

	सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in	
A. File No.	: GEN/ADJ/ADC/1198/2024-Adjn-O/o Pr. Commr- Cus-Mundra	
B. Passed by	: Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
C. Date of SCN	: 18.02.2025	
D. Noticee(s) / Party / Importer	: M/s AVN Commodities Private Limited (having IEC No.-0811014665)	
E. DIN	: 20250271MO000000F891	

SHOW CUASE NOTICE
UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962

The importer **M/s AVN Commodities Private Limited** (IEC: 0811014665) having registered office at No.23-24, Tirth Industrial Park, Village Paldi Kankaj, Ahmedabad Gholka Highway, Off Kamod Circle, SP Ring Road, Taluka Daskroi, Ahmedabad – 382425, (hereinafter referred to as “M/s AVN/the Importer” for the sake of brevity) is engaged in import of ‘Cold Rolled Stainless Steel Coils’ used in manufacturing of the finished goods, from overseas suppliers based in China.

2. Intelligence received by the officers of Directorate of Revenue Intelligence, Headquarters, New Delhi (hereinafter referred to as “The DRI, HQ” indicated that “M/s AVN” was importing the goods namely “**Non-magnetic Cold Rolled Stainless Steel Strips/Coils Grade J3 (Ex-Stock)**” by mis-classifying the same under CTH 72209022 and wrongly availing the benefit (at Sr No. 734) under Notification No. 50/2018-Customs dated 30.06.2018 to avail the tariff concession of 45% of applied rate of Customs duty on the goods falling under CTH 72209022, i.e. of Nickel Chromium Austenitic Type. CTH 7220 is appended below for reference:

7220

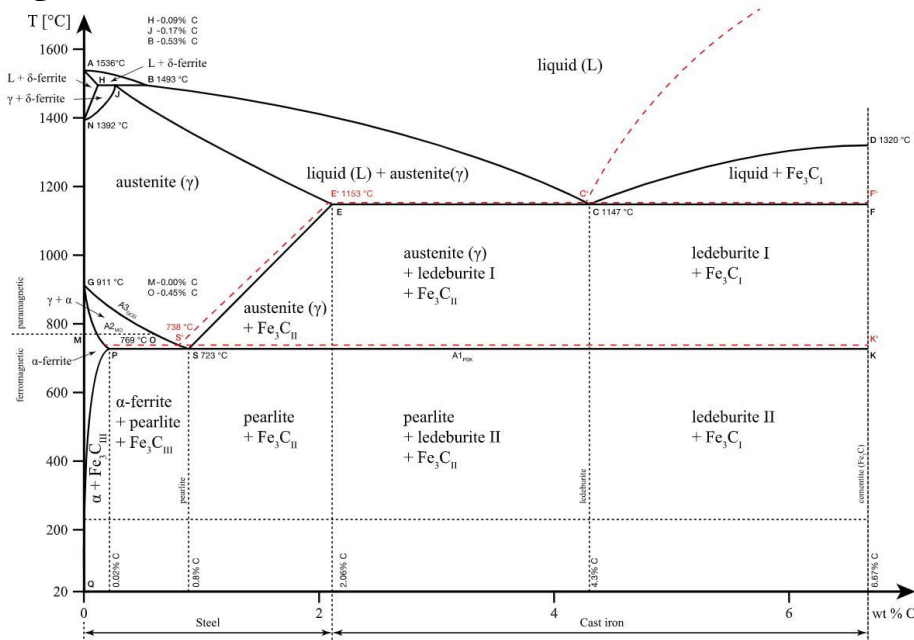
**FLAT-ROLLED PRODUCTS OF STAINLESS STEEL,
OF A WIDTH OF LESS THAN 600 MM**

- *Not further worked than hot-rolled :*

7220 11	--	<i>Of a thickness of 4.75 mm or more :</i>			
7220 11	---	Skelp for pipes and tubes	kg.	15%	-
10	---	<i>Strips for pipes and tubes (other than skelp) :</i>	kg.	15%	-
7220 11	----	Chromium type			
21					
7220 11	----	Nickel chromium austenitic type	kg.	15%	-
22					
7220 11	----	Other	kg.	15%	-
29					
7220 11	---	Other	kg.	15%	-
90					
7220 12	--	<i>Of a thickness of less than 4.75 mm :</i>			
7220 12	---	Skelp for pipes and tubes	kg.	15%	-
10	---	<i>Strips for pipes and tubes (other than skelp) :</i>	kg.	15%	-
7220 12	----	Chromium type			
21					
7220 12	----	Nickel chromium austenitic type	kg.	15%	-
22					
7220 12	----	Other	kg.	15%	-
29					
7220 12	---	Other	kg.	15%	-
90					
7220 20	-	<i>Not further worked than cold-rolled (cold-reduced) :</i>			
7220 20	---	Skelp for pipes and tubes		15%	-
10					
		kg.			
	---	<i>Strips for pipes and tubes (other than skelp) :</i>			
7220 20	----	Chromium type	kg.	15%	-
21					
7220 20	----	Nickel chromium austenitic type	kg.	15%	-
22					
7220 20	----	Other	kg.	15%	-
29					
7220 20	---	Other	kg.	15%	-
90					
7220 90	-	<i>Other :</i>			
7220 90	---	Skelp (strips for pipes and tubes)	kg.	15%	-
10					
	---	<i>Strips for pipes and tubes (other than skelp) :</i>			
7220 90	----	Chromium type	kg.	15%	-
21					
7220 90	----	Nickel chromium austenitic type	kg.	15%	-
22					
7220 90	----	Other	kg.	15%	-
29					
7220 90	---	Other	kg.	15%	-
90					

3. Examination of Mill Test Report of Imported Goods vis-à-vis Austenitic Stainless Steel of Nickel Chromium type:

3A. Austenitic Stainless Steel refers to a type of Non-Magnetic alloy of Iron. It has Face Centered Cubic crystal structure which is formed at elevated temperature above 723° C and below 1493° C, as shown in the Iron-Carbon diagram below:



Further, to stabilize Austenitic Stainless-Steel at room temperature, it is alloyed with other elements like Nickel and Chromium. The addition of these elements further divided Austenitic Steel in to two subgroups i.e. 200 and 300 series (International Grade). This differentiation is primarily based on partial replacement of Nickel (Ni) with Manganese (Mn) and Nitrogen (N). When Ni content in Series 300 Austenitic Steel is further partially replaced with Mn and N then it is classified as Series 200 Austenitic Steel. Composition of different grades of Austenitic Steel with respect to different alloying elements as specified in IS 6911:1992 are as follows **(RUD-1)** :

Table 1 Chemical Composition
(Clauses 7.1 and 7.2)

IS 6911 : 1992

Grade Designation		C	Si Max	Mn	Ni	Cr	Mo	S Max	P Max	Others
Letter Symbol [see IS 1762 (Part 1)]	Numerical Symbol ISS	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Ferritic Steels										
X 04Cr12	405	0.08 Max	1.0	1.0 Max	—	11.5-13.5	—	0.030	0.040	Al 0.10-0.30
X 07Cr17	430	0.12 Max	1.0	1.0 Max	0.50 Max	16.0-18.0	—	0.030	0.040	
Martensite Steel										
X 12Cr12	410	0.08-0.15	1.0	1.0 Max	1.0 Max	11.5-13.5	—	0.030	0.040	
X 20Cr13	420 S1	0.16-0.25	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 30Cr13	420 S2	0.26-0.35	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 40Cr13	420 S3	0.35-0.45	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 15Cr16Ni2	431	0.10-0.20	1.0	1.0 Max	1.25-2.50	15.0-17.0	—	0.030	0.045	
X 108Cr17Mo	440	0.95-1.20	1.0	1.0 Max	0.50 Max	16.0-18.0	0.75 Max	0.030	0.045	
Austenitic Steels										
X 10Cr17Mn6Ni4N20	201	0.20 Max	1.0	4.0-8.0	3.5-5.5	16.0-18.0	—	0.030	0.045	N 0.05-0.20
X 07Cr17Mn12Ni4	201 A	0.12 Max	1.0	10.0-14.0	3.5-5.5	16.0-18.0	—	0.030	0.045	
X 10Cr18Mn9Ni5	202	0.15 Max	1.0	8.0-10.0	4.0-6.0	17.0-19.0	—	0.030	0.045	
X 10Cr17Ni7	301	0.15 Max	1.0	2.0 Max	6.0-8.0	16.0-18.0	—	0.030	0.045	
X 07Cr18Ni9	302	0.15 Max	1.0	2.0 Max	8.0-10.0	17.0-19.0	—	0.030	0.045	
X 04Cr19Ni9	304 S1	0.08 Max	1.0	2.0 Max	8.0-10.0	17.5-20.0	—	0.03	0.045	
X 02Cr19Ni10	304 S2	0.03 Max	1.0	2.0 Max	8.0-12.0	17.5-20.0	—	0.030	0.045	
X 15Cr24Ni13	309	0.20 Max	1.5	2.0 Max	11.0-15.0	22.0-25.0	—	0.030	0.045	
X 20Cr25Ni20	310	0.25 Max	2.5	2.0 Max	18.0-21.0	24.0-26.0	—	0.030	0.045	
X 04Cr17Ni12Mo2	316	0.03 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	
X 02Cr17Ni12Mo2	316 L	0.08 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	
X 04Cr17Ni12Mo2Ti	316 Ti	0.08 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	Ti Min-5 (C + N) Ti Max-0.80
X 04Cr18Ni10Ti	321	0.08 Max	1.0	2.0 Max	9.0-12.0	17.0-19.0	—	0.030	0.045	Ti Min-5 (C + N) Ti Max-0.8
X 04Cr18Ni10Nb	347	0.08 Max	1.0	2.0 Max	9.0-12.0	17.0-19.0	—	0.030	0.045	Nb Min-10C Nb Max-1.0

In view of the above, it is clearly evident that the **Austenitic Stainless-Steel grades** have essentially content by weight (%) of alloying elements Chromium (Cr) and Nickel (Ni) as per table below:

Subgroups of Austenitic stainless steel	Minimum-Maximum range of Nickel (Ni) (% by weight)	Minimum-Maximum range of Chromium (Cr) (% by weight)
300 Series	6 - 21	16 - 25
200 Series	3.5 - 6	16-19

3B. Whereas, few samples of Mill Test Report/Certificate (MTC/MTR) of the imported “Cold Rolled Stainless Steel of J3 grade” are appended below:

A. Sample MTC/MTR in respect of Supplier M/s. Yong Steel Co. Ltd, China:

YONG STEEL CO., LTD

Room 905, Qiangsheng Building, No.145, Fujian Road, Pudong Area, Shanghai, China.

Factory address: No. 10, Keda Middle Road, zone a, science and Technology Industrial Park, Shishan town, Nanhai District, Foshan City, Guangdong Province

MILL TEST CERTIFICATE

CERTIFICATE NO.: YS202112162170-2158

CUSTOMER	AVN COMMODITIES PVT. LTD 23-24, Tirth Industrial Park, Village Paldi, Kankaj, Ahmedabad, Dhoka Road, Gujarat-382425	ORIGIN	CHINA	Invoice No.	JYS11232170-2/10212158	Date	2021/12/16										
NON MAGNETIC STAINLESS STEEL COLD ROLLED COILS GRADE J3, EX STOCK (MIX SIZES)				Chemical Composition(%)						Mechanical Test							
Heat no.	Specification	Quantity	Finish	Length	C	Si	Mn	P	S	Ni	Cr	Cu	Grade	T.S(Rm) N/mm ²	Elongation(%)	Y.S(Rp)0.2 % N/mm ²	Hardness
	WIDTH(mm)	THICKNESS(mm)															
A215432	0.48*487	3050	2B	/	0.144	0.462	9.460	0.036	0.002	0.752	14.080	0.680	J3	560	38	294	92
	0.48*510	3326	2B	/													
	0.48*585	4106	2B	/													
A215433	0.48*585	4010	2B	/	0.140	0.464	9.480	0.031	0.001	0.780	14.400	0.660	J3	575	36	290	94
	0.48*585	4524	2B	/													
	0.48*585	3826	2B	/													
	0.48*585	5168	2B	/													
A215434	0.38*387	2698	2B	/	0.149	0.470	9.470	0.038	0.002	0.760	14.090	0.680	J3	555	35	294	93
	0.38*465	2632	2B	/													
	0.38*510	3712	2B	/													
	0.38*585	4312	2B	/													
A215435	0.38*585	3994	2B	/	0.139	0.466	9.450	0.035	0.002	0.740	14.100	0.690	J3	560	37	294	90
	0.38*585	4096	2B	/													
	0.48*460	2624	2B	/													
	0.38*410	2323	2B	/													
A215436	0.38*585	3810	2B	/	0.147	0.467	9.380	0.039	0.003	0.770	14.210	0.650	J3	570	36	296	92
	0.33*585	4188	2B	/													
	0.33*79*8	4603	2B	/													
	0.33*79*8	3518	2B	/													
A215437	0.3*510	3092	2BA	/	0.145	0.468	9.350	0.037	0.002	0.750	14.320	0.670	J3	560	38	292	93
	0.3*360*2	5090	2BA	/													
	0.38*485	3706	2B	/													
		82408															

Inspector: JAYDEN

Y S C O
QUALITY CERTIFICATE

B. Sample MTC/MTR in respect of Supplier M/s. Foshan Juli Steel Co. Ltd, China:

佛山市聚力钢业有限公司

FOSHAN JULI STEEL CO.,LTD

ADD: HUIQUAN TECHNOLOGY INDUSTRY CENTER, SHISHAN,NANHAI, FOSHAN, CHINA

产品质量证明书

INSPECTION CERTIFICATE

订货单位Order unit	AVN COMMODITIES PVT. LTD													
收货地点 Receiving place	23-24, TIRTH INDUSTRIAL PARK,VILL: PALDI KANKAJ ,AHMEDABAD DHOLKA ROAD,Gujarat-382425,IEC No. 08110-14665													
产品名称 Product	NON MAGNETIC STAINLESS STEEL COLD ROLLED COILS													
TYPE	Grade J3													
证书号 Certificate No	ZCD5877													
发票号 Invoice No.:	AVN002-3													
发票日期 Invoice Date:	Oct. 27th, 2022													
炉号 HEAT NO.	规格 (厚度x宽度)	重量	化学成分Chemical Composition,Wt%								Mechanical Test			
Heat No	Size(MMf)	Weight (KGS)	C	Si	Mn	P	S	Ni	Cr	Cu	T.S(Rm) N/mm ²	Elongation (%)	Y.S(Rp)0.2 % N/mm ²	Hardness
10-009B	0.3*510/BA	3462	0.142	0.461	9.535	0.037	0.002	0.782	14.19	0.677	553	37	293	97
09-136A	0.3*510/BA	4206	0.141	0.463	9.531	0.038	0.003	0.787	14.15	0.672	556	36	296	90
09-136B	0.3*510/BA	4174	0.131	0.465	9.576	0.032	0.001	0.787	14.08	0.642	565	37	281	91
RLYJ2209006-1	0.43*550/BA	3504	0.137	0.464	9.573	0.034	0.003	0.788	14.07	0.635	563	37	286	91
RLYJ2209006-2	0.43*550/BA	3680	0.141	0.461	9.535	0.037	0.002	0.782	14.19	0.677	553	38	293	97
102566-1	0.45*650/2B	4189	0.143	0.462	9.501	0.036	0.001	0.792	13.95	0.630	566	39	286	93
102566-2	0.45*650/2B	4171	0.136	0.467	9.531	0.041	0.002	0.761	14.12	0.686	556	38	292	95
TOTAL		27386												

附注 Remarks:
1、尺寸公差 Size tolerance:合格 OK 2、表面质量 Surface quality :合格 OK

1、兹证明所列产品经检验均符合合同和标准要求。
The material listed above has been tested and complies with the terms of the contract & The standard
2、产品实验包括化学成分分析
Product experiments include chemical analysis
3、本证明书需盖章生效，复印无效。
This certificate needs to be put into effect by the official seal, and the copy is invalid
4、如有质量异议，请来电说明情况，并告知质量证明书编号。
If any quality query please clarify Via phone call of fax, indicating the certificate number.

佛山市聚力钢业有限公司
品质管理部
FOSHAN JULI STEEL CO.,LTD
Technical Department

盖 章(stamp)
Date: Oct. 27th, 2022
质量负责人:
Quality Manager

Examination of the above Mill Test Certificates (MTC) uploaded by M/s ACM; issued by the overseas suppliers, for “Cold Rolled Stainless Steel strips/ Coil Grade J3”, contained Nickel content less than 1.5% and Chromium is less than 16% which in comparison with the chemical composition of Austenitic Stainless Steel of Nickel Chromium type is much less. Therefore, Cold Rolled Stainless Steel of J3 grade cannot be classified as Nickel Chromium Austenitic type.

4. Examination of Statements recorded under Section 108 of the Customs Act, 1962:

During the course of investigation, the statements of responsible/authorized persons of “M/s AVN” and concerned CHA/CB were recorded under Section 108 of Customs Act, 1962. The gist of their statements is below:

S. No	Name of Proprietor of firm/Authorized Signatory of CHA/Customs Broker	Dt. of Statement	RUD No.
1	Shri Anand Netanand Choudhary, Director of “M/s AVN”	23.01.2023, 21.03.2023 and 07.02.2024	RUD-02; 03 & 4
2	Shri Rajan A M , Partner of M/s Suraj Forwarders and Shipping Agencies	22.06.2023	RUD-05

4A. Shri Anand Netanand Choudhary, Director of “M/s AVN” in his voluntary statements recorded under Section 108 of the Customs Act, 1962 stated that:

- his firm “M/s AVN” engaged in manufacturing of stainless-steel utensils for domestic sale and for export; “M/s AVN” imported “Cold Rolled Stainless Steel Coil/strips J3 grade” from China and also “stainless steel scrap/ingots” from Vietnam; they also used to sell the imported goods in local market. He further stated that their Major Chinese Suppliers are Yong Metals, China, JBL Metal Limited and Mamba Trading Co in Hong Kong, Huaye International Development (HK) Limited, Hong Kong etc.
- that he decided the classification of the imported goods i.e. “Cold Rolled Stainless Steel strips/ Coil Grade J3” under CTH 72209022 (*the same has been confirmed by Shri Rajan A. M, Partner of M/s Suraj Forwarders and Shipping Agencies in his voluntary statement*); that he knew that Government is providing SAPTA concessional benefit in import of ‘Nickel Chromium Austenitic Type’ under CTH 72209022 @ 45% of applied rate of Customs duty, under Notification no. 50/2018 dated 30.06.2018;

- He further stated that on the basis of CTH mentioned in the Country of Origin Certificate (COO) received from Chinese supplier, he used to classify “Cold Rolled Stainless Steel strips/ Coil Grade J3” under CTH-72209022 to avail SAPTA benefit under Notification 50/2018-Cus dated 30.06.2018.
- That “M/s AVN” started to classify the imported goods under CTH-72209022 instead of 72209090 to avail further concession of 45% on Customs duty under notification no.50/2018 dated 30.06.2018. He further stated that other Director in “M/s AVN” is his younger brother who works as per his directions.
- that “Cold Rolled Stainless Steel strips/Coil Grade J3” is a low quality alloy of Stainless Steel consisting of Nickel below 1%, Copper below 1%, Chromium below 15%, Manganese Below 9% and rest of the portion is iron;
- On being shown the copy of Custom Tariff Chapter-72, Section -XV and Stainless Steel Plate, Sheet and Strip specification (first revision)” issued by Bureau of Indian standards (IS 6911:1992)- (prescribing Chemical Composition for “201-International grade” as 3.5-5.5 percentage of Nickel and 16-18 %, he acknowledged that “Cold Rolled Stainless Steel strips/ Coil Grade J3” should not be classified under CTH-72209022 and should have been classified under CTH 72209090 or 72209029; and due to the low Nickel contents of goods that are not Nickel Chromium Austenitic Type. He also put his dated signature on each page of Custom Tariff Chapter-72, Section -XV (**RUD-6**) & “Stainless Steel Plate, Sheet and Strip specification (first revision)” issued by Bureau of Indian standards (IS 6911:1992) (**RUD-7**), as a token of having seen and understood the same.
- On being asked about the reason why the classification of “Cold Rolled Stainless Steel J3 Grade (Ex-Stock) or Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)” under CTH-72209022 was discontinued after November, 2022, he stated that on suggestion of Mr. Anurag, Branch Manager of CHA M/s Suraj Forwarders & Shipping Agencies., Mundra, he stopped classifying the “Cold Rolled Stainless Steel strips/ Coil Grade J3” under CTH-72209022 and started to classifying it under CTH 72209090/ 72202090.
- He further stated that “stainless-steel coil” imported by his firm is “cold-rolled stainless steel coil” (less than 600MM), which is produced by taking hot rolled steel and letting it cool to room temperature and then passing it through a series of rollers. Thus, it goes through processing of Hot Rolling and Cold Rolling both.

- That “Stainless-steel coil” imported by his firm are used for manufacturing of utensils.
- That by going through the above that as imported goods are manufactured by both Hot Rolling and Cold Rolling, therefore they shall be classified under subheading of “others” in CTH 7220, i.e. 7220 90. Further, within the sub-heading 7220 90, there are further categories based on the shape of goods (i.e. skelp or strips) and end use (i.e. used for pipes and tubes). In the instant case the goods imported are in Strip form and suitable for manufacturing of utensils not for pipes and tubes. Therefore, they shall be classified under CTH 7220 9090 of “others” category of CTH 7220 90.

4B. Shri Rajan A M, Partner of M/s Suraj Forwarders and Shipping Agencies” in his voluntary statement dated 22.06.2023 recorded under Section 108 of Customs Act, 1962 stated that:

- that the decision to classify the imported goods under CTH 72209022 was taken on directions of Shri Anand Netanand Choudhary, Director of “M/s AVN”, who, claimed the CTH-72209022 based on Preferential Certificate issued by the supplier;
- Further, in the consignments where “M/s AVN” did not have the Preferential Certificate, they preferred to classify imported goods i.e. “Cold Rolled Stainless Steel J3 Grade (Ex-Stock) or Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)” under CTH-72209029-*Others*.
- He further admitted that goods imported i.e. “J3 Grade” is low standard stainless steel having low value of Nickel (below 1.5%) and Chromium.

5. Outcome of the Investigation:

On Examination of Mill Test Certificates as discussed in Para 3 supra and Statements recorded in Para 4, it is ascertained that “M/s AVN” imported goods i.e. “Cold Rolled Stainless Steel strips/ Coil grade J3” -which do not contain Ni and Cr as prescribed under IS 6991:1992 do not merit classification under Tariff heading of Austenitic Stainless Steel of Chromium and Nickel type. Further, these cold-rolled stainless steels are gone through Hot Rolling and Cold Rolling both, therefore based on its manufacturing processes, these coils appear to be classifiable under subheading of “7220 90 -*other*” under heading 7220.

Now, within the sub-heading “7220 90 -*other*”, further classification is based on shape of the imported goods (i.e. skelp or strips) and its end use (i.e. used for pipes and tubes). In the instant matter the goods imported are in Strip form and suitable for manufacturing of utensils only, as stated by the importer in his voluntary statement recorded under Section 108 of the

Customs Act 1962. Therefore, the imported goods appears to be further classifiable under CTH 7220 9090 - “other” category of CTH 7220 90. Thus, the correct classification of the impugned goods i.e. “Cold Rolled Stainless Steel strips/Coil grade J3” appears to be under CTH 7220 9090 and not under CTH 7220 9022, as declared by the importer.

Further, concessional rate of Basic Customs Duty as availed by the importer under S. No.734 of Notification No.50/2018-Customs dated 30.06.2018 available for Austenitic Stainless Steel of Chromium and Nickel type under CTH 7220 9022, appears not available for the impugned imported goods i.e. “Cold Rolled Stainless Steel strips/Coil grade J3” as the same have been re-classified under its correct CTH 7220 9090. Therefore, benefit of concessional rate of Basic Customs Duty availed by the importer under S. No.734 of Notification No.50/2018-Customs dated 30.06.2018 appears to be taken incorrectly.

6. Calculation of Differential Duty:

Scrutiny of records and investigation conducted revealed that during the period from 01.01.2020 to 31.12.2022 the importer “M/s AVN” imported/cleared consignments of “*Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)*” having Assessable value of **Rs.9,05,55,983/-**, by classifying the same under CTH 7220 9022 and claimed SAPTA benefits under Notification no.50/2018 dated 30.06.2018 (S.No.734). The differential duty on account of such imports has been worked out as under:

Table-A

Year	Assessable Value (in INR)	Customs Duty short paid (in INR)
2020	4592836.27	201200.6749
2021	69997810.07	3066429.065
2022	15965336.98	699401.4998
TOTAL	9,05,55,983/-	39,67,031/-

7. Legal Provisions, relevant in the instant case:

A) Section 28. Recovery of duties not levied or not paid or short-levied or short- paid] or erroneously refunded. –

(1) Where any duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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;

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

7[**Provided** that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of 9[two years] shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been 10[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 11[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any 12[duty has not been levied or not paid or has been short-levied or short paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to 13 [fifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

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

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

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of 14 [two years] shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of two years referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(7A). Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the

provisions of this section shall apply to such supplementary notice as if it was issued under the said sub section (1) or sub-section (4).]

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-

*(a) within six months from the date of notice, 17 [***] in respect of cases falling under clause (a) of sub- section (1);*

*(b) within one year from the date of notice, 17 [***] in respect of cases falling under sub-section (4).*

Provided *that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:*

Provided *further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.*

(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that-

(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or

(b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

(c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or

(d) the Settlement Commission has admitted an application made by the person concerned, the proper officer shall inform the person concerned the reason for non determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.]

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the

amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

(10A) Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under section 28AA, from the date of refund up to the date of recovery, as a sum due to the Government.

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.

11. Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.]

Explanation 1 . - For the purposes of this section, "relevant date" means,-

- (a) in a case where duty is 21[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;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.

Explanation 2 . - For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.]

22[**Explanation 3** . - For the removal of doubts, it is hereby declared that the proceedings in respect of any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been

issued under sub-section (1) or sub-section (4), as the case may be, but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, shall, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, be deemed to be concluded, if the payment of duty, interest and penalty under the proviso to sub-section (2) or under sub-section (5), as the case may be, is made in full within thirty days from the date on which such assent is received.]

23[Explanation 4 - For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short payment or erroneous refund, prior to the 29th day of March, 2018 (13 of 2018), being the date of commencement of the Finance Act, 2018, such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date.]

B) Section 28AA. Interest on delayed payment of duty. -

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

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

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

C.) 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 electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed :

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry 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.*

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

D) Section 111. Confiscation of improperly imported goods, etc.

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

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an 1 [arrival manifest or import manifest] or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) 2[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 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

(n) any dutiable or prohibited goods transited with or without trans-shipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(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) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

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

E) Section 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.

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(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.

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, 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, -

(i) 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 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

Provided that where such duty 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 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 penalty so determined;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 4 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 5 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 6 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

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 2 [****]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 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

4 [**Provided** that where such duty or interest, as the case may be, as determined under 3 [sub-section (8) of section 28], and the interest payable thereon under section 5 [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so

determined has also been paid within the period of thirty days referred to in that proviso :

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

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 5 [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

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

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

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

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

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 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 1[four lakh rupees].

J) Further, vide Finance Act, 2011 w.e.f. 08.04.2011 “Self-Assessment” has been introduced 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 importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill.

K) In addition, Section 2 (39) of Customs Act defines "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

L) Section 146 of Customs Act 1962 read with Customs Brokers Licensing Regulations, 2018 (CBLR 2018):

Regulation 10 of CBLR 2018 provides for Obligations of Customs Broker.

Customs Broker shall —

(a)

(b).....

(c)

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

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

(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;

(g)

(h)

(i).....

(j)

(k)

(l)

(m)

(n)

(o)

(p) maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose; and

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

M). Regulation 10 of the CBLR, 2018 provides for Penalty—

(1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F card holder who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations.

(2) The Deputy Commissioner or an Assistant Commissioner of Customs may impose penalty not exceeding ten thousand rupees on a G card holder who contravenes any provisions of these regulations in connection with the proceedings against the Customs Broker.

(3) The imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the

Customs Broker or F card holder or G card holder under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

8. Voluntary Payment against differential Customs Duty:

During the course of investigation, the importer “M/s AVN” has voluntarily made part payment of differential duty arose due to misclassification of goods imported by them, amounting to Rs.10,00,000/- vide DD No. 005895 dated 06.03.2023 which has been deposited to the Govt. Exchequer vide TR-6 Challan No.89 dated 12.04.2023. **(RUD-8)**

9. Applicability of Sec 28(4) of the Customs Act, 1962 and Role Played:

In the present case, it is evident that the actual facts about the impugned goods i.e. end use of goods, whether for pipes and tubes or utensils manufacturing etc. were only known to the importer and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI, HQ. From the aforesaid, it appears that the importer had knowingly and deliberately indulged in suppression of facts and wilfully misrepresented/mis-stated the material facts in contravention of the provisions of Section 46(4) of the Customs Act, 1962 read with other provisions mentioned at para 7 above; that the “Cold Rolled Stainless Steel strips/Coil Grade J3” are rightly classifiable under CTH 7220 9090. In terms of Section 46(4) of Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. For these contraventions and violations, the goods fall under the ambit of ‘smuggled goods’ within the meaning of Section 2(39) of the Customs Act, 1962, and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

9.1 It further appears that mis-declaration of description and misclassification of goods in the import documents viz. Bills of Entry presented by “M/s AVN” before the Customs authorities, was done on the directions of Shri Anand Netanand Choudhary, Director of “M/s AVN”. Shri Anand Netanand Choudhary, Director of “M/s AVN” was aware that the consignments, imported by “M/s AVN” were actually Cold Rolled Stainless Steel/strips Coils falling under CTH 7220 9090, which is evident from his voluntary statements recorded before the DRI, HQ. Further, “M/s AVN” received the Mill Test Report (MTC), wherein the elemental composition of Stainless Steel was given as per the compositions of Stainless Steel under CTH 72209090 but Shri Anand Netanand Choudhary, Director of “M/s AVN” instructed Customs Broker to file the Bills of Entry under CTH 72209022 to avail concessional benefits illegally under Notification No. 50/2018-Customs

dated 30.06.2018(S.No.734), which was otherwise not available for the impugned goods.

9.2 In addition to above, it is pertinent to mention here that initially “M/s AVN” was classifying the impugned goods i.e. “*Cold Rolled Stainless Steel strips/ Coil Grade J3*” under CTH 72209022 in order to claim the undue duty benefits, however, later on they started classifying these goods under CTH 72209090, but neither preferred to intimate the same to Customs Authorities, nor paid differential Customs Duty voluntarily. This clearly suggests that “M/s AVN” and associated persons knowingly and intentionally committed acts of mis-declaration and mis-classification to avail ineligible benefits illegally, in contravention of the provisions of the Customs Act, 1962 as mentioned in Para 7 above.

9.3 All the aforesaid acts of omissions and commissions on the part of Shri Anand Netanand Choudhary, Director of “M/s AVN” have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and/or (b) of the Customs Act, 1962. Further, acts of Shri Anand Netanand Choudhary, Director of “M/s AVN” that he had knowingly and intentionally prepared/got prepared; signed/got signed and used the declaration, statements and/or documents; presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, has therefore, rendered himself liable for penalty under section 114AA of the Customs Act, 1962. Shri Anand Netanand Choudhary, Director of “M/s AVN” has also violated the provisions of Section 17 and Section 46 of the Customs Act, 1962. Therefore, the duty not paid/short paid is liable to be recovered from “M/s AVN” by invoking the extended period of five years as per Section 28(4) of the Customs Act, 1962, in as much as the duty is short paid on account of wilful mis-statement as narrated above.

9.4 Further, Shri Rajan A M, Partner of M/s Suraj Forwarders and Shipping Agencies (CHA) who was the authorized Customs Broker and filed Bills of Entries for “M/s AVN” also assisted “M/s AVN” in mis-classification of the imported goods as Austenitic Stainless Steel of Chromium and Nickel type under CTH 72209022 to avail in-eligible benefits under S. No.734 of Notification No.50/2018-Customs dated 30.06.2018.

In addition, Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies (Customs Broker) failed to examine the description and classification of the imported goods thoroughly vis-à-vis documents provided by the importer viz. Mill Test Certificates etc.). Moreover, Shri Rajan A. M.,

admitted in his voluntary statement that the imported goods i.e. “J3 Grade” were of low standard stainless steel having low value of Nickel (below 1.5%) and Chromium. Therefore, even after being aware in advance, he failed to fulfil his duties and obligations under provisions of Section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2018 (CBLR, 2018). Thus, Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies (CB) also rendered himself liable to penalty under the Customs Act, 1962 read with of the CBLR, 2018.

10. The Port/ICD/SEZ wise details of the impugned goods i.e. “*Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)*” by “M/s AVN” (IEC No.0811014665) by suppressing the description and Classification of the goods, along with assessable value and Differential Duty calculated is as detailed below:

Table-B

Sr. No.	Bills of Entry No. & Date	Ports / ICDs/ SEZ of imports	Assessable Value of goods imported (Rs.)	Customs Duty Short paid/ to be recovered (Rs.)	Competent Authority at Port of Imports
1	As shown in Annexure-A to the notice	Mundra port (INMUN1), Gujarat	8,12,60,802	35,59,833	Additional Commissioner O/o the Principal Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch
2	As shown in Annexure-B to the notice	ICD Sabarmati (INSBI6), Ahmedabad, Gujarat	92,95,182	4,07,199	Assistant Commissioner O/o the Principal Commissioner of Customs, New Custom House, Nr. All India Radio, Ahmedabad
Grand Total			9,05,55,983	39,67,031	

		/-	/-	
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10.2 Accordingly, the differential Customs duty amounting to Rs.39,67,031/- in respect of the imports made at various Ports/ICD's viz. Mundra port (INMUN1) & ICD SABARMATI (INSBI6) as indicated in Annexure-A & B to the SCN (Rs. 35,59,833/- *in respect of the imports at Mundra port (INMUN1) as detailed in Annexure-A and Rs. 4,07,199/- in respect of the imports at ICD SABARMATI (INSBI6) as detailed in Annexure-B*), is liable to be recovered from the importer "M/s AVN", under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

This demand of duty involved in the goods imported through multiple ports viz. Mundra port (INMUN1) & ICD SABARMATI (INSBI6). This Show Cause Notice is being issued by the competent authority at Customs Mundra port (INMUN1) as per Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi being the port i.e. where highest duty is involved.

11. Now, therefore, **M/s. AVN Commodities Private Limited" (IEC-0811014665)** having registered office at 23-24, Tirth Industrial Park, Village Paldi Kankaj, Ahmedabad Gholka Highway, Off Kamod Circle, SP Ring Road, Taluka Daskroi, Ahmedabad – 382425 is hereby called upon to Show Cause in writing to the Additional Commissioner of Customs O/o the Principal Commissioner of Customs, Custom House, Mundra Port (INMUN1), Gujarat, within 30 days from the date of receipt of this notice, as to why:

the declared classification of the impugned goods i.e. CTH 72209022 in the Bills of Entry as detailed in Annexure-A and Annexure-B attached to this investigation report should not be rejected and goods be re-classified under Customs Tariff Heading 7220 9090 of the First Schedule to the Customs Tariff Act, 1975 and why the subject Bills of Entry should not be reassessed accordingly;

- i. the impugned goods valued at **Rs.9,05,55,983/- (Rs. Nine Crore Five Lakhs Fifty-Five Thousand Nine Hundred Eighty Three only)** as per Column No. 4 of the Table-B in Para 10 and as detailed in Annexure-A and B attached to this investigation report, should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962; however, the same have been cleared and are not physically available for confiscation.

- ii. The classification of the impugned goods under CTI 72209022 should not be rejected and the same should not be re-classified under CTI 7220 9090.
- iii. The benefits of Serial No.734 of Notification No. 50/2018-Customs dated 30.06.2018 (detailed in Annexure-A) as claimed on the impugned goods should not be rejected and the subject Bills of Entry should not be re-assessed without any notification benefit.
- iv. the differential Customs duty amounting to **Rs 39,67,031/- (rupees Thirty Nine Lakhs Sixty seven thousand thirty one only)** as per Column No.5 of the Table in Para 10 above and as detailed in Annexure-A & B attached to this investigation report, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the act *ibid*;
- v. Differential duty amounting to Rs. 10,00,000/- (Ten- Lakh Only) voluntarily paid by “M/s AVN Commodities Private Limited”, should not be appropriated towards their Duty Liabilities mentioned at Para 11.4 above;
- vi. Penalty should not be imposed upon “M/s AVN Commodities Private Limited” under the provisions of Section 112(a) and/or 112(b) and/or 114AA and/or Section 117 of the Customs Act, 1962 for their act of omissions and commissions as discussed in foregoing paras.

12. Now, therefore, **Shri Anand Netanand Choudhary, Director of M/s. AVN Commodities Private Limited** is hereby called upon to Show Cause in writing to the Additional Commissioner of Customs O/o the Principal Commissioner of Customs, Custom House, Mundra Port (INMUN1), Gujarat, within 30 days from the date of receipt of this notice, as to why:

- i. Penalty should not be imposed upon Shri Anand Netanand Choudhary, Director of “M/s AVN” under Section 112(a) and/or 112(b) and/or 114AA and/or 117 of the Customs Act, 1962 separately for his act of omissions and commissions and role played, as discussed in para supra.

13. Now, therefore, **“Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping”, authorized Customs Broker**, is hereby called upon to Show Cause in writing to the Additional Commissioner of Customs O/o the Principal Commissioner of Customs, Custom House, Mundra Port (INMUN1), Gujarat, within 30 days from the date of receipt of this notice, as to why:

- i. The Penalty should not be imposed upon Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping, authorized Customs Broker of the importer, under Section 112(a) and/or 112(b) and/or 114AA and/or 117 of the Customs Act, 1962 read with the Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) separately for his act of omission and commission and role played, as discussed in the forgoing paras.

14. The Noticees should state in their written reply to this notice as to whether they desire to be heard in person. If no reply to this notice is received from them within 30 days from the date of receipt of this notice or if they fail to appear for the personal hearing on the date and time intimated to them, the case is liable to be decided ex parte based on evidence available on record without any further reference to them.

15. The Noticees has an option to make an application under Sec 127(B) of the Customs Act, 1962, prior to adjudication of this case, to the Settlement Commission to have the case settled, in such form and in such manner, specified in the rules and also inform the same to the Adjudication Authority.

16. This notice is issued without prejudice to any other action that may be taken against the Noticees or any other person(s) under the provisions of the Customs Act, 1962 and the Rules & Regulations made thereunder or any other law for the time being in force.

17. The Department reserves its rights to add, alter, amend, modify or supplement this Notice at any time on the basis of any evidence, material facts related to import of goods in question, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case. Further, this Show Cause Notice is only with respect to the issue in the instant case and the department reserves the right to issue Show Cause Notice on other issues related to the importer/noticee M/s AVN Commodities Private Limited. This Show Cause Notice is issued without prejudice to any other action that may be taken against the persons/firms mentioned herein or any other person under the Customs Act, 1962 or any other law for the time being in force.

18. A copy of the Show Cause Notice is also e-mailed to the notices at their email ID as under in terms of clause (C) of sub-section 1 of Section 153 of the Customs Act 1962, so that such service through e-mail shall be deemed to have been received by the noticees in terms of clause (C) of sub-section 1 of section 153 of the Customs Act 1962.

19. The documents relied upon in this Show Cause Notice are listed in **Annexure- A & B** to this Notice.

**Additional Commissioner
Custom House, Mundra**

फ़ाइल संख्या/F. No. GEN/ADJ/ADC/1198/2024

DIN/ दस्तावेज़ पहचान संख्या: 20250271MO000000F891

To:

- i) **M/s AVN Commodities Private Limited (IEC-0811014665)**
23-24, Tirth Industrial Park, Village Paldi Kankaj,
Ahmedabad Gholka Highway, Off Kamod Circle,
SP Ring Road, Taluka Daskroi,
Ahmedabad – 382425;
- ii) **Shri Anand Netanand Choudhary**, Director of “M/s AVN Commodities Private Limited”;
- iii) **Shri Rajan A M**, authorized Customs Broker, Partner of M/s Suraj Forwarders and Shipping Agencies

Copy to:-

1. Directorate of Revenue Intelligence, Headquarters, New Delhi
2. The Supdt. (EDI), Customs House, Mundra to upload a copy on the website.