

	<p style="text-align: center;"><b>सीमा शुल्क के आयुक्त का कार्यालय</b>  <b>सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</b>  <b>OFFICE OF THE PR. COMMISSIONER OF</b>  <b>CUSTOMS</b>  <b>CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT</b>  <b>Phone No.02838-271165/66/67/68</b>  <b>FAX.No.02838-271169/62, Email-adj-</b>  <b><a href="mailto:mundra@gov.in">mundra@gov.in</a></b></p>
<b>A.</b> File No.	F No GEN/ADJ/COMM/212/2025-Adjn-O/o Pr Commr-Cus-Mundra
<b>B.</b> Order-in-Original No.	<b>MUN-CUSTM-000-COM-61-25-26</b>
<b>C.</b> Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>D.</b> Date of order and Date of issue:	<b>03.03.2026</b> 03.03.2026
<b>E.</b> SCN No. & Date	07/2025-26/COMM/KE/ADJ/MCH Dated 16.04.2025
<b>F.</b> Importer	<b>M/s Saanvi Impex (IEC: BONPG0351Q)</b>
<b>G.</b> DIN	<b>20260371MO0000323823</b>

1. यह अपील आदेश संबंधित 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 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 3-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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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.

## **BRIEF FACTS OF THE CASE**

Intelligence developed by the Directorate of Revenue Intelligence; Surat Regional Unit (*'DRI SRU'* for the sake of brevity) indicated that M/s Saanvi Impex (Prop. Smt. Shilpi Gupta), registered at C-11/17, Ground Floor, Model Town-III, Delhi- 110009 (Presently at Ground Floor, RU 10, Pitampura, Delhi- 110034) (hereinafter referred to as *'Saanvi'* for the sake of brevity), having IEC: BONPG0351Q, was importing "Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc." falling under CTIs 54076900, 60019200, 60063200 of the first Schedule to the Customs Tariff Act, 1975, at APSEZ viz *Adani Port and Special Economic Zone*, Mundra [INAJM6] and Mundra Sea Port [INMUN1] and wrongly availing benefit of Notification No. 46/2011-Customs dated 01.06.2011, as amended, while clearing the said imports to their Domestic Tariff Area (DTA) unit / home consumption by using not authentic/fake Certificates of Origin (CoOs).

**1.2** As per the intelligence, it was suspected that the Certificate of Origin used for availing the duty exemption benefit were either non-existent or not authentic. Since Saanvi had imported the said goods from Malaysia and then cleared them to Domestic Tariff Area/ Home consumption while availing the benefit of BCD exemption on the said supplies, it appeared that they had claimed the preferential tariff benefit by way of using not authentic/ non-existent CoO and hence, the effective rate of duty on their import/ DTA Sale of "Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc" classified under CTIs 54076900, 60019200, 60063200 of the first Schedule to the CTA would be the merit rate of 20% ad-valorem.

**2.** Accordingly, investigation was initiated by DRI SRU against Saanvi for duty evasion on import of "Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc" from Malaysia and live consignments pending for DTA clearance at APSEZ Mundra were put on hold vide letter F. No. DRI/AZU/SRU/B/INT-04/2023 dated 19.04.2023.

## **SEARCH AND PANCHNAMA**

**3.** A search was conducted on 19.04.2023 at the registered premises of Saanvi at C-11/17, Ground Floor, Model Town-III, Delhi-110009 and panchnama dated 19.04.2023 was drawn in the presence of independent panchas and Shri Hari Das Gupta (Father-in-law of Smt. Shilpi Gupta) and Shri Mohit Gupta (Husband of Smt. Shilpi Gupta). Shri Mohit Gupta informed that his wife Smt. Shilpi Gupta was the proprietor of Saanvi Impex but work for the said firm was looked after by him. Shri Mohit Gupta informed that said firm was engaged in import of polyester Knitted Pile Fabrics & other fabrics and the documents of the firm were kept at Flat No. 10, RU Block, Pitampura, Delhi. During the search, no documents in relation to import were found.

**3.2** Thereafter, a search was conducted on 19.04.2023 at the office premises of Shri Mohit Gupta situated at Flat No. 10, Block RU, Pitampura, North West Delhi, Delhi - 110034 and panchnama dated 19.04.2023 was drawn in the presence of independent panchas and Shri Mohit Gupta. During the search Shri Mohit Gupta informed that he was controlling the activities of the said firm which was in the name of his wife viz. Smt. Shilpi Gupta; that the records of Saanvi were being maintained at that premises only; that his wife Smt. Shilpi Gupta was the proprietor of M/s Saanvi Impex but the work related to the firm was being looked after by him; that the firm was engaged in import and trading of imported /local Polyester Knitted Pile Fabrics & other fabrics and the records were being maintained at that premises i.e. Flat No. 10, RU Block, Pitampura, Delhi. Thereafter, the officers systematically searched the said premises and segregated the relevant import documents pertaining to Saanvi for the imports made from Malaysia and kept them in made up files.

**3.2.1.** On being asked, Shri Mohit Gupta informed that for the import of fabrics from Malaysia, he used to communicate with one person named Shri Jeson, a Chinese citizen, and the said communication took place from the official e-mail ID of the firm. With the concurrence of Shri Mohit Gupta, the officers verified the documents/e-mails. Further, the officers scrutinized the communications done via the official e-mail IDs and took printouts of the relevant e-mail along with its attachment and other excel sheets, under the provisions of Section 138C of Customs Act, 1962 and 65-B of The Indian Evidence Act, 1872 (Section 63 of Bhartiya Sakshya Adhinyam, 2023) as the same seemed useful for further investigation pertaining to import of Polyester Knitted Pile Fabrics & other fabrics from Malaysia and availment of CoO benefit on the said imports. The officers placed the above said printouts in a two separate made up files and allotted serial number 1 to 73 & 1 to 157 and resumed them under the

provisions of Customs Act, 1962 under reasonable belief that same are useful for further investigation.

## **STATEMENTS RECORDED AND ENQUIRY**

### **4. STATEMENT OF CONCERNED PERSONS OF SAANVI:**

**4.1.** Summons dated 19.04.2023 were issued to Shri Mohit Gupta and his statement was recorded on 19.04.2023 under Section 108 of the Customs Act, 1962 wherein he *inter-alia* stated that he started one proprietorship firm in 2017 i.e. M/s Guru Kripa Textiles, Flat No. 10, Block RU, Pitampura, North West Delhi, Delhi-110034; that from July 2022, he started importing Polyester Knitted Pile Fabrics & other fabrics from Malaysia and started availing the benefit on Certificate of Origin under AIFTA and paying NIL customs duty.

**4.1.1** On being asked, Shri Mohit Gupta stated that apart from his proprietorship firm i.e. M/s Guru Kripa Textiles, he was looking after the work of M/s Saanvi Impex (Proprietor: Smt. Shilpi Gupta) as well; that Saanvi (started in 2019) was engaged in import and trading of Polyester Knitted Pile Fabrics & other fabrics; that the overall day to day work of the firm was looked after by him; that his wife did not have knowledge of the above said business; that he used to communicate with Shri Jeson Shen (0086-57388025899), a Chinese National for the import of Polyester Knitted Pile Fabrics & other fabrics from China & Malaysia; that he met Shri Jeson Shen in 2017 in Guangzhou, China in a Canton Fair where he (Shri Jeson Shen) was representing his firm M/s Zhejiang Huashen Silk Imp. & Exp. Co. Ltd; that in June 2022, Shri Jeson Shen contacted him and informed that they had started manufacturing Polyester Knitted Pile Fabrics & other fabrics in Malaysia also, besides China, and suggested that he could import the above said goods from Malaysia instead of China and could avail the benefit on Certificate of Origin of Malaysian Goods and avoid paying import Customs duties in India; that in view of the suggestion of Shri Jeson Shen, he started import of Polyester Knitted Pile Fabrics & other fabrics from Malaysia from July 2022 onwards and started availing the benefit of Certificate of Origin and paid NIL customs duty against the import of the said goods.

**4.1.2** He was asked to peruse on sample basis-

- i. *Country of origin (CoO) certificate Ref. No. KL-2023-AI-21-003672 dated 16.01.2023. The exporter in the said CoO was Hubking Resources and the Consignee in the said CoO was M/s Saanvi Impex for the goods Polyester Knitted Pile bonded Fabrics &*

*others. The said CoO was also submitted by him before the Customs Authority at the time of import.*

- ii. Country of origin (CoO) certificate Ref. No. KL-2023-AI-21-003672 (same reference number as above) issued by the Secretary General, Ministry of International Trade and Industry, Malaysia on 29.03.2023, downloaded from Malaysia Govt. Portal. The exporter in the said CoO was Rubber Leisure Products SDN BHD and the Consignee in the said CoO was Decathlon Sports India Pvt Ltd for the goods rubber swim cap etc.*

On being asked to comment on the above said CoO, Shri Mohit Gupta stated that the latter CoO seemed genuine as the same was downloaded from the Govt. Portal of Malaysia; that the CoO produced by him before Indian Customs appeared to be fake and that he would have to verify the genuineness of the same from his supplier.

**4.1.3** On being asked whether he possessed sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in Section 28DA(1)(ii) of the Customs Act, 1962, he stated that he did not have any such information of his supplier; that his supplier had forwarded only Certificate of Origin in support of Malaysia origin. He produced stock ledger of Polyester Knitted Pile Fabrics.

**5.** Summons dated 19.04.2023 were issued to Smt. Shilpi Gupta, Proprietor of Saanvi. Smt. Shilpi Gupta vide letter dated 24.04.2023 sought for 15 days' time for arranging the desired information and to give statement. Further, Summons dated 24.04.2023 were issued to Smt. Shilpi Gupta and her statement was recorded on 04.05.2023 under Section 108 of the Customs Act, 1962 wherein she *inter-alia* stated that Saanvi Impex was engaged in the import and trading of various types of Polyester Knitted Fabrics; that all the day to day work of her firm was managed by her husband Shri Mohit Gupta; that she did not have knowledge of business activities of Saanvi as her husband Shri Mohit Gupta used to look after all day to day business activities of her firm.

**5.1** On being asked, Smt. Shilpi Gupta stated that Shri Mohit Gupta used to communicate with the overseas suppliers as he used to handle all business activities of Saanvi; that she had never contacted the overseas supplier and she had no idea about the same. He was asked to peruse the statement dated 19.04.2023 of Shri Mohit Gupta and the following documents:

- i. *Country of origin (CoO) certificate Ref. No. KL-2023-AI-21-003672 dated 16.01.2023. The exporter in the said CoO was Hubking Resources and the Consignee in the said CoO was M/s Saanvi Impex for the goods Polyester Knitted Pile bonded Fabrics & others. The said CoO was also submitted by her firm before the Customs Authority at the time of import.*
- ii. *Country of origin (CoO) certificate Ref. No. KL-2023-AI-21-003672 (same reference number as above) issued by the Secretary General, Ministry of International Trade and Industry, Malaysia on 29.03.2023, downloaded from Malaysia Govt. Portal. The exporter in the said CoO was Rubber Leisure Products SDN BHD and the Consignee in the said CoO was Decathlon Sports India Pvt Ltd for the goods rubber swim cap etc.*

On being asked regarding the different details in above said CoO having same number, she stated that as she did not have knowledge of the business activities of Saanvi, Shri Mohit Gupta would be in better position to explain the same. She further stated that she had submitted a demand draft of Rs.50 Lakh on behalf of M/s Saanvi Impex, under protest, towards the total customs duty liability of Saanvi.

**5.2** On being specifically asked, she stated that Shri Mohit Gupta had informed her that 3 import consignments of Saanvi were pending for clearance at Mundra SEZ.

**6.** Further, summons dated 02.05.2023 were issued to Shri Mohit Gupta and his statement was recorded on 04.05.2023 under Section 108 of the Customs Act, 1962. In his statement, Shri Mohit Gupta stated that he was the person dealing with the foreign supplier on behalf of Saanvi and that he had directed the CHA to file Bill of Entry for clearance of import consignment for the firm.

**6.1** Shri Mohit Gupta was asked to peruse copies of Certificates of Origin submitted by him against clearance of import consignments pertaining to Saanvi and a printout of Certificates of Origin having the same reference number as the documents submitted by him but downloaded from the portal of Malaysian Government and his comment on the same are summarized in the table below:

**Table 1: Details of CoOs verified on portal of Malaysian Government during statement of Shri Mohit Gupta**

Sr.	B.E./	CoO No.	Consignee	Comment of Shri Mohit
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<b>No.</b>	<b>B.E.(SEZ To DTA) No.</b>	<b>submitted by M/s Saanvi Impex</b>	<b>name as per CoO certificate issued from the portal</b>	<b>Gupta</b>
1	2001601	KL-2023-AI-21-003572	Bain Capability Centre India Pvt Ltd	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
2	2001713	KL-2023-AI-003918	Himalaya Wellness Company	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
3	2001712	KL-2023-AI-21-003672	Decathlon Sports India Pvt Ltd	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
4	2003683	KL-2023-AI-21-004277	Dover India Pvt Ltd	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
5	2010130	KL-2022-AI-22-0100534	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
6	2010131	KL-2022-AI-22-0100533	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
7	2011999	KL-2022-AI-22-0100625	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
8	2012000	KL-2022-AI-22-0100623	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
9	2012001	KL-2022-AI-22-0100624	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
10	2012911	KL-2022-AI-22-0100718	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness

				of the same from my supplier in China.
11	2018105	KL-2022-AI-21-013134	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
12	2020492	KL-2022-AI-22-0101057	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
13	2021055	KL-2022-AI-22-0101084	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
14	2000279	KL-2022-AI-22-0101114	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
15	2001108	KL-2022-AI-21-016895	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
16	2003686	KL-2023-AI-21-004487	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
17	2004084	KL-2023-AI-21-004793	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
18	2019579	KL-2022-AI-22-0101033	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
19	2019973	KL-2022-AI-21-013936	Saanvi Impex	CoO produced by me before Indian Customs is genuine
20	2326545	KL-2022-AI-22-0100792	Endorsement No. does not exist	CoO produced by me before Indian Customs is fake and I have to verify the genuineness of the same from my supplier in China.
21	2374406	KL-2022-AI-22-0100800	Endorsement No. does not exist.	CoO produced by me before Indian Customs is fake and I have to verify the genuineness

				of the same from my supplier in China.
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**6.2** On being asked regarding the manufacturer in Malaysia, he stated that Mr Jeson had informed him that their Chinese company had established their manufacturing unit in Malaysia; but that he (Shri Mohit Gupta) had not verified its existence in Malaysia; that he had made communication to his supplier regarding fake CoO provided by them and their reply was awaited; that he would try to pay the remaining amount after receiving a reply from his supplier.

**6.3** *On being asked regarding the consignments pending for clearance, Shri Mohit Gupta stated that some of consignments of Saanvi were pending for clearance from APSEZ, Mundra, details of which are tabulated below:*

**Table 2: Details of Consignments put on hold**

<i>Sr. No</i>	<i>BL No.</i>	<i>Name of Firm</i>	<i>No. of Containers</i>
1	CULVPK2300693	Saanvi Impex	1
2	CULVPKG2300680	Saanvi Impex	1
3	HDMUKULA4937130 0	Saanvi Impex	2

**6.4** He further stated that he was ready to clear the above-mentioned consignments without availing the benefit of Certificate of Origin from Malaysia and requested that the said consignments may be allowed clearance on duty payment.

## **7. ENQUIRY WITH CHA**

**7.1.** Summon dated 17.05.2023 were issued to Maa Shipping and Logistics and statement of Shri Krushnrajsinh Jadeja, Partner of Maa Shipping and Logistics was recorded on 22.05.2023 under Section 108 of the Customs Act, 1962 wherein he *inter-alia* stated that he used to do the clearance of goods from Mundra SEZ for Saanvi from Fasttrack CFS Pvt Ltd; that for Customs clearance work related to the firm Saanvi, he used to talk with Shri Mohit Gupta; that whenever an import consignment arrived, he received Bill of Lading, CoO and Packing List by mail from Shri Mohit Gupta and later his company received BL, Invoice, PL and CoO by courier;

that after completing all the customs clearance formalities and getting Out of Charge, his company informed Shri Mohit Gupta about the same after which he arranged the transportation of the goods.

**7.1.1.** Further, on being asked, Shri Krushnrajsinh Jadeja perused statement dated 04.05.2023 of Shri Mohit Gupta and on being asked regarding Certificates of Origin submitted by the firms against clearance of import/DTA consignment pertaining to Saanvi and printout of another set of Certificates of Origin having the same reference number but different details, downloaded from the portal of Malaysian Government he stated that CoO produced by the firm before Indian Customs appeared to be fake and that he had no knowledge regarding its origin. On being asked whether there was any involvement of Shri Mohit Gupta in creating these fake CoO, he stated that he had no knowledge about the same and till date he knew that the goods were being imported from Malaysia.

**7.2** Maa Shipping and Logistics, CHA vide email dated 29.04.2023, 01.05.2023 and 03.05.2023 and Vogue Logistics, CHA submitted copies of import documents in respect of Saanvi. Further, Maa Shipping and Logistics vide letter dated Nil (received on 31.07.2023) submitted copies of import documents namely Bill of Lading, Invoice, Packing List, Certificate of Origin, TP Bill of Entry, DTA Bill of Entry and Proforma Invoice in respect of Saanvi.

### **RELEASE OF IMPORT CONSIGNMENT PUT ON HOLD**

**8.** Saanvi vide letter dated 04.05.2023, requested to release their shipments stating that they were ready to pay actual duty without availing benefit of Certificate of Origin.

**8.1.** DRI, Surat vide letter F. No. DRI/AZU/SRU/B/INV-04(INT-04)/2023 dated 12.05.2023 addressed to Specified Officer, Adani Port and Special Economic Zone, Mundra communicated that this office had no objection if the DTA Bills of Entry pertaining to Saanvi are assessed without benefit under Notification No 46/2011-Cus dated 01.06.2011, as amended, and the said DTA consignments are released as per the Customs and SEZ Act and Rules

### **SCRUTINY OF DOCUMENTS AND DUTY CALCULATION:**

**9.** On scrutiny of documents, resumed from the premises of Shri Mohit Gupta and documents submitted by Maa Shipping and Logistic (CHA) it appears that Saanvi had imported goods at APSEZ, Mundra (INAJM6) and

SEZ Entity M/s Fast Track CFS Private Limited had filed 'Bill of Entry for Home Consumption' on behalf of their client viz. DTA unit of Saanvi while availing preferential tariff rate benefit of Certificate of Origin under the ASEAN-India FTA as notified vide Notification No. 46/2011-Customs dated 01.06.2011, as amended. It appeared that Saanvi had cleared a total of 18 consignments of imported Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc. falling under CTIs 54076900, 60019200, 60063200 of the first Schedule to the Customs Tariff Act, 1975 from SEZ to DTA. It appeared that Saanvi had also cleared 2 consignments of imported Polyester Knitted Pile Fabrics falling under CTI 60019200 of the first Schedule to the Customs Tariff Act, 1975 from Mundra Sea Port [INMUN1]. On checking the CoO on Malaysian Government portal (<https://newepco.dagangnet.com.my/dnex/login/>), it is evident that either the CoOs submitted by Saanvi are fabricated as the original CoOs pertain to a different importers or the CoO numbers were non-existent. The concerned persons of Saanvi agreed that the CoOs produced by them before Indian Customs were fake. It appeared that Saanvi had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, and had therefore not paid the applicable Customs duties of Rs. 5,71,54,051/- (details as per Annexure-A to SCN) at APSEZ, Mundra and Rs.1,15,13,003/- (details as per Annexure-A to SCN) at Mundra Sea Port during the period from 14.07.2022 to 01.03.2023, summarized in Table-3 below:

**Table-3: Summary of DTA Clearance by Saanvi during the period from 14.07.2022 to 01.03.2023**


Port for DTA Clearance and Import	Total No. of Consignments	Value of goods (in Rs.)	Total differential Customs duty involved (in Rs.)
<b>Adani Ports and Special Economic Zone (INAJM6)</b>	<b>18</b>	<b>24,80,29,516</b>	<b>5,71,54,051/-</b>
<b>Mundra Sea Port (INMUN1)</b>	<b>2</b>	<b>4,98,39,840</b>	<b>1,15,13,003</b>
<b>TOTAL</b>	<b>20</b>	<b>29,78,69,356</b>	<b>6,86,67,054/-</b>

10. The genuineness of the CoOs used in the clearance of 20 consignments was verified from the official Malaysian govt. portal (<https://newepco.dagangnet.com.my/dnex/login/>) and found to be fake/not authentic. On sample basis, a scan image of CoO Reference No. KL-2023-AI-21-003572 submitted by Saanvi before Customs and scan

image of CoO found during verification from the official Malaysian govt. portal are attached below:



SCAN IMAGE OF COO PRODUCED BY SAANVI BEFORE CUSTOMS

ORIGINAL

<p>1. Goods consigned from (Exporter's business name, address, country)</p> <p>HUBKING RESOURCES A-9-1, 9TH FLOOR, BBT ONE THE TOWERS LEBUH BATU NILAM 1, BANDAR BUKIT TINGGI, 41200 KLANG, SELANGOR, MALAYSIA</p>		<p>Reference No. KL-2023-AI-21-003572</p> <p style="text-align: center;"><b>ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)</b></p> <p style="text-align: center;"><b>FORM AI MALAYSIA</b></p> <p>Issued in _____ (Country)</p> <p>(See Notes Overleaf)</p>				
<p>2. Goods consigned to (Consignee's name, address, country)</p> <p>SAANVI IMPEX GROUND FLOOR RU 10, OUTER RING ROAD, PITAMPURA, NEW DELHI 110034, INDIA IEC NO: BONPG0351Q GSTIN: 07BONPG0351Q1ZL</p>		<p>3. Means of transport and route (as far as known)</p> <p>Departure Date:</p> <p>11 January 2023 by MARITIME TRANSPORT</p> <p>Vessel's Name/Aircraft, etc.:</p> <p>D ANGELS V. 017A</p> <p>Port of Discharge:</p> <p>MUNDRA</p>		<p>4. For official use</p> <p><input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff</p> <p><input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)</p> <p>_____ Signature of Authorised Signatory of the Importing Country</p>		
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices	
1.	N/M	695 ROLLS 1 X D40H CONTAINER STC POLYESTER KNITTED PILE BONDED FABRICS IMPORTING COUNTRY HS CODE 600192 EXPORTING COUNTRY HS CODE 600192	RVC77.15% +CTSH	15,370.000 KGS USD 57,083.99	05622796 11/12/2022	
Page 1 of 1			TOTAL:	15,370.000 KGS USD 57,083.99	04/07/2023	
<p>11. Declaration by the exporter</p> <p>The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in</p> <p style="text-align: center;">MALAYSIA (Country)</p> <p>and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to</p> <p style="text-align: center;">INDIA (Importing Country)</p> <p style="text-align: center;">SELANGOR, 09 January 2023</p> <p>Place and date, signature of authorised signatory</p>			<p>12. Certification</p> <p>It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> <p style="text-align: center;">               for Secretary General              Ministry of International Trade and Industry              Malaysia              Kuala Lumpur, 12 January 2023              [FAI-FIE-W-230109-KL-0000153]         </p> <p style="text-align: center;">SITI NADIRAH NASARUDIN Place and date, signature and stamp of certifying authority</p>			
<p>13. Where appropriate please tick:</p> <p><input type="checkbox"/> Third Country Invoicing    <input type="checkbox"/> Exhibition    <input type="checkbox"/> Back-to-Back CO    <input type="checkbox"/> Cumulation</p>						

**SCAN IMAGE OF COO VERIFIED FROM MALAYSIAN GOVT. PORTAL**

PREVIEW

<p>1. Goods consigned from (Exporter's business name, address, country)                  TEKNION FURNITURE SYSTEMS (MALAYSIA) SDN BHD                  LOT 761                  JALAN HAJI SIRAT,                  OFF JALAN MERU                  42100 KLANG, SELANGOR, MALAYSIA</p>		<p>Reference No. KL-2023-AI-21-003572</p> <p style="text-align: center;"><b>ASEAN-INDIA FREE TRADE AREA                  PREFERENTIAL TARIFF                  CERTIFICATE OF ORIGIN                  (Combined Declaration and Certificate)</b></p> <p style="text-align: center;"><b>FORM AI</b></p> <p>Issued in <u>          MALAYSIA          </u>                  (Country)                  (See Notes Overleaf)</p>			
<p>2. Goods consigned to (Consignee's name, address, country)                  BAIN CAPABILITY CENTRE INDIA PVT LTD                  4TH FLOOR, BUILDING 8, TOWER C,                  DLF CYBER CITY, PHASE II                  GURGAON, HARYANA                  122002 INDIA</p>		<p>4. For official use <span style="float: right;">ISSUED RETROACTIVELY</span></p> <p><input type="checkbox"/> Preferential Tariff Treatment Given Under                  ASEAN-INDIA Free Trade Area Preferential Tariff</p> <p><input type="checkbox"/> Preferential Tariff Treatment Not Given                  (Please state reason/s)</p> <p style="text-align: center;">_____                  Signature of Authorised Signatory of the                  Importing Country</p>			
<p>3. Means of transport and route (as far as known)</p> <p>Departure Date:                  21 March 2023 by MARITIME TRANSPORT</p> <p>Vessel's Name/Aircraft, etc.:                  X-PRESS BARDSEY V.23003W</p> <p>Port of Discharge:                  PIPAVAV (VICTOR) PORT</p>					
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1.	N/A	101 CARTON CONFERENCE M IMPORTING COUNTRY HS CODE 940330	RVC 84.93% + CTSH	14 SET	100095/23 18/03/2023
2.	N/A	219 CARTON CONFERENCE XL IMPORTING COUNTRY HS CODE 940330	RVC 71.79% + CTSH	24 SET	100095/23 18/03/2023
TOTAL :				38 SET	
<p>11. Declaration by the exporter                  The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in  <u>          MALAYSIA          </u>                  (Country)</p> <p>and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to  <u>          INDIA          </u>                  (Importing Country)</p> <p><u>          SELANGOR , 23 March 2023          </u>                  Place and date, signature of authorised signatory</p>			<p>12. Certification                  It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> <div style="text-align: center;">   <p>for Secretary General                      Ministry of International Trade and Industry                      Malaysia                      Kuala Lumpur , 27 March 2023                      [FAI-FIF-W-230323-KL-000003]                      NOORASHIKEN NOOR</p> </div> <p>_____                  Place and date, signature and stamp of certifying authority</p>		
<p>13. Where appropriate please tick:</p> <p><input type="checkbox"/> Third Country Invoicing    <input type="checkbox"/> Exhibition    <input type="checkbox"/> Back-to-Back CO    <input type="checkbox"/> Cumulation</p>					

**10.1** Scanned image of CoO Reference No. KL-2023-AI-21-003572 dated 12.01.2023 produced by Saanvi before Customs Authority at the time of import shows the exporter as Hubking Resources and consignee as Saanvi for 'Polyester Knitted Pile Bonded fabrics' while the Scanned Image of CoO reference no KL-2023-AI-21-003572 (same reference number as in CoO produced by Saanvi during Import of its consignment into India) dated 27.03.2023 downloaded from Malaysian Govt. Portal by the statement recording officer in the presence of Shri Mohit Gupta, shows the exporter as 'Teknion Furniture Systems (Malaysia) SDN BHD' and consignee as 'Bain Capability Centre India Pvt Ltd' for goods 'Conference M & Conference XL', implying that Saanvi had used a CoO issued for a different consignment for clearance of their imported consignment by forging the supplier and importer details in the CoO. The same pattern was found in the twenty consignments imported by Saanvi.

**PAYMENT DURING INVESTIGATION:**

**11.** During the investigation, Saanvi vide letter dated 03.05.2023 submitted a Demand Draft of Rs.50,00,000/- stating that *“Although I am making the payment, I want to emphasize that it is being made under protest and without prejudice to my right to challenge the demand in the appropriate legal forum. I am doing this to avoid any further interest or penalty charges that may be levied on the unpaid amount.”*

**11.1.** Further, Saanvi submitted various Demand Drafts amounting to Rs. 6,86,41,459/- in total from time to time against their duty liability to DRI, Surat. The said DDs were deposited under GAR/TR-6 challans details of which are tabulated below:

**Table 4: Details of duty payment made by Saanvi during investigation**

<b>Sl No</b>	<b>Letter dated / Recd. on</b>	<b>DD No &amp; date</b>	<b>Challan No &amp; date</b>	<b>Duty/ Interest</b>	<b>Amount (Rs.)</b>
1.	03.05.2023/ 04.05.2023	689665 dt. 01.05.2023	01/2023-24 dt. 8.5.2023	Duty	50,00,000
2.	Nil/ 25.09.2023	689776 dt. 21.09.2023	16/2023-24 dt. 29.9.2023	Duty	20,00,000
3.	Nil/ 03.10.2023	689779 dt. 26.09.2023	19/2023-24 dt. 3.10.2023	Duty	25,00,000
4.	Nil/ 07.10.2023	689785 dt. 03.10.2023	23/2023-24 dt.10.10.2023	Duty	40,00,000
5.	Nil/ 14.10.2023	689789 dt. 10.10.2023	26/2023-24 dt 16.10.2023	Duty	60,00,000
6.	16.10.2023/	689795 dt.	29/2023-24	Duty	60,00,000

	23.10.2023	13.10.2023	dt.23.10.2023		
7.	19.10.2023/ 23.10.2023	689799 dt. 19.10.2023	31/2023-24 dt.23.10.2023	Duty	25,00,000
8.	01.11.2023/ 07.11.2023	689804 dt. 01.11.2023	33/2023-24 dt.13.11.2023	Duty	60,00,000
9.	07.11.2023/ 15.11.2023	689807 dt. 07.11.2023	36/2023-24 dt.16.11.2023	Duty	50,00,000
10.	20.11.2023/ 23.11.2023	689817 dt. 20.11.2023	37/2023-24 dt.23.11.2023	Duty	50,00,000
11.	23.11.2023/ 30.11.2023	689820 dt. 23.11.2023	40/2023-24 dt.01.12.2023	Duty	40,00,000
12.	28.11.2023/ 01.12.2023	689821 dt. 28.11.2023	41/2023-24 dt.01.12.2023	Duty	25,00,000
13.	30.11.2023/ 04.12.2023	689826 dt. 30.11.2023	46/2023-24 dt.05.12.2023	Duty	20,00,000
14.	08.12.2023/ 11.12.2023	689837 dt. 08.12.2023	47/2023-24 dt.11.12.2023	Duty	15,00,000
15.	13.12.2023/ 18.12.2023	689845 dt. 13.12.2023	51/2023-24 dt.18.12.2023	Duty	6,04,000
16.	Nil/ 23.07.2023	689981 dt. 19.07.2023	05/2024-25 dt.24.07.2024	Duty	30,00,000
17.	Nil/ 05.08.2024	689986 dt. 01.08.2024	15/2024-25 dt. 5.08.2024	Duty	20,00,000
18.	25.11.2024/ 29.11.2024	690075 dt. 25.11.2024	25/2024-25 dt.29.11.2024	Duty	65,37,459
	<b>TOTAL</b>				<b>6,61,41,459</b>

**11.2** Saanvi vide letter dated 25.11.2024 stated that:

*“We have paid full Custom duty of Rs. 6,64,41,459 within specific period of time. We have full intention to pay the interest also and we need some time to pay the interest amount. We request for the waiver of show cause notice after receiving the interest amount.”*

**11.3.** Saanvi has admitted their duty liability and voluntarily discharged differential duty under various challans totally amounting to Rs. 6,61,41,459/- (Differential Duty including differential IGST) against their total liability of Rs. 6,86,67,054/- in respect of the ‘Bills of Entry for Home Consumption (SEZ to DTA)’ and ‘Bills of Entry for Home consumption’ at Mundra Sea Port, mentioned in Annexure-A to the SCN.

**SUMMARY OF THE INVESTIGATION:**

**12.** From the investigation conducted and the foregoing discussions, it appeared that:

- a. *Saanvi had imported 20 consignments of “Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc.”, supplied by the various suppliers from Malaysia, from 14.07.2022 to 01.03.2023 vide various Bills of Entry filed at APSEZ, Mundra & Mundra Sea Port and has wrongly availed the AIFTA (ASEAN India Free trade Agreement) duty benefit of preferential treatment notified vide Notification No. 46/2011-Customs dated 01.06.2011, while clearing the said goods to their DTA unit vide various ‘Bills of Entry for Home Consumption (SEZ to DTA)’ as well as Bills of Entry for Home consumption at Mundra Sea Port as mentioned in Annexure-A.*
- b. *Further, CoOs used in the clearance of 20 consignments in respect of “Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc.” were verified from the official Malaysian govt. portal (<https://newepco.dagangnet.com.my/dnex/login/>) and found to be fake/not authentic.*
- c. *A search was conducted on 19.04.2023 at the registered premises of Saanvi and premises of concerned persons and documents related to import from Malaysia were resumed for further investigation under the provisions of the Customs Act, 1962.*
- d. *Statement of Shri Shilpi Gupta, Proprietor of Saanvi was recorded under Section 108 of the Customs Act, 1962 wherein she stated that his husband Shri Mohit Gupta used to look after all day to day business activities of her firm.*
- e. *Statement of Shri Mohit Gupta was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he did not possess sufficient information as specified in Section 28DA(1)(ii) of the Customs Act, 1962. He also stated that the supplier had forwarded only Certificate of Origin in support of Malaysia Origin. Further, he stated that Mr Jeson, (person related to the foreign supplier companies) had informed him that their Chinese company had established their manufacturing units in Malaysia, but he had not verified its existence in Malaysia. Further, on being shown the online verification of the CoOs on the official Malaysian government portal, he stated that CoOs produced by him, pertaining to Saanvi before Indian Customs appeared to be fake.*

- f. *Statement of Shri Krushnrahsinh Jadeja, partner of Maa Shipping and Logistics, the CHA firm involved in clearance of goods from SEZ, were recorded wherein he stated that he had no knowledge whether Shri Mohit Gupta was involved in creating those fake CoO and he knew that the goods were being imported from Malaysia.*
- g. *At the time of clearance of goods, Saanvi had availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011 based on these inauthentic CoOs claimed to be issued by Malaysia Authority and paid only IGST @ 5% or 12%.*
- h. *However, the Certificates-of-origin were verified from the portal of Malaysian Government and found to be fake/ un-authentic which confirms that the said Certificates-of-origin used for availing the benefit of preferential treatment of duty are fake/ un-authentic.*
- i. *Saanvi had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, and has now voluntarily paid the differential Customs duties of Rs.6,61,41,459/- against their total duty liabilities of Rs.6,83,86,054/-.*
- j. *In the instant case, analysis of the facts and evidences brought out that not only did the importer not exercise due diligence as mandated in Section 28DA of Customs Act, 1962 but also got imported goods cleared on the basis of fake/un-authentic Certificates of Origin. Hence the case is covered under section 28(4) and not section 28(2) of the Customs Act, 1962.*

**OBLIGATIONS UNDER SELF-ASSESSMENT AND DEMAND INVOKING EXTENDED PERIOD:**

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

sufficient information with regard to the origin criteria. In view of the same, by submitting un-authentic Certificate of Origin, it appeared that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed benefit of exemption Notification on the basis of not authentic CoO. The importer has failed to exercise reasonable care and precaution with regard to the accuracy and truthfulness of the information provided by exporter/ seller to them, as was entrusted to them by the Act while providing benefit of the CoO.

**13.1** The subject Bills of Entry for home consumption as summarized in Table-3 above, filed by Saanvi, wherein they had declared the description, classification of goods and country of origin was self-assessed by them.

**MIS-DECLARATION BY THE IMPORTER – LIABILITY OF GOODS TO CONFISCATION, DEMAND OF DIFFERENTIAL DUTY AND LIABILITY TO PENALTIES:-**

**14.** Whereas, sub-section (4) of Section 46 of the Customs Act, 1962, specifies that the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods. From the verification report discussed above, it appeared that the importer knowingly and deliberately availed exemption Notification without authentic and valid of Certificate of Origin document supporting the import as prescribed under Section 46 of Customs Act, 1962 and has suppressed the relevant facts and intentionally evaded Customs duty on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962.

**14.1.** The imported goods under the Bills of Entry for Home Consumption, as summarized in Table-3 above, has been found to be imported under the cover of not authentic Certificate of Origin (CoO) and hence do not satisfy the criteria for claiming exemption under Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods cleared to home consumption having assessable value of Rs.29,78,69,356/- (Rupees Twenty Nine Crore Seventy Eight Lakh Sixty Nine Thousand Three Hundred Fifty Six only) are liable to confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appeared that Saanvi is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

**14.2.** That as per the discussion above, it appeared that Saanvi knowingly availed exemption Notification which was not available to them. By the provisions of Section 28 DA of the Customs Act, it appeared that Saanvi failed to exercise due diligence while availing benefit of exemption notification and by his act of willfully availing exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bills of Entry for Home Consumption at APSEZ, Mundra & Mundra Sea Port the importer has evaded applicable Customs duty. Accordingly, it appeared that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case. For the same reasons, the importer also appeared liable to penalty under Section 114A of the Customs Act, 1962.

**14.3.** That as per the discussion above, it appeared that Saanvi had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and due diligence with regard to the authenticity of documents and truthfulness of the information provided by the manufacturer/supplier. The importer was not eligible for the exemption benefit as available under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted not authentic documents for claiming the exemption benefit before the Customs Authorities. Therefore, it appeared that they are also liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

**15.** It appeared that Shri Mohit Gupta was looking after the import activities of Saanvi and dealt with placing purchase order to overseas supplier and as well as import clearance at APSEZ Mundra & Mundra Sea Port. It also appeared that Shri Mohit Gupta dealt with CHA and directed him to file the Bills of Entry from time to time. It appeared that Shri Mohit Gupta abets Saanvi to avail the exemption benefit on the strength of not authentic CoOs. . It appeared that he was having culpable mental state and the act of omission and commission made on his part for evasion of Customs duties on the basis of not authentic documents and clearance of goods which are liable to confiscation, have rendered himself liable for penalty under Section 112 (b) of the Customs Act, 1962.

**16.** With the insertion of Section 110AA in the Customs Act, 1962 enforced vide Finance Act, 2022, the proper officers for issuance and adjudication of demand notices under Section 28 and Section 28AAA have been appointed under the Customs Act, 1962 in cases of single and multiple jurisdictions. Further, vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, CBIC has appointed officers of Customs to exercise powers under Section 28, Section 28AAA or Chapter X of the said

Act, and assigned the functions to such officers in the cases of single and multiple jurisdictions as referred in Section 110AA of Customs Act, 1962.

**16.1.** Whereas, it appeared that the DTA Clearance of the disputed imported goods viz. “Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc.” involving highest duty demand was made at the port of APSEZ, Mundra [INAJM6] falling under the jurisdiction of Pr. Commissioner/ Commissioner of Customs, Mundra. Therefore, in terms of Section 110AA read with Notification No. 28/2022 Customs (NT) dated 31.03.2022 the proper officer in the instant case is the Pr. Commissioner/ Commissioner of Customs, Mundra.

**17.1** In view of foregoing paras, M/s Saanvi Impex (Prop. Smt. Shilpi Gupta), was called upon to show cause vide Show Cause Notice No. 07/2025-26/COMM/KE/ADJ/MCH dated 16.04.2025 read with corrigendum dated 21.04.2025, as to why:-

- i. *The certificates of Origin in respect of Bills of Entry for Home Consumption as summarized in Table-3 above, issued by Ministry of International Trade and Industry (MITI) for the “Polyester Woven Bonded Fabrics, Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc.” supplied from Malaysia are un-authentic, as discussed above, in terms of proviso to Section 28DA(4) of the Customs Act, 1962. Thus, the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the import and DTA Clearance of goods under various Bills of Entry filed at APSEZ, Mundra & Mundra Sea Port, as per Annexure-A attached, should not be disallowed in terms of Section 28DA of the Customs Act, 1962 and the Bills of Entry for Home Consumption should not be reassessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.*
- ii. *The impugned goods having total assessable value of Rs.29,78,69,356/- (Rupees Twenty Nine Crore Seventy Eight Lakh Sixty Nine Thousand Three Hundred Fifty Six only) as per Annexure-A attached should not be held liable to confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. However, the said goods are not physically available for confiscation.*
- iii. *The differential Customs duty amounting to Rs.6,86,67,054/- (Rupees Six Crores Eighty Six Lakh Sixty Seven Thousand Fifty Four only)*

*should not be demanded and recovered from Saanvi under Section 28(4) of the Customs Act, 1962, as per Annexure-A attached. Since the differential duty amount of Rs. 6,61,41,459/- (Rupees Six Crores Sixty One Lakh Forty One Thousand Four Hundred Fifty Nine only) has already been paid by them, the same should not be appropriated and adjusted against the aforesaid demand of duty.*

- iv. The Interest at the applicable rate should not be recovered from them on the said differential Customs Duty above (iii) under Section 28AA of the Customs Act, 1962.*
- v. Penalty should not be imposed upon Saanvi separately under Section 112(a) and 112(b) of the Customs Act, 1962 for improper importation of goods which were liable to confiscation under Section 111 of Customs Act, 1962, as discussed above.*
- vi. Penalty should not be imposed upon Saanvi under Section 114A of the Customs Act, 1962 for non-levy of Customs duty and non-payment of interest thereon by using not authentic certificates of origin, as discussed above.*
- vii. Penalty should not be imposed upon Saanvi under Section 114AA of the Customs Act, 1962 for using fake/not authentic certificate of origin for claiming the exemption benefit, as discussed above.*

**17.2** Shri Mohit Gupta, Son of Shri Haridass Gupta, was called upon to show cause as to why Penalty should not be imposed upon them under Sections 112 (b) of the Customs Act, 1962, for the reason as discussed above.

#### **RECORD OF PERSONAL HEARING-**

**18.** Following the principles of natural justice, opportunities of personal hearing were granted to the importer. During the personal hearing held on 05.02.2026 through virtual mode, Shri Rishabh Suman, Advocate, and Shri Vijay Prakash Shukla, Consultant, appeared on behalf of the noticees, namely M/s Saanvi Impex, M/s. Gurukripa Textile, M/s. Harihar Enterprises and Shri Mohit Gupta. They reiterated the written submissions dated 05.02.2026.

It was submitted that all three cases are of similar nature and that submissions made on behalf of Shri Mohit Gupta may be treated as applicable to all the cases. The noticees questioned the authenticity of the

Malaysian Government portal relied upon by the department and, on that basis, sought cross-examination of the investigating officers who had verified the said portal.

The noticees pleaded ignorance regarding the alleged fake Certificates of Origin and contended that no money trail was established; therefore, *mens rea* was absent. It was further submitted that there was no deliberate misstatement or suppression of facts and, consequently, the extended period of limitation was not invocable.

**19. DEFENCE SUBMISSION:** The Noticees, vide their reply dated 05.02.2026, have submitted their response to the impugned Show Cause Notice. The submissions made by the Noticees are summarized hereunder:

**(i) Challenge to Denial of AIFTA Benefit:** The Noticee submitted that denial of preferential tariff benefit under AIFTA is legally unsustainable as the Department has not followed the mandatory verification procedure prescribed under the Operational Certification Procedures (OCP). It is contended that the Certificates of Origin (CoOs) were issued by the designated issuing authority in Malaysia and were duly submitted at the time of import. Mere comparison of CoOs with portal screenshots, without concluding verification through the issuing authority, is alleged to be insufficient in law. The Noticee further submits that no verification report from the Malaysian issuing authority has been produced and, therefore, the allegation that the CoOs are fake or not authentic is based only on assumptions.

**(ii) Absence of Fraud, Knowledge or Mens Rea:** It has been contended that the Noticee was not the issuing authority of the CoOs and had not fabricated or forged any document. According to the Noticee, there is no evidence on record to establish that the CoOs were knowingly or intentionally used despite being false. At best, the dispute relates to alleged documentary discrepancies, which cannot automatically be equated with importer-side fraud or wilful misstatement.

**(iii) Objection to Invocation of Extended Period:** The Noticee submitted that all imports were made through regular channels on the basis of documents disclosed to Customs at the time of assessment. There was no suppression of facts or misdeclaration. Since the documents relied upon in the SCN were already available with the Department, invocation of the extended period under Section 28(4) of the Customs Act, 1962 is stated to be unjustified and the demand beyond the normal period is alleged to be time-barred.

**(iv) Penalties and Confiscation Not Sustainable:** The Noticee argued that penalties under Sections 112, 114A and 114AA of the Customs Act are not

imposable in the absence of proof of fraud, collusion, wilful misstatement, suppression or knowledge. It has been submitted that mere submission of supplier-provided documents does not amount to abetment or intentional use of false documents. The proposal for confiscation and redemption fine is also contested on the ground that the goods are not prohibited and that the dispute relates only to eligibility of preferential duty.

**(iv)** Payments Made During Investigation: The Noticee submits that payments made during investigation were under protest and without prejudice, and were made to avoid business disruption. Such payments are stated not to constitute admission of liability or acceptance of allegations. The Noticee reserves the right to seek refund or adjustment in accordance with law if the demand is dropped wholly or partly. Further, the Noticee, in their written submissions, has inter alia contended that an amount of ₹ 25,25,595/- has already been deposited by them vide TR-6 Challan No. 01/2025-26 dated 01.04.2025. In support of the said contention, they have relied upon the copy of the challan issued in the name of Saanvi Impex. They have produced a copy of TR-6 Challan wherein the payment was made through D. D. No. 155914 dated 28.03.2024 of Rs. 25,25,595/-. It has been further submitted by the Noticee that the aforesaid amount does not find mention in the list of challans referred to in the Show Cause Notice. Accordingly, they have prayed that necessary cognisance of the said payment be taken and appropriate adjustment thereof be granted while adjudicating the present proceedings.

**(v)** Retraction of Statements and Alleged Admissions: The Noticee has retracted statements recorded during investigation, alleging that the statements were obtained under coercion and that copies were not supplied at the time of recording. The Noticee also disputes reliance on correspondence marked as RUD-14 to RUD-32, contending that these documents do not constitute voluntary admissions or settlement. It is alleged that blank or partly blank letterheads were obtained and contents were filled subsequently without informed consent. The Noticee denies having waived issuance of SCN or settled the matter under Sections 28(5) or 28(6) of the Customs Act.

**(vi)** Request for Cross-Examination: The Noticee has sought cross-examination of the investigating officer who accessed the Malaysian Government portal, downloaded the screenshots and relied upon the same to allege forgery of CoOs. It is submitted that denial of such cross-examination would violate principles of natural justice, as the portal screenshots constitute the primary evidence relied upon in the SCN. The

Noticee has requested that the application for cross-examination be decided by a separate speaking order prior to final adjudication.

### **DISCUSSION AND FINDINGS**

**20.** I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the importer is eligible for Notification benefit of Notification No. 46/2011-Cus dated 01.06.2011, in respect of the impugned goods.
- ii. Whether differential Customs duty amounting to Rs. 6,86,67,054/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA or otherwise.
- iii. Whether the impugned goods are liable to confiscation under Section 111(o) and 111(q) of the Customs Act, 1962 or otherwise.
- iv. Whether penalty is imposable upon the importer under Section 112(a) and/or 112(b) and/or 114A and 114AA of the Customs Act, 1962 or otherwise.
- v. Whether penalty is imposable upon Shri Mohit Gupta under Section 112(b) of the Customs Act, 1962 or otherwise.

**20.1** I note that the present proceedings arise out of an investigation initiated by DRI on the basis of specific intelligence that certain importers were availing preferential tariff benefit under the ASEAN-India Free Trade Agreement (AIFTA) by using Certificates of Origin purportedly issued by the Malaysian authorities, which were suspected to be not authentic. I observe that M/s. Saanvi Impex was identified as one of the importers who had claimed benefit under Notification No. 46/2011-Cus dated 01.06.2011 in respect of imports of polyester woven/knitted fabrics. The Show Cause Notice alleges that M/s. Saanvi Impex imported 20 consignments of Polyester Woven/Knitted Fabrics during the period 14.07.2022 to 01.03.2023 and cleared the same from Mundra Port by claiming benefit under Notification No. 46/2011-Cus dated 01.06.2011 under the ASEAN-India Free Trade Agreement. It is alleged that such benefit was availed on

the strength of fake or not authentic Certificates of Origin purportedly issued by the Malaysian authorities. Due to this modus, the importer evaded payment of Basic Customs Duty amounting to Rs. 6,86,67,054/-.


**20.2** I find it on record that when the CoO reference numbers submitted by the importer were verified, it was found that in several instances the same reference numbers corresponded to entirely different exporters, different consignees and even different descriptions of goods. In certain other instances, endorsement numbers were found to be non-existent. The Certificates of Origin produced before Indian Customs did not match the data reflected in the official database of the issuing authority i.e. MITI, Malaysia. Such discrepancies were not minor clerical variations but fundamental inconsistencies relating to the identity of exporter, importer and goods.

**20.3** The Show Cause Notice further relies upon the statements of Smt. Shilpi Gupta, Proprietor of the firm (statement dated 04.05.2023), and Shri Mohit Gupta, who was handling the business operations of the firm (statements dated 19.04.2023 and 04.05.2023). The contents of the statements are not reproduced here for the sake of brevity; however, they are relied upon and discussed in the upcoming paras. From the record of these statements, it emerged that Shri Mohit Gupta had not verified the existence of the Malaysian manufacturing unit and that he did not possess sufficient information regarding the manner in which the origin criteria were satisfied. He further admitted that the Certificates of Origin produced before Indian Customs appeared to be fake when compared with the data downloaded from the Malaysian Government portal. Smt. Shilpi Gupta stated that the day-to-day business activities were being handled by her husband and that she did not have knowledge of such operational matters.

**20.4** Upon careful consideration of the material on record, I find that the discrepancies in the Certificates of Origin are substantial and go to the root of the matter. The fact that the same CoO reference numbers corresponded to different importers and different goods as per the official Malaysian database clearly indicates that the documents produced before Indian Customs were not genuine Certificates of Origin issued for the consignments imported by the Noticee. Therefore, I find that the Certificates of Origin were fake or not authentic. Detailed discussion to this point will also be discussed under upcoming paras. Certain screenshots taken from the Malaysian Government portal are reproduced here for reference. It is pertinent to note that the details available on the said portal still verifiable, and the present status of the COO Certificates

produced by the importer before Customs, as on the date of issuance of this order, is as per the Table-A below.


**(I) COO copy produced by M/s. Saanvi Impex:**

1. Goods consigned from (Exporter's business name, address, country) HUBKING RESOURCES A-9-1, 9TH FLOOR, BBT ONE THE TOWERS LEBUH BATU NILAM 1, BANDAR BUKIT TINGGI, 41200 KLANG, SELANGOR, MALAYSIA		Reference No. KL-2023-AI-21-003572 ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)			
2. Goods consigned to (Consignee's name, address, country) SAANVI IMPEX GROUND FLOOR RU 10, OUTER RING ROAD, PITAMPURA, NEW DELHI 110034, INDIA IEC NO: BONPG0351Q GSTIN: 07BONPG0351Q1ZL		FORM AI MALAYSIA Issued in _____ (Country) (See Notes Overleaf)			
3. Means of transport and route (as far as known) Departure Date: 11 January 2023 by MARITIME TRANSPORT Vessel's Name/Aircraft, etc.: D ANGELS V. 017A Port of Discharge: MUNDRA		4. For official use <input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s) _____ Signature of Authorised Signatory of the Importing Country			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1	N/M	695 ROLLS 1 X D40H CONTAINER STC POLYESTER KNITTED FIBRE BONDED FABRICS IMPORTING COUNTRY HS CODE 600192 EXPORTING COUNTRY HS CODE 600192	RVC77.15% +CTSH	15,370.000 KGS USD 57,083.99	05622796 11/12/2022
		TOTAL:		15,370.000 KGS USD 57,083.99	
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in MALAYSIA (Country) and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to INDIA (Importing Country) SELANGOR, 09 January 2023 Place and date, signature of authorised signatory			12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.  SITI NADIRAH NAGARUDIN Place and date, signature and stamp of certifying authority		
13. Where appropriate please tick: <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation					

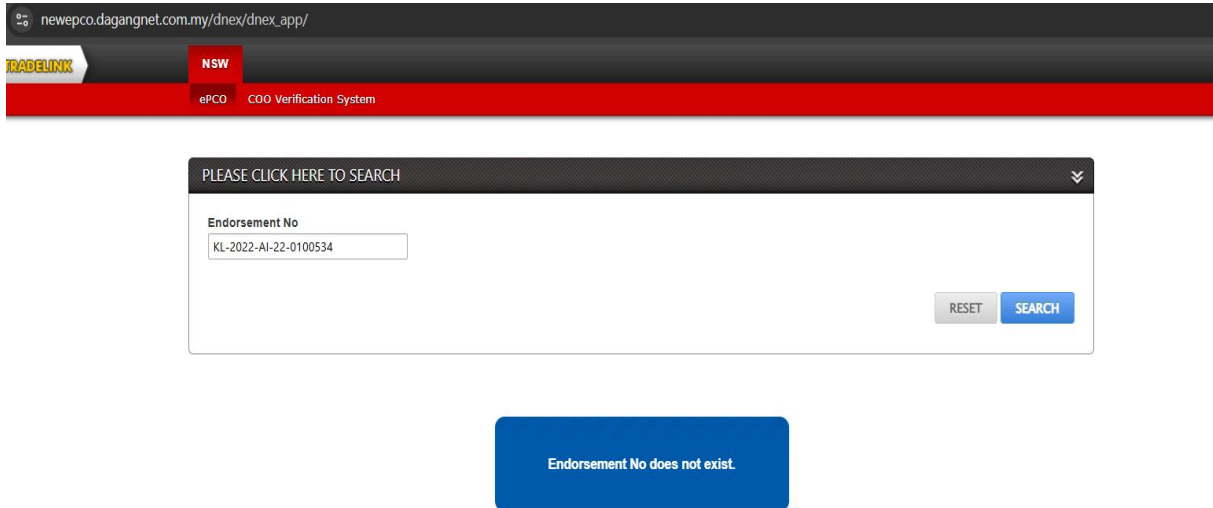


**(II) COO copy produced by M/s. Saanvi Impex:**

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country)  MULTI RESOURCES VENTURES SDN BHD LOT 11892, JALAN TELOK GONG, TELOK GONG, 42000 PORT KLANG, SELANGOR DARUL EHSAN, MALAYSIA		Reference No. KL-2022-AI-22-0100534			
2. Goods consigned to (Consignee's name, address, country)  SAANVI IMPEX ADDRESS: GROUND FLOOR, H, NO 17, BLOCK C-11, MODEL TWON III NORTH WEST DELHI, DELHI, 110009		ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)  FORM AI MALAYSIA Issued in _____ (Country) (See Notes Overleaf)			
3. Means of transport and route (as far as known)  Departure Date: 20 June 2022 by MARITIME TRANSPORT  Vessel's Name/Aircraft, etc.:  BLP. BLESSING/2210W  Port of Discharge: MUNDRA, INDIA		4. For official use  <input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff  <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)  _____ Signature of Authorised Signatory of the Importing Country			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1	N/M	2 X 40'HC CONTAINERS STC :- 2572 ROLLS OF POLYESTER KNITTED PILE FABRICS IMPORTING COUNTRY HS CODE 6001929000 EXPORTING COUNTRY HS CODE 6001929000  TEC CODE: BONPG0351Q GST NO.: 07BONPG351Q1ZL PAN NO.: BONPG0351Q	WO	45930.000 KGS USD174521.75	05622266 27.05.2022
Page 1 of 1				TOTAL:	45930.000 KGS USD174521.75
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in _____ MALAYSIA (Country)  and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to _____ INDIA (Importing Country)  _____ SELANGOR, 22 June 2022 Place and date, signature of authorised signatory			12. Certification It is hereby certified, on the basis of control carried out that the declaration by the exporter is correct.   _____ MARIA HASSAN Place and date, signature and stamp of certifying authority		
13. Where appropriate please tick: <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation					

**Screenshot from the Malaysian Government portal wherein the reference number used by M/s. Saanvi Impex found not existed:**




The screenshot shows a web browser window with the URL `newepco.dagangnet.com.my/dnex/dnex_app/`. The page header includes the **TRADELINK** logo, the state **NSW**, and the text **ePCO COO Verification System**. Below the header is a search interface with a dropdown menu labeled **PLEASE CLICK HERE TO SEARCH**. The search criteria are: **Endorsement No** with the value `KL-2022-AI-22-0100534`. There are **RESET** and **SEARCH** buttons. Below the search area, a blue button displays the message: **Endorsement No does not exist.**

**(III) COO copy produced by M/s. Saanvi Impex:**

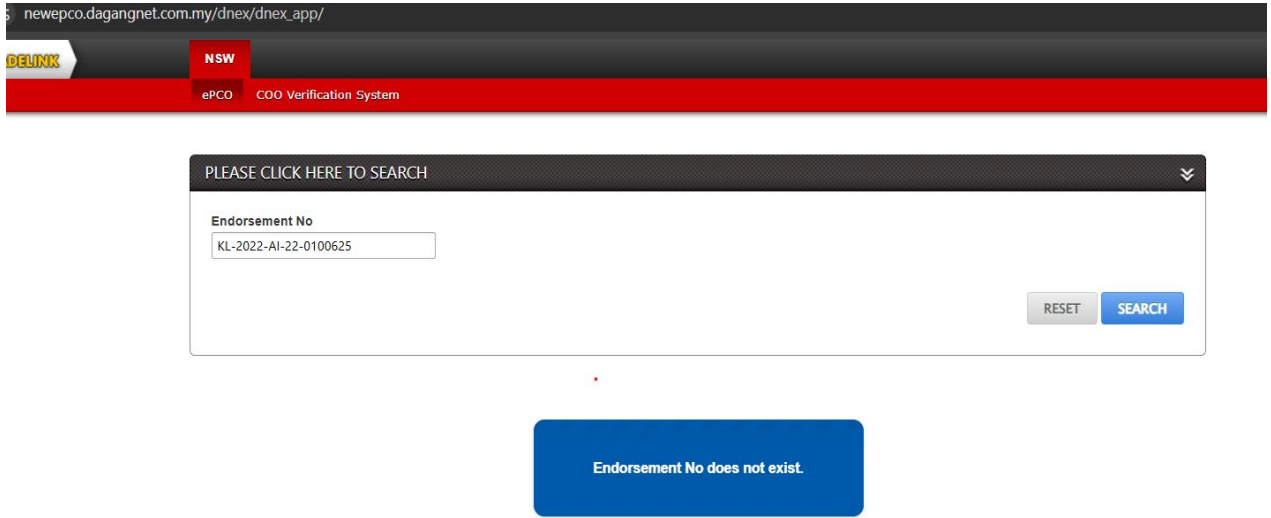
7884051850

ORIGINAL

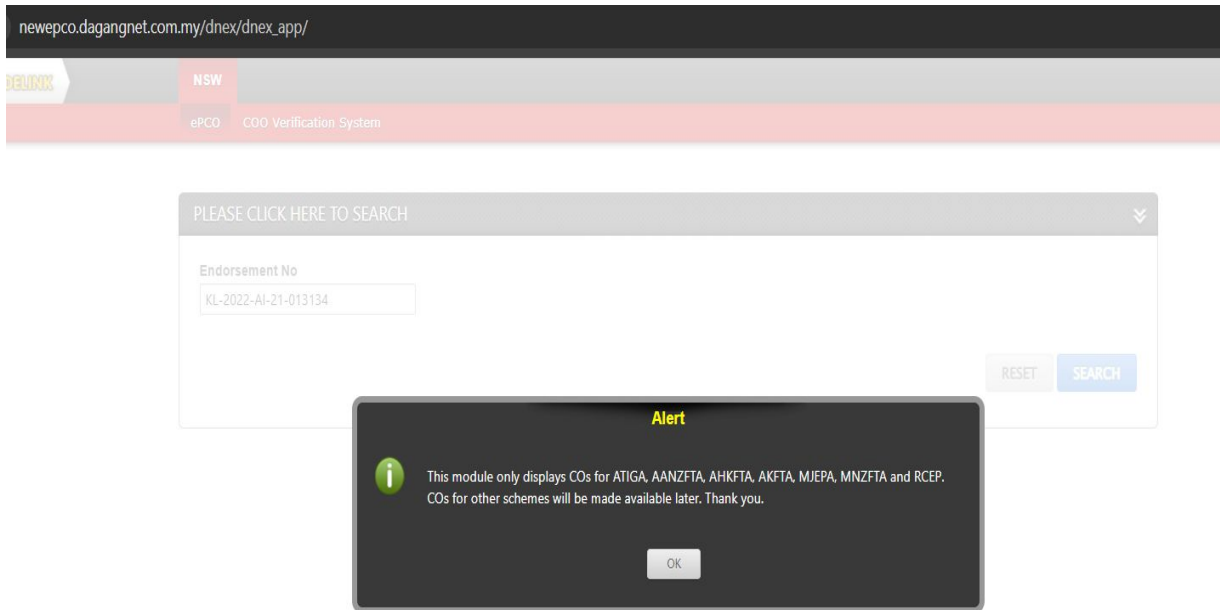
69

1. Goods consigned from (Exporter's business name, address, country)  MULTI RESOURCES VENTURES SDN BHD LOT 11892, JALAN TELOK GONG, TELOK GONG, 42000 PORT KLANG, SELANGOR DARUL EHSAN, MALAYSIA		Reference No. KL-2022-AI-22-0100625  <b>ASEAN-INDIA FREE TRADE AREA                  PREFERENTIAL TARIFF                  CERTIFICATE OF ORIGIN                  (Combined Declaration and Certificate)</b>  <b>FORM AI</b> MALAYSIA Issued in _____ (Country) (See Notes Overleaf)			
2. Goods consigned to (Consignee's name, address, country)  SAANVI IMPEX GROUND FLOOR, H, NO 17, BLOCK C-11, MODEL TWON III NORTH WEST DELHI, DELHI, 110009		3. Means of transport and route (as far as known)  Departure Date: 15 July 2022 by MARITIME TRANSPORT  Vessel's Name/Aircraft, etc.:  COSCO HAMBURG / 257W  Port of Discharge: MUNDRA, INDIA			
4. For official use  <input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff  <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)  _____  Signature of Authorised Signatory of the Importing Country		5. Item number 6. Marks and numbers on Packages 7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country) 8. Origin criterion (see Notes overleaf) 9. Gross weight or other quantity and value (FOB) 10. Number and date of invoices			
1	N/M	2 X 40HC CONTAINERS STC :- 2828 ROLLS OF POLYESTER KNITTED PILE FABRICS IMPORTING COUNTRY HS CODE 6001929000 EXPORTING COUNTRY HS CODE 6001929000	WO	46580.000 KGS USD168625.63	05622316 15.06.2022
		TOTAL:		46580.000 KGS USD168625.63	
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in MALAYSIA (Country)  and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to INDIA (Importing Country)  SELANGOR, 18 July 2022 Place and date, signature of authorised signatory		12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.   for Secretary General Ministry Of International Trade and Industry Malaysia Kuala Lumpur, 18 July 2022 Reference No. W-220715-KL-006822 MARIA HASSAN Place and date, signature and stamp of certifying authority			
13. Where appropriate please tick: <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation					

**Screenshot from the Malaysian Government portal wherein the reference number used by M/s. Saanvi Impex found not existed:**



**Screenshot from the Malaysian Government portal wherein the reference number used by M/s. Saanvi Impex found not existed:**



**Table-A: Details of CoOs verified on portal of Malaysian Government**

Sr.	B.E./	CoO No.	Consignee	Remarks
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<b>No.</b>	<b>B.E.(SEZ To DTA) No.</b>	<b>submitted by M/s Saanvi Impex</b>	<b>name as per CoO certificate issued from the portal</b>	
1	2001601	KL-2023-AI-21-003572	Bain Capability Centre India Pvt Ltd	COO issued to the different Consignee/entity. Hence, found to be fake/forged.
2	2001713	KL-2023-AI-21-003918	Himalaya Wellness Company	COO issued to the different Consignee/entity. Hence, found to be fake/forged.
3	2001712	KL-2023-AI-21-003672	Decathlon Sports India Pvt Ltd	COO issued to the different Consignee/entity. Hence, found to be fake/forged.
4	2003683	KL-2023-AI-21-004277	Dover India Pvt Ltd	COO issued to the different Consignee/entity. Hence, found to be fake/forged.
5	2010130	KL-2022-AI-22-0100534	Endorsement No. does not exist	Endorsement No. does not exist
6	2010131	KL-2022-AI-22-0100533	Endorsement No. does not exist	Endorsement No. does not exist
7	2011999	KL-2022-AI-22-0100625	Endorsement No. does not exist	Endorsement No. does not exist
8	2012000	KL-2022-AI-22-0100623	Endorsement No. does not exist	Endorsement No. does not exist
9	2012001	KL-2022-AI-22-0100624	Endorsement No. does not exist	Endorsement No. does not exist
10	2012911	KL-2022-AI-22-0100718	Endorsement No. does not exist	Endorsement No. does not exist
11	2018105	KL-2022-AI-21-013134	Endorsement No. does not exist	Endorsement No. does not exist
12	2020492	KL-2022-AI-22-0101057	Endorsement No. does not exist	Endorsement No. does not exist
13	2021055	KL-2022-AI-22-0101084	Endorsement No. does not exist	Endorsement No. does not exist
14	2000279	KL-2022-AI-22-0101114	Endorsement No. does not exist	Endorsement No. does not exist
15	2001108	KL-2022-AI-21-016895	Endorsement No. does not exist	Endorsement No. does not exist
16	2003686	KL-2023-AI-21-004487	Jain Resource	COO issued to the different Consignee/entity. Hence, found

			Recycling Pvt Ltd.	to be fake/forged.
17	2004084	KL-2023-AI-21-004793	Lifestyle International Pvt Ltd.	COO issued to the different Consignee/entity. Hence, found to be fake/forged.
18	2019579	KL-2022-AI-22-0101033	Endorsement No. does not exist	Endorsement No. does not exist
19	2326545	KL-2022-AI-22-0100792	Endorsement No. does not exist	Endorsement No. does not exist
20	2374406	KL-2022-AI-22-0100800	Endorsement No. does not exist	Endorsement No. does not exist

## **21. Discussion on applicability of Section 28DA of the Customs Act, 1962:**

**21.1** The entire structure of the importer's claim for preferential tariff benefit under Notification No. 46/2011-Cus dated 01.06.2011 rests upon the Certificates of Origin purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia. Under the ASEAN-India Free Trade Agreement (AIFTA), the Certificate of Origin is not merely a procedural document but a substantive instrument certifying that the goods satisfy the prescribed origin criteria which includes regional value content and product specific rules. However, in the present case, verification undertaken from the official Malaysian Government portal revealed that all twenty Certificates of Origin relied upon by M/s. Saanvi were not authentic and fake. Sixteen of the CoOs bore endorsement numbers that were non-existent in the official database, and in four cases the same reference numbers corresponded to entirely different exporters, consignees and descriptions of goods. For example, CoO No. KL-2023-AI-21-003572 submitted by the importer reflected "Hubking Resources" as exporter and the importer as consignee for polyester fabrics, whereas the official portal reflected "Teknion Furniture Systems (Malaysia) SDN BHD" as exporter and "Bain Capability Centre India Pvt Ltd" as consignee for entirely unrelated goods. Such discrepancies are not explainable as clerical irregularities; they strike at the authenticity of the document itself and establish fabrication. Once the foundational document evidencing origin is found to be forged or fake, the preferential claim collapses in entirety. In such circumstances, the Certificates of Origin become invalid for the purposes of AIFTA and attract the consequences contemplated under Section 28DA(10)(iii) of the Customs Act, 1962, which provides that preferential treatment may be refused where the certificate of origin is not authentic or contains not authenticated alterations.

**21.2** At this stage, it becomes necessary to examine the statutory framework of Section 28DA of the Customs Act, 1962, which governs claims of preferential rate of duty under trade agreements. Section 28DA(1) imposes four cumulative obligations upon the importer: first, to make a declaration that the goods qualify as originating goods; second, to possess sufficient information regarding the manner in which origin criteria are satisfied; third, to furnish such information in the prescribed manner; and fourth, to exercise reasonable care as to the accuracy and truthfulness of the information furnished. These are not empty formalities; they constitute substantive statutory duties designed to prevent abuse of trade agreements. Section 28DA(2) further clarifies that submission of a Certificate of Origin issued by the designated authority does not absolve the importer from the responsibility to exercise reasonable care. The legislative intent is clear: the importer cannot act as a passive conduit merely forwarding whatever certificate is supplied by the exporter. The importer is statutorily obligated to ensure that the origin claim is supported by verifiable and sufficient information.

**21.3** In the present case, the record reveals that Shri Mohit Gupta admitted that he did not possess any information regarding regional value content, manufacturing process, or product specific origin criteria. He admitted that he relied solely upon the Certificates of Origin forwarded by the supplier. Such admission demonstrates direct non-compliance with Section 28DA(1)(ii), which mandates possession of sufficient information regarding origin criteria. Equally, the failure to verify the authenticity of the issuing authority or the manufacturing activity reflects absence of “reasonable care” as contemplated under Section 28DA(1)(iv) of the Customs Act, 1962. The statutory standard of reasonable care is objective in nature; it requires conduct expected from a prudent importer engaged in international trade. When repeated consignments involving substantial revenue implication are cleared at nil Basic Customs Duty, elementary prudence would require verification of origin credentials, particularly when the supplier is primarily a Chinese entity claiming manufacturing shift to Malaysia. The importer’s omission to undertake even basic verification cannot be characterized as a minor lapse; it constitutes a clear breach of statutory obligation.

**21.4** Section 28DA(3) empowers the proper officer, where he has reasons to believe that origin criteria have not been met, to require the importer to furnish further information. In the instant case, the proper officer had cogent reasons to doubt the origin claim, as portal verification revealed non-existent or mismatched CoO numbers. Once such prima facie doubt arose, the statutory burden shifted to the importer to substantiate the

origin claim by producing requisite supporting information. However, the importer failed to provide any documentary evidence regarding manufacturing, regional value addition, or product specific compliance. In such circumstances, Section 28DA(4) authorizes the proper officer to disallow the claim for preferential rate of duty. The proviso to Section 28DA(4) empowers the Principal Commissioner or Commissioner to disallow the preferential claim without further verification, on the basis of information available or where the importer fails to provide requisite information. Therefore, the argument that verification from the foreign issuing authority was mandatorily required is legally untenable. The statute itself provides that disallowance may be based on available evidence where the importer fails to discharge his burden.

**21.5** Further, Section 28DA(10) permits refusal of preferential tariff treatment without verification in specified circumstances, including where the certificate of origin is not authentic, contains not authenticated alterations, or is otherwise invalid. In the present case, the Certificates of Origin have been found to bear non-existent endorsement numbers or mismatched exporter/consignee details, thereby rendering them inherently invalid and not authentic. Once the foundational document is fabricated, insistence on diplomatic or inter-governmental verification becomes unnecessary, as the document fails at the threshold of authenticity. The statutory framework thus clearly contemplates summary refusal of preferential benefit where the certificate itself is apparently false.

**21.6** Thus, when Section 28DA is interpreted harmoniously, it becomes evident that the statutory scheme places primary responsibility upon the importer to ensure authenticity and origin compliance. The importer in the present case failed to possess requisite origin information, failed to exercise reasonable care, relied upon fabricated Certificates of Origin, and failed to rebut official verification evidence. Consequently, the claim for preferential benefit under Notification No. 46/2011-Cus is unsustainable in law. Further, during the entire investigation and adjudication proceedings, the importer has not disputed the fact that the COO Certificates were fake, forged or non-exist. The disallowance of the AIFTA benefit is therefore fully justified under Sections 28DA(1), 28DA(2), 28DA(4) and 28DA(10) of the Customs Act, 1962.

**21.7** Accordingly, I find that the necessary conditions for rejection of claims of preferential rate of duty, without further verification, are applicable in the present case. These findings were corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in

respect of the impugned 20 Bills of Entry, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be either fake or non-existent with the system displaying the remark "Endorsement No does not exist". This clearly established that the Certificates of Origin relied upon by the importer were not authentic and were not issued by the said authority.

**21.8** I observed that the Noticees, through their written submission dated 05.02.2026, have submitted that denial of AIFTA benefit is unsustainable without verification through the prescribed Operational Certification Procedure and that portal-based verification cannot be the basis for concluding that the Certificates of Origin are fake. I am unable to accept this contention for the reasons recorded herein.

21.8.1 I find that the verification in the present case was conducted through the official CO Verification System (CVS) maintained by the MITI, Malaysia, which is the designated issuing authority under AIFTA. The said portal is an authentic platform meant exclusively for verification of Certificates of Origin by authorized focal points of importing countries. I note that access to this system is restricted and provided only to designated government officials due to the confidential and sensitive nature of the information contained therein. The portal is not a public website meant for general access or public proceedings. The confidentiality of the system, including user credentials and user guide, is required to be maintained and cannot be disseminated to unauthorized or unintended parties. I further note that only one authorized user ID has been provided by MITI, Malaysia to the Indian Customs administration for verification purposes. In view of the confidentiality attached to the said access credentials and the sensitive nature of inter-governmental verification mechanisms, the user guide and system access details cannot be treated as relied upon documents for disclosure in adjudication proceedings. However, I find that the status of the said COO Certificates are still verifiable from the said portal. Upon verification, status of the COO Certificates reference numbers were found either to be non-existent or not matching with the particulars declared in the Bills of Entry.

20.8.2 I also find that the dispute in the present case is not one relating to computation of regional value content or interpretation of origin criteria. The allegation is not that the goods failed to meet value addition norms; rather, the allegation is that the Certificates of Origin themselves are unauthentic. When the foundational document certifying origin is found to be non-existent or mismatched in core particulars such as

exporter, consignee and description of goods, the question of undertaking further retroactive check does not arise. A document which is itself not traceable or does not correspond with official records cannot be treated as a valid Certificate warranting further origin examination.

**21.9** I further find that the Noticees have repeatedly asserted that they are not the issuing authority of the Certificates of Origin and that there is no evidence of fabrication by them. This defence, in my view, overlooks the statutory obligation under Section 28DA(1) which casts a positive duty upon the importer to possess sufficient information regarding origin criteria and to exercise reasonable care as to the accuracy and truthfulness of the claim. I note that the Noticees have not produced any documentary evidence such as regional value content calculation, manufacturing details, supplier declarations, back-to-back invoices, or confirmation from the issuing authority to establish that the goods satisfied AIFTA origin criteria. The defence has thus remained confined to questioning the investigation rather than substantiating the legitimacy of the exemption claim. It is settled law that the burden to prove eligibility to an exemption notification lies upon the claimant. In the absence of any supporting origin documentation, the preferential claim cannot be sustained merely on the basis of a disputed certificate.

**22. Burden of Proof in Respect of Exemption Claim – Onus on the**

**Importer:** I find it necessary to reiterate the settled legal position that the burden to prove eligibility to an exemption notification lies squarely upon the person who claims the benefit thereof. An exemption notification is in the nature of an exception to the general rule of levy of duty, and therefore its conditions must be strictly complied with. The claimant must establish, through cogent and affirmative evidence, that all statutory requirements and conditions prescribed therein are fully satisfied. In the present case, M/s. Saanvi Impex claimed preferential tariff benefit under Notification No. 46/2011-Cus (AIFTA). Consequently, the burden was upon the importer to demonstrate that the goods qualified as originating goods under the applicable Rules of Origin and that valid Certificates of Origin were produced in compliance with Section 28DA of the Customs Act, 1962. Mere production of a document styled as a Certificate of Origin does not discharge this burden, particularly when serious discrepancies regarding its authenticity have been brought on record. In the absence of supporting origin-compliance documents or any evidence establishing fulfillment of origin criteria, the importer has failed to discharge the onus cast upon it. Therefore, the benefit of the notification cannot be granted to the Importer. The burden to prove the eligibility of exemption notification is on importer;

and the exemption notification are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)]** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.
- The constitutional bench dated July 30, 2018 of Hon'ble Supreme Court of India in the case of **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ...APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007)** held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation. Relevant Para the said judgement is reproduced hereunder;

“41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.”

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

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

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

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

### **23. Invocation of Extended Period under Section 28(4) of the Customs Act, 1962:**

**23.1** I have discussed in detail that the importer has failed to comply with the statutory obligations under Section 28DA of the Customs Act, 1962 and that the Certificates of Origin relied upon were forged/not authentic/non-exist, it now becomes necessary to examine whether such violation attracts the extended period under Section 28(4) of the Customs Act, 1962. Section 28(4) of the Customs Act, 1962 provides that where duty has not been levied or has been short-levied by reason of collusion, wilful misstatement or suppression of facts, the proper officer may issue notice within five years from the relevant date. The provision requires existence of a positive act or omission attributable to the importer that results in non-payment or short-payment of duty. In the present case, the importer filed Bills of Entry claiming preferential benefit under AIFTA, thereby declaring that the goods qualified as originating goods and that valid Certificates of Origin were being furnished in support of such claim. This declaration is not a passive procedural formality but a substantive representation made under the self-assessment regime.

**23.2** In the present case, the Importer had claimed preferential rate of duty by declaring the country of origin of the imported goods as Malaysia and by submitting Certificates of Origin purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia. The Importer has filed 20 Bill of Entry while claiming concessional rate of BCD on the basis of Importer's declaration in the subject Bills of Entry- ***“I/We declare that content of this Bill of entry imported against above mentioned Bill of Lading number are in accordance with the above mentioned invoice(s) No(s) and other documents presented herewith”***. The Importer have accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer have also declared that the said goods ***“I/We declared that these goods qualify as originating goods for preferential rate of duty under the Customs (Administration of Rules***

***of Origin under Trade Agreements) Rules, 2020 notified vide Customs notification no. 81/2020-Customs (NT) date 21.08.2020".***

**23.3** I find that; the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Further, with the introduction of self-assessment by amendment to Section 17, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the country of origin while being presented to the Customs. However, In the present case, as discussed under foregoing paras, it is evident that the importer had deliberately evaded customs duty by producing fake/forged Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty under Customs Notification No. 46/2011 dated 01.06.2011. These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be fake or non-existent, with the system displaying the remark "Endorsement No does not exist". This verification clearly established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority.

**23.4** A thorough examination of the above facts undoubtedly establishes that the Noticee deliberately suppressed material facts while importing the subject goods, with the intent to circumvent the provisions of the Customs Act, 1962 and the relevant exemption notifications, and to obtain undue benefits. I have no doubt that the origin of the imported goods was misrepresented in order to wrongfully avail benefits under the ASEAN-

India Free Trade Agreement. Such a modus operandi enabled the Noticee to misuse the Free Trade Agreement between India and Malaysia and thereby evade payment of the applicable customs duties on the imported goods. The Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic. On being confronted with the genuine COO Certificates and screenshot of the Malaysian Government portal, Shri Mohit Gupta stated that later COO (actual one) seems to be genuine as the same is downloaded from the Govt. Portal of Malaysia. He further acknowledged and stated that COO produced by him before Indian Customs appears to be fake and he had to verify the genuineness of the same from their supplier in China. However, the fact is here it that no such verification, if any, done by Shri Mohit Gupta and no such verification related information was ever provided by him. This raise serious doubt on the integrity of Shri Mohit Gupta. Under Section 46(4A), the importer presenting a Bill of Entry is statutorily obligated to ensure the authenticity and validity of supporting documents. Read conjointly with Section 28DA(1)(iv), which mandates exercise of reasonable care as to the accuracy and truthfulness of information furnished, it is evident that the importer bears a statutory duty not merely to submit documents but to ensure their genuineness. In the present case, the importer submitted Certificates of Origin which have been established to be fabricated or not authentic. The verification conducted from the official Malaysian portal demonstrated that several CoO numbers were either non-existent or corresponded to entirely different exporters, consignees and goods. Such fundamental falsity could not have gone unnoticed had even minimal due diligence been exercised.

**23.5** In the present case, the importer failed to disclose that no verification of manufacturing activity had been undertaken, that no origin compliance information was possessed, and that the supplier was primarily a Chinese entity routing goods through Malaysia. These facts were material to determination of eligibility under AIFTA. The non-disclosure of such material circumstances, coupled with submission of fabricated certificates, squarely attracts the ingredients of suppression and wilful misstatement. It is also relevant that the discrepancies were not discovered through routine scrutiny of documents furnished by the importer but were unearthed through independent verification by the investigating agency. The subsequent admission by the person handling the operations that the Certificates of Origin “appeared to be fake” further reinforces the conclusion that the importer was aware of the doubtful authenticity of the documents. Therefore, I find that the ingredients necessary for invocation of the extended period under Section 28(4) are

fully satisfied. I find that in the instant case, the Noticee had willfully mis-declared the Country of Origin as Malaysia the time of filing of the Bills of Entry to evade payment of correctly leviable duty. The Noticee deliberately chose to mis-declare the COO to take full duty exemption benefit, being fully aware that the CoO were not authentic. This willful and deliberate act clearly brings out their 'mens rea' in this case. Thus, demand has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of this finding of invoking extended period, I rely upon the following court decisions:

**(a) 2013(294) E.L.T.222 (Tri. - LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi** [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

*"In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified"*

**(b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I;** Tax Appeal No. 132 of 2011, decided on 27.01.2012.

*"Demand – Limitation – Fraud, collusion, willful misstatement, etc. – Extended period can be invoked up to five years anterior to date of service of notice – Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, willful misstatement, etc., rejected as it would lead to strange and anomalous results;"*

**(c) 2005 (191) E.L.T. 1051 (Tri. – Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune:** Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19- 7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

*"Demand – Limitation – Blind belief cannot be a substitute for bona fide belief – Section 11A of Central Excise Act, 1944. [para 5]"*

**(d) 2006 (198) E.L.T. 275 (Tri. Bom) –Interscape v. CCE, Mumbai-I:** in the case, it has been held by the Hon'ble Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

**23.6** I also find that the Noticee's plea against invocation of extended limitation under Section 28(4) is without merit. The Noticees contend that all documents were disclosed at the time of assessment and hence there was no suppression. However, I note that submission of a document subsequently found to be fabricated or not authentic cannot be equated with full and true disclosure. The declaration in the Bills of Entry that goods were eligible for preferential treatment was a positive assertion of fact. When such assertion is founded upon documents found to be false in material particulars, the ingredients of wilful misstatement stand attracted. The fact that the irregularity came to light only upon independent verification by the investigating agency further establishes that the true facts were not disclosed.

**24. STATEMENTS RECORDED DURING THE INVESTIGATION:** I find that Sh. Mohit Gupta, is the main person who looked after all the work of the said company. Thus, the statements tendered by him are the key evidences for confirmation of charges in the subject case and provide backings to the charges levelled against the exporter. However, the Noticee during the written submissions argued that the statement of Shri Mohit Gupta cannot be relied upon since the same has been taken under coercion. I, with respect to this claim, found that a mere allegation by the Noticee of duress or coercion is not sufficient to nullify the statement's value. The burden lies on the Noticee to prove that the statement was recorded under coercion, threat, or undue influence. It is undisputed fact that under Section 108 of the Customs Act, customs authorities have the power to summon and record statements. From the facts of the case, I noticed that no complaint was lodged before any higher authority or Court with respect to their claim, nor was any retraction made after the statement recorded by the investigating agency. On the contrary, the noticee continued to tender his statements in other similar type of cases of M/s. Gurukripa Textile, M/s. Harihar Enterprises etc. I find that claim related to coercion during investigation is appears to be nothing but just a trick to absolve themselves from responsibility. Instead of acknowledging their obligation to prove that the benefit was claimed legitimately, they questioned the investigation. I find that confessional and corroborative statements recorded under Section 108 of the Customs Act, 1962, are one of the vital tools in the hands of the department to establish the role of the offenders. These statements are in the nature of substantive evidence and culpability of the concerned persons can be based on the same. The scope of these provisions of law has been examined in a large number of authoritative judgements of the Supreme Court and the High Courts, as under:

- *It has been held by the Hon'ble Supreme Court in the judgment in Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar - 1997 (96) E.L.T. 211 (S.C.):*

*"7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940, and KI. Pavynny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 24] (S.C) = (1997) 3 SCC 721."*

- *The Hon'ble Supreme Court has observed in the case of Naresh J. Sukhwani v. Union of India - 1995 Supp. (4) SCC 663 = AIR 1996 SC 5 = 1996 (83) E.L.T. 258:*

*"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."*

- *A Constitution Bench of Apex Court of India in the matter of Romesh Chandra & Mehta v. State of W.B. - (1999 (110) E.L.T. 327(S.C.) held that Customs Officer is not a Police Officer AND Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence and are not hit by Section 25 of Indian Evidence Act.*
- *Further the admitted facts need not to be proved as held by Hon'ble High Court of Madras in the case of **Govindasamy Raghupati reported in 1998 (98) ELT 50 (Mad.)**. In the said judgement the Hon'ble Court held that "Confessional statement made under Section 108 of Customs Act, 1962 before Customs Officers regarded as voluntary and not to be viewed with suspicion - Retraction of such confessional statement not affects its evidentiary value."*
- *Hon'ble Supreme Court in the case of **Surjeet Singh Chhabra v. Union of India & Others reported in 1997 (89) E.L.T. 646 (S.C.)**, has also pronounced that confessional statement made before Customs officer*

*under Section 108 of the Customs Act, 1962, though retracted, is an admission and binding since Customs Officers are not Police Officers.*

- *Further, in the case of Gulam Hussain Shaikh Chougule Vs S. Reynolds, Supdt. Of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC), relying on various judgments of Apex Court of reported at AIR 1972 SC 1224, 2000 (120) ELT 280 (S.C.); 1999 (110) ELT 324 (S.C.); 1992 (60) ELT 24 (S.C.); 1999 (110) ELT 309 (S.C.); 1983 (13) ELT 1443 (S.C.); 1983 (13) ELT 1590 (S.C), has further held that confessional statement recorded by Customs officer under Section 108 of Customs Act, 1962 are not required to follow safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.*

In view of the above, I have no doubt that the statements are legitimate and have legal authority. I do not find any infirmity in the statement tendered by him. Accordingly, the charges proposed in the Show Cause Notice regarding wrong availment of COO benefit are confirmed.

**24.1** The Noticees have also alleged coercion in recording statements and have attempted retraction. I find that no contemporaneous complaint of coercion was made at the time of recording of statements. The retraction has been made only after issuance of the Show Cause Notice and consultation with legal counsel. As discussed above, it is well settled that a belated and bald allegation of coercion, unsupported by evidence, does not efface the evidentiary value of a statement recorded under Section 108. The statement of Shri Mohit Gupta, wherein he admitted lack of origin compliance information and acknowledged discrepancies in the Certificates of Origin, acceptance of the nature of the COO Certificates produced by him as fake, remains valid. I therefore find no merit in the plea that the statements were involuntary.

**24.2** I further note that the Noticee has contended that the documents marked as RUD-14 to RUD-32 ought not to be treated as voluntary payments, admissions or settlement. It is an undisputed fact that payments were made during the course of investigation. The Noticee has not produced a single document/evidence to show that such payments were forged, extracted under threat, coercion or duress. No complaint was lodged before any superior authority, no representation was made alleging coercion at the relevant time, and no material has been placed on record to substantiate the bald allegation of force. On the contrary, the Show Cause Notice itself records at para 14 that M/s. Saanvi Impex, vide letter dated 03.05.2023, submitted a demand draft of Rs. 50,00,000/- clearly stating that the payment was being made “under protest and without prejudice” to the right to challenge the demand before the appropriate legal forum. Such recording itself demonstrates that the Noticee was conscious of his legal

rights and expressly reserved the same while making payment. Therefore, it cannot now be contended that the payment was made under threat or coercion. Further, the Noticee in their reply dated 04.02.2026, has submitted that they had paid Rs. 25,25,595/- vide TR-6 Challan No. 01/2025-26 dated 01.04.2025. I find that payment made by the Noticee vide TR-6 Challan No. 01/2025-26 dated 01.04.2025 amounting to Rs. 25,25,595/- was not considered in the Show Cause Notice, as voluntarily payment. The payment particulars, as claimed by the Importer, found to be legitimate. Thus, total payment made by the Noticee amounts to Rs. 6,86,67,054/- (66141459+2525595).

**24.3** I further find that the Noticee has failed to explain through what mode or medium he communicated with the investigating agency while forwarding such payments. It is also relevant that in two other cases, namely M/s. Harihar Enterprises and M/s. Gurukripa Textile, wherein Shri Mohit Gupta is the key person, payments were similarly made during investigation. This pattern indicates a consistent course of conduct rather than any isolated instance of alleged coercion. I also note that from the date of issuance of the Show Cause Notice, wherein all relevant documents including RUD-14 to RUD-32 were supplied, the Noticee did not immediately dispute the genuineness of the letters or signatures. It is only at the final stage of adjudication, nearly two and a half years after making the payments, that the Noticee has raised a plea that the letters were not signed by him and has sought forensic examination. I find this belated contention to be devoid of credibility and unsupported by any prima facie material. Such afterthought plea, raised at the end of proceedings, appears to be nothing but an attempt to delay adjudication and to disown documents already on record. Accordingly, I reject the contention that the payments or accompanying letters cannot be taken into consideration, and I find that the belated challenge to the authenticity of RUD-14 to RUD-32 lacks merit. Even assuming such payments were made without admission of liability, the same do not detract from the substantive evidence on record regarding wrongful avilment of exemption. The issue of liability must be decided on the basis of statutory provisions and evidentiary material, not on characterization of interim payments.

**25. Liability of Interest under the provisions of Section 28AA of the Customs Act, 1962:** I find that the Noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

**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.*

Section 28AA of the Customs Act, 1962 provides that when a person is liable to pay duty under Section 28, such person is also required to pay interest at the notified rate, in addition to the duty, whether the duty is paid voluntarily or after its determination. The levy of interest follows automatically as a statutory consequence and the same is not optional in nature. Even though in the case wherein the bona fide conduct of the importer is visible, it does not by itself extinguish or reduce the statutory liability to pay interest under Section 28AA of the Customs Act, 1962. Thus, interest remains mandatorily payable.

**26. Violation of the provisions of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020):**

19.22 Further, it is observed that the Importer is required to possess information and knowledge as per Rule 4 read with Rule 5 of the CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. The said Provisions of Rule 4 and Rule 5 are reproduced below:

**- Rule 4.**

**Origin related information to be possessed by importer. -**

The importer claiming preferential rate of duty shall-

(a) possess information, as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.

(b) keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.

(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.

### **Rule 5.**

#### **Requisition of information from the importer. -**

(1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.

(2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.

(3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.

(4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.

(5) Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:

(a) The importer relinquishes the claim; or

(b) The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

## **26.1 From the above, I observe that:**

- In the instant case that there is no dispute about the fact that the Noticee has taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty, as prescribed in Rule 4 (c) of the CAROTAR, 2020.
- Further, Noticee has failed to provide the above said vital information along with supporting documents as prescribed in Rule 4 (b) of the CAROTAR, 2020 at any relevant point of time namely i) at the time of recording of his statement under section 108 of the Customs Act, 1962, or (ii) in its defence reply.
- Additionally, Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to 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. As per Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility. Therefore, I find that the Noticee has violated Rule 4 & 5 of CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. Further, as mandated by Section 28DA of the Customs Act, 1962 read with Rule 4 of CAROTAR, 2020, The Importer has failed to possess sufficient information as per Form I of the said rules along with supporting documents of the same.

Therefore, in terms of Section 28DA of the Customs Act, 1962, Noticee cannot avoid responsibility of ensuring accuracy and truthfulness of COO certificate, facing the consequences in terms of payment of related duty, interest, fine and penalties.

## **27. Confiscation of goods under Section 111(m) & 111(q) of the Customs Act, 1962:**

**27.1** I find that the Show Cause Notice proposes confiscation of the imported goods under the provisions of Section 111(m) and 111(q) of the Customs Act, 1962. Section 111(o) renders goods liable to confiscation if they are exempted from duty subject to any condition under the Act or any other law, and such condition is not observed, unless the non-observance is sanctioned by the proper officer. In this case, the importer availed conditional exemption from Basic Customs Duty (BCD) under Notification No. 46/2011-Customs dated 01.06.2011, as amended, which provides preferential tariff treatment for goods originating from ASEAN countries under the AIFTA. Rule 13 of Notification No. 189/2009-Customs (Non-Tariff) is reproduced for better appreciation:

*“Rule 13 Certificate of Origin- A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin 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 Appendix D.”*

From the above Rule 13, it is evident that the condition for this exemption is the production of a valid Certificate of Origin (CoO) certifying that the goods meet the origin criteria specified in the AIFTA Rules of Origin. As discussed under foregoing paras, the importer is not eligible for the AIFTA benefit as the CoOs submitted were not authentic and fake. This act on the part of the importer rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

**27.2** Section 111(q), inserted vide Finance Act, 2020 (12 of 2020) dated 27.03.2020, specifically addresses goods imported on a claim of preferential rate of duty that contravene any provision of Chapter VAA (Special Provisions Relating to Preferential Rate of Duty under Trade Agreements) or rules thereunder. Chapter VAA, covering Sections 28DA to 28DC, mandates importers to declare origin qualification, possess and furnish information on origin criteria, and exercise reasonable care regarding the accuracy of such information. The importer's by submitting forged CoOs violates Section 28DA, as they failed to ensure the authenticity of the documents and did not possess verifiable details. Consequently, the goods contravene Chapter VAA provisions, which makes them liable to confiscation under Section 111(q) of the Customs Act, 1962.

**27.3** As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the

present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in **C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]**. Para 23 of the said Judgment is as follows:

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

**27.4** I further find that the above view of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited* reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of *M/s Synergy Fertichem Pvt. Ltd* reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I note that the case involves availment of exemption

from Basic Customs Duty (BCD) under Notification No. 46/2011-Customs dated 01.06.2011, as amended, but does not involve prohibited goods or smuggled goods. I find it appropriate to maintain proportionality between the gravity of offence and the extent of revenue implication. Considering the nature of the violation and the principle that redemption fine should not be excessive, the ends of justice would be met if the redemption fine is restricted to approx. 50% of the differential duty.

**28 With regards to Cross Examination sought by the Noticees:**

**28.1** I have carefully considered the request of the Noticee seeking cross-examination of the investigating officers who accessed the Malaysian Government portal and downloaded the verification screenshots. I note that the Noticee has contended that denial of cross-examination would vitiate the proceedings and has relied upon various judicial precedents in support of such plea. In the present case, I find that the investigating officers whose cross-examination is sought is a Customs officer who accessed an official foreign government portal in discharge of official functions during investigation. The screenshots downloaded from the Malaysian portal are not personal statements of the officers but are electronic records obtained from an official source. The officers are not witnesses to any disputed private transaction; rather, they have merely placed on record the results of verification conducted from a recognized government portal. The authenticity or otherwise of the Certificates of Origin is established primarily through documentary comparison and portal data, not through any oral testimony of the investigating officers.

**28.2** I further note that the Noticee has not demonstrated any specific prejudice that would arise in absence of cross-examination of the officer. The request is framed broadly to question methodology, date of access, and search parameters, but no material has been produced to show that the portal itself is unofficial or that the screenshots are fabricated. Therefore, I find that cross-examination of the officer would not alter the core documentary discrepancies already established on record. I further find that the Noticee, despite serious allegations regarding fabrication and not authenticity of the Certificates of Origin, has not produced a single documentary evidence to establish that the CoOs submitted at the time of import were genuine and validly issued. Instead of discharging the statutory burden cast upon the importer under Section 28DA to possess and furnish sufficient information regarding origin criteria, the Noticee has questioned the manner of investigation and the portal verification process. I find that such approach amounts to shifting the burden onto the Department without first establishing the legitimacy of the exemption claim. It is settled law that the burden to prove eligibility to an exemption

notification lies upon the claimant. In the present case, without producing any affirmative evidence to demonstrate that the Certificates of Origin were genuine, the Noticee cannot seek to invalidate the investigation merely on procedural objections. I therefore hold that the Noticee has failed to discharge its primary responsibility of proving that the preferential benefit availed was legitimate, and such failure further weakens the request for cross-examination and the defence raised in the written submissions.

**28.3** I also find it appropriate to observe that even if, for the sake of argument, it is assumed that no portal verification had been conducted in the present case, the fundamental question would still remain as to what documentary evidence was available with the importer to substantiate the legitimacy of the Certificates of Origin and the corresponding preferential claim. If a simple query had been raised by an audit officer requiring the importer to furnish supporting documents evidencing compliance with origin criteria, the importer was duty bound under Section 28DA to produce such information. However, the Noticee has remained silent and has not produced any such documentary evidence either during investigation or in adjudication proceedings. This absence of supporting material clearly indicates that the preferential claim was made without possession of requisite origin-compliance information. Such conduct cannot be characterized as bona fide or as an instance of innocent reliance on supplier documents; rather, it reflects failure to discharge the statutory responsibility cast upon the importer claiming exemption.

**28.4** I also note that the reliance placed by the Noticee on *Andaman Timber Industries* and *Mahek Glazes* is distinguishable on facts. In those cases, the adjudication was founded substantially on third-party statements, the veracity of which could be tested only through cross-examination. In the present case, the investigating officer's role is limited to retrieval of official electronic data; he is not the author of the portal content nor a private witness making inculpatory allegations.

**28.5** Further, I find that the request for cross examination has been made at the final stage of the proceedings. This appears to be a delaying tactic intended to prolong the adjudication process without any substantive justification. Furthermore, the requesting noticees themselves have made incriminating admissions. Shri Mohit Gupta in his statement clearly admitted that he was handling the entire import operations of M/s. Saanvi Impex, that he did not verify the manufacturing activity in Malaysia, and that he did not possess any documentary evidence relating to fulfillment of origin criteria under AIFTA. I also note that upon being confronted with the portal verification results, he acknowledged that the Certificates of Origin submitted before Customs appeared to be fake or required verification

from the supplier. The statement, being voluntary and recorded under statutory authority, clearly demonstrates knowledge of the deficiencies in the origin claim and thus constitutes substantive self-incriminating evidence corroborating the documentary findings on record.

**28.6** It is further noted that the applicants have not retracted his statements recorded under Section 108 of the Customs Act, 1962. The statements remain voluntary, consistent, and corroborated by independent documentary and scientific evidence. Even after issuance of the Show Cause Notice dated 16.04.2025, the applicants have not disputed the investigation or any of the connected statements. The present request for cross-examination, made only on 04.02.2025, at the last stage of adjudication proceedings, clearly appears to be an afterthought, devoid of any new or justifiable grounds. As the applicants have themselves accepted these facts and never retracted their statements, I find no necessity for cross-examination. Noticee's own uncontroverted confessional statements constitute direct and primary evidence of the conspiracy, mens rea, and duty evasion. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

**a. SANJEEV MAGGU Vs. ADDITIONAL COMMISSIONER OF CUSTOMS [WP (C) No.5184/2019]:** the Hon'ble High Court, Delhi I the said case pronouncing judgement on 26.12.2025 has held that:

"16. The aforesaid persons being Customs Officials, this Court is of the considered view that they were discharging their duties in an official capacity. Consequently, they cannot, as a matter of right, be subjected to cross-examination, particularly in view of the settled position of law laid down by this Court in W.P.(C) 4576/2026 titled M/s Vallabh Textiles vs. Additional Commissioner Central Tax GST, Delhi East and Ors. = 2025-TIOL-680-HC-DEL-GST, wherein the Court has held that the right to cross examination is not an unfettered and absolute right. Prejudice has to be shown which would lead to a conclusion that without cross examination substantial justice cannot be done. The relevant portion of the said decision in M/s Vallabh Textiles (Supra) reads as under:

*"18. A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to*

*cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.*

*19. The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. Persons seeking cross examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained. If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all."*

- b.** Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: ..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- c.** **In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**  
 "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]
- d.** **In the case of Commissioner of Customs, Hyderabad v. Tallaja Impex reported in 2012 (279) ELT 433 (Tri.), it was held that—**

“In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross-examination cannot be claimed as a matter of right.”

**e. Hon’ble Tribunal in the case of P. Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri) has held in Para 5 that:**

“The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable.”

From the above discussion, I find the request for cross-examination is devoid of merit. It is unnecessary in view of the admitted facts, corroborated evidence, noticees own admissions, and was also filed belatedly after accepting the material facts.

**29. Penalty under Section 112(a), 112(b), 114A & 114AA of the Customs Act, 1962.** I observe that the Show Cause Notice proposed penalties on M/s. Saanvi Impex and Shri Mohit Gupta under Section 112(a) & (b)/ 114A & 114AA of The Customs Act, 1962. In order to examine the same, it is necessary to refer to the provisions of Section 112(a) & (b)/ 114A & 114AA of the Customs Act, 1962, which are reproduced as follows:

**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 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 :*

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

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

**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.*

**29.1** The language of Section 114A is imperative: where duty has not been levied or has been short-levied by reason of collusion or wilful misstatement or suppression of facts, the person liable to pay such duty shall also be liable to penalty equal to the duty so determined. Since the duty has been short levied by reason of suppression and wilful mis-statement and the importer is liable to pay differential duty as determined under Section 28(8) of the Customs Act, 1962, the importer, M/s. Saanvi Impex, is liable for penalty equal to the duty amount under the provisions of **Section 114A** of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, once penalty is imposed under Section 114A, no penalty under Section 112 is imposable.

**29.2** Section 114AA of the Customs Act, 1962 provides for penalty where a person knowingly or intentionally makes, signs or uses any declaration or document which is false or incorrect in any material particular in the transaction of business under the Act. In the present case, M/s. Saanvi Impex, while filing Bills of Entry and claiming preferential benefit under Notification No. 46/2011-Cus, used Certificates of Origin which have been found to be fake/not authentic. The COO reference numbers were either non-existent or corresponded to entirely different exporters, consignees

and goods. The repeated use of such false Certificates of Origin for availing undue preferential tariff benefit clearly establishes intentional use of incorrect documents in customs transactions. Accordingly, the importer, M/s. Saanvi Impex, is liable to penalty under **Section 114AA** of the Customs Act, 1962.

**29.3** I find that Shri Mohit Gupta was the person who was actively handling and controlling the entire import operations of M/s. Saanvi Impex, including communication with overseas suppliers, submission of import documents to the Customs Broker, and direction for filing of Bills of Entry claiming AIFTA benefit. He admitted that he did not possess requisite information regarding origin criteria and had not verified the manufacturing activity in Malaysia, however, he continued to use the Certificates of Origin for clearance of goods at preferential rate of duty. Being the person directly concerned with the import, clearance and subsequent dealing of the goods, and having consciously relied upon documents found to be false in material particulars, Shri Mohit Gupta had rendered the goods liable for confiscation. Accordingly, I hold that Shri Mohit Gupta is liable to penalty under Section **112(b)** of the Customs Act, 1962.

**30. In view of the aforesaid discussions and findings, I pass the following order:**

**ORDER**

- i. I order to deny the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the Bills of Entry, as per Annexure-A to the SCN, and disallowed the benefit in terms of Section 28DA of the Customs Act, 1962 and order for re-assessment of subject Bills of Entry by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.
- ii. I order to confiscate the impugned goods having total assessable value of Rs. 29,78,69,356/- (Rupees Twenty Nine Crore Seventy Eight Lakh Sixty Nine Thousand Three Hundred Fifty Six only) as per Annexure-A to the SCN, under the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. I impose redemption fine of **Rs. 3,50,00,000/- (Rupees Three Crores and Fifty Lakhs only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.
- iii. I confirm the demand of differential duty amounting to **Rs. 6,86,67,054/- (Rupees Six Crores Eighty Six Lakh Sixty Seven**

**Thousand Fifty Four only)** under Section 28(4) of the Customs Act, 1962 and order to recover the same from the importer.

- iv. I order to recover interest, as applicable, at the appropriate rate on the short-paid duty from the importer under Section 28AA of the Customs Act, 1962.
- v. Since the amount of Rs. 6,86,67,054/ (Rupees Six Crores Eighty Six Lakh Sixty Seven Thousand Fifty Four only) has already been paid by them, I order to appropriate the said amount towards their duty liability against the aforesaid demand of duty.
- vi. I impose a penalty of **Rs. 6,86,67,054/- (Rupees Six Crores Eighty Six Lakh Sixty Seven Thousand Fifty Four only)** upon M/s. Saanvi Impex under the provisions of Section 114A of the Customs Act, 1962. However, I do not impose any penalty under Section 112(a)/112(b) of the Customs Act, 1962.
- vii. I impose a penalty of **Rs. 1,00,00,000/- (Rupees One Crore only)** upon M/s. Saanvi Impex under the provisions of Section 114AA of the Customs Act, 1962.
- viii. I impose a **Rs. 60,00,000/- (Rupees Sixty Lakhs only)** upon Shri Mohit Gupta under Section **112(b)(ii)** of the Customs Act, 1962.

**31.** This order is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

**(NITIN SAINI)**  
Commissioner of Customs,  
Custom House Mundra.

File No: F No GEN/ADJ/COMM/212/2025-Adjn

**DIN: 20260371M00000323823**

To,

- (i) M/s Saanvi Impex (Prop. Smt. Shilpi Gupta),  
C-11/17, Ground Floor,  
Model Town-III, Delhi- 110009.
- (ii) Shri Mohit Gupta,  
K-1/25, 1st Floor, Model Town-II,  
Delhi-110009.

**Copy to:-**

1. The Chief Commissioner, Custom Zone, Ahmedabad
2. The The Deputy/Asst. Commissioner (EDI/TRC/Legal/Prosecution),  
Custom House, Mundra.
3. The Additional Director, Directorate of Revenue Intelligence,  
Ahmedabad Zonal Unit, Ahmedabad-380054.
4. Guard File.