

VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25
OIO No. 03/ADC/SRV/O&A/2025-26



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद
“सीमा शुल्क भवन ,” पहली मंजिल ,पुराने हाई कोर्ट के सामने ,नवरंगपुरा,
अहमदाबाद – 380 009.

दूरभाष : (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

DIN: 20250471MN000000A9A4

PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25 dated 20.12.2024
C	मूल आदेश संख्या / Order-In-Original No.	:	03/ADC/SRV/O&A/2025-26
D	आदेश तिथि / Date of Order-In-Original	:	16.04.2025
E	जारी करने की तारीख / Date of Issue	:	16.04.2025
F	द्वारा पारित / Passed By	:	SHREE RAM VISHNOI, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	M/S. SHIV ALLOYS, 2ND FLOOR, SHOP NO. 202, MAHATMA MARKET, NAGAR SHETH NO VANDO, GHEEKANTA, AHMEDABAD, GUJARAT, 380001
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE

M/S. SHIV ALLOYS, 2nd Floor, Shop No. 202, Mahatma Market, Nagar Sheth No Vando, Gheekanta, Ahmedabad, Gujarat, 380001 and **IEC No. AKBPV1005D** (hereinafter referred to as “importer” or “the noticee” or “M/s. Shiv Alloys” for the sake of brevity) have filed Bills of Entry at ICD, Sachana as mentioned in Table-1 below for

import of 'Stainless Steel Coils and Sheets, Grade J3' of various sizes under CTI: 72193590 from Malaysia.

TABLE – 1

Sl. No.	BOE/Date	ITEM DESCRIPTION	CTI	Declared Country of Origin	Declared Manufacturer's Name (M/s.)
1	9933250/12-12-2020	STAINLESS STEEL COILS AND SHEETS GRADE J3	72193590	MALAYSIA	EZY METAL ENTERPRISE
2	2079955/23-12-2020	STAINLESS STEEL COILS AND SHEETS GRADE J3	72193590	MALAYSIA	EZY METAL ENTERPRISE
3	2611157/04-02-2021	STAINLESS STEEL COILS AND SHEETS GRADE J3	72193590	MALAYSIA	MZH MAJU INDUSTRY

2. Directorate General of Revenue Intelligence (DRI), HQ, New Delhi vide their letter dated 07.06.2022 forwarded various letters of FTA Cell, CBIC, vide which it was informed that the Country-of-Origin certificates said to be issued in Malaysia in respect of certain suppliers/ manufacturers/ third party/ sellers were inauthentic. In continuation with the said letter dated 07.06.2022, DRI HQ, New Delhi vide their letter F. No. DRI/HQ-CI/B-Cell/50D/Enq-01/2020-CI dated 25.07.2022, also forwarded 42 COOs reported to be unauthentic by the issuing authority in Malaysia.

2.1 In view of the same, investigation was initiated against the importers which had imported the goods from Malaysia with suppliers as mentioned in the said letters of FTA Cell. Vide the said letters of DRI HQ, a number of risky import consignments pertaining to various importers were shared to DRI, AZU, Ahmedabad for comprehensive investigation. Out of the shared import consignments, import consignments as per Table-1 above, imported by M/s Shiv Alloys were taken up for investigation. The import data for M/s. Shiv Alloys was retrieved and analyzed. The analysis revealed that M/s. Shiv Alloys had imported 'Stainless Steel Coils and Sheets, Grade J3' of various sizes under CTI: 72193590 from Malaysia. These goods were supplied by M/s. EZY Metal Enterprise and M/s. MZH Maju Industry, both of which were identified as suppliers with inauthentic Certificates of Origin (COOs). Tthe details of the said imports are summarized as per Table-2:

TABLE-2

Sr. No.	Particular	Details
1.	Name of Importer	M/s. Shiv Alloys, 2nd Floor, Shop No. 202, Mahatma Market, Nagar Sheth No Vando, Gheekanta, Ahmedabad, Gujarat, 380001 (IEC: AKBPV1005D)
2.	PAN	AKBPV1005D
3.	GSTIN	24AKBPV1005D1ZT
4.	Bills of Entry No. & date	9933250 dated 12.12.2020, 2079955 dated 23.12.2020 and 2611157 dated 04.02.2021
5.	Name of Supplier	M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry
6.	Country of Origin	Malaysia
7.	Item Description	Stainless Steel Coils and Sheets Grade J3 of various sizes
8	CTI	72193590
9.	Quantity	133.618 MTs
10.	Custom exemption notification	46/2011 [967(I)]
11.	Total Assessable Value	Rs. 1,23,09,443/-
12.	Custom Duty paid	NIL
13.	IGST paid	Rs. 22,15,700/-

2.2 The matter was examined and it was found that M/s. Shiv Alloys had imported 'Stainless Steel Coils and Sheets Grade J3' of various sizes from Malaysia and availed the benefit of preferential duty treatment as provided under Notification No. 46/2011-Customs dated 01.06.2011, (Sr. No. 967(I)) as amended, by claiming the country of origin as Malaysia. 'Flat rolled products of stainless steel, of a width of 600 mm or more' are classified under CTH 7219 of the first schedule to the Customs Tariff Act and the effective rate of basic customs duty on this product is 7.5% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017, as amended. However, by claiming the preferential duty treatment on the strength of COO claimed to be issued by the authority of Malaysia, the importer had claimed exemption from payment of basic customs duty.

3. APPLICABLE PROVISIONS OF CAROTAR, 2020 AND NOTIFICATION NO. 46/2011-CUSTOMS DATED 01.06.2011

3.1 As per the provisions made in the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated 31st December 2009, the Certificate of Country of Origin was to constitute the principal basis for the purposes of extension of preferential treatment. In extension of the FTA, CBIC proceeded to issue exemption Notification No. 46/2011 dated 01st June 2011 granting benefit of "nil" rate of Basic Custom Duty on goods falling in Customs Tariff Head "7219" when imported into India from a country listed in Appendix I of the said Exemption Notifications.

3.2 Benefits of exemption under Notification No. 46/2011-Customs dated 01.06.2011 are available to the importer when goods mentioned therein imported into the Republic of India from a country listed in APPENDIX I, which includes Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia, Brunei Darussalam, Lao People's Democratic Republic & Cambodia, provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. The origin of the imported goods was to be verified in accordance with the 2009 Rules.

3.3 "Verification" means verifying genuineness of a certificate of origin or correctness of the information contained therein in the manner prescribed by the respective Rules of Origin. The Government of India, Ministry of Finance (Department of Revenue) issued a set of rules called the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (in short CAROTAR, 2020) vide Notification No. 81/2020-Cus. (N.T.), dated 21-8-2020 and these rules apply to import of goods into India where the importer makes claim of preferential rate of duty in terms of a trade agreements.

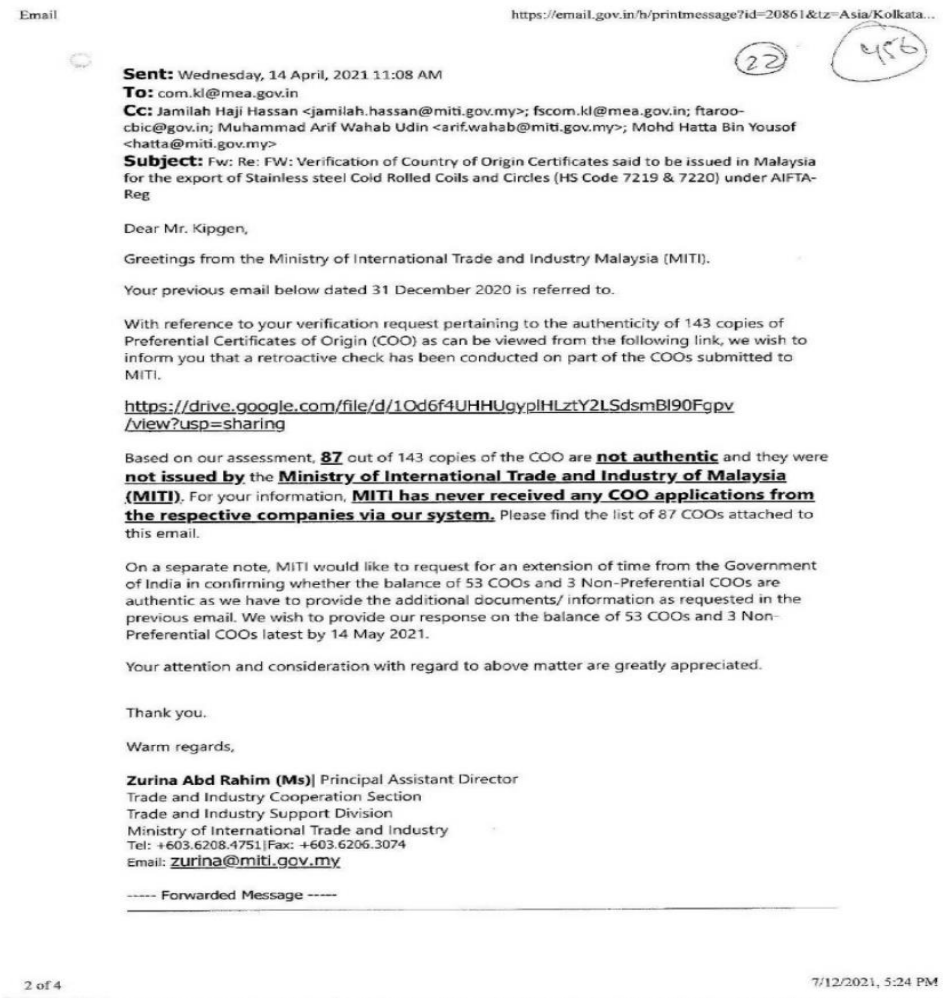
3.4 Rule 6 of the CAROTAR Rules, 2020, provides for the retroactive verification of the certificates of country of origin. Further, sub-rule 7(c) of Rule 6 of the CAROTAR Rules, 2020 provides that if the information and documents furnished by the Verification Authority and records available provide sufficient evidence to prove that the goods do not meet the origin criteria prescribed in Rules of Origin, the proper officer may deny the claim of preferential duty treatment.

4. CORRESPONDENCE RECEIVED FROM FTA CELL, CBIC AND MITI, MALAYSIA REGARDING THE SUBJECT COO CERTIFICATES

4.1 Various correspondences forwarded by DRI, HQ with regard to retroactive verification of Country-of-Origin Certificates by the issuing authority i.e. Ministry of International Trade and Industry, Malaysia (hereinafter also referred to as MITI) indicated that the COOs issued by the suppliers M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry were inauthentic.

4.2 Vide its email dated 15.04.2021, Ministry of International Trade and Industry (MITI), Malaysia informed that the said 87 COOs referred to them were not authentic and were not issued by their office. MITI, Malaysia also informed that they had never received any COO application from the respective companies. Vide their email dated 15.04.2021, MITI, Malaysia forwarded list of 87 Certificate of Country of Origin, which have been found to be unauthentic and the same have not been issued by them. The screenshot of the said email and the list of the said COOs are reproduced as per Image-1, 2 & 3 below:

IMAGE-1



VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25
OIO No. 03/ADC/SRV/O&A/2025-26

IMAGE-2

28

453

LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
1	KL-2019-AI-21-085278	MH MEGAH MAJU ENTERPRISE	30.09.2019
2	KL-2019-AI-21-072695	MZH MAJU INDUSTRY	01.08.2019
3	KL-2019-AI-21-077386	MH MEGAH MAJU ENTERPRISE	19.08.2019
4	KL-2019-AI-21-085859	MH MEGAH MAJU ENTERPRISE	01.10.2019
5	KL-2019-AI-21-086871	MH MEGAH MAJU ENTERPRISE	09.10.2019
6	KL-2019-AI-21-088746	MH MEGAH MAJU ENTERPRISE	25.10.2019
7	KL-2019-AI-21-091327	MH MEGAH MAJU ENTERPRISE	12.11.2019
8	KL-2019-AI-21-091319	MH MEGAH MAJU ENTERPRISE	12.11.2019
9	KL-2019-AI-21-095563	MH MEGAH MAJU ENTERPRISE	26.11.2019
10	KL-2019-AI-21-095873	MH MEGAH MAJU ENTERPRISE	27.11.2019
11	KL-2019-AI-21-075801	MH MEGAH MAJU ENTERPRISE	15.08.2019
12	KL-2019-AI-21-077378	MH MEGAH MAJU ENTERPRISE	19.08.2019
13	KL-2019-AI-21-077411	MH MEGAH MAJU ENTERPRISE	19.08.2019
14	KL-2019-AI-21-080137	MH MEGAH MAJU ENTERPRISE	28.08.2019
15	KL-2019-AI-21-080172	MH MEGAH MAJU ENTERPRISE	28.08.2019
16	KL-2019-AI-21-085898	MH MEGAH MAJU ENTERPRISE	02.10.2019
17	KL-2019-AI-21-086855	MH MEGAH MAJU ENTERPRISE	09.10.2019
18	KL-2019-AI-21-086834	MH MEGAH MAJU ENTERPRISE	09.10.2019
19	KL-2019-AI-21-086829	MH MEGAH MAJU ENTERPRISE	09.10.2019
20	KL-2019-AI-21-06958	SETICA INDUSTRIES (M) SDN BHD	22.01.2019
21	KL-2019-AI-21-06591	SETICA INDUSTRIES (M) SDN BHD	07.02.2019
22	KL-2018-AI-21-139316	JENTAYU INDUSTRY	28.12.2018
23	KL-2019-AI-21-03293	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
24	KL-2019-AI-21-05483	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
25	KL-2019-AI-21-07132	SETICA INDUSTRIES (M) SDN BHD	15.02.2019
26	KL-2019-AI-21-099652	MH MEGAH MAJU ENTERPRISE	31.12.2019
27	KL-2020-AI-21-001958	MH MEGAH MAJU ENTERPRISE	22.01.2020
28	KL-2019-AI-21-02866	SETICA INDUSTRIES (M) SDN BHD	25.01.2019
29	KL-2020-AI-21-003235	MH MEGAH MAJU ENTERPRISE	04.02.2020
30	KL-2019-AI-21-091247	MH MEGAH MAJU ENTERPRISE	12.11.2019
31	KL-2020-AI-21-005078	CEKAP PRIMA SDN BHD	29.01.2020
32	KL-2019-AI-21-010992	ARTFRANSI INTERNATIONAL SDN BHD	24.09.2019
33	KL-2019-AI-21-010967	ARTFRANSI INTERNATIONAL SDN BHD	11.10.2019
34	KL-2019-AI-21-010979	ARTFRANSI INTERNATIONAL SDN BHD	31.10.2019
35	KL-2019-AI-21-010989	ARTFRANSI INTERNATIONAL SDN BHD	19.11.2019
36	KL-2019-AI-21-088361	MH MEGAH MAJU ENTERPRISE	21.10.2019
37	KL-2020-AI-21-000862	MH MEGAH MAJU ENTERPRISE	20.01.2020
38	KL-2019-AI-21-018819	HARD METAL TRADE SDN BHD	16.12.2019
39	KL-2019-AI-21-014873	SETICA INDUSTRIES (M) SDN BHD	09.04.2019
40	KL-2019-AI-21-015487	SETICA INDUSTRIES (M) SDN BHD	12.04.2019
41	KL-2019-AI-21-039871	MH MEGAH MAJU ENTERPRISE	23.04.2019
42	KL-2019-AI-21-043235	CEKAP PRIMA SDN BHD	12.12.2019
43	KL-2019-AI-21-038903	SETICA INDUSTRIES (M) SDN BHD	N/A
44	KL-2019-AI-21-072613	MZH MAJU INDUSTRY	01.08.2019

1

Image-3

28

452

26

LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
45	KL-2019-AI-21-093214	EZY METAL ENTERPRISE	15.11.2019
46	KL-2019-AI-21-095525	MH MEGAH MAJU ENTERPRISE	26.11.2019
47	KL-2019-AI-21-095473	MH MEGAH MAJU ENTERPRISE	26.11.2019
48	KL-2019-AI-21-027975	MALY METAL INDUSTRY SDN BHD	30.09.2019
49	KL-2019-AI-21-033688	MALY METAL INDUSTRY SDN BHD	13.11.2019
50	KL-2019-AI-21-039022	MALY METAL INDUSTRY SDN BHD	25.11.2019
51	KL-2019-AI-21-043662	MALY METAL INDUSTRY SDN BHD	16.12.2019
52	KL-2019-AI-21-088477	MH MEGAH MAJU ENTERPRISE	22.10.2019
53	KL-2019-AI-21-088408	CEKAP PRIMA SDN BHD	12.11.2019
54	KL-2019-AI-21-033027	MH MEGAH MAJU ENTERPRISE	22.10.2019
55	KL-2019-AI-21-038395	CEKAP PRIMA SDN BHD	27.11.2019
56	KL-2019-AI-21-0101023	ARTFRANSI INTERNATIONAL SDN BHD	02.12.2019
57	KL-2019-AI-21-043670	MALY METAL INDUSTRY SDN BHD	16.12.2019
58	KL-2019-AI-21-099382	EZY METAL ENTERPRISE	27.12.2019
59	KL-2019-AI-21-044172	MALY METAL INDUSTRY SDN BHD	31.12.2019
60	KL-2019-AI-21-091339	JENTAYU INDUSTRY	30.11.2019
61	KL-2019-AI-21-090139	JENTAYU INDUSTRY	11.11.2019
62	KL-2019-AI-21-093873	JENTAYU INDUSTRY	29.11.2019
63	KL-2019-AI-21-085293	MH MEGAH MAJU ENTERPRISE	30.09.2019
64	KL-2019-AI-21-086925	MH MEGAH MAJU ENTERPRISE	09.10.2019
65	KL-2019-AI-21-017946	PIONEER ULT ENTERPRISE	24.10.2019
66	KL-2019-AI-21-017945	PIONEER ULT ENTERPRISE	24.10.2019
67	KL-2019-AI-21-017896	PIONEER ULT ENTERPRISE	04.11.2019
68	KL-2019-AI-21-017895	PIONEER ULT ENTERPRISE	04.11.2019
69	KL-2019-AI-21-017912	PIONEER ULT ENTERPRISE	15.11.2019
70	KL-2019-AI-21-018082	PIONEER ULT ENTERPRISE	20.11.2019
71	KL-2019-AI-21-018251	PIONEER ULT ENTERPRISE	29.11.2019
72	KL-2019-AI-21-018250	PIONEER ULT ENTERPRISE	29.11.2019
73	KL-2019-AI-21-018252	PIONEER ULT ENTERPRISE	29.11.2019
74	KL-2019-AI-21-018796	PIONEER ULT ENTERPRISE	16.12.2019
75	KL-2019-AI-21-018809	PIONEER ULT ENTERPRISE	16.12.2019
76	KL-2019-AI-21-018800	PIONEER ULT ENTERPRISE	16.12.2019
77	KL-2019-AI-21-018848	PIONEER ULT ENTERPRISE	24.12.2019
78	KL-2019-AI-21-018845	PIONEER ULT ENTERPRISE	24.12.2019
79	KL-2019-AI-21-018843	PIONEER ULT ENTERPRISE	24.12.2019
80	KL-2019-AI-21-018898	PIONEER ULT ENTERPRISE	31.12.2019
81	KL-2020-AI-21-019358	PIONEER ULT ENTERPRISE	15.01.2020
82	KL-2020-AI-21-019428	PIONEER ULT ENTERPRISE	28.01.2020
83	KL-2020-AI-21-019484	PIONEER ULT ENTERPRISE	28.01.2020
84	KL-2020-AI-21-019482	PIONEER ULT ENTERPRISE	28.01.2020
85	KL-2020-AI-21-019480	PIONEER ULT ENTERPRISE	28.01.2020
86	KL-2020-AI-21-019511	PIONEER ULT ENTERPRISE	04.02.2020
87	KL-2019-AI-21-01095	SETICA INDUSTRIES (M) SDN BHD	07.01.2019

2

4.3 As is manifest from the aforesaid communications, it is evident that the CBIC had forwarded the retroactive verification request to the Competent Authority in Malaysia and the issuing authorities had reverted back affirming that 87 COO

Certificates were not issued by them and further they had never received any COO application from such companies via their system. In the said list, the names of the suppliers which had supplied the said goods to the importer M/s. Shiv Alloys, i.e. M/s. EZY Metal Enterprise and M/s. MZH Maju Industry are also reflected at Sr. Nos. 2 & 44 and 45 & 58 respectively indicating that the COO certificates issued to them are not authentic. Thus, it is apparent that these supplier firms had never applied for COO to the competent authorities in Malaysia.

5. Thus, the following 03 COO certificates produced by the importer for claiming the exemption from duty under Notification No. 46/2011-Cus dated 01.06.2011, appear to be inauthentic. Hence, exemption from BCD under Notification no. 46/2011-Customs dated 01.06.2011 claimed and availed by the importer is not proper. The said three B/Es with the corresponding COOs are as given in Table-3 below:

TABLE-3

Sr. No.	Bill of Entry No.	Date	No. of COO Certificate	Name of the Supplier
1	9933250	12-12-2020	KL-2020-AI-21-098513 dated 23.11.2020	M/s. Ezy Metal Enterprise, 3B Lorong Sentosa 4, Taman Bayu Tinggi, 41200, Klang, Selangor, Malaysia
2	2079955	23-12-2020	KL-2020-AI-21-099435 dated 07.12.2020	
3	2611157	04-02-2021	KL-2020-AI-21-003298 dated 18.01.2021	M/s. MZH Maju Industry, Lot 1250 Batu 8 Sijangkang, 42500, TLK Panglima Garang, Selangor, Malaysia

6. SUMMONSES ISSUED TO M/s. SHIV ALLOYS AND ITS PROPRIETOR

6.1 Summonses were issued by this office against M/s Shiv Alloys to tender oral statement and submit import documents relating to import of Stainless-Steel Coil and Sheets from Malaysia for the period 2020 and thereafter. Accordingly, (i) Summons bearing CBIC DIN-202304DDZ10000222BDB dated 19.04.2023, (ii) Summons bearing CBIC DIN- 202309DDZ10000333ECE dated 15.09.2023, (iii) Summons bearing CBIC DIN-202310DDZ10000888D8C dated 05.10.2023 were issued to M/s. Shiv Alloys but the same were returned unattended/undelivered. In view of the same, Summons was also issued specifically to the proprietor of M/s. Shiv Alloys namely Shri Maroti Baliram Varale at his known home address, i.e. (i) Summons bearing CBIC DIN-202401DDZ1000000D060 dated 15.01.2024, (ii) Summons bearing CBIC DIN-202401DDZ1000000AF24 dated 30.01.2024, (iii) Summons bearing CBIC DIN-202402DDZ1000000AD4F dated 19.02.2024, (iv) Summons bearing CBIC DIN-202402DDZ10000515365 dated 07.03.2024, (v) Summons bearing CBIC DIN-202406DDZ100009909EB dated 11.06.2024 and (vi) Summons bearing CBIC DIN-202407DDZ1000061186C dated 08.07.2024 were issued to Shri Maroti Baliram Varale. The said Summonses were also returned unattended/undelivered with a postal remark that the said person does not live in the village as mentioned in his home address.

6.2 In view of the above, it appeared that Shri Maroti Baliram Varale, proprietor of M/s. Shiv Alloys had deliberately declared wrong addresses as a safety measure to evade investigation that might arise on account of the fraudulent benefits being taken by M/s.

Shiv Alloys by presenting non-authentic documents in such manner. Hence, he did not join the investigation.

VERIFICATION OF THE IMPORTER- M/s. SHIV ALLOYS AT THEIR REGISTERED ADDRESS:

7. As no appearance was made by the importer during the course of investigation, verification of the firm was done by the team of DRI, AZU, officers on 11.06.2024 at their registered address, i.e. 2nd Floor, Shop No. 202, Mahatma Market, Nagar Sheth No Vando, Ghee Kanta, Ahmedabad, Gujarat-380001. On reaching the said address, it was revealed that no such firm by the name of M/s. Shiv Alloys was operating from the said address. The owner of the said premise was also contacted, who informed that M/s. Shiv Alloys used to operate from the said shop earlier, but currently M/s. Shiv Alloys are not operating from there and they are just using the said address.

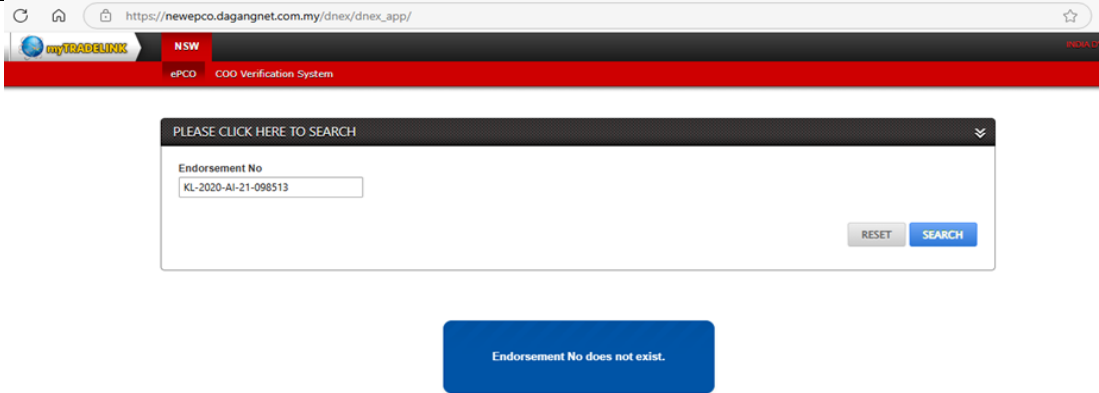
IMPORT DOCUMENTS SUBMITTED BY CUSTOMS BROKER

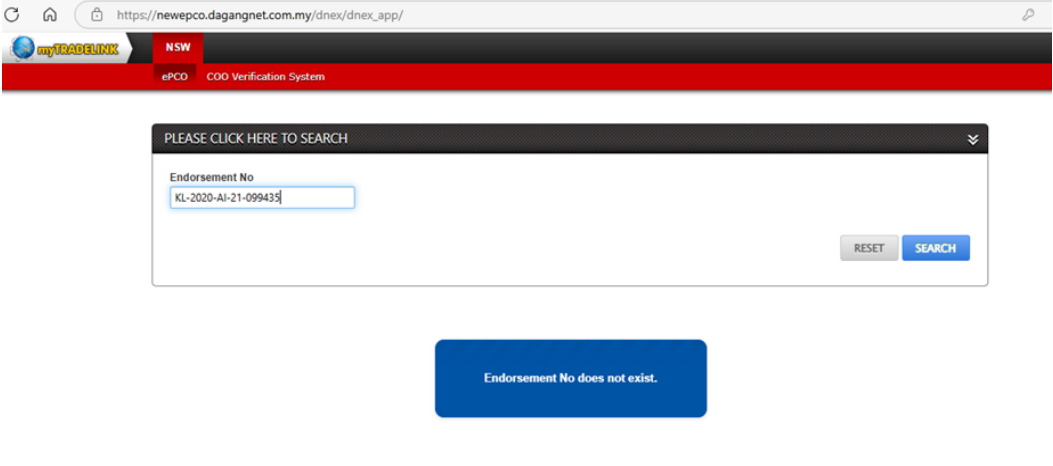
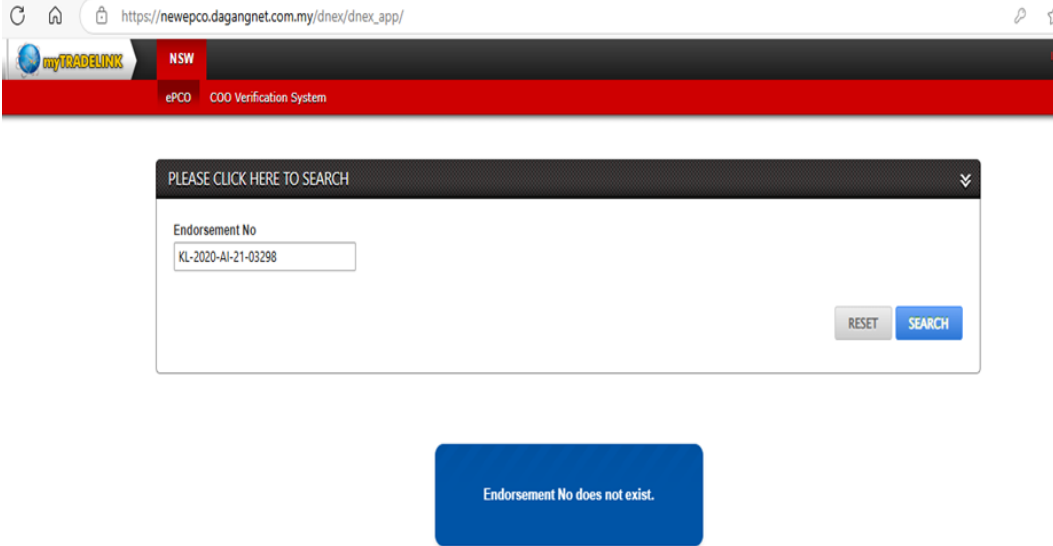
8. The import documents were called from the Customs Broker who had undertaken customs clearance for the goods imported vide the said Bs/E filed by M/s. Shiv Alloys. The copy of the said Bills of Entry along with other supporting documents viz. Bill of Lading, COO Certificate, Commercial Invoice, Packing List etc. were submitted by him.

VERIFICATION OF THE SUBJECT COO CERTIFICATES FROM THE OFFICIAL MALAYSIAN GOVT PORTAL

9.1 As mentioned at foregoing paras, the correspondence received from MITI, Malaysia as forwarded by DRI, HQ revealed that COOs issued to the supplier M/s. EZY Metal Enterprise and M/s. MZH Maju Industry were non-authentic. Further, veracity of the COO certificates submitted by the importer with respect to the said Bills of Entry was also verified on the official Malaysian govt. portal ([https:// newepco. dagangnet. com. my/ dnex / login/](https://newepco.dagangnet.com.my/dnex/login/)), wherein, the said COO certificate numbers were found non-existent. Screenshots of the said verification are appended in Table-4 below:

TABLE-4

Sr. No.	COO No./Date	RESULT FOUND ON VERIFICATION
1	KL-2020-AI-21-098513 dated 23.11.2020	

2	KL-2020-AI-21-099435 dated 07.12.2020	
3	KL-2020-AI-21-003298 dated 18.01.2021	

9.2 Therefore, the preferential rate of duty claimed against the impugned COOs appeared to be improper and stands liable to be rejected as per the provisions the Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) as notified under Notification No. 81/2020-Cusroms (N.T.) dated 21st August 2020 in conjunction with Section 28DA of the customs Act, 1962, for the impugned goods imported against the aforesaid Bills of Entry wherein goods had originated from the disputed overseas suppliers from Malaysia under unauthentic COO certificates.

10. DUTY LIABILITY

10.1 Based on Bills of Entry filed by the importer, quantification of short levied/not levied Basic Custom Duty as well as IGST has been worked out in terms of INR and stated below as:

TABLE-5

BoE No. & date	Ass. Value as per BoE	Duty Paid under claim of Noti. 46/2011	Duty Payable				Differential Duty Payable (7)-(3)
		BCD (@0%)+ SWS (@0%)+IGST (@18%)	BCD (@7.5%)	SWS (10% on BCD	IGST (@18% of IGST AV)	Total Duty ((4)+(5) +(6))	
1	2	3	4	5	6	7	8
9933250 /12.12.2020	5041861	907535	378139.58	37814	982406.62	1398360	490825
2079955 /23.12.2020	2346336	422341	175975.20	17598	457183.61	650756	228415
2611157 / 04.02.2021	4921246	885824	369093.45	36909	958904.78	1364908	479084
TOTAL	1,23,09,443/-	22,15,700	923208/-	92321/-	23,98,495/-	34,14,024/-	11,98,324/-

10.2 The above quantification suggests that wrong availment of exemption benefit under Asean-India PFA in light of Notification No. 46/2011-Cus has resulted in short levy/ not levy of total duty to the tune of **Rs. 11,98,324/- (BCD: Rs. 9,23,208/- + SWS: Rs. 92,321/- + IGST: Rs. 1,82,795/-)**, which appeared to be recoverable from the importer along with appropriate rate of interest and penalty as applicable.

11. From all the foregoing paras, it is ostensible that consignment imported under the subject Bills of Entry by M/s Shiv Alloys have been cleared by producing unauthentic country of origin certificates and therefore the duty exemption benefit claimed under the ASEAN-India Preferential Trade Agreement under S. No, 967[I] of Notification No. 046/2011.Cus dated 01.06.2011 is improper and illegitimate. The importer also left their registered premises and the same was not intimated to Custom Authority. He has also failed to provide the true contents of the Bill of Entry in support of their declaration and has neither ensured the accuracy of the information contained therein, nor the authenticity and validity of the documents (COO Certificate in this instance) submitted against the bills of entry to supplement their claims of duty exemption as per Notification No. 046/2011-Cus dated 01.07.2011. This has resulted in the violation of Section 46(4) of the Customs Act, 1962 on the part of the importer. The imported goods as per the mentioned Bills of Entry were cleared on account of unauthentic Country of Origin Certificates and thereby the importer has failed to fulfill the statutory conditions of duty exemption benefit, thus rendering the impugned goods liable to confiscation under Section 111(o) and 111(q) of the Customs Act, 1962.

12. RELEVANT LEGAL PROVISIONS OF THE CUSTOMS ACT, 1962:

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

(1) *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting ¹ [electronically] ² [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.....*

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

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

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

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

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

(B) Section 28(4) of the Customs Act, 1962:

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

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

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

(C) Section 28AA: Interest on delayed payment of duty

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

(D) Section 28DA. Procedure regarding claim of preferential rate of duty. -

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

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

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

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

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

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

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may, -

(i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

(i) the tariff item is not eligible for preferential tariff treatment;

(ii) complete description of goods is not contained in the certificate of origin;

(iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;

(iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(11) Where the verification under this section establishes non-compliance of the imported goods with the country-of-origin criteria, the proper officer may reject the preferential tariff

treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country-of-origin criteria.

Explanation-For the purposes of this Chapter, -

(a)"certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country-of-origin criteria and other requirements specified in the said agreement;

(b)"identical goods" means goods that are same in all respects with reference to the country-of-origin criteria under the trade agreement;

(c)"Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;

(d)"trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.

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

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

(a) ...

(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];

(n) ...

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p)...

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

(F) 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,.."

(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,

(G) Section 114A: “Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 22[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:]”

(H) 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.”

(I) Section 124: “Issue of show cause notice before confiscation of goods, etc.-

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

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

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

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

13. The subject Bills of Entry of this investigation report, filed by the importer, wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per the verification report of Certificate of Origin conducted, the Certificates of Origin were found to be unauthentic in r/o supplies in aforesaid bills of entry.

13.1 Vide Finance Act, 2011, “Self-Assessment” has been introduced w. e. f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported goods while presenting Bill of Entry. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by submitting unauthentic Certificate of Origin, it appeared that the importer

willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed the benefit of exemption Notification on the basis of unauthentic COO. The importer has failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

13.2 The arrangement of the above facts has highlighted substantial grounds and reasons for collusion, wilful mis-statement and suppression of facts on the part of the subject importer where they have taken clearance of import consignments against import documents viz. COO Certificates which are unauthentic and by claiming duty exemption benefit under ASEAN-India PTA against such unauthentic COO; they have violated the conditions of rules of origin as required for compliance under the relevant clauses of Section 28DA of the Customs Act' 1962, thereby causing injury to Revenue for the short levied duty amounts as per the Basic customs Duty exemption claimed by importer under Notification No. 046 / 2011-Cus dated 01.07.2011. Further, it also appeared that the importer deliberately provided wrong addresses in the documents so as to evade the investigation that ensued on account of such submission of non-authentic documents. Therefore, it appeared that the importer knowingly and deliberately availed the exemption Notification on the goods of Malaysia based origin. It appeared to be indicative of their *mens rea*. Moreover, the importer appeared to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, and has not paid applicable BCD and thereby short paid applicable IGST. Accordingly, it appeared that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case for recovery of total duty of Rs. 11,98,324/- (BCD: Rs. 9,23,208/- + SWS: Rs. 92,321/- + IGST: Rs. 1,82,795/-), along with appropriate rate of interest for the same reasons, the importer also appeared liable to penalty under Section 114A of the Customs Act, 1962.

13.3 As mentioned in the foregoing paras, the imported goods under the said Bill of Entry, have been found to be not corresponding the condition for claiming the exemption against Country of Origin (COO) Certificate in terms of Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported having assessable value of Rs. 1,23,09,443/- (Rupees One Crore Twenty-Three Lakhs Nine Thousand Four Hundred and Forty-Three only) are liable to confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appeared that the importer is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

13.4 As discussed above, it appeared that the importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and also failed to possess sufficient information as regards to authenticity of Certificate of Origin and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. The importer was not eligible for exemption benefit as provided under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Therefore, it appeared that they are also liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

14. Thereafter, a show cause notice dated 20.12.2024 was issued vide F. No. VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25, **M/s. Shiv Alloys, 2nd Floor, Shop No. 202, Mahatma Market, Nagar Sheth No Vando, Gheekanta, Ahmedabad, Gujarat, 380001** were called upon to show cause to the Additional Commissioner of Customs, Customs House, Navrangpura, Ahmedabad-380009, as to why:

- i. As the country of Origin certificates in respect of bills of entry as mentioned in Table – 1 above, purported to be issued by the Ministry of International Trade and Industry (MITI), Malaysia for the supplies made by M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry are inauthentic, in terms of Rule 7 of CAROTAR 2020 as discussed in foregoing paras; the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by them against the import of goods under Bills of entry filed at ICD-Sachana, should not be disallowed in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 and the bill of entry should not be re-assessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011;
- ii. The impugned goods having total assessable value of **Rs. 1,23,09,443/- (Rupees One Crore Twenty-Three Lakhs Nine Thousand Four Hundred and Forty-Three only)** as mentioned in Table – 2 above, should not be held liable for confiscation as per the provisions of Section 111(o) & Section 111(q) of the Customs Act, 1962;
- iii. The differential Customs Duty amounting to **Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only)** (BCD - Rs. 9,23,208/- + SWS – Rs. 92,321/- + IGST - Rs. 1,82,795/-) should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- iv. The interest at the applicable rate may be recovered from them on the said differential Customs Duty as mentioned in Sr. No. iii above under Section 28AA of the Customs Act, 1962;
- v. Penalty should not be imposed on the importer under Section 112/114A/114AA of the customs Act, 1962.

SUBMISSION AND PERSONAL HEARING:-

15 In response to the show cause notice, M/s. Shiv Alloys have not submitted any written submission till date.

15.1 Accordingly, opportunities to be heard in person were given to M/s. Shiv Alloys on 19.03.2025, 28.03.2025, and 08.04.2025 in compliance with Principle of Natural Justice. All the letters of Personal Hearing were sent to the address available with the

office by speed post and were also pasted on the Notice Board of the Office of Principal Commissioner of Customs, Ahmedabad-380009 as per the provisions of Section 153(1)(e) of the Customs Act, 1962, however, the noticee did not attend any of the Personal Hearing.

16. From the aforesaid facts, it is observed that sufficient opportunity has been granted to the noticee, but they chose not to join the personal hearing.

DISCUSSION AND FINDINGS:-

17. I have carefully gone through the show cause notice, records and facts in the present case. I find that the noticee have failed to appear for Personal Hearing as well as submit any written submission, inspite of being given opportunity to appear in person several times as detailed in forgoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

17.1 With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws:

17.1.1 Hon'ble High Court of Kerala in the case of **UNITED OIL MILLS VS. COLLECTOR OF CUSTOMS & C.EX. COCHIN REPORTED IN 2000 (124) ELT 53 (KER.)** has held that:

“19.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.

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot

be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See Union of India and Another v. M/s. Jesus Sales Corporation [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].”

17.1.2 Hon’ble Tribunal of Mumbai in the case of **SUMIT WOOL PROCESSORS V. CC, NHAVA SHEVA REPORTED IN 2014 (312) E.L.T. 401 (TRI. - MUMBAI)** has observed as under:

“8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard.”

18. I find from the records available that M/s. Shiv Alloys has imported 'Stainless Steel Coils and Sheets, Grade J3' of various sizes at ICD Sachana by availing duty exemption benefit of Customs Tariff Notification No.46/2011-Cus. dated 01.06.2011 availing Country of Origin benefit on the basis of the Country of Origin Certificates issued by the supplier mentioned in Table-3 above. I find that Directorate General of Revenue Intelligence (DRI), HQ, New Delhi vide their letter dated 07.06.2022 forwarded various letters of FTA Cell, CBIC, vide which it was informed that the Country-of-Origin certificates said to be issued in Malaysia in respect of certain suppliers/ manufacturers/ third party/ sellers were inauthentic and the suppliers of M/s. Shiv Alloys, M/s. EZY Metal Enterprise and M/s. MZH Maju Industry, both of which were identified as suppliers with inauthentic Certificates of Origin (COOs). Thus it appeared during the investigation by the DRI that the noticee have paid Customs Duty at lower rates to evade the Customs Duties under the Customs Act, 1962. I find that the Show Cause Notice proposed to recover differential duty of Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only) from the noticee and confiscation and penalty under the Customs Act, 1962 were also proposed. Therefore, the issues before me to decide are:-

- (a) Whether the country of Origin certificates in respect of bills of entry as mentioned in Table – 3 above, purported to be issued by the Ministry of International Trade and Industry (MITI), Malaysia for the supplies made by M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry are inauthentic, in terms of Rule 7 of CAROTAR 2020 and the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by them against the import of goods under Bills of entry filed at ICD-Sachana, should not be disallowed in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 and the bill of entry should not be re-assessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011?
- (b) Whether the differential Customs Duty amounting to Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only) is recoverable from them under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA?
- (c) Whether the impugned goods having total assessable value of Rs. 1,23,09,443/- (Rupees One Crore Twenty-Three Lakhs Nine Thousand Four Hundred and Forty-Three only) are liable for confiscation as per the provisions of Section 111(o) & Section 111(q) of the Customs Act, 1962?
- (d) Whether the Penalty is imposable on the importer under Section 112, 114A and 114AA of the customs Act, 1962?

18.1 Now I proceed to decide whether the country of Origin certificates in respect of bills of entry as mentioned in Table – 3 above, purported to be issued by the Ministry of International Trade and Industry (MITI), Malaysia for the supplies made by M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry are inauthentic, in terms of Rule 7 of CAROTAR 2020 and the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by them against the import of goods under Bills of entry filed at ICD-Sachana, should not be disallowed in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 and the bill of entry should not be re-assessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011.

18.1.1 I find that As per the provisions made in the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated 31st December 2009, the Certificate of Country of Origin was to constitute the principal basis for the purposes of extension of preferential treatment. In extension of the FTA, CBIC proceeded to issue exemption Notification No. 46/2011 dated 01st June 2011 granting benefit of "nil" rate of Basic Custom Duty on goods falling in Customs Tariff Head "7219" when imported into India from a country listed in Appendix

I of the said Exemption Notifications. I reproduce the Notification No. 46/2011-Customs dated 01.06.2011 as under:

“Notification No. 46/2011-Customs

New Delhi dated the 1st June, 2011

*- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962),and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.153/2009-Customs dated the 31st December, 2009 [G.S.R. 944 (E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby **exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in,-column (4) of the said Table**, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II .Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009*

....

S. No.	Chapter, Heading, Sub- and Tariff item	Description	Rate (in percentage unless otherwise specified)	
	...			
967	72	All goods	0.0	2.0
	...			

Appendix I

S. No.	Name of the Country
1	Malaysia
...	

”

18.1.2 I find that Benefits of exemption under Notification No. 46/2011-Customs dated 01.06.2011 are available to the importer when goods mentioned therein imported into the Republic of India from a country listed in APPENDIX I, which includes Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia, Brunei Darussalam, Lao People’s Democratic Republic & Cambodia, provided that the importer proves to the satisfaction

VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25
OIO No. 03/ADC/SRV/O&A/2025-26

of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.

18.1.3 I find that the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (in short CAROTAR, 2020) vide Notification No. 81/2020-Cus. (N.T.), dated 21.08.2020 were issued for import of goods into India where the importer makes claim of preferential rate of duty in terms of a trade agreements. Rule 6 of the CAROTAR Rules, 2020, provides for the retroactive verification of the certificates of country of origin. Further, sub-rule 7(c) of Rule 6 of the CAROTAR Rules, 2020 provides that if the information and documents furnished by the Verification Authority and records available provide sufficient evidence to prove that the goods do not meet the origin criteria prescribed in Rules of Origin, the proper officer may deny the claim of preferential duty treatment.

18.1.4 I find that the various correspondences forwarded by DRI, HQ with regard to retroactive verification of Country-of-Origin Certificates by the issuing authority i.e. Ministry of International Trade and Industry, Malaysia (hereinafter also referred to as MITI) indicated that the COOs issued by the suppliers M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry were inauthentic as per images below:-

Email https://email.gov.in/h/printmessage?id=20861&tz=Asia/Kolkata...

(22) 456

Sent: Wednesday, 14 April, 2021 11:08 AM
To: com.kl@mea.gov.in
Cc: Jamilah Haji Hassan <jamilah.hassan@miti.gov.my>; fscm.kl@mea.gov.in; faroo-cbic@gov.in; Muhammad Arif Wahab Udin <arif.wahab@miti.gov.my>; Mohd Hatta Bin Yousof <hatta@miti.gov.my>
Subject: Fw: Re: FW: Verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless steel Cold Rolled Coils and Circles (HS Code 7219 & 7220) under AIFTA-Reg

Dear Mr. Kipgen,

Greetings from the Ministry of International Trade and Industry Malaysia (MITI).

Your previous email below dated 31 December 2020 is referred to.

With reference to your verification request pertaining to the authenticity of 143 copies of Preferential Certificates of Origin (COO) as can be viewed from the following link, we wish to inform you that a retroactive check has been conducted on part of the COOs submitted to MITI.

<https://drive.google.com/file/d/1Od6f4UHHUgypIHLztY2LSdsmBI90Fgpy/view?usp=sharing>

Based on our assessment, **87** out of 143 copies of the COO are **not authentic** and they were **not issued by the Ministry of International Trade and Industry of Malaysia (MITI)**. For your information, **MITI has never received any COO applications from the respective companies via our system**. Please find the list of 87 COOs attached to this email.

On a separate note, MITI would like to request for an extension of time from the Government of India in confirming whether the balance of 53 COOs and 3 Non-Preferential COOs are authentic as we have to provide the additional documents/ information as requested in the previous email. We wish to provide our response on the balance of 53 COOs and 3 Non-Preferential COOs latest by 14 May 2021.

Your attention and consideration with regard to above matter are greatly appreciated.

Thank you.

Warm regards,

Zurina Abd Rahim (Ms) Principal Assistant Director
 Trade and Industry Cooperation Section
 Trade and Industry Support Division
 Ministry of International Trade and Industry
 Tel: +603.6208.4751|Fax: +603.6206.3074
 Email: zurina@miti.gov.my

----- Forwarded Message -----

VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25
OIO No. 03/ADC/SRV/O&A/2025-26

LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)

28

453

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
1	KL-2019-AI-21-085278	MH MEGAH MAJU ENTERPRISE	30.09.2019
2	KL-2019-AI-21-072695	MZH MAJU INDUSTRY	01.08.2019
3	KL-2019-AI-21-077386	MH MEGAH MAJU ENTERPRISE	19.08.2019
4	KL-2019-AI-21-085859	MH MEGAH MAJU ENTERPRISE	01.10.2019
5	KL-2019-AI-21-086871	MH MEGAH MAJU ENTERPRISE	09.10.2019
6	KL-2019-AI-21-088746	MH MEGAH MAJU ENTERPRISE	25.10.2019
7	KL-2019-AI-21-091327	MH MEGAH MAJU ENTERPRISE	12.11.2019
8	KL-2019-AI-21-091319	MH MEGAH MAJU ENTERPRISE	12.11.2019
9	KL-2019-AI-21-095563	MH MEGAH MAJU ENTERPRISE	26.11.2019
10	KL-2019-AI-21-095873	MH MEGAH MAJU ENTERPRISE	27.11.2019
11	KL-2019-AI-21-075801	MH MEGAH MAJU ENTERPRISE	15.08.2019
12	KL-2019-AI-21-077378	MH MEGAH MAJU ENTERPRISE	19.08.2019
13	KL-2019-AI-21-077411	MH MEGAH MAJU ENTERPRISE	19.08.2019
14	KL-2019-AI-21-080137	MH MEGAH MAJU ENTERPRISE	28.08.2019
15	KL-2019-AI-21-080172	MH MEGAH MAJU ENTERPRISE	28.08.2019
16	KL-2019-AI-21-085898	MH MEGAH MAJU ENTERPRISE	02.10.2019
17	KL-2019-AI-21-086855	MH MEGAH MAJU ENTERPRISE	09.10.2019
18	KL-2019-AI-21-086834	MH MEGAH MAJU ENTERPRISE	09.10.2019
19	KL-2019-AI-21-086829	MH MEGAH MAJU ENTERPRISE	09.10.2019
20	KL-2019-AI-21-06958	SETICA INDUSTRIES (M) SDN BHD	22.01.2019
21	KL-2019-AI-21-06591	SETICA INDUSTRIES (M) SDN BHD	07.02.2019
22	KL-2018-AI-21-139316	JENTAYU INDUSTRY	28.12.2018
23	KL-2019-AI-21-03293	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
24	KL-2019-AI-21-05483	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
25	KL-2019-AI-21-07132	SETICA INDUSTRIES (M) SDN BHD	15.02.2019
26	KL-2019-AI-21-099652	MH MEGAH MAJU ENTERPRISE	31.12.2019
27	KL-2020-AI-21-001958	MH MEGAH MAJU ENTERPRISE	22.01.2020
28	KL-2019-AI-21-02866	SETICA INDUSTRIES (M) SDN BHD	25.01.2019
29	KL-2020-AI-21-003235	MH MEGAH MAJU ENTERPRISE	04.02.2020
30	KL-2019-AI-21-091247	MH MEGAH MAJU ENTERPRISE	12.11.2019
31	KL-2020-AI-21-005078	CEKAP PRIMA SDN BHD	29.01.2020
32	KL-2019-AI-21-010992	ARTFRANSI INTERNATIONAL SDN BHD	24.09.2019
33	KL-2019-AI-21-010967	ARTFRANSI INTERNATIONAL SDN BHD	11.10.2019
34	KL-2019-AI-21-010979	ARTFRANSI INTERNATIONAL SDN BHD	31.10.2019
35	KL-2019-AI-21-010989	ARTFRANSI INTERNATIONAL SDN BHD	19.11.2019
36	KL-2019-AI-21-088361	MH MEGAH MAJU ENTERPRISE	21.10.2019
37	KL-2020-AI-21-000862	MH MEGAH MAJU ENTERPRISE	20.01.2020
38	KL-2019-AI-21-018819	HARD METAL TRADE SDN BHD	16.12.2019
39	KL-2019-AI-21-014873	SETICA INDUSTRIES (M) SDN BHD	09.04.2019
40	KL-2019-AI-21-015487	SETICA INDUSTRIES (M) SDN BHD	12.04.2019
41	KL-2019-AI-21-039871	MH MEGAH MAJU ENTERPRISE	23.04.2019
42	KL-2019-AI-21-043235	CEKAP PRIMA SDN BHD	12.12.2019
43	KL-2019-AI-21-038903	SETICA INDUSTRIES (M) SDN BHD	N/A
44	KL-2019-AI-21-072613	MZH MAJU INDUSTRY	01.08.2019

1

LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)

28

453

26

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
45	KL-2019-AI-21-093214	EZY METAL ENTERPRISE	15.11.2019
46	KL-2019-AI-21-095525	MH MEGAH MAJU ENTERPRISE	26.11.2019
47	KL-2019-AI-21-095473	MH MEGAH MAJU ENTERPRISE	26.11.2019
48	KL-2019-AI-21-027975	MALY METAL INDUSTRY SDN BHD	30.09.2019
49	KL-2019-AI-21-033688	MALY METAL INDUSTRY SDN BHD	13.11.2019
50	KL-2019-AI-21-039022	MALY METAL INDUSTRY SDN BHD	25.11.2019
51	KL-2019-AI-21-043662	MALY METAL INDUSTRY SDN BHD	16.12.2019
52	KL-2019-AI-21-088477	MH MEGAH MAJU ENTERPRISE	22.10.2019
53	KL-2019-AI-21-088408	CEKAP PRIMA SDN BHD	12.11.2019
54	KL-2019-AI-21-033027	MH MEGAH MAJU ENTERPRISE	22.10.2019
55	KL-2019-AI-21-038395	CEKAP PRIMA SDN BHD	27.11.2019
56	KL-2019-AI-21-0101023	ARTFRANSI INTERNATIONAL SDN BHD	02.12.2019
57	KL-2019-AI-21-043670	MALY METAL INDUSTRY SDN BHD	16.12.2019
58	KL-2019-AI-21-099382	EZY METAL ENTERPRISE	27.12.2019
59	KL-2019-AI-21-044172	MALY METAL INDUSTRY SDN BHD	31.12.2019
60	KL-2019-AI-21-091339	JENTAYU INDUSTRY	30.11.2019
61	KL-2019-AI-21-090139	JENTAYU INDUSTRY	11.11.2019
62	KL-2019-AI-21-093873	JENTAYU INDUSTRY	29.11.2019
63	KL-2019-AI-21-085293	MH MEGAH MAJU ENTERPRISE	30.09.2019
64	KL-2019-AI-21-086925	MH MEGAH MAJU ENTERPRISE	09.10.2019
65	KL-2019-AI-21-017946	PIONEER ULT ENTERPRISE	24.10.2019
66	KL-2019-AI-21-017945	PIONEER ULT ENTERPRISE	24.10.2019
67	KL-2019-AI-21-017896	PIONEER ULT ENTERPRISE	04.11.2019
68	KL-2019-AI-21-017895	PIONEER ULT ENTERPRISE	04.11.2019
69	KL-2019-AI-21-017912	PIONEER ULT ENTERPRISE	15.11.2019
70	KL-2019-AI-21-018082	PIONEER ULT ENTERPRISE	20.11.2019
71	KL-2019-AI-21-018251	PIONEER ULT ENTERPRISE	29.11.2019
72	KL-2019-AI-21-018250	PIONEER ULT ENTERPRISE	29.11.2019
73	KL-2019-AI-21-018252	PIONEER ULT ENTERPRISE	29.11.2019
74	KL-2019-AI-21-018796	PIONEER ULT ENTERPRISE	16.12.2019
75	KL-2019-AI-21-018809	PIONEER ULT ENTERPRISE	16.12.2019
76	KL-2019-AI-21-018800	PIONEER ULT ENTERPRISE	16.12.2019
77	KL-2019-AI-21-018848	PIONEER ULT ENTERPRISE	24.12.2019
78	KL-2019-AI-21-018845	PIONEER ULT ENTERPRISE	24.12.2019
79	KL-2019-AI-21-018843	PIONEER ULT ENTERPRISE	24.12.2019
80	KL-2019-AI-21-018898	PIONEER ULT ENTERPRISE	31.12.2019
81	KL-2020-AI-21-019358	PIONEER ULT ENTERPRISE	15.01.2020
82	KL-2020-AI-21-019428	PIONEER ULT ENTERPRISE	28.01.2020
83	KL-2020-AI-21-019484	PIONEER ULT ENTERPRISE	28.01.2020
84	KL-2020-AI-21-019482	PIONEER ULT ENTERPRISE	28.01.2020
85	KL-2020-AI-21-019480	PIONEER ULT ENTERPRISE	28.01.2020
86	KL-2020-AI-21-019511	PIONEER ULT ENTERPRISE	04.02.2020
87	KL-2019-AI-21-01095	SETICA INDUSTRIES (M) SDN BHD	07.01.2019

2

18.1.4 I find that from the aforesaid communications, in reply to retroactive verification request, MITI Malaysia affirmed that 87 COO Certificates were not issued by them and further they had never received any COO application from such companies via their system. I find in the said list, that the names of the suppliers which had supplied the said goods to the importer M/s. EZY Metal Enterprise and M/s. MZH Maju

Industry are also reflected at Sr. Nos. 2 & 44 and 45 & 58 respectively indicating that the COO certificates issued to them are not authentic. Further, I find that the 03 COO mentioned in Table-3 were verified from the official Malaysian govt. portal <https://newepco.dagangnet.com.my/dnex/login/> and the said COO numbers were found non-existent as per Table-4. Therefore, I find that country of Origin certificates in respect of bills of entry as mentioned in Table – 3 above, purported to be issued by the Ministry of International Trade and Industry (MITI), Malaysia for the supplies made by M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry are inauthentic, in terms of Rule 7 of CAROTAR 2020 and the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011.

18.1.5 In this connection, I would like to rely on the judgment of Hon'ble Supreme Court in the matter of **M/S. NOVOPAN INDIA LTD. REPORTED AT 1994 (73) ELT 769 (SC)**, wherein the Hon'ble SC held that:

“18. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) E.L.T. (J 350) (SC) = 1969 (2) S.C.R. 253] that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.”

18.1.6 Further, I would like to rely on the judgment of the Constitutional Bench in Hon'ble Supreme Court in the matter of **M/S. DILIP KUMAR & COMPANY. REPORTED AT 2018 (361) ELT 577 (SC)**, wherein the Hon'ble SC held that:

“48. The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other

unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.

49. The ratio in *Mangalore Chemicals case* (supra) was approved by a three-Judge Bench in *Novopan India Ltd. v. Collector of Central Excise and Customs*, 1994 Supp (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :

“We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals* - and in *Union of India v. Wood Papers*, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State....”

50. In *Tata Iron & Steel Co. Ltd. v. State of Jharkhand*, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -

“The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See *Novopan India Ltd. v. CCE and Customs*).”

...

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) *The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."*

18.1.7 Further, I would like to quote the lines from the case of **COLLECTOR OF CUSTOMS, BANGALORE & ANR. VS. M/S. MAESTRO MOTORS LTD. & ANR. 2004 (10) SCALE 253**, wherein the Court held:

"It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language."

18.1.8 In view of the above, I hold that the preferential rate of duty claimed against the impugned COOs is improper and stands liable to be rejected as per the provisions the Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) as notified under Notification No. 81/2020-Customs (N.T.) dated 21.08.2020 in conjunction with Section 28DA of the customs Act, 1962, for the impugned goods imported against the aforesaid Bills of Entry wherein goods had originated from the disputed overseas suppliers from Malaysia under unauthentic COO certificates. I disallow the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by them against the import of goods under Bills of entry filed at ICD-Sachana, in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 and hold that the bill of entry should be re-assessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011.

18.2 Now I decide whether the differential Customs Duty amounting to Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only) is recoverable from them under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA.

18.2.1 I find that Differential Customs duty of **Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only)** has been proposed to be recovered vide the Show Cause Notice under Section 28(4) of the Customs Act, 1962. I find from the discussion in the foregoing paras that the noticee had availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011 as amended on the basis of COO which are found to be inauthentic. I find that the noticee has deliberately withheld from disclosing to the Department, the inauthenticity of the COOs as they have not co-operated in the investigation.

18.2.2 I find that Summons bearing CBIC DIN-202304DDZ10000222BDB dated 19.04.2023, 202309DDZ10000333ECE dated 15.09.2023, and 202310DDZ10000888D8C dated 05.10.2023 were issued to M/s. Shiv Alloys but the same were returned unattended/undelivered. Also, Summons were also issued to the proprietor of M/s. Shiv Alloys namely Shri Maroti Baliram Varale at his known home address, bearing DIN-202401DDZ1000000D060 dated 15.01.2024, 202401DDZ1000000AF24 dated 30.01.2024, 202402DDZ1000000AD4F dated 19.02.2024, 202402DDZ10000515365 dated 07.03.2024, 202406DDZ100009909EB dated 11.06.2024 and DIN-202407DDZ1000061186C dated 08.07.2024, I find that the

said Summons were also returned unattended/undelivered with a postal remark that the said person does not live in the village as mentioned in his home address.

18.2.3 I find that Shri Maroti Baliram Varale, proprietor of M/s. Shiv Alloys had deliberately declared wrong addresses as a safety measure to evade investigation that might arise on account of the fraudulent benefits being taken by M/s. Shiv Alloys by presenting non-authentic documents in such manner and did not join the investigation. Therefore, they have suppressed the material fact from the department and indicative of their *mens rea*. Therefore, differential duty is required to be recovered by invoking the provision of Section 28 (4) of the Customs Act, 1962.

“Section 28(4) of the Customs Act, 1962:

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

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

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

Section 28AA: Interest on delayed payment of duty

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

Therefore, I find that proposed differential duty of **Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only)** is required to be recovered under Section 28 (4) along-with interest under Section 28AA of the Customs Act, 1962.

18.3 Now I decide whether the impugned goods having total assessable value of Rs. 1,23,09,443/- (Rupees One Crore Twenty-Three Lakhs Nine Thousand Four Hundred and Forty-Three only) are liable for confiscation as per the provisions of Section 111(o) & Section 111(q) of the Customs Act, 1962.

18.3.1 I find that in the Show Cause Notice, it is alleged that the goods are liable for confiscation under Section 111(o) and 111(q) of the Customs Act, 1962. From the perusal of Section 111(o) of the Customs Act, 1962 it is clear that *“any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, will be liable to confiscation. Further as per Section 111(q), “any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder”, will also be liable for confiscation.*

18.3.2 I find that the subject Bills of Entry filed by the noticee, wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per the verification report of Certificate of Origin conducted, the Certificates of Origin were found to be unauthentic in r/o supplies in aforesaid bills of entry.

18.3.3 Vide Finance Act, 2011, “Self-Assessment” has been introduced w. e. f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported goods while presenting Bill of Entry. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, I find that by submitting unauthentic Certificate of Origin the noticee willfully evaded Customs duty on the impugned goods. The noticee has wrongly availed the benefit of exemption Notification on the basis of unauthentic COO. The noticee has failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

18.3.4 I find that the above facts has highlighted substantial grounds and reasons for collusion, wilful mis-statement and suppression of facts on the part of the noticee where they have taken clearance of import consignments against import documents viz. COO Certificates which are unauthentic and by claiming duty exemption benefit under ASEAN-India PTA against such unauthentic COO; they have violated the conditions of rules of origin as required for compliance under the relevant clauses of Section 28DA of the Customs Act' 1962, thereby causing injury to Revenue for the short levied duty amounts as per the Basic customs Duty exemption claimed by the noticee under Notification No. 046 / 2011-Cus dated 01.07.2011. Further, the noticee deliberately provided wrong addresses in the documents so as to evade the investigation that ensued on account of such submission of non-authentic documents. Therefore, the noticee knowingly and deliberately availed the exemption Notification on the goods of Malaysia based origin and evaded the customs duty.

18.3.5 I find accordingly that the noticee has knowingly claimed the benefit of said Notification on the basis of inauthentic documents. Thus, I find that M/s. Shiv Alloys have violated the provisions of Section 46 (4) of the Customs Act, 1962. All these acts on part of them have rendered the imported goods liable to confiscation under Section 111 (o) and 111(q) of the Customs Act, 1962.

18.3.6 As the impugned goods are found liable to confiscation under Section 111 (o) and 111(q) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

“125 Option to pay fine in lieu of confiscation –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit...”

18.3.7 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of **M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)** wherein the Hon’ble High Court of Madras has observed as under:

“....
....
....

23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that

the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

....
....”

18.3.8 I also find that Hon’ble High Court of Gujarat by relying on this judgment, in the case of **SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.)**, has followed the dictum as laid down by the Madras High Court. In view of the above, I find that subject goods having assessable value of **Rs. 1,23,09,443/- (Rupees One Crore Twenty-Three Lakhs Nine Thousand Four Hundred and Forty-Three only)** though not available, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

18.4 I decide further whether the Penalty is imposable on the importer under Section 112, 114A and 114AA of the customs Act, 1962.

18.4.1 Penalty under Section 114A of the Customs Act, 1962: I find that that country of Origin certificates in respect of bills of entry as mentioned in Table – 3 above, purported to be issued by the Ministry of International Trade and Industry (MITI), Malaysia for the supplies made by M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry were found inauthentic as discussed in foregoing paras and the noticee has knowingly claimed the benefit of said Notification on the basis of inauthentic documents. I find that these acts on part of them have rendered the imported goods liable to confiscation under Section 111 (o) and 111(q) of the Customs Act, 1962 and also differential duty of Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only) is required to be recovered from the noticee by reason of collusion or wilful mis-statement or suppression of facts. Hence, Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in 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. In the instant case, the ingredient of suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid as proposed in the notice.

18.4.2 Penalty under Section 112 of the Customs Act, 1962: I find that fifth proviso to Section 114A stipulates that *“where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114”*. Hence, I refrain from imposing penalty on the noticee under Section 112 of the Customs Act, 1962; as

in view of discussion in Para 18.4.1, penalty has been imposed on them under Section 114A of the Customs Act, 1962.

18.4.3 Penalty under Section 114AA of the Customs Act, 1962: I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

*“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.”*

18.4.4 I find that the noticee had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and also failed to possess sufficient information as regards to authenticity of Certificate of Origin and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. I also find that the noticee was not eligible for exemption benefit as provided under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Hence, for the said act of contravention on their part, the noticee is liable for penalty under Section 114AA of the Customs Act, 1962.

18.4.5 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of **Principal Commissioner of Customs, New Delhi (Import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi)** wherein it has been held that *“Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority”*.

19. Therefore, I pass the following order -

ORDER

- i. I hold that the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011 as amended is not admissible to M/s. Shiv Alloys in respect of bills of entry as mentioned in Table – 1, as the country of Origin certificates, purported to be issued by the Ministry of International Trade and Industry (MITI), Malaysia for the supplies made by M/s. Ezy Metal Enterprise and M/s. MZH Maju Industry are inauthentic, as discussed in foregoing paras and order to re-assess the said bills of entry by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011;
- ii. I confirm the demand of differential Customs Duty amounting to **Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only)** in respect of said Bills of

VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25
OIO No. 03/ADC/SRV/O&A/2025-26

entry in Table-1 above and order to recover the same from M/s. Shiv Alloys under Section 28(4) of the Customs Act, 1962;

- iii. I order to recover the interest on the demand at (ii) above at the applicable rates under Section 28AA of the Customs Act, 1962;
- iv. I hold the impugned goods having total assessable value of **Rs. 1,23,09,443/- (Rupees One Crore Twenty-Three Lakhs Nine Thousand Four Hundred and Forty-Three only)**, liable for confiscation as per the provisions of Section 111(o) & Section 111(q) of the Customs Act, 1962. However, I give M/s. Shiv Alloys an option to redeem the said goods on payment of fine of Rs. **13,00,000/- (Rupees Thirteen Lakhs Only)** under Section 125 of the Customs Act, 1962;
- v. I impose a penalty of **Rs. 11,98,324/- (Rupees Eleven Lakhs Ninety Eight Thousand Three Hundred Twenty-Four Only) plus interest as determined under Section 28AA of the Customs Act, 1962** on M/s. Shiv Alloys under Section 114A of the Customs Act, 1962. I refrain from imposing any penalty under Section 112 of the Customs Act, 1962 as discussed in foregoing paras;
- vi. I impose a penalty of **Rs. 5,00,000 (Rupees Five Lakhs Only)** on M/s. Shiv Alloys under Section 114AA of the Customs Act, 1962.

20. The Show Cause Notice No. VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25 dated 20.12.2024 is disposed of in terms of the para above.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

DIN: 20250471MN000000A9A4

F. No. VIII/10-245/ICD-SACHANA/O&A/HQ/2024-25 Date: **16.04.2025**
BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To,
M/S. SHIV ALLOYS,
2ND FLOOR, SHOP NO. 202,
MAHATMA MARKET, NAGAR SHETH NO VANDO,
GHEEKANTA, AHMEDABAD,
GUJARAT, 380001

Copy to:

- 1. The Principal Commissioner of Customs, Ahmedabad (Kind Attn: The Assistant Commissioner, RRA Section, Customs Ahmedabad).
- 2. The Additional Director General, Ahmedabad Zonal Unit.
- 3. The Assistant Commissioner of Customs, ICD-Sachana, Ahmedabad.
- 4. The Superintendent of Customs (Systems), Customs HQ, Ahmedabad for uploading on official web-site.
- 5. The Superintendent (Task Force), Customs-Ahmedabad
- 6. Guard File.