



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

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A	File No.	CUS/APR/INV/172/2023-Gr 4-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/113/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	06.07.2023
E	Date of Issue	07.07.2023
F	SCN No. & Date	SCN No. S/15-49/Enq. GSR Steel/SIIB-C/CHM/2021-22 dated 31.01.2023
G	Noticee/Party/Importer/ Exporter	M/s GSR Metal Impex, House No. 717 Mundka, Near Todar Mal Chowk, New Delhi - 110041 (IEC No. AASFG9849B)
H	DIN No.	20230771MO000000CBD2

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

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Brief facts of the case:

M/s GSR Metal Impex, (hereinafter referred to as 'said importer' for the sake of brevity), situated at House No. 717 Mundka, Near Todar Mal Chowk, New Delhi - 110041 (IEC No. AASFG9849B), engaged in the import of "Magnetic Stainless Steel Cold Rolled Coil Grade 410S" (hereinafter referred to as 'said goods') falling under CTH 7219 9090 of the Customs Tariff Act, 1975, filed various bills of entry as mentioned in **"Table-A"**, (hereinafter referred to as "said bills of entry") through its Customs Broker M/s Shakti Forwarders Pvt. Ltd., for import of goods declared as "Magnetic Stainless Steel Cold Rolled Coil Grade 410S" availing the benefit of Sr. No. **967(I) of Notification No. 046/2011 dated 01.06.2011** on the basis of Certificates of Origin purportedly issued by the Ministry Of International Trade and Industry, Malaysia. Details of the bills of entry are as under:

Table - A

Sr. No.	Bill of Entry and Date	Description of Goods	Ass. Value of the goods Rs.	Noti. Availd & COO reference no.	Name of Supplier
1.	4868848 dated 12.09.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2304496	KL-2019-AI-21-010642 dated 28.08.2019	M/s Artfransi International SDN BHD, Malaysia
2.	4964175 dated 19.09.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2300602	KL-2019-AI-21-010872 dated 12.09.2019	M/s Artfransi International SDN BHD, Malaysia
3.	5142032 dated 02.10.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2114899	KL-2019-AI-21-010897 dated 24.09.2019	M/s Artfransi International SDN BHD, Malaysia
4.	5407261 dated 23.10.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2070308	KL-2019-AI-21-010938 dated 15.10.2019	M/s Artfransi International SDN BHD, Malaysia
5.	5850764 dated 27.11.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2073050	KL-2019-AI-21-010997 dated 19.11.2019	M/s Artfransi International SDN BHD, Malaysia
6.	4665835 dated 27.08.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2320881	KL-2019-AI-21-010618 dated 26.08.2019	M/s Artfransi International SDN BHD, Malaysia
7.	5939059 dated 04.12.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2054290	KL-2019-AI-21-0101006 dated 19.11.2019	M/s Artfransi International SDN BHD, Malaysia
8.	6227478 dated 25.12.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	1928833	KL-2019-AI-21-0101049 dated 17.12.2019	M/s Artfransi International SDN BHD, Malaysia

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9.	6882490 dated 14.02.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2033775	KL-2020-AI-21- 0101143 dated 12.02.2020	M/s Artfransi International SDN BHD, Malaysia
10.	6883111 dated 14.02.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2028417	KL-2020-AI-21- 0101281 dated 12.02.2020	M/s Artfransi International SDN BHD, Malaysia
11.	6989999 dated 24.02.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	1893275	KL-2020-AI-21- 0101217 dated 31.01.2020	M/s Artfransi International SDN BHD, Malaysia
12.	7343713 dated 23.03.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2170413	KL-2020-AI-21- 001408 dated 23.03.2020	M/s Artfransi International SDN BHD, Malaysia
13.	7421615 dated 09.04.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	4311576	KL-2020-AI-21- 001424 dated 02.04.2020	M/s Artfransi International SDN BHD, Malaysia
14.	6990092 dated 24.02.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	4131108	KL-2020-AI-21- 0101219 dated 31.01.2020	M/s Artfransi International SDN BHD, Malaysia
		Total	3,37,35,923/-		

1 . 1 The intelligence gathered by the Officers of SIIB Section, Custom Mundra indicated that certain importers were importing “Magnetic Stainless Steel Cold Rolled Coil Grade 410S” classifying the same under CTH 7220 9090 through ASEAN Countries especially Malaysia and violating the Rules meant for Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and India Rules, 2009 in order to avail exemption from payment of Basic Custom Duty. Further, Intelligence suggested that exporters in Malaysia are providing COO Certificate to the Importers of “Magnetic Stainless Steel Cold Rolled Coil Grade 410S” mentioning Origin Criteria as either WO (Wholly Obtained) goods or as the Regional Value Content (hereinafter referred to as ‘RVC’) to be above 35% whereas the same were not actually qualifying the minimum requirement of 35% value addition as per the Notification No. 189/2009-Cus (N.T.) dated 31.12.2009. In view of the above mis-declarations by the importers undue benefits on the basis of the preferential certificates of origin were being availed which resulted into misuse of the FTA resulting in evasion of huge amount of customs duty. Therefore, the above-mentioned Bills of Entry were taken up for further verification.

1.2 As the intelligence suggested that the importer had wrongly availed the benefit of the preferential rate of duty, therefore the above mentioned Bills of Entry were taken up for

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further verification. During the investigation, a letter F. No. 456/241/2021-CUS. V dated 23.04.2021 received from Ministry of Finance, Department of Revenue, CBIC, New Delhi regarding the verification of Country of Origin Certificates under AIFTA Preferential Certificates whereby they informed as under:

“2. In this regard, it is to inform that the Ministry of International Trade and Industry, Malaysia vide its email dated 25.03.2021 has informed that they have never received a COO application from Artfransi International SDN BHD.”

As the issuing authorities had confirmed that they never received a Country of Origin application from Artfransi International SDN BHD, therefore, it appears that COOs submitted by the importer to avail the benefit of Sr. No. 967(I) of Notification No. 046/2011 dated 01.06.2011 are fake.

1.3 Further, in this regard Summons dated 27.04.2021 were issued to the importer and concerned CB, however no one appeared for the statement purpose. In response of which the importer has deposited the **differential duty of Rs.32,84,192/- (Rupees Thirty Two Lac Eighty Four Thousand One Hundred and Ninety Two Only)** in respect of above mentioned 14 bills of entry vide Challan No. 521 dated 01.06.2022, however, no interest and penalty was paid by the importer. Further, summons dated 30.06.2022 & 18.10.2022 were issued to the importer for recording of statement. However, no one appeared for the same.

1.4 The details of the imports and the amounts of duties foregone as a result of producing the fake certificate of origin are as under:

Table – B

Sr. No.	B/E No. & Date	A. V.	Total duty	Duty Paid	Diff. Duty	No. of Days for interest	Interest
1	4868848 dated 12.09.2019	2304496	639151.966	414809	224342.9656	975	89890.85
2	4964175 dated 19.09.2019	2300602	638071.965	414108	223963.9647	976	89831.03
3	5142032 dated 02.10.2019	2114899	586567.238	380682	205885.2377	946	80041.41
4	5407261 dated 23.10.2019	2070308	574199.924	372656	201543.9238	947	78436.48
5	5850764 dated	2073050	574960.418	373149	201811.4175		

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	27.11.2019					918	76135.43
6	4665835 dated 27.08.2019	2320881	643696.345	417759	225937.3454	1010	93779.47
7	5939059 dated 04.12.2019	2054290	569757.332	369772	199985.3315	889	73063.13
8	6227478 dated 25.12.2019	1928833	534961.833	347190	187771.8326	890	68678.19
9	6882490 dated 14.02.2020	2033775	564067.496	366080	197987.4963	831	67614.09
10	6883111 dated 14.02.2020	2028417	562581.455	365115	197466.455	832	67517.3
11	6989999 dated 24.02.2020	1893275	525099.821	340790	184309.8213	833	63094.55
12	7343713 dated 23.03.2020	2170413	601964.046	390675	211289.0456	803	69725.39
13	7421615 dated 09.04.2020	4311576	1195815.6	776084	419731.6036	774	133509.1
14	6990092 dated 24.02.2020	4131108	1145762.8	743600	402162.8038	836	138167.7
	Total	33735923			3284189.24		1189484

(However, importer has deposited the differential duty of Rs.32,84,192/- in respect of above mentioned 14 bills of entry vide Challan No. 521 dated 01.06.2022. No interest accrued thereon was paid by the importer)

1.5 It can be seen that M/s GSR Metal Impex had evaded the customs duty to the tune of **Rs.32,84,190/- (Rupees Thirty Two Lac Eighty Four Thousand One Hundred and Ninety Two Only)** by adopting the above modus operandi.

Legal Provisions:

2.1 **Rule of proviso** to Notification No. 046/2011 dated 01.06.2011 are re-produced here:

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

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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.

Whereas it appeared that in terms of Rule 13 of Notification No. 189/2009-Customs(N.T.) Dated 31.12.2009, the exemption from payment of Duty vide Sl. No.967(I)of 046/2011-Cus Dated 01.06.2011 under Asean India Free Trade Agreement claimed by the importer in the subject B/E would be granted subject to the condition that the importer produces a valid certificate of Origin, in support of their claim that the product is eligible for preferential tariff treatment as per the specimen in the attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in the Annexure III annexed to 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. Text of the 13 Rule reads as follows:

13. Certificate of Origin - Any claim that product shall be accepted was eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment CO the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III annexed to these rules.

Further Rule - 1 of above referred Annexure-III requires that the AIFTA Certificate of Origin shall be issued by the Government authorities (Issuing Authority), of the exporting party. Text of the Rule -1 of the Annexure-III, reads as follows:-

1. The AIFTA Certificate of Origin shall be issued by the Government authorities (Issuing Authority) of the exporting party.

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2.2 *Section 28(4): Where any duty has not been 12[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

(a) collusion; or

(b) any wilful mis-statement; or

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(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter; the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been 13[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.

2.3. 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] :*

..

..

(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.]*

...

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

..

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

..

(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;

2.5 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 [xxx] 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*

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

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

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

2.6 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.*

Show Cause Notice:

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3 M/s GSR Metal Impex, situated at House No. 717 Mundka, Near Todar Mal Chowk, New Delhi - 110041 (IEC No. AASFG9849B) were issued the SCN vide F. No. S/15-49/Enq. GSR Steel/SIIB-C/CHM/2021-22 dated 31.01.2023 requiring them to show cause within thirty days to Adjudicating Authority i.e. Additional Commissioner of Customs (Group IV), Customs House Mundra, Office of the Commissioner of Customs, First Floor, Port User Building, Custom House Mundra, Kutch, Gujarat-370 421, as to why:-

- i. The goods imported vide bills of entry as mentioned in **Table-A** with Assessable Value of **Rs.3,37,35,923/- (Rupees Three Crores Thirty Seven Lakhs Thirty Five Thousands Nine Hundred and Twenty Three only)** should not be confiscated under Section 111(o) & 111(m) of the Customs Act, 1962;
- ii. The interest of **Rs.11,89,484/- (Rupees Eleven Lakhs Eighty Thousands Four Hundred and Eighty Four only)** accrued on differential duty of Rs.32,84,190/- till payment of duty i.e. 01.06.2022 in respect of bills of entry as mentioned in **Table-A** should not be demanded and recovered from them under the provisions of Section 28AA of the Customs Act, 1962.
- iii. Penalty under Section 114A of the Customs Act, 1962 should not be imposed on M/s GSR Metal Impex in relation to the said goods

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- iv. Penalty under Section 114AA of Customs Act, 1962 should not be imposed on M/s GSR Metal Impex in relation to said goods;

Importer's submission:

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4 The importer vide letter dated 27.02.2023 has stated they already paid the differential duty of Rs. 32,84,192/- in r/o impugned 14 Bills of Entry vide Challan No. 521 dated 01.06.2023. Further, they informed that they also paid interest of Rs. 11,89,404/- and penalty of Rs. 4,92,630/- (at 15%) vide challan No. 2338 dated 14.02.2023 under provision of Section 28(5) of the Customs Act, 1962. In view of the above requested that proceeding proposed under the said Show Cause Notice may please be deemed to have been concluded and matter closed under the provisions of 28(6) of the Act.

Discussion and findings:

5 I have carefully gone through the case records, Show Cause Notice dated 31.01.2023 issued by the Investigation Agency (SIIB) and applicable provisions of Law. I find that the condition of Principle of Natural Justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

5.1 The issues before me are to decide whether-

- i. The goods imported vide bills of entry as mentioned in **Table-A** with Assessable Value of **Rs.3,37,35,923/- (Rupees Three Crores Thirty Seven Lakhs Thirty Five Thousands Nine Hundred and Twenty Three only)** should not be confiscated under Section 111(o) & 111(m) of the Customs Act, 1962 or otherwise. However, as the goods are not available for confiscation being already released, why fine in lieu confiscation should not be imposed.
- ii. The duty exemption benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, claimed and extended at the time of assessment of bills of entry as mentioned in **Table-A** is liable to deny and differential duty with interest is liable to be demanded and recovered as proposed in SCN or otherwise.
 - (iii) Differential/short paid duty should not be demanded and recovered as per Section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA ibid.
 - (IV) Penalty under Section 114A of the Customs Act, 1962 should not be imposed on them in relation to the said goods or otherwise.

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V. Penalty under Section 114AA of Customs Act, 1962 should not be imposed on them in relation to said goods or otherwise.

5.2 I find that M/s GSR Metal Impex, situated at House No. 717 Mundka, Near Todar Mal Chowk, New Delhi - 110041 (IEC No. AASFG9849B), has imported Magnetic Stainless Steel Cold Rolled Coil Grade 410S falling under CTH 72199090/72209090 of the Customs Tariff Act, 1975, vide bills of entry as mentioned in **“Table-A”** availing the benefit of Sr. No. **967(I) of Notification No. 046/2011 dated 01.06.2011** on the basis of Certificates of Origin purportedly issued by the Ministry of International Trade and Industry, Malaysia.

Details of the bills of entry are as under:

Table - A

Sr. No.	Bill of Entry and Date	Description of Goods	Ass. Value of the goods Rs.	Noti. Availed & COO reference no.	Name of Supplier
1.	4868848 dated 12.09.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2304496	KL-2019-AI-21-010642 dated 28.08.2019	M/s Artfransi International SDN BHD, Malaysia
2.	4964175 dated 19.09.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2300602	KL-2019-AI-21-010872 dated 12.09.2019	M/s Artfransi International SDN BHD, Malaysia
3.	5142032 dated 02.10.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2114899	KL-2019-AI-21-010897 dated 24.09.2019	M/s Artfransi International SDN BHD, Malaysia
4.	5407261 dated 23.10.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2070308	KL-2019-AI-21-010938 dated 15.10.2019	M/s Artfransi International SDN BHD, Malaysia
5.	5850764 dated 27.11.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2073050	KL-2019-AI-21-010997 dated 19.11.2019	M/s Artfransi International SDN BHD, Malaysia
6.	4665835 dated 27.08.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2320881	KL-2019-AI-21-010618 dated 26.08.2019	M/s Artfransi International SDN BHD, Malaysia
7.	5939059 dated 04.12.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2054290	KL-2019-AI-21-0101006 dated 19.11.2019	M/s Artfransi International SDN BHD, Malaysia
8.	6227478 dated 25.12.2019	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	1928833	KL-2019-AI-21-0101049 dated 17.12.2019	M/s Artfransi International SDN BHD, Malaysia
9.	6882490 dated 14.02.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2033775	KL-2020-AI-21-0101143 dated 12.02.2020	M/s Artfransi International SDN BHD, Malaysia
		Magnetic Stainless		KL-2020-AI-21-	M/s Artfransi

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10.	6883111 dated 14.02.2020	Steel Cold Rolled Coil Grade 410S	2028417	0101281 dated 12.02.2020	International SDN BHD, Malaysia
11.	6989999 dated 24.02.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	1893275	KL-2020-AI-21- 0101217 dated 31.01.2020	M/s Artfransi International SDN BHD, Malaysia
12.	7343713 dated 23.03.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	2170413	KL-2020-AI-21- 001408 dated 23.03.2020	M/s Artfransi International SDN BHD, Malaysia
13.	7421615 dated 09.04.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	4311576	KL-2020-AI-21- 001424 dated 02.04.2020	M/s Artfransi International SDN BHD, Malaysia
14.	6990092 dated 24.02.2020	Magnetic Stainless Steel Cold Rolled Coil Grade 410S	4131108	KL-2020-AI-21- 0101219 dated 31.01.2020	M/s Artfransi International SDN BHD, Malaysia
		Total	3,37,35,923/-		

5.3 I find that COO Certificates as mentioned in the above **Table-A** which were purported to be issued by the Ministry of International Trade and Industry, Malaysia were found to be fake and it was informed by Ministry of International Trade and Industry, Malaysia (MITI) that the said Certificates were not issued by them as they never received a COO application from M/s Artfransi International SDN BHD, Malaysia.

5 . 4 I find that a conspiracy was hatched by M/s GSR Metal Impex, to defraud the Government of India's legitimate revenue by mis-use of the benefits of concessional rate of customs duty under Notification No. 46/2011-Cus. dated 01.06.2011 as amended. Pursuant to the said conspiracy, M/s GSR Metal Impex availed the benefits of concessional rate of customs duty under Notification No. 46/2011-Cus. dated 01.06.2011 by submitting the fake Preferential Certificates of origin in 'Form-AI' obtained by mis-representation and collusion in contravention of provisions of Rules of Origin for seeking the benefits of concessional rate of duty, with an intention to evade the payment of customs duty. The certificates produced by M/s GSR Metal Impex had been found to be unauthentic during the process of verification.

5.5 I find that by adopting the above modus-operandi, goods were imported by the importer M/s GSR Metal Impex vide bills of entry as mentioned in **Table-A** in contravention of the provisions of Notification No. 46/2011-Cus. dated 01.06.2011, as amended read with Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009, by showing the goods as RVC (35%) + CTSH in the 'Form-AI' certificates submitted by them at the time of clearances from Customs. M/s GSR Metal Impex had made wrong declarations for availing the undue benefit under the Notification No. 46/2011-Cus. dated 01.06.2011. Further, it appears that due to deliberate and intentional submission of fraudulently obtained

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unauthentic preferential Certificates of origin in 'Form-AI' for availing exemption under FTA, the goods in the BEs do not correspond to the documents submitted and declaration in the Bill of Entry, therefore, the goods under bills of entry no. as mentioned in **Table-A** above totally valued at **Rs.3,37,35,923/- (Rupees Three Crores Thirty Seven Lakhs Thirty Five Thousands Nine Hundred and Twenty Three only)** imported were liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, as the goods are not available for confiscation and already been released.

5.6 I also gone through the facts and importers submission. Importer vied letter dated 20.02.2023 has submitted that they have already deposited the **differential duty of Rs.32,84,192/- (Rupees Thirty Two Lac Eighty Four Thousand One Hundred and Ninety Two Only)** in respect of above mentioned 14 bills of entry vide Challan No. 521 dated 01.06.2022 before issuance of the SCN and also has paid interest of Rs. 11,89,404/- and penalty of Rs. 4,92,630/- (at 15%) vide challan No. 2338 dated 14.02.2023 under provision of Section 28(5) of the Customs Act, 1962. I find that Importer has already deposited penalty and interest within 30 days of issuance of show cause notice and has already paid differential duty before issuance of the SCN.

6 Considering the fact mentioned above, being payment of duty along with interest and reduced penalty at their own, within 30 days from receiving of notice, by the importer, I am taking lenient view in this matter and I pass the following order:

Order

- i. I order and confirm the differential duty of **Rs.32,84,192/- (Rupees Thirty Two Lac Eighty Four Thousand One Hundred and Ninety Two Only)** and also order to appropriate the amount paid towards differential duty of **Rs.32,84,192/- (Rupees Thirty Two Lac Eighty Four Thousand One Hundred and Ninety Two Only)** already paid vide Challan No. 521 dated 01.06.2023 as per the provisions of the Customs act, 1962.
- ii. I order to confirm the interest as per the provisions of Section 28AA of the Customs Act, 1962 and ordered to appropriate the amount paid towards interest of Rs 11,89,404/-already paid vide Challan No. 2338 dated 14.02.2023 as per the provisions of the Customs Act, 1962.
- iii. I order to accept the penalty calculated by the importer as per the provisions of the setion 28(V) of the Customs Act, 1962 and ordered to appropriate an amount of Rs. 4,92,630/- (Being 15% calculated by the importer at their own and intimated vide their letter) paid Vide Challan No. 2338 dated 14.02.2023.
- iv. I refrain from imposing any penalty on the importer.
- v. I ordered to accept the request made by the importer to conclude the proceedings as

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per provisions of the Section 28(6) of the Customs Act, 1962.

7. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

8. The SCN F. No. S/15-49/Enq.GSR Steel/SIIB-C/CHM/2021-22 dated 31.01.2023 issued by the Additional Commissioner (SIIB), Custom House Mundra, is hereby disposed of.

Signed by
Mukesh Kumari
Additional Commissioner of Customs
Date: 06-07-2023, 16:19:35
Custom House Mundra

To,
M/s GSR Metal Impex,
House No. 717 Mundka, Near Todar Mal Chowk,
New Delhi - 110041
(IEC No. AASFG9849B)

Copy to:

1. The Dy. Commissioner of Customs, Review Section, CH, Mundra
2. The Dy. Commissioner of Customs, TRC, CH, Mundra
3. The Dy. Commissioner of Customs, Adjudication Cell.
4. The Dy. Commissioner of Customs, SIIB Section, CH, Mundra
5. Guard file