and surface finishing operations are carried out to enhance the aesthetic appeal and smoothness of the cooking surface. These finishing processes render the product commercially presentable and ready for sale in the market.

vi. Thus, the transformation from a flat blank to a finished tawa is achieved through progressive forming, machining, assembly, and finishing operations, each stage contributing to the emergence of the final functional article.

### **Not attaining the Essential Character of an Article**

**16.9.2.4** The emergence of essential character must be examined with reference to the progressive stages of manufacture. At the stage of SS tri-ply circles or aluminium-cladded blanks, the product remains a flat disc of uniform thickness without curvature, rim formation, holes, or handle attachment. At this point, the product does not possess the distinctive features associated with a tawa. Even after press forming or dishing, though a shallow concave contour is introduced, the absence of handling capability and structural completeness indicates that the essential character has not yet fully emerged. Similarly, edge trimming and rim formation improve durability and safety but do not impart functional identity. It is only at the stage where drilling and handle attachment are completed that the product assumes the recognizable shape and character of a tawa. The subsequent polishing and finishing operations enhance presentation but do not fundamentally alter the essential character already established upon handle attachment.

### **Non-Usability as an Article**

**16.9.2.5** The usability of the product as a finished good depends upon its capability to perform the intended function without further processing. At the blank stage, the flat circular disc is incapable of being used as a cooking utensil and serves only as raw material. Following press forming and rim finishing, although the product begins to resemble a cooking surface, it still lacks handling capability and cannot be practically used over a heat source. The attachment of the handle marks the stage at which the product becomes capable of being placed on a stove and manually handled during cooking. Thus, usability as a finished cooking utensil arises only upon completion of handle attachment, whereas earlier stages represent incomplete and non-usable forms.

### **Non-Marketability as an Article**

**16.9.2.6** Marketability as a finished article requires that the product be commercially recognizable and capable of being sold as such. The blank stage product is ordinarily traded, if at all, only as raw material and not as a cooking utensil. Even after forming and rim finishing, the product lacks functional completeness and is not typically marketed to end consumers as a tawa. Upon completion of drilling and handle attachment, the product acquires functional identity and becomes recognizable in commercial parlance as a tawa. The final polishing and surface finishing operations further enhance its commercial appeal and presentation, rendering it suitable for sale in the market as finished cookware. Accordingly, marketability as a finished good arises only after the stage of handle attachment and final finishing.

**16.9.2.7** Comparison at glance of ‘SS tri-ply circles’ or ‘Aluminium cladded circles’ or blanks v/s Tawa

<b>Core Legal Distinction</b>		
<b>Test</b>	<b>SS tri-ply circles or Aluminium cladded circles or blanks</b>	<b>Finished Tawa</b>
3D Shape	No	Yes
Functional Use	No	Yes

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

Marketability	No	Yes
Further Manufacturing Required	Yes	No
Identity as Article	No	Yes

**16.9.2.8** From the foregoing, I find that the essential character of a tawa does not arise at the blank stage. The blank lacks three-dimensional form, functional usability, and independent market identity. It does not possess the defining attributes of a cooking utensil.

**16.9.2.9** The tests of essential character, usability, and marketability clearly demonstrate the distinction:

- A blank is flat and incomplete; a tawa has a defined concave cooking surface with handle.
- A blank cannot be used independently; a tawa can be directly used for cooking.
- A blank is traded, if at all, as raw material; a tawa is sold as finished cookware.
- A blank requires substantial further manufacturing; a tawa does not.

**16.9.2.10** Accordingly, I hold that the imported SS tri-ply circles / **aluminium-cladded circles are not tawa and do not possess the essential character of a finished article. I further find that the impugned goods do not even possess the essential characteristics to be remotely regarded as semi-finished tawa or any identifiable utensil.** They are merely flat-rolled composite stainless-steel blanks which require substantial further processing—such as forming, rim finishing, drilling, handle attachment, and polishing—before the emergence of a cooking utensil. The contention of the Noticee that the imported goods are independent finished products is therefore devoid of merit and stands rejected.

**16.9.3** Noticee has contended that as per Customs Tariff Act, 1975 the Chapter Heading for 7219 is prescribed as under; **“Flat-rolled product of stainless steel, of a width of 600 mm or more”** Not further worked than hot-rolled, in coils. I find that the said contention is in-correct. In this context, I reiterate my findings recorded in para 16.4 supra, which are mutatis mutandis applicable to the issue at hand.

**16.9.3.1** I observe that CTH 7219 covers both ‘**non-further worked than hot/cold rolled**’ steel and ‘**further worked on hot/cold rolling like cladded of steel product**’. On seeing the provisions of CTH 721911 to 721914, 721921 to 7421924, 721931 to 721935 it would transpire that all these heads are for only hot or cold rolled stainless steel, not further worked. 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.

**16.9.3.2** It is further observed that the Explanatory Notes to Headings 7208 to 7210 apply mutatis mutandis to products of Heading 7219. Heading 7210 specifically covers flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, which are clad, plated or coated. On a harmonious reading of the tariff structure and corresponding Explanatory Notes, it becomes evident that the scheme adopted for iron or non-alloy steel under Headings 7208 to 7210 is mirrored for stainless steel under Heading 7219. **Just as Heading 7210 is the specific entry for clad, plated or coated flat-rolled products of iron or non-alloy steel, Heading 7219, through subheading 7219.90, provides the corresponding classification for clad, plated or coated flat-rolled products of stainless steel.** Since subheadings 7219.11 to 7219.35 are confined to hot-rolled or cold-rolled stainless steel “not further worked”, subheading 7219.90 necessarily encompasses stainless steel flat-rolled products which have been further worked by cladding, plating or coating.

**16.9.3.3** 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’

**16.9.3.4** Accordingly, the contention of the Noticee is rejected.

**16.9.4** I notice that the Noticee has also contended *he Customs Tariff Act, 1975 prescribed the Chapter Heading 7326 as under "Other article of iron or steel"*

***Forged or stamped, but not further worked***

***7326 90 70 -Article of clad metals***

***Hence the importer correctly classifies the CTH-7326 90 70***

**16.9.4** I find that the Noticee has not given any explanation as to why the goods merit classification under CTH 73269070, instead has merely just quoted the above text. In this context, I reiterate my findings recorded in para 16.4 *supra*, which are *mutatis mutandis* applicable to the issue at hand.

**16.9.4.1** I observe that the Explanatory Notes to CTH 7326 specify that as follows:

*"this heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in the preceding headings of this Chapter or covered by Note I to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature."*

**16.9.4.2** I observe that Heading 7326 reads as "Other articles of iron or steel." The use of the expression "Other articles" indicates that the heading is residuary in nature and is intended to cover only those articles of iron or steel which are not specifically covered elsewhere in Chapter 73 or in any other Chapter of the Tariff. The legal implication of this structure is that Heading 7326 operates only when the goods in question:

5. Qualify as "articles" of iron or steel;
6. Are not covered by any of the preceding headings of Chapter 73;
7. Are not excluded by Section Note 1 to Section XV; and
8. Are not more specifically covered elsewhere in the Tariff.

**16.9.4.3** 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.

**16.9.4.4** 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'. Since the impugned goods though made of 'clad metal' has not attained the essential characters of an articles, same can't be classified under CTH 73269070.

**16.9.4.5** More importantly, they are specifically covered under Heading 7219 as flat-rolled stainless-steel products. Since they are more specifically described under Chapter 72, resort to Heading 7326, which is residuary and applicable only to "other articles," is legally unsustainable.

**16.9.4.6** Thus, heading 7326 cannot be invoked to classify goods that:

- Do not qualify as articles;
- Are specifically covered elsewhere in the Nomenclature, particularly under Chapter 72.

**16.9.4.7** Accordingly, I observe that Heading 7326, being a residual entry, excludes goods that are not articles & covered by Section Note 1 to Section XV or are more specifically classifiable under other headings, including those of Chapter 72. Therefore, the impugned goods cannot be brought under CTH 7326 and the contention of the Noticee is rejected.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

**16.9.5** Noticee has also submitted that the SCN has been issued on 28.11.2025 i.e. after 5 years and as per Section 28(4) the SCN should have been issued within 5 years from the relevant date. Relevant date; As per section 28(11) Explanation -1 For the purpose of this section, "relevant date" means, -  
(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods; Based on this ground itself the SCN should be set aside.

**16.9.5.1** In this regard, I observe that the Noticee, in his reply, has stated an incorrect date of issuance of the Show Cause Notice (SCN) as 28.11.2025. However, I further observe that in the written submission dated 06.01.2026, the Noticee has in fact correctly stated the date of issuance of the SCN as 03.09.2025. A screenshot evidencing the same has been placed below for reference. This clearly indicates inconsistency in the submissions of the Noticee and reflects lack of due care and accuracy even in respect of basic factual particulars placed on record.

**16.9.5.2** In this context it is pertinent to mention here that the date of earliest Bill of Entry No. 8568823 Dated 24.08.2020, as per SCN, it's Out of Charge date is 04.09.2020, whereas the SCN issue date is 03.09.2020, therefore the SCN has been timely issued and is not time barred.

**16.9.5.3** Screenshot of Noticee's written submission dated 06.01.2026:

## AGARWAL TRADE LINK

219, 2<sup>nd</sup> Floor, Devashish Arcade, Opp. Gurudwara, Odhav, Ahmedabad, Gujarat-382415  
**Contact No:** 9909912092 **Email Id:** axtonimperla@gmail.com

6<sup>th</sup> January, 2026

To,

Shri Dr. Kundan Yadav  
 Commissioner of Customs  
 Office of the Commissioner of Customs, NS-III  
 Jawaharlal Nehru Customs House, Nhava Seva,  
 Taluka – Uran, Dist.: Raigad,  
 Maharashtra

Respected Sir / Madam

**Sub.:** Reply to Demand cum Show Cause Notice.

**Ref.:** SCN No.779/2025-26/CC/Gr.IV/NS-III/CAC/JNCH bearing DIN:  
 20250978NV00000AD99 dated 03.09.2025.

**Reg.:** Agarwal Trade Links bearing IEC No. 0815001592.

With regards to above subject matter and reference quoted above, we submit as under;

S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025

16.9.5.4 Screenshot of Bill of Entry No. 8568823 Dated 24.08.2020, showing Out of Charge date as 04.09.2020 i.e. before the SCN issue date 03.09.2020.

INDIAN CUSTOMS		Port Code	BE No	BE Date	BE Type
PORT : JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707		INNSA1	8568823	24.08.2020	H
BILL OF ENTRY FOR HOME CONSUMPTION		IEC/Br	0815001592/0	OOC COPY	
		GSTIN/TYPE	24AESP7580A1Z/N/G		
		CB CODE	AACCC9742NCH001		
		TYPE	INV	ITEM	CONT
		Nos	1	1	1
		PKG	12	G.WT (KGS)	27137
					BE1040920201655

PART - I - BILL OF ENTRY SUMMARY																			
A. STATUS	1.BE STATUS	2.MODE	3.DEF BE	4.KACHA	5.SEC 48	6.REIMP	7.ADV BE (Y/N/P)	8.ASSESS	9.EXAM	10.HSS	11.FIRST CHECK	12.PROV/FINAL							
	OOC COPY	Sea	T	N	N	N	N	Y	Y	N	C	F							
B. DECLARANT	13.COUNTRY OF ORIGIN						14.COUNTRY OF CONSIGNMENT			15.PORT OF LOADING		16.PORT OF SHIPMENT							
	INDONESIA						INDONESIA			Batam (ex Batu Besar)		Batam (ex Batu Besar)							
1.IMPORTER NAME & ADDRESS						2.CB NAME													
AGARWAL TRADE LINKS 219 2ND FLOOR DEVASHISH ARCADE,OPP GURUWADARA ODHAV AHMEDABAD,GUJARAT 382415						CITILOGISTICS PVT LTD													
3.AEO						4.UCR													
AD CODE						0510312													
C. DUTY SUMMARY	1.BCD	2.ACD	3.SWS	4.NCCD	5.ADD	6.CVD	7.IGST	8.G.CESS	18.TOT.ASS VAL	9.SG	10.SAED	11.GSIA	12.TTA	13.HEALTH	14.TOTAL DUTY	15.JNT	16.PNLTY	17.FINE	19.TOT. AMOUNT
	265392.7	0	26539.3		0	0	1007962	0	5307854						1299894	0	0	35000	1334894
D.MANIFEST DETAILS	1.IGM NO	2.IGM DATE	3.INW DATE	4.GIGMNO	5.GIGMDT	6.MAWB NO	7.DATE	8.HAWB NO	9.DATE	10.PKG	11.GW								
	2260092	16/08/2020	18/08/2020	0		BTM189751N SA	06/08/2020			12	27137								
E. BOND DETAILS	1.BOND NO.	2.PORT	3.BOND CD	4.DEBT AMT	5.BG AMT	F. PAYMENT DETAILS													
						1.SR NO	2.CHALLAN NO	3.PAID ON	4.AMOUNT(Rs.)										
						1	2031968046	04/09/2020	1299894										
G. WH	1.WBE NO.	2.DATE	3.WBE SITE	4.WH CODE															
H. PROCESSING DETAILS	1.EVENT	2.DATE	3.TIME	EXCHANGE RATE															
	Submission	24-AUG-20	14:41	1 USD=75.9INR															
	Assessment	03-SEP-20	17:32																
	Examination	01-SEP-20	18:18																
	OOC	04-09-2020	16:49																
I. INVOICE DETAILS - SUMMARY #	1.S.NO	2.INVOICE NO		3.INV. AMT	4.CUR														
	1	BAU0064/2020		69932.2	USD														
J. CONTAINER DETAILS *	1.SNO	2.LCL/FCL	3.TRUCK	4.SEAL	5.CONTAINER NUMBER														
	1	F		19121538	VSBU2046580														
						OOC NO.													
						2038508756													
						OOC DATE													
						04.09.2020													
GLOSSARY																			
A : DEF - Deferred Payment, REIMP - Reimport, ADV - Advance, P - Prior, HSS - HighSeaSale; B : CB - Customs Broker, AEO - Authorized Economic Operator, UCR - Unique Customs Reference; D : GIGM - Gateway IGM; G : WBE - Warehouse BE; I : OOC - Out of Charge, # Refer Part IV for full list of Invoices J : * Refer Part IV for full list of Containers;																			

**B. NOW I TAKE UP THE NEXT ISSUE AS TO WHETHER THE DIFFERENTIAL DUTY OF RS. 57,33,549/(RUPEES FIFTY SEVEN LAKHS THIRTY THREE THOUSAND FIVE HUNDRED FORTY NINE ONLY) ON LEVIABILITY OF CVD @18.95% AS PER NOTIFICATION NO. 01/2017-CUSTOMS (CVD) DATED 07.09.2017 (FOR THE RELEVANT PERIOD) RECOVERABLE UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962 IN RESPECT OF BILLS OF ENTRY AS DETAILED IN Table-II ABOVE ALONG WITH APPLICABLE INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT, 1962.**

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

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

**TABLE-III**

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

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

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

17.2. As per my detailed findings in Para 16 above, the item – “SS Triply Circles” is Flat-rolled products of stainless steel and rightly classifiable under 7219 90 90 and it is also an undisputed fact that the item has been imported from China, therefore, I further find that CVD @ 18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 for the relevant period is leviable for the goods imported vide Bills of Entry mentioned in Table-II above.

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

blade grade steel, CVD as per Notification No. 1/2017-Cus. (CVD) dated 07.09.2017, is applicable to these goods.

**17.4** I observe that with the introduction of the “Self-Assessment”, with effect from 08.04.2011, Section 17 of the Customs Act 1962 provides that the duty on imported or export goods shall be self-assessed by the importer or exporter, as the case may be, by filing the Bill of Entry or Shipping Bill in electronic form in terms of Section 46 or Section 50 respectively. Enhanced faith and reliance have been placed on the importer to make a true, correct, and complete declaration. Accordingly, it is the statutory responsibility of the importer to correctly declare the classification, applicable rate of duty, assessable value, and to correctly claim any exemption or preferential notification, if applicable, in respect of the imported goods. The scheme of self-assessment thus operates on the principle of trust reposed in the importer.

**17.4.1** From the advent of self-assessment in 2011, it is the responsibility of the importer under Section 46(4) and 46(4A) of Customs Act, 1962 while presenting the Bill of Entry under Section 46(1) that it shall make and subscribe to a declaration as to the truth and correctness of the contents of the Bill of Entry and to correct value, classification, description of the goods, exemption notification and self-assess duty, etc. The declaration is made on the basis of self-assessment and places full responsibility on the importer for the accuracy of the description, quantity, value, classification, and other material particulars of the imported goods. Any misdeclaration, suppression, or furnishing of incorrect information in the Bill of Entry constitutes a breach of this statutory duty and renders the goods liable to confiscation and the importer liable to penal action under the provisions of the Customs Act.

**17.4.2 Section 28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded.-**

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

*(a) collusion; or*

*(b) any wilful mis-statement; or*

*(c) suppression of facts,*

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

**17.4.3** Section 28(4) of the Customs Act, 1962 provides that 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 Collusion, or any willful mis-statement, or 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.

**17.5** In this context, I observe that the importer, vide Past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra) has self-assessed the goods, namely ‘Stainless Steel Cold Rolled Circles’ imported from Vietnam with preferential Tariff benefit under AIFTA Notification 46/2011 dated 01.07.2011, under CTH 7220, i.e., as flat-rolled products, and not under CTH 7326, which covers articles and is a residual entry. As per Note 1(k) to Chapter 72 of the

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

Customs Tariff Act, 1975, flat-rolled products of shapes other than rectangular or square are to be classified as products having a width equal to or more than 600 mm. Nonetheless, the core issue in the present case is not merely whether the goods 'Stainless Steel Cold Rolled Circles' fall under CTH 7219 or 7220, but whether the blanking of such circular discs from the 'Stainless Steel Cold Rolled Sheets imparts any essential character to the 'Stainless Steel Cold Rolled Circles' so as to render them "articles" classifiable under Chapter 73. Even though the 'Stainless Steel Cold Rolled Circles' are distinct from SS tri-ply circles or aluminium-cladded circles; however, it is an undisputed fact that both of them are obtained from the Flat Rolled Sheets and therefore the central question remains whether the process of blanking alone converts a flat-rolled product into an article. Since the importer himself has, in respect of 'Stainless Steel Cold Rolled Circles' imported from Vietnam (with claim of preferential Tariff benefit under AIFTA Notification 46/2011), has taken the position that such goods are flat-rolled products and not articles, which stands in contrast to the view adopted in the case of aluminium-cladded discs, therefore it clearly demonstrate that the importers stand in the present case is with men-rea to evade CVD and to enrich itself by not paying legal customs duty on the impugned goods aluminium-cladded circles or SS tri-ply circles.

**17.6** In view of the detailed findings recorded above, I find that the importer has willfully violated the provisions of Section 17 of the Customs Act, 1962, which mandates correct self-assessment of imported goods in accordance with the Customs Tariff, relevant Section and Chapter Notes, and the General Rules for Interpretation. Section 17 imposes a statutory obligation upon the importer to exercise due diligence and declare the correct classification, description, and duty liability at the time of filing the Bill of Entry. In the present case, despite the impugned goods being clearly classifiable as flat-rolled stainless-steel products under CTH 7219.90.90, the importer classified them under 73269070 an incorrect tariff entry applicable to articles. Significantly, the importer had, in earlier imports of similar goods i.e. Stainless-Steel Cold Rolled Circles from Vietnam, itself classified similar blank circular products as flat-rolled goods and not as articles under CTH 7326. The conscious departure from its own consistent classification practice in the present imports demonstrates deliberate misclassification with the intent to evade applicable CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017. Such conduct reflects willful suppression of correct classification and failure to discharge the statutory obligation of correct self-assessment. Accordingly, I hold that the importer has willfully contravened Section 17 of the Customs Act, 1962, attracting consequential penal actions under the relevant provisions of the Customs Act 1962.

**17.7** I further find that the Noticee(s) have willfully violated the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962. Section 46(4) mandates that the importer shall make a true, correct, and complete declaration in the Bill of Entry regarding the description, classification, value, and other material particulars of the imported goods. Section 46(4A) imposes a statutory obligation upon the importer to exercise due diligence to ensure the accuracy and completeness of the information furnished for assessment purposes. In the present case, despite the impugned goods being clearly classifiable as flat-rolled clad stainless-steel products under CTH 7219.90.90, the Noticee(s) willfully mis-declared them under 73269070 an incorrect tariff heading applicable to articles. Significantly, the importer had previously classified similar stainless-steel circles as flat-rolled products in earlier imports and not under CTH 7326, yet consciously adopted a contrary classification in the present case. This inconsistent and deliberate false declaration demonstrates a conscious misstatement of material particulars with intent to evade applicable duty. Accordingly, I hold that the Noticee(s) have willfully contravened Sections 46(4) and 46(4A) of the Customs Act, 1962, thereby attracting consequential action under the relevant provisions of the Act.

**17.8** In view of the foregoing facts and findings, I find that the short-levy / non-levy of duty in the present case has occurred by reason of willful misstatement and suppression of material facts on the part of the Noticee(s). Despite being fully aware that the impugned goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90, the Noticee(s) deliberately declared them under an incorrect tariff heading applicable to articles, thereby reducing their duty liability. It is further observed that the importer had, in earlier imports of similar stainless-steel circles,

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

classified such goods as flat-rolled products, which demonstrates knowledge of the correct classification. The conscious deviation from this position in the present imports establishes intent to evade payment of applicable duty.

**17.8.1** In the present case, the Noticee(s) willfully mis-declared the classification, such mis-declaration was neither accidental nor a procedural lapse. The importer had previously classified similar goods correctly as flat-rolled products, yet consciously adopted a contrary position in the present imports. This establishes that the incorrect classification and mis-declarations were deliberate and made with full knowledge of the correct legal position. I therefore find that the plea of bona fide belief or blind reliance is not tenable. Under the self-assessment regime, the importer cannot escape liability by claiming ignorance or reliance when the statutory responsibility to ensure correct declaration rests squarely upon him. The evidence on record clearly demonstrates a conscious and intentional contravention of statutory provisions with the object of evading payment of applicable duty.

**17.8.2** Accordingly, I hold that the ingredients of Section 28(4) of the Customs Act, 1962—namely willful misstatement and suppression of material facts with intent to evade duty—stand clearly established in the present case. The conduct of the Noticee(s), viewed in light of the mis-declaration of classification and other material particulars despite knowledge of the correct legal position, clearly evidences the presence of mens rea. The plea of bona fide belief or blind reliance is rejected as an afterthought, unsupported by facts and contrary to the statutory obligations cast upon the importer under the self-assessment regime. Therefore, the invocation of the extended period of limitation under Section 28(4) is fully justified and rightly invocable for recovery of the differential duty along with applicable interest and consequential penal action under the provisions of the Act.

**17.9** In view of the foregoing, I find that, due to deliberate mis-declaration, mis-classification duty demand against the Noticee(s) has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of this finding of invoking extended period, I rely upon the following court decisions:

- (a) 2013(294) E.L.T.222 (Tri. - LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]  
*"In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified"*
- (b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.  
*Demand – Limitation – Fraud, collusion, willful misstatement, etc. – Extended period can be invoked up to five years anterior to date of service of notice – Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, willful misstatement, etc., rejected as it would lead to strange and anomalous results;*
- (c) 2005 (191) E.L.T. 1051 (Tri. – Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.  
*Demand – Limitation – Blind belief cannot be a substitute for bona fide belief – Section 11A of Central Excise Act, 1944. [para 5]*
- (d) 2006 (198) E.L.T. 275 –Interscape v. CCE, Mumbai-I.  
*It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;*

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

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

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

### **DUTY CALCULATION**

**17.11 Differential duty is determined as follows:**

**Table-II**

Sr. No.	BE No.	B/E date	Ass. Value (Rs.)	BCD (Rs.)	SWS (Rs.)	Landed cost (Rs.)	CVD (@18.95%) (Rs.)	IGST payable (@ 18%) (Rs.)	Diff. duty (Rs.)
1	8568823	24.08.2020	5,307,853	265,392	26,539	5,599,784	1,061,159	191,009	1,252,168
2	8857488	18.09.2020	5,329,826	266,491	26,649	5,622,966	1,065,552	191,799	1,257,351
3	9248748	20.10.2020	4,847,866	484,786	48,479	5,381,131	1,019,724	183,550	1,203,275
4	9248753	20.10.2020	8,141,407	814,140	81,414	9,036,961	1,712,504	308,251	2,020,755
		<b>TOTAL</b>	<b>23,626,952</b>	<b>1,830,809</b>	<b>183,081</b>	<b>25,640,842</b>	<b>4,858,939</b>	<b>874,609</b>	<b>5,733,549</b>

**17.12** In view of the facts and findings above, I further find that differential duty (CVD) amounting **Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine only)**, on leviability of CVD @ 18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 (for the relevant period is recovered from the importer, M/s Agarwal Trade Links (IEC: 815001592) under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under the provisions of Section 28AA of the Customs Act, 1962. In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)] is squarely applicable in the instant case on the ground of mis-statement and suppression of facts.

## **REBUTTAL TO DEFENCE SUBMISSION**

**17.13** Noticee has also submitted that duty demand under section 28 (4) is not tenable as the no allegation of any duty has not been levied or has been short-levied, collusion or any willful mis-statement or suppression of facts are proved.

**17.13.1** In this context, at the outset, I observe that the importer, vide Past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra) has self-assessed the similar goods, namely 'Stainless Steel Cold Rolled Circles' imported from Vietnam with preferential Tariff benefit under AIFTA Notification 46/2011 dated 01.07.2011, under CTH 7220, i.e., as flat-rolled products, and not under CTH 7326, which covers articles and is a residual entry. As per Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975, flat-rolled products of shapes other than rectangular or square are to be classified as products having a width equal to or more than 600 mm i.e. under CTH 7219. Nonetheless, the core issue in the present case is not merely whether the goods 'Stainless Steel Cold Rolled Circles' fall under CTH 7219 or 7220, but whether the blanking of such circular discs from the 'Stainless Steel Cold Rolled Sheets' imparts any essential character to the 'Stainless Steel Cold Rolled Circles' so as to render them "articles" classifiable under Chapter 73. Even though the 'Stainless Steel Cold Rolled Circles' are distinct from SS tri-ply circles or aluminium-cladded circles; however, it is an undisputed fact that both of them are obtained from the Flat Rolled Sheets and therefore the central question remains whether the process of blanking alone converts a flat-rolled product into an article. Since the importer himself has, in respect of 'Stainless Steel Cold Rolled Circles' imported from Vietnam (with claim of preferential Tariff benefit under AIFTA Notification 46/2011), has taken the position that such goods are flat-rolled products and not articles, which stands in contrast to the view adopted in the case of aluminium-cladded discs, therefore it clearly demonstrate that the importers stand in the present case is with men-rea to evade CVD and to enrich itself by not paying legal customs duty on the impugned goods aluminium-cladded circles or SS tri-ply circles.

**17.13.2** Further in this context, I reiterate my findings recorded in para 17.6 to 17.12 *supra*, which are *mutatis mutandis* applicable to the issue at hand.

**17.13.2.1** In view of the detailed findings recorded above, I find that the importer has willfully violated the provisions of Section 17 of the Customs Act, 1962, which mandates correct self-assessment of imported goods in accordance with the Customs Tariff, relevant Section and Chapter Notes, and the General Rules for Interpretation. Section 17 imposes a statutory obligation upon the importer to exercise due diligence and declare the correct classification, description, and duty liability at the time of filing the Bill of Entry. In the present case, despite the impugned goods being clearly classifiable as flat-rolled stainless-steel products under CTH 7219.90.90, the importer classified them under 73269070 an incorrect tariff entry applicable to articles. Significantly, the importer had, in earlier imports of similar goods i.e. Stainless-Steel Cold Rolled Circles from Vietnam, itself classified similar blank circular products as flat-rolled goods and not as articles under CTH 7326. The conscious departure from its own consistent classification practice in the present imports demonstrates deliberate misclassification with the intent to evade applicable CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017. Such conduct reflects willful suppression of correct classification and failure to discharge the statutory obligation of correct self-assessment. Accordingly, I hold that the importer has willfully contravened Section 17 of the Customs Act, 1962, attracting consequential penal actions under the relevant provisions of the Customs Act 1962.

**17.13.2.2** I further find that the Noticee(s) have willfully violated the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962. Section 46(4) mandates that the importer shall make a true, correct, and complete declaration in the Bill of Entry regarding the description, classification, value, and other material particulars of the imported goods. Section 46(4A) imposes a statutory obligation upon the importer to exercise due diligence to ensure the accuracy and completeness of the information furnished for assessment purposes. In the present case, despite the impugned goods being clearly classifiable as flat-rolled clad stainless-steel products under CTH 7219.90.90, the Noticee(s) willfully mis-declared them under 73269070 an incorrect tariff heading applicable to articles. Significantly, the

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

importer had previously classified similar stainless-steel circles as flat-rolled products in earlier imports and not under CTH 7326, yet consciously adopted a contrary classification in the present case. This inconsistent and deliberate false declaration demonstrates a conscious misstatement of material particulars with intent to evade applicable duty. Accordingly, I hold that the Noticee(s) have willfully contravened Sections 46(4) and 46(4A) of the Customs Act, 1962, thereby attracting consequential action under the relevant provisions of the Act.

**17.13.2.3** In view of the foregoing facts and findings, I find that the short-levy / non-levy of duty in the present case has occurred by reason of willful misstatement and suppression of material facts on the part of the Noticee(s). Despite being fully aware that the impugned goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90, the Noticee(s) deliberately declared them under an incorrect tariff heading applicable to articles, thereby reducing their duty liability. It is further observed that the importer had, in earlier imports of similar stainless-steel circles, classified such goods as flat-rolled products, which demonstrates knowledge of the correct classification. The conscious deviation from this position in the present imports establishes intent to evade payment of applicable duty.

**17.13.2.4** In the present case, the Noticee(s) willfully mis-declared the classification, such mis-declaration was neither accidental nor a procedural lapse. The importer had previously classified similar goods correctly as flat-rolled products, yet consciously adopted a contrary position in the present imports. This establishes that the incorrect classification and mis-declarations were deliberate and made with full knowledge of the correct legal position. I therefore find that the plea of bona fide belief or blind reliance is not tenable. Under the self-assessment regime, the importer cannot escape liability by claiming ignorance or reliance when the statutory responsibility to ensure correct declaration rests squarely upon him. The evidence on record clearly demonstrates a conscious and intentional contravention of statutory provisions with the object of evading payment of applicable duty.

**17.13.2.5** Accordingly, I hold that the ingredients of Section 28(4) of the Customs Act, 1962—namely willful misstatement and suppression of material facts with intent to evade duty—stand clearly established in the present case. The conduct of the Noticee(s), viewed in light of the mis-declaration of classification and other material particulars despite knowledge of the correct legal position, clearly evidences the presence of mens rea. The plea of bona fide belief or blind reliance is rejected as an afterthought, unsupported by facts and contrary to the statutory obligations cast upon the importer under the self-assessment regime. Therefore, the invocation of the extended period of limitation under Section 28(4) is fully justified and rightly invocable for recovery of the differential duty along with applicable interest and consequential penal action under the provisions of the Act.

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

*“Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof*

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

**17.13.2.7** In view of the facts and findings above, I further find that differential duty (CVD) amounting **Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine only)**, on leviability of CVD @ 18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 (for the relevant period is recovered from the importer, M/s Agarwal Trade Links (IEC: 815001592) under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under the provisions of Section 28AA of the Customs Act, 1962. In this regard, the ratio laid down by Hon’ble Supreme Court in the case of CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)] is squarely applicable in the instant case on the ground of mis-statement and suppression of facts.

**17.13.3** In view of the foregoing, I reject the contention of the Noticee.

**C. NOW I TAKE UP THE NEXT ISSUE, AS TO WHETHER THE GOODS IMPORTED IN RESPECT OF BILLS OF ENTRY AS DETAILED IN Table-II ABOVE HAVING DECLARED ASSESSABLE VALUE OF RS. 2,36,26,952/- (RUPEES TWO CRORES THIRTY-SIX LAKHS TWENTY-SIX THOUSAND NINE HUNDRED FIFTY-TWO ONLY) ARE LIABLE FOR CONFISCATION UNDER THE PROVISIONS OF SECTION 111(m) OF THE CUSTOMS ACT, 1962.**

**18.** I observe that the Show Cause Notice has proposed confiscation of the goods under Sections 111(m) of the Customs Act, 1962, which are reproduced as under:

**Section 111(m) - 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;*

**18.1** In this context, I reiterate my findings in Paras 16 to 17 supra, as the same are *mutatis mutandis* applicable to the issue in hand.

**18.1.1** Upon careful consideration of the nature of the product and the processes undertaken, I find that the impugned goods, namely “Aluminium Cladded Circles” / “SS Tri-Ply Circles,” are flat-rolled stainless steel products. The product is manufactured by cladding, wherein an aluminium layer is metallurgically bonded between two stainless steel layers through roll bonding. This process results in the formation of a composite material, combining the properties of stainless steel and aluminium, while retaining the essential character of a flat-rolled stainless-steel product.

**18.1.2 Cladding** is a recognized surface treatment process and does not alter the fundamental classification of the product as a flat-rolled item. The tri-ply configuration enhances functional properties such as heat distribution and durability, but the product continues to remain a flat-rolled composite metal sheet within the meaning of Chapter 72. The subsequent operation undertaken is **blanking**, whereby circular profiles are cut out from the flat-rolled composite sheets. Blanking is a sheet-metal shearing operation performed using a punch-and-die mechanism. In this process, the circular cut-out portion constitutes the intended product (blank), while the surrounding sheet skeleton becomes scrap. The operation merely changes the external outline from rectangular to circular shape and does not affect thickness, metallurgical structure, bonding characteristics, or intrinsic properties of the composite material. It is important to distinguish blanking from punching. In punching, the sheet remains the principal product and only perforations are created, with the removed slugs treated as

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

scrap. In blanking, however, the cut-out portion is the usable product and the remaining material becomes scrap. Nevertheless, in both operations, there is no functional transformation. In the present case, blanking does not impart any curvature, rim formation, holes, handle attachment, or three-dimensional form. The circles remain flat and lack independent functional identity. Thus, the SS tri-ply / aluminium-cladded circles retain their identity as flat-rolled stainless-steel composite products and do not emerge as articles merely by virtue of blanking.

**18.1.3** In view of the foregoing, I find that the process of blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles is a tariff-neutral operation. The said process merely involves cutting or shaping flat-rolled material into circular form and does not, by itself, result in the emergence of a new article. SS tri-ply circles or aluminium-cladded circles are mere blanks of flat-rolled products, being a flat disc without curvature, rim formation, holes, attachment features, or any other attributes that would impart the identity of a finished article. At this stage, the **product does not acquire any essential character** of a finished good. I further find that such **blanks do not have any usability as finished articles**, as they are incapable of performing any intended end-use function without undergoing substantial further manufacturing processes. They are meant for subsequent forming, machining, assembly, and finishing operations. It is also observed that SS tri-ply circles **do not possess marketability as finished goods** in commercial parlance. They are not ordinarily bought or sold as consumer articles, but only as inputs for further manufacture.

**18.2** I also find that an SS tri-ply circle **does not have any specific or dedicated use corresponding to a particular finished article. Instead, it has a general use**, comparable to that of flat-rolled products, and is capable of being utilized for the manufacture of a variety of articles depending upon subsequent processing. Accordingly, I hold that the blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles does not result in the emergence of a new article having a distinct identity, essential character, usability, marketability, or specific end-use as a finished good, and the said blanks remain comparable in nature and utility to flat-rolled products.

**18.3** Upon examination of Note 1(j) and Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975, read with the undisputed factual matrix, I find that the impugned SS tri-ply circles / aluminium-cladded circles are flat-rolled stainless-steel composite products and are clearly excluded from the scope of “semi-finished products” under Note 1(j). The goods originate from rectangular flat-rolled sheets satisfying the prescribed dimensional criteria, and the subsequent process of blanking is merely a tariff-neutral cutting operation that changes the external outline without altering thickness, composition, bonding structure, or essential character. **Note 1(k) specifically provides that flat-rolled products of shapes other than rectangular or square are to be classified as products of a width of 600 mm or more, provided they do not assume the character of articles of other headings. This clarification is significant in the present case, as it reflects the legislative intent that a mere change in external outline does not deprive the goods of their character as flat-rolled products.** The impugned goods remain flat, lack independent functionality, and have not acquired the character of articles under Chapter 73. Accordingly, I hold that the goods retain the essential character of flat-rolled products and are rightly classifiable under Heading 7219

**18.4.** I observe that Chapter 72 of the Customs Tariff covers iron and steel in their primary, semi-finished and flat-rolled forms, whereas Chapter 73 covers finished articles of iron and steel having definite shape, independent function and direct end use. The impugned SS Triply / Aluminium Cladded Circles are composite products in which stainless steel predominates by weight and, in terms of Section Note 7 to Section XV, are to be treated as stainless steel products. At the stage of importation, the goods are merely flat blank circles requiring substantial further processing and do not possess independent functionality, finished shape, or direct usability. They therefore do not qualify as “articles” under Chapter 73. Heading 7326, being a residuary entry covering “other articles of iron or steel,” can be invoked only where goods qualify as articles and are not more specifically covered elsewhere in the Tariff. Since the impugned goods are specifically covered under Heading 7219 as

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

flat-rolled stainless-steel products and have not assumed the essential character of articles, classification under CTH 7326 stands excluded.

**18.5.** The impugned goods, namely SS Triply / Aluminium Cladded Circles, are products of stainless steel and fall within Sub-Chapter III (Headings 7218–7227) of Chapter 72 dealing with stainless steel. The relevant competing headings are 7219 (for width 600 mm or more) and 7220 (for width less than 600 mm). In terms of Note 1(k), flat-rolled products of non-rectangular shape are to be classified as products of width 600 mm or more. The circles are blanked from rectangular flat-rolled sheets, and blanking being a tariff-neutral operation does not alter their essential character. The goods therefore retain the character of flat-rolled stainless-steel products. Heading 7219 covers flat-rolled stainless-steel products of width 600 mm or more, and subheadings 7219.11 to 7219.35 cover stainless steel not further worked beyond hot or cold rolling. The impugned goods are clad stainless-steel products and are therefore “further worked.” Subheading 7219.90 specifically covers other flat-rolled stainless-steel products, including clad products. The Explanatory Notes to Headings 7208–7210 apply mutatis mutandis to Heading 7219, and just as Heading 7210 covers clad flat-rolled products of iron or non-alloy steel, heading 7219.90 covers clad stainless steel. The tariff scheme clearly segregates not-further-worked and further-worked stainless steel products. Cladding does not convert the goods into articles of steel, and they remain flat-rolled composite stainless-steel products. Tariff items 7219.90.11 to 7219.90.13 apply to sheets and plates, whereas the impugned goods are circular profiles and not sheets or plates. Therefore, they fall under residual tariff item 7219.90.90. Accordingly, by application of GRI Rules 1, 2(b), 3(a) and 6, the goods are correctly classifiable under CTH 7219.90.90.

**18.6** In this context, I observe that the importer, vide Past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra) has self-assessed the goods, namely ‘Stainless Steel Cold Rolled Circles’ imported from Vietnam with preferential Tariff benefit under AIFTA Notification 46/2011 dated 01.07.2011, under CTH 7220, i.e., as flat-rolled products, and not under CTH 7326, which covers articles and is a residual entry. As per Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975, flat-rolled products of shapes other than rectangular or square are to be classified as products having a width equal to or more than 600 mm. Nonetheless, the core issue in the present case is not merely whether the goods ‘Stainless Steel Cold Rolled Circles’ fall under CTH 7219 or 7220, but whether the blanking of such circular discs from the ‘Stainless Steel Cold Rolled Sheets imparts any essential character to the ‘Stainless Steel Cold Rolled Circles’ so as to render them “articles” classifiable under Chapter 73. Even though the ‘Stainless Steel Cold Rolled Circles’ are distinct from SS tri-ply circles or aluminium-cladded circles; however, it is an undisputed fact that both of them are obtained from the Flat Rolled Sheets and therefore the central question remains whether the process of blanking alone converts a flat-rolled product into an article. Since the importer himself has, in respect of ‘Stainless Steel Cold Rolled Circles’ imported from Vietnam (with claim of preferential Tariff benefit under AIFTA Notification 46/2011), has taken the position that such goods are flat-rolled products and not articles, which stands in contrast to the view adopted in the case of aluminium-cladded discs, therefore it clearly demonstrate that the importers stand in the present case is with men-rea to evade CVD and to enrich itself by not paying legal customs duty on the impugned goods aluminium-cladded circles or SS tri-ply circles.

**18.7** In view of the detailed findings recorded above, I find that the importer has willfully violated the provisions of Section 17 of the Customs Act, 1962, which mandates correct self-assessment of imported goods in accordance with the Customs Tariff, relevant Section and Chapter Notes, and the General Rules for Interpretation. Section 17 imposes a statutory obligation upon the importer to exercise due diligence and declare the correct classification, description, and duty liability at the time of filing the Bill of Entry. In the present case, despite the impugned goods being clearly classifiable as flat-rolled stainless-steel products under CTH 7219.90.90, the importer classified them under 73269070 an incorrect tariff entry applicable to articles. Significantly, the importer had, in earlier imports of similar goods i.e. Stainless-Steel Cold Rolled Circles from Vietnam, itself classified similar

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

blank circular products as flat-rolled goods and not as articles under CTH 7326. The conscious departure from its own consistent classification practice in the present imports demonstrates deliberate misclassification with the intent to evade applicable CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017. Such conduct reflects willful suppression of correct classification and failure to discharge the statutory obligation of correct self-assessment. Accordingly, I hold that the importer has willfully contravened Section 17 of the Customs Act, 1962, attracting consequential penal actions under the relevant provisions of the Customs Act 1962.

**18.8** I further find that the Noticee(s) have willfully violated the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962. Section 46(4) mandates that the importer shall make a true, correct, and complete declaration in the Bill of Entry regarding the description, classification, value, and other material particulars of the imported goods. Section 46(4A) imposes a statutory obligation upon the importer to exercise due diligence to ensure the accuracy and completeness of the information furnished for assessment purposes. In the present case, despite the impugned goods being clearly classifiable as flat-rolled clad stainless-steel products under CTH 7219.90.90, the Noticee(s) willfully mis-declared them under 73269070 an incorrect tariff heading applicable to articles. Significantly, the importer had previously classified similar stainless-steel circles as flat-rolled products in earlier imports and not under CTH 7326, yet consciously adopted a contrary classification in the present case. This inconsistent and deliberate false declaration demonstrates a conscious misstatement of material particulars with intent to evade applicable duty. Accordingly, I hold that the Noticee(s) have willfully contravened Sections 46(4) and 46(4A) of the Customs Act, 1962, thereby attracting consequential action under the relevant provisions of the Act.

**18.9** In view of the foregoing facts and findings, I find that the short-levy / non-levy of duty in the present case has occurred by reason of willful misstatement and suppression of material facts on the part of the Noticee(s). Despite being fully aware that the impugned goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90, the Noticee(s) deliberately declared them under an incorrect tariff heading applicable to articles, thereby reducing their duty liability. It is further observed that the importer had, in earlier imports of similar stainless-steel circles, classified such goods as flat-rolled products, which demonstrates knowledge of the correct classification. The conscious deviation from this position in the present imports establishes intent to evade payment of applicable duty.

**18.9.1** In the present case, the Noticee(s) willfully mis-declared the classification, such mis-declaration was neither accidental nor a procedural lapse. The importer had previously classified similar goods correctly as flat-rolled products, yet consciously adopted a contrary position in the present imports. This establishes that the incorrect classification and mis-declarations were deliberate and made with full knowledge of the correct legal position. I therefore find that the plea of bona fide belief or blind reliance is not tenable. Under the self-assessment regime, the importer cannot escape liability by claiming ignorance or reliance when the statutory responsibility to ensure correct declaration rests squarely upon him. The evidence on record clearly demonstrates a conscious and intentional contravention of statutory provisions with the object of evading payment of applicable duty.

**18.9.2** Accordingly, I hold that the ingredients of Section 28(4) of the Customs Act, 1962—namely willful misstatement and suppression of material facts with intent to evade duty—stand clearly established in the present case. The conduct of the Noticee(s), viewed in light of the mis-declaration of classification and other material particulars despite knowledge of the correct legal position, clearly evidences the presence of mens rea. The plea of bona fide belief or blind reliance is rejected as an afterthought, unsupported by facts and contrary to the statutory obligations cast upon the importer under the self-assessment regime. Therefore, the invocation of the extended period of limitation under Section 28(4) is fully justified and rightly invocable for recovery of the differential duty along with applicable interest and consequential penal action under the provisions of the Act.

**18.9.3** In view of the facts and findings above, I further find that differential duty (CVD) amounting **Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine only)**, on leviability of CVD @ 18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 (for

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

the relevant period is recovered from the importer, M/s Agarwal Trade Links (IEC: 815001592) 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.

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

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

**18.11** I observe that Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under the Act are liable to confiscation. In the present case, the impugned goods were wilfully mis-declared in respect of their correct classification and correct description at the time of filing the Bills of Entry. Despite being fully aware that the goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90, the Noticee(s) deliberately declared them under CTH 73269070, which is applicable to articles of iron or steel, thereby materially misrepresenting their true nature and classification. Such mis-declaration directly affected the assessment of duty and resulted in short-levy of CVD. As the Noticee did not declare correct description & CTH even though in some past Past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra) have classified the goods under chapter 7220 and hence, contravened the provisions of Section 46 of the Customs Act, 1962. It is and admitted fact, the imported item is known as ‘SS Triply Circles’ but to evade customs duty, and restrained themselves to mention word – ‘Stainless Steel’ which is the primary description of the item. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Supported by above judicial pronouncements, I hold that the Show Cause Notice has adduced sufficient evidences which establish the case and accordingly, I arrive to the conclusion that the Noticee cannot escape their liability towards mis-declaration & misclassification of the imported goods. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

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

*“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable,*

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

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

**18.13** 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.).

**18.14** 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.

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

- (a) M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- (b) M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- (c) M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);
- (d) M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

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

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

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

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

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

**D. NOW I TAKE UP THE NEXT ISSUE AS TO WHETHER PENALTY UNDER SECTION 112(a) AND/OR 114A AND SECTION 117 OF THE CUSTOMS ACT, 1962 IS LIABLE TO BE IMPOSED ON M/s. AGARWAL TRADE LINKS.**

**19.** I observe that the Show Cause Notice proposes imposition of penalty under Sections **112(a), 114A and 117** of the Customs Act, 1962 on the Noticee, which are reproduced as follows:

- i. **Section 112- Penalty for improper importation of goods, etc.** —Any person,—
  - (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
  - (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable to penalty.
- ii. **Section 114A.** [ Penalty for short-levy or non-levy of duty in certain cases. [ Inserted by Act 33 of 1996, Section 64 (w.e.f. 28.9.1996).]
 

- 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 (4) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:]
- iii. **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.
- iv. **SECTION 117.** Penalties for contravention, etc., not expressly mentioned. Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty

is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

**19.1** In this context, I reiterate my findings in Paras 16 to 18 supra, as the same are *mutatis mutandis* applicable to the issue in hand.

**19.1.1** Upon careful consideration of the nature of the product and the processes undertaken, I find that the impugned goods, namely “Aluminium Cladded Circles” / “SS Tri-Ply Circles,” are flat-rolled stainless steel products. The product is manufactured by cladding, wherein an aluminium layer is metallurgically bonded between two stainless steel layers through roll bonding. This process results in the formation of a composite material, combining the properties of stainless steel and aluminium, while retaining the essential character of a flat-rolled stainless-steel product.

**19.1.2 Cladding** is a recognized surface treatment process and does not alter the fundamental classification of the product as a flat-rolled item. The tri-ply configuration enhances functional properties such as heat distribution and durability, but the product continues to remain a flat-rolled composite metal sheet within the meaning of Chapter 72. The subsequent operation undertaken is **blanking**, whereby circular profiles are cut out from the flat-rolled composite sheets. Blanking is a sheet-metal shearing operation performed using a punch-and-die mechanism. In this process, the circular cut-out portion constitutes the intended product (blank), while the surrounding sheet skeleton becomes scrap. The operation merely changes the external outline from rectangular to circular shape and does not affect thickness, metallurgical structure, bonding characteristics, or intrinsic properties of the composite material. It is important to distinguish blanking from punching. In punching, the sheet remains the principal product and only perforations are created, with the removed slugs treated as scrap. In blanking, however, the cut-out portion is the usable product and the remaining material becomes scrap. Nevertheless, in both operations, there is no functional transformation. In the present case, blanking does not impart any curvature, rim formation, holes, handle attachment, or three-dimensional form. The circles remain flat and lack independent functional identity. Thus, the SS tri-ply / aluminium-cladded circles retain their identity as flat-rolled stainless-steel composite products and do not emerge as articles merely by virtue of blanking.

**19.2** In view of the foregoing, I find that the process of blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles is a tariff-neutral operation. The said process merely involves cutting or shaping flat-rolled material into circular form and does not, by itself, result in the emergence of a new article. SS tri-ply circles or aluminium-cladded circles are mere blanks of flat-rolled products, being a flat disc without curvature, rim formation, holes, attachment features, or any other attributes that would impart the identity of a finished article. At this stage, the **product does not acquire any essential character** of a finished good. I further find that such **blanks do not have any usability as finished articles**, as they are incapable of performing any intended end-use function without undergoing substantial further manufacturing processes. They are meant for subsequent forming, machining, assembly, and finishing operations. It is also observed that SS tri-ply circles **do not possess marketability as finished goods** in commercial parlance. They are not ordinarily bought or sold as consumer articles, but only as inputs for further manufacture.

**19.2.1** I also find that an SS tri-ply circle **does not have any specific or dedicated use corresponding to a particular finished article. Instead, it has a general use**, comparable to that of flat-rolled products, and is capable of being utilized for the manufacture of a variety of articles depending upon subsequent processing. Accordingly, I hold that the blanking of flat-rolled products into SS tri-ply circles or aluminium-cladded circles does not result in the emergence of a new article having a distinct identity, essential character, usability, marketability, or specific end-use as a finished good, and the said blanks remain comparable in nature and utility to flat-rolled products.

**19.3** Upon examination of Note 1(j) and Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975, read with the undisputed factual matrix, I find that the impugned SS tri-ply circles / aluminium-

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

cladded circles are flat-rolled stainless-steel composite products and are clearly excluded from the scope of “semi-finished products” under Note 1(j). The goods originate from rectangular flat-rolled sheets satisfying the prescribed dimensional criteria, and the subsequent process of blanking is merely a tariff-neutral cutting operation that changes the external outline without altering thickness, composition, bonding structure, or essential character. **Note 1(k) specifically provides that flat-rolled products of shapes other than rectangular or square are to be classified as products of a width of 600 mm or more, provided they do not assume the character of articles of other headings. This clarification is significant in the present case, as it reflects the legislative intent that a mere change in external outline does not deprive the goods of their character as flat-rolled products.** The impugned goods remain flat, lack independent functionality, and have not acquired the character of articles under Chapter 73. Accordingly, I hold that the goods retain the essential character of flat-rolled products and are rightly classifiable under Heading 7219

**19.4.** I observe that Chapter 72 of the Customs Tariff covers iron and steel in their primary, semi-finished and flat-rolled forms, whereas Chapter 73 covers finished articles of iron and steel having definite shape, independent function and direct end use. The impugned SS Triply / Aluminium Cladded Circles are composite products in which stainless steel predominates by weight and, in terms of Section Note 7 to Section XV, are to be treated as stainless steel products. At the stage of importation, the goods are merely flat blank circles requiring substantial further processing and do not possess independent functionality, finished shape, or direct usability. They therefore do not qualify as “articles” under Chapter 73. Heading 7326, being a residuary entry covering “other articles of iron or steel,” can be invoked only where goods qualify as articles and are not more specifically covered elsewhere in the Tariff. Since the impugned goods are specifically covered under Heading 7219 as flat-rolled stainless-steel products and have not assumed the essential character of articles, classification under CTH 7326 stands excluded.

**19.5.** The impugned goods, namely SS Triply / Aluminium Cladded Circles, are products of stainless steel and fall within Sub-Chapter III (Headings 7218–7227) of Chapter 72 dealing with stainless steel. The relevant competing headings are 7219 (for width 600 mm or more) and 7220 (for width less than 600 mm). In terms of Note 1(k), flat-rolled products of non-rectangular shape are to be classified as products of width 600 mm or more. The circles are blanked from rectangular flat-rolled sheets, and blanking being a tariff-neutral operation does not alter their essential character. The goods therefore retain the character of flat-rolled stainless-steel products. Heading 7219 covers flat-rolled stainless-steel products of width 600 mm or more, and subheadings 7219.11 to 7219.35 cover stainless steel not further worked beyond hot or cold rolling. The impugned goods are clad stainless-steel products and are therefore “further worked.” Subheading 7219.90 specifically covers other flat-rolled stainless-steel products, including clad products. The Explanatory Notes to Headings 7208–7210 apply mutatis mutandis to Heading 7219, and just as Heading 7210 covers clad flat-rolled products of iron or non-alloy steel, heading 7219.90 covers clad stainless steel. The tariff scheme clearly segregates not-further-worked and further-worked stainless steel products. Cladding does not convert the goods into articles of steel, and they remain flat-rolled composite stainless-steel products. Tariff items 7219.90.11 to 7219.90.13 apply to sheets and plates, whereas the impugned goods are circular profiles and not sheets or plates. Therefore, they fall under residual tariff item 7219.90.90. Accordingly, by application of GRI Rules 1, 2(b), 3(a) and 6, the goods are correctly classifiable under CTH 7219.90.90.

**19.6** In this context, I observe that the importer, vide Past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra) has self-assessed the goods, namely ‘Stainless Steel Cold Rolled Circles’ imported from Vietnam with preferential Tariff benefit under AIFTA Notification 46/2011 dated 01.07.2011, under CTH 7220, i.e., as flat-rolled products, and not under CTH 7326, which covers articles and is a residual entry. As per Note 1(k) to Chapter 72 of the Customs Tariff Act, 1975, flat-rolled products of shapes other than rectangular or square are to be classified as products having a width equal to or more than 600 mm. Nonetheless, the core issue in the present case is not merely whether the goods ‘Stainless Steel Cold Rolled Circles’ fall under CTH

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

7219 or 7220, but whether the blanking of such circular discs from the 'Stainless Steel Cold Rolled Sheets' imparts any essential character to the 'Stainless Steel Cold Rolled Circles' so as to render them "articles" classifiable under Chapter 73. Even though the 'Stainless Steel Cold Rolled Circles' are distinct from SS tri-ply circles or aluminium-cladded circles; however, it is an undisputed fact that both of them are obtained from the Flat Rolled Sheets and therefore the central question remains whether the process of blanking alone converts a flat-rolled product into an article. Since the importer himself has, in respect of 'Stainless Steel Cold Rolled Circles' imported from Vietnam (with claim of preferential Tariff benefit under AIFTA Notification 46/2011), has taken the position that such goods are flat-rolled products and not articles, which stands in contrast to the view adopted in the case of aluminium-cladded discs, therefore it clearly demonstrates that the importers stand in the present case is with *mens rea* to evade CVD and to enrich itself by not paying legal customs duty on the impugned goods aluminium-cladded circles or SS tri-ply circles.

**19.7** In view of the detailed findings recorded above, I find that the importer has willfully violated the provisions of Section 17 of the Customs Act, 1962, which mandates correct self-assessment of imported goods in accordance with the Customs Tariff, relevant Section and Chapter Notes, and the General Rules for Interpretation. Section 17 imposes a statutory obligation upon the importer to exercise due diligence and declare the correct classification, description, and duty liability at the time of filing the Bill of Entry. In the present case, despite the impugned goods being clearly classifiable as flat-rolled stainless-steel products under CTH 7219.90.90, the importer classified them under 73269070 an incorrect tariff entry applicable to articles. Significantly, the importer had, in earlier imports of similar goods i.e. Stainless-Steel Cold Rolled Circles from Vietnam, itself classified similar blank circular products as flat-rolled goods and not as articles under CTH 7326. The conscious departure from its own consistent classification practice in the present imports demonstrates deliberate misclassification with the intent to evade applicable CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017. Such conduct reflects willful suppression of correct classification and failure to discharge the statutory obligation of correct self-assessment. Accordingly, I hold that the importer has willfully contravened Section 17 of the Customs Act, 1962, attracting consequential penal actions under the relevant provisions of the Customs Act 1962.

**19.8** I further find that the Noticee(s) have willfully violated the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962. Section 46(4) mandates that the importer shall make a true, correct, and complete declaration in the Bill of Entry regarding the description, classification, value, and other material particulars of the imported goods. Section 46(4A) imposes a statutory obligation upon the importer to exercise due diligence to ensure the accuracy and completeness of the information furnished for assessment purposes. In the present case, despite the impugned goods being clearly classifiable as flat-rolled clad stainless-steel products under CTH 7219.90.90, the Noticee(s) willfully mis-declared them under 73269070 an incorrect tariff heading applicable to articles. Significantly, the importer had previously classified similar stainless-steel circles as flat-rolled products in earlier imports and not under CTH 7326, yet consciously adopted a contrary classification in the present case. This inconsistent and deliberate false declaration demonstrates a conscious misstatement of material particulars with intent to evade applicable duty. Accordingly, I hold that the Noticee(s) have willfully contravened Sections 46(4) and 46(4A) of the Customs Act, 1962, thereby attracting consequential action under the relevant provisions of the Act.

**19.9** In view of the foregoing facts and findings, I find that the short-levy / non-levy of duty in the present case has occurred by reason of willful misstatement and suppression of material facts on the part of the Noticee(s). Despite being fully aware that the impugned goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90, the Noticee(s) deliberately declared them under an incorrect tariff heading applicable to articles, thereby reducing their duty liability. It is further observed that the importer had, in earlier imports of similar stainless-steel circles, classified such goods as flat-rolled products, which demonstrates knowledge of the correct classification. The conscious deviation from this position in the present imports establishes intent to evade payment of applicable duty.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

**19.9.1** In the present case, the Noticee(s) willfully mis-declared the classification, such mis-declaration was neither accidental nor a procedural lapse. The importer had previously classified similar goods correctly as flat-rolled products, yet consciously adopted a contrary position in the present imports. This establishes that the incorrect classification and mis-declarations were deliberate and made with full knowledge of the correct legal position. I therefore find that the plea of bona fide belief or blind reliance is not tenable. Under the self-assessment regime, the importer cannot escape liability by claiming ignorance or reliance when the statutory responsibility to ensure correct declaration rests squarely upon him. The evidence on record clearly demonstrates a conscious and intentional contravention of statutory provisions with the object of evading payment of applicable duty.

**19.9.2** Accordingly, I hold that the ingredients of Section 28(4) of the Customs Act, 1962—namely willful misstatement and suppression of material facts with intent to evade duty—stand clearly established in the present case. The conduct of the Noticee(s), viewed in light of the mis-declaration of classification and other material particulars despite knowledge of the correct legal position, clearly evidences the presence of mens rea. The plea of bona fide belief or blind reliance is rejected as an afterthought, unsupported by facts and contrary to the statutory obligations cast upon the importer under the self-assessment regime. Therefore, the invocation of the extended period of limitation under Section 28(4) is fully justified and rightly invocable for recovery of the differential duty along with applicable interest and consequential penal action under the provisions of the Act.

**19.10** In view of the facts and findings above, I further find that differential duty (CVD) amounting **Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine only)**, on leviability of CVD @ 18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 (for the relevant period is recovered from the importer, M/s Agarwal Trade Links (IEC: 815001592) 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.

**19.11** I observe that Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under the Act are liable to confiscation. In the present case, the impugned goods were willfully mis-declared in respect of their correct classification and correct description at the time of filing the Bills of Entry. Despite being fully aware that the goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90, the Noticee(s) deliberately declared them under CTH 73269070, which is applicable to articles of iron or steel, thereby materially misrepresenting their true nature and classification. Such mis-declaration directly affected the assessment of duty and resulted in short-levy of CVD. As the Noticee did not declare correct description & CTH even though in some past Past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra) have classified the goods under chapter 7220 and hence, contravened the provisions of Section 46 of the Customs Act, 1962. It is an admitted fact, the imported item is known as 'SS Triply Circles' but to evade customs duty, and restrained themselves to mention word – 'Stainless Steel' which is the primary description of the item. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Supported by above judicial pronouncements, I hold that the Show Cause Notice has adduced sufficient evidences which establish the case and accordingly, I arrive to the conclusion that the Noticee cannot escape their liability towards mis-declaration & misclassification of the imported goods. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

**Penalty under section 112 (a) of the Customs Act, 1962**

**19.12** I observe that Section 112(a) of the Customs Act, 1962 provides for imposition of penalty on any person who, in relation to any goods, does or omits to do any act which renders such goods liable to confiscation under Section 111 of the Act, or who abets the doing or omission of such an act. As

already held above, the impugned goods are liable to confiscation under Section 111(m) for wilful mis-declaration of classification and mis-statement in terms of willful act of not declaring the correct and complete description of the goods in the Bills of Entry, resulting in short-levy of duty. The Noticee(s), by deliberately misclassifying the flat-rolled stainless-steel products under CTH 73269070 instead of the correct CTH 7219.90.90, committed acts of commission directly connected with improper importation.

**19.12.1** It is further observed that in past Bills of Entry, namely No. 7370334 dated 30.03.2020, No. 7678222 dated 16.05.2020, and No. 9121872 dated 09.10.2020 (screenshots enclosed at para 10.1 supra), the importer had classified similar goods under Chapter 7220 as flat-rolled products. Despite this prior knowledge and consistent classification practice, the Noticee(s) failed to declare the correct description and correct CTH in the present imports. Such conduct clearly establishes conscious deviation from the correct legal position and amounts to will full contravention of the provisions of the Customs Act, 1962.

**19.12.2** Accordingly, I hold that by wilfully mis-statement & mis-classification of the goods the Noticee(s) have rendered the goods liable to confiscation under Section 111(m), and are therefore liable to penalty under Section 112(a) of the Customs Act, 1962.

### **Penalty under Sections 114A of the Customs Act, 1962**

**19.13** I observe that Section 114A of the Customs Act, 1962 provides for imposition of penalty in cases where duty has not been levied or has been short-levied, or interest has not been charged or has been short-paid, or where duty or interest has been erroneously refunded, by reason of collusion, willful mis-statement, or suppression of facts. The said provision mandates that the person who is liable to pay the duty or interest, as determined under Section 28(4) of the Act, shall also be liable to pay a penalty equal to the amount of duty or interest so determined. This provision is attracted where the short-levy or non-levy of duty is not accidental or procedural, but is a consequence of deliberate acts involving mens rea, such as conscious mis-declaration or suppression of material facts.

**19.13.1** In this context, I reiterate my findings recorded in para 17 *supra*, which are *mutatis mutandis* applicable to the issue at hand.

**19.13.1.1** I find that the importer has willfully violated the provisions of Section 17 of the Customs Act, 1962, which mandates correct self-assessment of imported goods in accordance with the Customs Tariff, relevant Section and Chapter Notes, and the General Rules for Interpretation. Section 17 imposes a statutory obligation upon the importer to exercise due diligence and declare the correct classification, description, and duty liability at the time of filing the Bill of Entry. In the present case, despite the impugned goods being clearly classifiable as flat-rolled stainless-steel products under CTH 7219.90.90, the importer classified them under 73269070 an incorrect tariff entry applicable to articles. Significantly, the importer had, in earlier imports of similar goods i.e. Stainless-Steel Cold Rolled Circles from Vietnam, itself classified similar blank circular products as flat-rolled goods and not as articles under CTH 7326. The conscious departure from its own consistent classification practice in the present imports demonstrates deliberate misclassification with the intent to evade applicable CVD @18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017. Such conduct reflects willful suppression of correct classification and failure to discharge the statutory obligation of correct self-assessment. Accordingly, I hold that the importer has willfully contravened Section 17 of the Customs Act, 1962, attracting consequential penal actions under the relevant provisions of the Customs Act 1962.

**19.13.1.2** I further find that the Noticee(s) have willfully violated the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962. Section 46(4) mandates that the importer shall make a true, correct, and complete declaration in the Bill of Entry regarding the description, classification, value, and other material particulars of the imported goods. Section 46(4A) imposes a statutory obligation upon the importer to exercise due diligence to ensure the accuracy and completeness of the information

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

furnished for assessment purposes. In the present case, despite the impugned goods being clearly classifiable as flat-rolled clad stainless-steel products under CTH 7219.90.90, the Noticee(s) willfully mis-declared them under 73269070 an incorrect tariff heading applicable to articles. Significantly, the importer had previously classified similar stainless-steel circles as flat-rolled products in earlier imports and not under CTH 7326, yet consciously adopted a contrary classification in the present case. This inconsistent and deliberate false declaration demonstrates a conscious misstatement of material particulars with intent to evade applicable duty. Accordingly, I hold that the Noticee(s) have willfully contravened Sections 46(4) and 46(4A) of the Customs Act, 1962, thereby attracting consequential action under the relevant provisions of the Act.

**19.13.1.3** In view of the foregoing facts and findings, I find that the short-levy / non-levy of duty in the present case has occurred by reason of willful misstatement and suppression of material facts on the part of the Noticee(s). Despite being fully aware that the impugned goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90, the Noticee(s) deliberately declared them under an incorrect tariff heading applicable to articles, thereby reducing their duty liability. It is further observed that the importer had, in earlier imports of similar stainless-steel circles, classified such goods as flat-rolled products, which demonstrates knowledge of the correct classification. The conscious deviation from this position in the present imports establishes intent to evade payment of applicable duty.

**19.13.1.4** In the present case, the Noticee(s) willfully mis-declared the classification, such mis-declaration was neither accidental nor a procedural lapse. The importer had previously classified similar goods correctly as flat-rolled products, yet consciously adopted a contrary position in the present imports. This establishes that the incorrect classification and mis-declarations were deliberate and made with full knowledge of the correct legal position. I therefore find that the plea of bona fide belief or blind reliance is not tenable. Under the self-assessment regime, the importer cannot escape liability by claiming ignorance or reliance when the statutory responsibility to ensure correct declaration rests squarely upon him. The evidence on record clearly demonstrates a conscious and intentional contravention of statutory provisions with the object of evading payment of applicable duty.

**19.13.1.5** Accordingly, I hold that the ingredients of Section 28(4) of the Customs Act, 1962—namely willful misstatement and suppression of material facts with intent to evade duty—stand clearly established in the present case. The conduct of the Noticee(s), viewed in light of the mis-declaration of classification and other material particulars despite knowledge of the correct legal position, clearly evidences the presence of mens rea. The plea of bona fide belief or blind reliance is rejected as an afterthought, unsupported by facts and contrary to the statutory obligations cast upon the importer under the self-assessment regime. Therefore, the invocation of the extended period of limitation under Section 28(4) is fully justified and rightly invocable for recovery of the differential duty along with applicable interest and consequential penal action under the provisions of the Act.

**19.13.1.6** In view of the facts and findings above, I further find that differential duty (CVD) amounting **Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine only)**, on leviability of CVD @ 18.95% as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 (for the relevant period is recovered from the importer, M/s Agarwal Trade Links (IEC: 815001592) 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.

**19.13.2** From the foregoing, I observe that the Noticee(s) wilfully mis-declared the classification of the impugned goods despite being fully aware that the goods were flat-rolled clad stainless-steel products correctly classifiable under CTH 7219.90.90. Instead, they consciously declared the goods under CTH 73269070 applicable to articles, thereby reducing the applicable CVD liability @ 18.95% under Notification No. 01/2017-Customs (CVD) dated 07.09.2017. The importer had previously classified similar stainless-steel circles as flat-rolled products in earlier imports vide past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra), clearly demonstrating knowledge of

the correct legal position. The conscious deviation from its earlier consistent practice establishes deliberate misclassification with intent to evade duty.

**19.13.2.1** I further find that the importer wilfully violated Sections 17, 46(4), and 46(4A) of the Customs Act, 1962 by failing to make true, correct, and complete declarations and by not exercising due diligence under the self-assessment regime. The mis-declaration of classification was neither accidental nor inadvertent but a conscious and intentional act to obtain illegal pecuniary benefits. The plea of bona fide belief or blind reliance is rejected as untenable and contrary to statutory obligations.

**19.13.2.2** Accordingly, I hold that all the essential ingredients required for invocation of Section 114A—namely willful misstatement, mis-classification, suppression of facts, intent to evade duty, and determination of duty under Section 28(4)—are clearly present in the present case. Therefore, the importer, M/s Agarwal Trade Links (IEC: 815001592), is liable to penalty equal to the duty determined and interest, in terms of Section 114A of the Customs Act, 1962.

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

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

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

**19.15 Therefore, I hold that the conditions prescribed under Section 114A of the Customs Act, 1962 are fully satisfied in the present case, and accordingly, the importer, is liable to penalty equal to the duty and interest so determined under Section 114A of the Customs Act, 1962.**

**19.16** I observe that the Fifth Proviso to Section 114A of the Customs Act, 1962 provides that where penalty is imposed under Section 114A, no penalty shall be imposed under Section 112 of the Customs Act, 1962 for the same act or omission.

**19.16.1** Further, sub-section (ii) of Section 112 of the Customs Act, 1962 provides that the penalty prescribed thereunder in respect of dutiable goods is **applicable subject to the provisions of Section 114A** of the Act. This clearly establishes the **primacy and supremacy of penalty under Section 114A** in cases involving evasion of duty on account of **willful misstatement, collusion, or suppression of facts**. Accordingly, where penalty under Section 114A is attracted, the penalty under Section 112(ii) operates in a subordinate manner, subject to the overriding applicability of Section 114A.

**19.16.2** Since the acts and omissions of the importer, which rendered the goods liable to confiscation and resulted in evasion of duty, have already been adequately covered and penalized under Section

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

114A of the Customs Act, 1962, imposition of a separate penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962 for the same set of facts would be hit by the Fifth Proviso to Section 114A, read with provision of subsection (ii) of Section 112 of the Customs Act, 1962.

**19.16.3** Accordingly, in view of the Fifth Proviso to Section 114A, read with provision of subsection (ii) of Section 112 of the Customs Act, 1962, No separate penalty under Section 112(a) of the Customs Act, 1962 is warranted on Noticee in the present case.

**Penal Action under Section 117 of the Customs Act**

**19.17** I observe that Section 117 of the Customs Act, 1962 provides that any person who contravenes any provision of the Act or abets any such contravention, for which no express penalty is elsewhere provided under the Act, shall be liable to a penalty which may extend to the amount prescribed therein. The said provision is residuary in nature and is attracted in cases where there is a breach of statutory obligations under the Customs Act, but such contravention does not specifically fall within any other penal provision. Thus, Section 117 operates to ensure that violations of procedural or statutory requirements under the Act do not go unaddressed merely because no specific penalty clause is invoked elsewhere.

**19.17.1** I find that the present case involves short-payment of customs duty arising out of wilful misstatement, mis-classification & suppression of facts on the part of the importer with intent to evade payment of duty. Accordingly, the provisions of Section 114A of the Customs Act, 1962 are squarely attracted. Since penalty under Section 114A is a specific and mandatory penalty provision applicable to cases involving fraud, collusion, wilful misstatement or suppression of facts, no separate penalty under Section 117 of the Customs Act, 1962 is warranted for the same set of acts and omissions. Therefore, no separate penalty under Section 117 of the Customs Act, 1962 is warranted on Noticee in the present case.

**Penalty under Sections 114AA of the Customs Act, 1962**

**19.18** I observe that Section 114AA of the Customs Act, 1962 provides for imposition of penalty on any person **who knowingly or intentionally makes, signs, 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 the Act.** The provision covers deliberate use of false or incorrect documents such as commercial invoices, Bills of Entry, Certificates of Origin, or other statutory declarations, and prescribes a penalty not exceeding five times the value of the goods involved, where such falsehood or incorrectness is established to be intentional or knowing.

**19.18.1** In view of the detailed discussion in the foregoing paragraphs, it has already been held that the Noticee(s) have wilfully violated the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962. Section 46(4) mandates that the importer shall make and subscribe to a declaration as to the truth of the contents of the Bill of Entry and furnish true, correct, and complete particulars regarding the description, classification, value, and other material details of the imported goods. Section 46(4A) further imposes a statutory obligation upon the importer to exercise due diligence to ensure the accuracy and completeness of the information furnished for assessment purposes. In the present case, despite the impugned goods being clearly classifiable as flat-rolled clad stainless-steel products under CTH 7219.90.90, the Noticee(s) wilfully mis-declared them under CTH 73269070, an incorrect tariff heading applicable to articles. The importer had previously classified similar stainless-steel circles as flat-rolled products in earlier imports vide past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020 & Bill of Entry No. 9121872 dated 09.10.2020 (screenshots are enclosed at para 10.1 supra), yet consciously adopted a contrary classification in the present case. Such conduct establishes a deliberate and conscious false declaration of material particulars in violation of Section 46.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

**19.18.2** I further find that, by filing the impugned Bills of Entry and subscribing to the statutory declaration affirming the truthfulness of their contents, the Noticee(s) knowingly and intentionally made and used declarations that were false and incorrect in material particulars. The mis-declaration was not inadvertent but was directly connected to the assessment of duty and resulted in short-levy. Therefore, the act of making and using such false declarations squarely attracts the provisions of Section 114AA of the Customs Act, 1962. Accordingly, I hold that the Noticee(s) are liable to penalty under Section 114AA for knowingly and intentionally making and using false declarations and documents in the transaction of business under the Act.

**19.18.3** I observe that the Show Cause Notice does not specifically propose imposition of penalty under Section 114AA of the Customs Act, 1962. However, being the fact-finding and adjudicating authority, I am seized of the matter in its entirety and am duty-bound to examine all consequential legal provisions arising from the established facts on record. It is an undisputed fact that the importer had previously classified similar stainless-steel circles as flat-rolled products under Chapter 72 vide Past Bill of Entry No. 7370334 dated 30.03.2020, Bill of Entry No. 7678222 dated 16.05.2020, and Bill of Entry No. 9121872 dated 09.10.2020 (screenshots enclosed at para 10.1 supra). Despite such prior knowledge and consistent classification practice, the importer consciously adopted a contrary classification under CTH 73269070 in the present imports. Such deliberate and conscious deviation establishes intentional false declaration of material particulars in violation of Section 46(4) and 46(4A) of the Customs Act, 1962.

**19.18.3.1** In this regard, I observe that while the Customs Act prescribes limitation for demand of duty under Section 28, there is no statutory bar restricting the imposition of penalty where the factual matrix independently warrants such action. The established facts on record clearly demonstrate knowing and intentional use of false declarations in the Bills of Entry, thereby attracting the provisions of Section 114AA of the Customs Act, 1962. Accordingly, I hold that penalty under Section 114AA is clearly applicable to the importer in the present case.

**19.18.3.2** I find that, it is a well-settled principle of law that merely quoting a wrong section or failing to quote the correct section in a Show Cause Notice (SCN) will not vitiate the notice, provided that the substance of the charge is clearly stated and the recipient is not prejudiced. The validity of the SCN hinges on the clarity of the allegations, not on a technical error in citing the law. In this regard, I rely on following case law: -

- In Pruthvirajsinh N Jadeja (D) By Lrs. v Jayeshkumar Chhakaddasm Shah, in Civil Appeal No. 10521 of 2013 on **4 October, 2013** (and similar other cases like **AIR ONLINE 2019 SC 1172, 2019 (9) SCC 533, (2019) 137 ALL LR 703, (2019) 13 SCALE 572, (2019) 203 ALLINDCAS 22, (2019) 4 CURCC 12, (2019) 4 RECCIVR 919, (2020) 1 ALL RENTCAS 52, (2020) 1 CIVLJ 239** the Supreme Court reiterated that misstating an incorrect provision is not fatal if the power to grant the order is available to the court.
- Similarly, the court in N. Jagadeesan vs K.Selvam held that simply quoting a wrong provision of law is not a reason to deny relief to a party.
- The ruling in P.K Palanisamy v. N. Arumugham supports the idea that mentioning a wrong provision does not disentitle a person from obtaining the relief they seek.

**19.18.3.4** Accordingly, I find that Importer is also liable for penal action under section 114AA of the Customs Act, 1962.

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

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

**ORDER**

- (i) I reject the declared classification of goods i.e. 'Aluminium Cladded Circles'/ 'SS Triply Circles' under CTH 73269070, imported vide Bills of Entry mentioned above in Table-II above and order to classify the same under CTH 72199090 with applicable duties;
- (ii) I confirm the demand of total differential duty of **Rs. 57,33,549/- (Rupees Fifty-Seven lakhs thirty-three thousand five hundred forty-nine only)**, in respect of goods cleared by M/s Agarwal Trade Links vide Bills of Entry as mentioned above in Table-II, under the provision of Section 28(4) of the Customs Act, 1962 along with applicable interest leviable under Section 28AA of the Customs Act, 1962;
- (iii) I order confiscation of the imported goods vide Bills of Entry listed in Table-II above, valued at **Rs. 2,36,26,952/- (Rupees two crores thirty-six lakhs twenty-six thousand nine hundred fifty-two only)** under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 50,00,000/- (Rs. Fifty Lakh only)** on the importer in lieu of confiscation under Section 125(1) of the Customs Act, 1962.;
- (iv) I impose a penalty equivalent to differential duty of **Rs. 57,33,549/- (Rupees fifty-seven lakhs thirty-three thousand five hundred forty-nine only)** and interest accrued there upon on the importing firm M/s Agarwal Trade Links under section 114A of the Customs Act, 1962. However, 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. I refrain from imposing any penalty on the importer under Section 112(a) of the Customs Act, 1962, in view of the Fifth Proviso to Section 114A, read with sub-section (ii) of Section 112 of the Customs Act, 1962. I also refrain from imposing any penalty on the importer under Section 117 of the Customs Act, 1962 as discussed in Para 19.17 supra;
- (v) I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakh Only)** on the importer under **Section 114AA** of the Customs Act, 1962 for their involvement and role in knowingly using of false declarations for the import of the of the aforementioned impugned goods (as detailed in Table-II), as detailed in para 19.18 supra.

**Digitally signed by  
Vijay Risi  
Date: 19-02-2026  
19:14:52  
(VIJAY RISI)**

**Pr. COMMISSIONER OF CUSTOMS  
NS-III, JNCH**

**To,**

M/s, Agarwal Trade Links,  
219, 2<sup>nd</sup> Floor, Devashish Arcade,  
Opp. Gurudara, Odhav,  
Ahmadabad, Gujarat, 382415

**Copy to:**

1. The Asst. /Dy. Commissioner of Customs, Chief Commissioner's Office, JNCH

**S-10-160/2025-26/Adj./Commr. /Customs/Gr. IV/NS-III/CAC/JNCH  
SCN. No. 779/25-26/CC/Gr. IV/NS-III/CAC JNCH dated 03.09.2025**

2. The Asst. /Dy. Commissioner, Audit, D3 Circle, NS-IV, JNCH
3. The Asst./Dy. Commissioner of Customs, Group-IV, JNCH
4. The Asst. /Dy. Commissioner of Customs, Centralized Revenue Recovery Cell (CRRC), JNCH
5. The Asst. / Dy. Commissioner of Customs, SIIB (Import), JNCH: For uploading on DIGIT.
6. The Asst. /Dy. Commissioner of Customs (CAC), JNCH: For uploading on CARMA Portal.
7. The Asst. /Dy. Commissioner of Customs, EDI, JNCH: For display on JNCH Website.
8. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
9. Office Copy.