



कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,

सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,

CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421

PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in



<b>A. File No.</b>	:	F.No.: GEN/ADJ/COMM/549/2024-Adjn-O/o Pr Commr-Cus-Mundra
<b>B. Order-in-Original No.</b>	:	MUN-CUSTM-OOO-COM-36-25-26
<b>C. Passed by</b>	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>D. Date of order and Date of issue:</b>	:	20.11.2025 20.11.2025
<b>E. SCN No. &amp; Date</b>	:	SCN F.No. GEN/ADJ/COMM/549/2024-Adjn-Pr Commr-Cus-Mundra, dated 21.11.2024.
<b>F. Noticee(s) / Party / Importer</b>	:	<ul style="list-style-type: none"> <li>(i) M/s Vasko Metalloys Private Limited (IEC-815900295) having registered office at B-703 &amp; 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad, Gujarat,</li> <li>(ii) M/s Vasko Steels Private Limited (IEC-AAHCV6582A) having registered office at B-703 &amp; 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad-380054</li> <li>(iii) Shri Vinaye Jain, Director of M/s Vasko Metalloys Private Limited ((IEC-815900295) and M/s Vasko Steels Private Limited (IEC-AAHCV6582A) residing at A-54, Amaltas Apartments, Nr. Wide Angel, Satellite, Ahmedabad-380015,</li> <li>(iv) Shri Madhur Jain, Freelancer of M/s Vasko Metalloys Private Limited ((IEC-815900295) and M/s Vasko Steels Private Limited (IEC-AAHCV6582A) residing at E-101, Takshshila Apartment, Vastrapur Ahmedabad-380015</li> </ul>
<b>G. DIN</b>	:	20251171MO00009479DE

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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 अधीलीय 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.”**

- 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.

- उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल 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.

- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-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 paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

- 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.
- 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.

- 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:-

The present case pertains to M/s Vasko Metalloys Private Limited (IEC-815900295) (hereinafter also referred to as "M/s VMPL" for the sake of brevity) and M/s Vasko Steels Private Limited (IEC-AAHCV6582A) (hereinafter also referred to as "M/s VSPL" for the sake of brevity) having registered office at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad, Gujarat and are engaged in import of Cold Rolled Stainless Steel Coils and Circles from overseas suppliers based in China, Indonesia, Vietnam & Hong Kong.

**1.1** The Flat-Rolled products of Stainless Steel falling under CTH 7219/7220, attracts Basic Customs duty @7.5%, Surcharge on Customs duty @ 10%, IGST @ 18% and countervailing duty @18.95% on landed value of goods imported into India from People's Republic of China, imposed vide Notification No. 1/2017-Customs (CVD) dtd. 07.09.2017.

**2.1** Intelligence collected by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as DRI) indicated that "M/s VMPL" & "M/s VSPL" are importing 'Cold Rolled Stainless Steel Coils Grade J3' at highly undervalued prices with an intent to evade appropriate Customs duty. Intelligence indicated that said goods viz. Cold Rolled Stainless Steel Coils were of Chinese origin and the actual rates varied from USD 1600 to USD 2000 per MT during period 2019 to 2022 but they declared the import price @ USD 750 to USD 1000 per MT.

**2.2.1.** Intelligence further indicated that "M/s VMPL" & "M/s VSPL" are importing the 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTI 72209022 to wrongly avail the benefit under Notification no. 50/2018-Customs dated 30.06.2018 (**RUD-01**). As per the Notification no. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on the goods falling under CTH 72209022, of Nickel Chromium Austenitic Type. "M/s VMPL" & "M/s VSPL" imported the "Cold Rolled Stainless Steel Coils", which were not Nickel Chromium Austenitic Type, by wrongly declaring them under CTI 72209022 instead of the correct CTI 72209090 to wrongfully avail the benefit under Notification no. 50/2018-Customs dated 30.06.2018.

### SEARCH DATED 22.11.2022 AT THE PREMISES OF "M/s. VSPL" and "M/s. VMPL", AHMEDABAD

**3.** Acting on the aforesaid intelligence, a search was conducted at the office premises of "M/s VMPL" & "M/s VSPL" at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad, Gujarat and some incriminating documents along with one Apple Make Laptop & one Samsung make mobile phone were resumed under Panchnama dated 22.11.2022 (**RUD-02**) for further investigation.

### 4. DOCUMENTARY BASIS INFERRING THE UNDERVALUATION AND MIS-CLASSIFICATION OF THE IMPORTED GOODS BY 'M/s. VSPL' AND 'M/s. VMPL':

During the course of investigation, the import prices of 'M/s. VSPL' and 'M/s. VMPL' were inferred to be lower than the actual market or the transaction prices on the basis of the forensic examination of the devices withdrawn during search dated 22.11.2022 at the premises of M/s. VSPL' and 'M/s. VMPL' and the comparison of the various import prices of M/s. VSPL' and 'M/s. VMPL' with the

contemporary prices of the same goods declared by M/s. Shah Foils Limited and certain other importers. Further, on the basis of the import documents withdrawn during the search at the premises of M/s. VSPL' and 'M/s. VMPL', it also came to the fore that for certain import consignments, M/s. VSPL' and 'M/s. VMPL' had taken undue benefit of the Notification no. 50/2018-Customs dated 30.06.2018 i.e. availed concession benefit of 45% of the BCD by mis-declaring the imported goods, i.e. 'Cold Rolled Stainless Steel Coils' under CTI 72209022. The relevant import documents of M/s. VSPL and M/s. VMPL which are part of the current investigation have been annexed as **RUD-03**. The documentary basis of the undervaluation and mis-declaration of the imported goods is discussed herein under:

#### 4.1 DOCUMENTARY BASIS FOR THE UNDERRVALUATION:

##### 4.1.1 FORENSIC EXAMINATION OF ELECTRONIC GADGETS AND SCRUTINY OF DOCUMENTS WITHDRAWN DURING SEARCH DATED 22.11.2022:

**(i)** The electronic Gadgets viz. Apple Make Laptop and Samsung Make Mobile phone seized under the Panchnama dtd. 22.11.2022 drawn at the office premises of "M/s VMPL" & "M/s VSPL" were sent to Cyber Defense Centre, National Forensic Science University, Gandhinagar for examination and extraction/retrieval/cloning of data from the devices vide DRI letter F.No. DRI/AZU/CI/INT-16/2022 dated 28.11.2022. The Senior Scientific Officer, National Forensic Science University (NFSU), Gandhinagar vide letter NFSU/CDC/02/23 dated 05.01.2023 (**RUD-04**) provided two Hard discs containing data processed from the above Laptop and Mobile phone i.e. one Master copy & an additional Working Copy.

**(ii)** The working copy of the Hard Disc provided by the NFSU, Gandhinagar after retrieving the data from Laptop and Mobile phone was examined by connecting with PC installed in DRI office, while recording of statement of Shri Madhur Jain, Marketing Manager of M/s. Vasko Steels Private Ltd. on 19.09.2023. On examination of the working copy of the said Hard Disc, it was found that Shri Madhur Jain had given purchase order to overseas supplier on behalf of both the importers i.e. 'M/s. VSPL' and 'M/s. VMPL' and further, a note containing detail of actual rate/CIF value of goods and other particulars of the goods imported by "M/s VMPL" & "M/s VSPL" was found from the data of the Mobile Phone of Shri Madhur Jain (**RUD-05**). The statement of Shri Madhur Jain and the said note evidencing the actual transaction prices of the imported goods are discussed in detail at para no. 7.4.

**(iii)** On scrutiny of evidences collected in the form of Note taken from the Hard Disc under Statement dated 19.09.2023 of Shri Madhur Jain containing actual rate/CIF value of goods along with other particulars of imported goods and on comparing the same with the invoices/commercial invoices submitted by "M/s VMPL" & "M/s VSPL" before the Indian Customs at the time of imports of Cold Rolled Stainless Steel Coils, it appeared that the price of the said Cold Rolled Stainless Steel Coils shown in the invoices/commercial invoices presented before the Indian Customs were significantly less than the actual rates shown in the Note taken from the Hard Disc. The rate declared in BoEs filed by both importers and corresponding actual rate of the overseas supplier as per evidences recovered from the Mobile phone are as detailed below:

S. No.	Custom House Code	BoE No. & Date	Rate declared in BoE in USD /MT	Actual Rate as per evidences	Name of the importer
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				found in USD/ MT	
1	INMUN1	5568735 dtd. 24.09.2021	750	1780	M/s Vasko Steels Pvt. Ltd.
2	INMUN1	5924358 dtd. 21.10.2021	750	1720	M/s Vasko Steels Pvt. Ltd.
3	INMUN1	6200546 dtd. 11.11.2021	750	2125	M/s Vasko Steels Pvt. Ltd.
4	INMUN1	5328725 dtd. 06.09.2021	750	1635	M/s Vasko Metalloys Pvt. Ltd.

**(iv)** It was also noticed during the course of investigation that 'M/s. VSPL' and 'M/s. VMPL' had resorted to similar undervaluation in the goods imported vide some other Bs/E, the goods being imported in same time period, thus the said Bs/E are also made part of the current investigation.

#### 4.1.2 COMPARISON OF THE IMPORT PRICES OF 'M/s. VSPL' WITH THE CONTEMPORARY IMPORT BY M/s. SHAH FOILS LIMITED, AHMEDABAD

**(i)** During investigation, it was gathered that M/s Shah Foils Limited (IEC-0804004501), Ahmedabad had also imported similar goods i.e. Cold Rolled Stainless Steel Coils Grade J3 from the same overseas suppliers from which "M/s VSPL" had imported the Cold Rolled Stainless Steel Coils Grade J3 during the same period. Therefore, to ascertain the actual prices of Cold Rolled Stainless Steel Coils Grade J3, evidences in the form of Commercial Invoices issued by overseas supplier to M/s Shah Foils Limited were called. In response, M/s Shah Foils Limited submitted the copies of Commercial Invoices, packing lists issued by the overseas suppliers along with Bills of entry filed by M/s Shah Foils Limited vide letter dated 05.06.2023 (**RUD-06**).

**(ii)** On scrutiny of documents viz. Commercial Invoices, packing list & Bills of Entry received from M/s Shah Foils Limited (**RUD-06**) and on comparing the same with the invoices/commercial invoices submitted by "M/s VSPL" before the Indian Customs at the time of imports of Cold Rolled Stainless Steel Coils Grade J3, it appeared that the price of the said Cold Rolled Stainless Steel Coils shown in the invoices/commercial invoices presented before the Indian Customs were much less than the prices shown in Commercial Invoices issued by overseas suppliers as well as price declared by M/s Shah Foils Limited during the import of goods at the same period of time. The details of import prices of M/s Shah Foils Limited for purchase of Cold Rolled Stainless Steel Coils Grade J3 supplied by the overseas suppliers and its comparison with the rate declared by "M/s VSPL" for purchase of similar goods from the same supplier is tabulated as follows:

Sr. No	Name of Overseas supplier	Details of goods imported by M/s Shah Foils Limited		Details of goods imported by M/s Vasko Steels Pvt. Ltd	
		Bill of Entry No & Date	Rate declared in BoE (USD /MT)	Bill of Entry No & Date	Rate declared in BoE (USD /MT)
1	Star Industrial Group Ltd.	9012065 dtd. 07.06.2022	1525	9012127 dtd. 07.06.2022	1200
2	Foshan Jia Wei Import and Export Co. Ltd	9304663 dtd. 27.06.2022	1650	9822474 dtd. 01.08.2022	1050
3	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	2762913 dtd. 06.10.2022	800
4	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	3123696 dtd. 01.11.2022	800
5	Emetal Company Ltd.	3236062 dtd. 09.11.2022	1375	2849040 dtd. 12.10.2022	800
6	Emetal Company Ltd.	3237180 dtd. 09.11.2022	1375	3075229 dtd. 28.10.2022	800

7	Star Industrial Group Ltd.	3439493 dtd. 23.11.2022	1315	3319105 dtd. 15.11.2022	800
8	Star Industrial Group Ltd.	3540377 dtd. 30.11.2022	1315	3319103 dtd. 15.11.2022	800
9	MFY Metal Company Ltd.	3886806 dtd. 23.12.2022	1270	2795582 dtd. 08.10.2022	810
10	MFY Metal Company Ltd.	3964572 dtd. 29.12.2022	1235	3236765 dtd. 09.11.2022	810

**4.1.3 COMPARISON OF THE IMPORT PRICES OF 'M/s. VSPL' AND 'M/s. VMPL' WITH THE CONTEMPORARY IMPORT PRICES OF OTHER IMPORTERS**

(i) It was learnt during the course of investigation that DRI, HQ had initiated a similar case of undervaluation of Stainless Steel Coils and the overseas suppliers of goods are common to the subject case of undervaluation being investigated by DRI, Ahmedabad. Therefore, DRI, HQ was requested to share the evidences in the form of documents/parallel invoices related to undervaluation. In response, DRI, HQ vide their letter dated 11.07.2023 (**RUD-07**) shared certain documents in the form of invoices and other import documents of certain importers. The said documents received from DRI, HQ were scrutinized for the purpose of the subject investigation by this office. The selected import documents received from DRI, HQ which have been used for comparison for the subject investigation are annexed as **RUD-08**.

(ii) On comparison with the import documents of various importers, mentioned in table below, it appears that "M/s VSPL" had purchased similar goods from same overseas suppliers during the same period at much lower prices than the purchase price of such importers. The details of the invoice prices of the said importers are tabulated as under:

Sr. No.	Name of the importer (M/s.)	Name of the supplier	Goods description as per invoice	Invoice date	Invoice rate in USD/MT
1	Shri Mahadev Ji Exports, Delhi	Foshan Tian Maiduo Import & Export Co. Ltd	Stainless Steel Coils Grade J3 Stock Lot	01.04.2021	1340
2	Shree International	Huaye International Development (HK) Limited	Cold Rolled Stainless Steel Coil Grade J3 Ex Stock	06.09.2021	1685
3	Maha Shakti Exims	Leo Metals Limited	Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock	05.08.2021	1700
4	Maha Shakti Exims	Foshan Xuanzheng Trading Co., Ltd.	Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock	19.08.2021	1425
5	Shri Mahadev Ji Exports, Delhi	Jiayao (Hongkong) International Group Limited	Cold Rolled Stainless Steel Coil Grade J3 Stock Lot	12.03.2021	1410
6	<b>Shri Mahadev Ji Exports, Delhi</b>	<b>MFY Metal Company Limited</b>	<b>Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock</b>	<b>06.07.2021</b>	<b>1363</b>
7	Shri Mahadev Ji Exports, Delhi	Guangdong Guangxin Goldtec Holdings Co. Ltd	Cold Rolled Stainless Steel Coil Grade J3 Stock Lot	12.03.2021	1430

(iii) While, M/s. VSPL has imported the same goods vide certain Bs/E during the same period at a much lower price in the range of 750-910 USD/MT. The same is detailed at para no. 11.7.

#### 4.2 DOCUMENTARY BASIS FOR THE MIS-CLASSIFICATION OF THE IMPORTED GOODS:

During preliminary scrutiny of the documents resumed from the office premises of "M/s VMPL" & "M/s VSPL", it appears that "M/s VMPL" & "M/s VSPL" have imported Cold Rolled Stainless Steel Coils Grade J3 under CTI 72209022 from China and have availed benefit under Notification no. 50/2018-Customs dated 30.06.2018 i.e. availed concession benefit of 45% of the BCD. Further, on scrutiny of the Mill test Certificates/Test Certificate-Inspection Certificates issued by the overseas suppliers, it appears that "M/s VMPL" & "M/s VSPL" had imported Cold Rolled Stainless Steel Coils Grade J3, which contain more percentage of chromium and magnesium instead of Chromium & Nickel. Thus, it appears that Cold Rolled Stainless Steel Coils Grade J3 imported by "M/s VMPL" & "M/s VSPL" do not meet the standards of Nickel Chromium Austenitic type coils and the said goods do not fall under the CTI 72209022 in the category of Nickel Chromium Austenitic Type. Thus, it appears that "M/s VMPL" & "M/s VSPL" had wrongly classified the goods under CTI 72209022 to avail benefit of Notification no. 50/2018-Customs dated 30.06.2018.

#### STATEMENTS RECORDED DURING THE INVESTIGATION:

**5.** During the course of investigation, summons were issued to the concerned persons of 'M/s. VSPL' and 'M/s. VMPL' and also, the Customs Broker and their statements were recorded u/s. 108 of the Customs Act, 1962. The same are detailed as follows:

#### STATEMENTS OF THE CUSTOMS BROKERS:

**6.** The import documents related to goods cleared for "M/s VMPL" & "M/s VSPL" were called from the respective CHAs/Customs Brokers. The statements of the responsible persons of the following CHA firms &Customs Brokers were recorded under Section 108 of Customs Act, 1962:

S. No.	Name of Proprietor/Authorized Signatory of CHA/Customs Broker	Dt. of Statement	RUD No.
1	Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics, Gurgaon	14.12.2022& 15.12.2022	<b>RUD-09</b>
2	Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics	19.12.2022	<b>RUD-10</b>

#### STATEMENT DATED 14/15.12.2022 OF SHRI JITENDER KUMAR, M/s. SHRI BALAJI LOGISTICS

**6.1** Statement of Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics, Gurgaon (Customs broker) was recorded under Section 108 of the Customs Act, 1962 on 14.12.2022 and 15.12.2022 **[RUD-09]**, wherein he inter-alia stated that:

**6.1.1** Shri Madhur Jain of M/s. Vasko Steels Pvt Ltd, Ahmedabad and M/s. Vasko Metalloys Pvt Ltd., Ahmedabad came in contact directly with them through trade for the clearance of goods imported by M/s. Vasko Steels Pvt Ltd, Ahmedabad and M/s. Vasko Metalloys Pvt Ltd., Ahmedabad.

**6.1.2** Shri Madhur Jain is the contact person of M/s. Vasko Steels Pvt Ltd, Ahmedabad and M/s. Vasko Metalloys Pvt Ltd., Ahmedabad.

**6.1.3** The documents related to KYC of M/s. Vasko Steels Pvt Ltd, Ahmedabad and M/s. Vasko Metalloys Pvt Ltd., Ahmedabad were submitted by Shri Madhur Jain physically.

**6.1.4** With regard to receipt of documents related to import by M/s. Vasko Steels Pvt Ltd, Ahmedabad and M/s. Vasko Metalloys Pvt Ltd., Ahmedabad and filing of Bill of Entry finally, he stated that the importer forwarded scanned copies of import documents like Commercial Invoice, Bill of Lading, Packing List, Mill Test Certificate and Country of Origin on their mail Id [jitender.sehgal@endurancelogistics.com](mailto:jitender.sehgal@endurancelogistics.com), [neeraj@endurancelogistics.com](mailto:neeraj@endurancelogistics.com).

Sometimes documents were forwarded on what's app or physically. After receiving documents, they prepared the check list for the Bill of Entry and forwarded the same to the importer, after the checklist was finalized by the importer, they filed Bill of Entry on behalf of the Importer.

**6.1.5** They had never made any comparison regarding the valuation of goods declared by M/s. Vasko Steels Pvt Ltd, Ahmedabad and M/s. Vasko Metalloys Pvt Ltd. with similar goods imported by other importers. They relied on the valuation of goods as mentioned in commercial invoice submitted by the importer.

**6.1.6** The mail id of M/s Vasko Steels Pvt Ltd, Ahmedabad from which they received documents is [vaskosteel@gmail.com](mailto:vaskosteel@gmail.com).

**6.1.7** On being asked about the grade J3 of Cold Rolled Stainless Steel Coils, he stated that grade J3 is a customized grade of 200 series having low Nickel content around 1 % and mainly imported from China. Further, on being asked to explain the meaning of Ex Stock as mentioned in the description of imported Cold Rolled Stainless Steel Coils, he stated that Ex stock means the goods of various types of size, Heat Number and Lot number.

**6.1.8** On being asked to explain whether the imported Cold Rolled Stainless Steel Coils are of various grades, he stated that the imported Cold Rolled Stainless Steel Coils are of only one grade i.e. J3 which is a customized grade of 200 series having low Nickel content around 1 %. That, it appears that same goods may not be covered under Ex stock.

**6.1.9** On being asked whether the similar goods have been imported by other importers under advance license at various ports and cleared by them, he stated that other importers are importing the similar type of goods having description as Cold Rolled Stainless Steel Coils, Grade J3 and the goods were cleared by them.

**6.1.10** On being asked about the approximate value of the goods declared as Cold Rolled Stainless Steel Coils, Grade J3 and imported under advance license, he stated that the approximate value of the goods declared as Cold Rolled Stainless Steel Coils, Grade J3 and imported under advance license is USD1350 per metric ton to 1800 USD per metric ton.

**6.2** Statement of Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics (Customs broker) was recorded under Section 108 of the Customs Act, 1962 on 19.12.2022 [RUD-10], wherein, he, inter-alia stated that:

**6.2.1** Shri Madhur Jain of M/s. Vasko Metalloys Pvt Ltd., Ahmedabad came in contact directly with them through trade for the clearance of goods imported by his firm M/s. Vasko Metalloys Pvt Ltd., Ahmedabad.

**6.2.2** Shri Madhur Jain is the contact person of M/s. Vasko Metalloys Pvt Ltd., Ahmedabad.

**6.2.3** The documents related to KYC of M/s. Vasko Metalloys Pvt Ltd., Ahmedabad were submitted by Shri Madhur Jain on their mail.

**6.2.4** Regarding receipt of documents related to import from M/s. Vasko Metalloys Pvt Ltd., Ahmedabad and filing of Bill of Entry finally, he stated that the importer forwarded scanned copies of import documents like Commercial Invoice, Bill of Lading, Packing List, Mill Test Certificate and Country of Origin on their mail Id [info.svjlogistic@gmail.com](mailto:info.svjlogistic@gmail.com). Sometimes documents were forwarded on what's app or physically. After receiving documents, they prepared the check list for the Bill of Entry and forwarded the same to the importer, after the checklist was finalized by the importer, they filed Bill of Entry on behalf of the Importer.

**6.2.5** Regarding comparing the valuation of goods declared by M/s. Vasko Steels Pvt Ltd, Ahmedabad and M/s. Vasko Metalloys Pvt Ltd., Ahmedabad with similar goods imported by other importers and goods cleared by their firm, he stated that they had never made any comparison regarding the valuation of goods with similar goods imported by other importers.

**6.2.6** Mail id of M/s Vasko Steels Pvt Ltd, Ahmedabad from which they received documents is [vaskosteel@gmail.com](mailto:vaskosteel@gmail.com).

**6.2.7** Grade J3 is a customized grade of 200 series having low Nickel content around 1 % and mainly imported from China. Further, on being asked to explain the meaning of Ex Stock as mentioned in the description of imported Cold Rolled Stainless Steel Coils, he stated that Ex stock means the goods of various types of size, Heat Number and Lot number.

**6.2.8** On being asked to explain whether the imported Cold Rolled Stainless Steel Coils are of various grades, he stated that the imported Cold Rolled Stainless Steel Coils are of only one grade i.e. J3 which is a customized grade of 200 series having low Nickel content around 1%. Therefore, it appears that same goods may not be covered under Ex stock.

**6.2.9** On being asked whether the similar goods have been imported by other importers under advance license at Mundra port and cleared by them, he stated that other importers are importing the similar type of goods having description as Cold Rolled Stainless Steel Coils, Grade J3.

**6.2.10** On being asked about the approximate value of the goods declared as Cold Rolled Stainless Steel Coils, Grade J3 and imported under advance license, he stated that the approximate value of the goods declared as Cold Rolled Stainless Steel Coils, Grade J3 and imported under advance license is USD is 1350 per metric ton to 1800 USD per metric ton.

**6.3** The above responsible persons of Customs House Agent/Customs Broker have categorically stated that grade J3 is a customized grade of 200 series having

low Nickel content around 1%; that approximate value of the goods declared as Cold Rolled Stainless Steel Coils, Grade J3 and imported under advance license is *USD is 1350 per metric ton to 1800 USD per metric ton* whereas approximate value of the goods declared as Cold Rolled Stainless Steel Coils, Grade J3, Ex stock and imported on duty payment is USD is 850 per metric ton to 1150 USD per metric ton: that the imported Cold Rolled Stainless Steel Coils are of only one grade i.e. J3 which is a customized grade of 200 series having low Nickel content around 1% and therefore same goods may not be covered under Ex stock.

**STATEMENTS AND INQUIRY WITH SHRI MADHUR JAIN, MARKETING MANAGER OF M/S. VASKO STEELS PRIVATE LIMITED**

**7.** Statements of Shri Madhur Jain, Marketing Manager of M/s. Vasko Steels Private Ltd. were recorded under Section 108 of the Customs Act, 1962 on 22.11.2022, 06.04.2023, 17.05.2023 & 19.09.2023, wherein, he inter-alia stated that:

**7.1 Statement of Shri Madhur Jain recorded on 22.11.2022 (RUD-11)**

**7.1.1** They procure material from M/s. ARS Technologies, RM 1412, 14<sup>th</sup> Flr., 655 Nathan Road, Mangkok, Kowloon, Hong Kong (Tel 852-66483982), which is based in Hong Kong, but supplies materials from China. The owner of M/s. ARS Technologies is Shri Sanjay Goyal.

**7.1.2** For placing orders for purchase on import, he contacts Shri Sanjay Goyal by mobile call to know the rate, and after negotiation, Shri Sanjay Goyal sent the Proforma Invoice by email, against which they made the payments of advance in confirmation of the orders.

**7.1.3** After confirmation of the order by making advance payment, within 3-4 working days, the supplier sends copies of Invoice, Packing list, Country of Origin Certificate issued by China, Mill Test Certificate and copy of Bill of Lading. Once the cargo reaches Mundra port and is unloaded, they make the full payment to the supplier.

**7.1.4** They also purchase Coil from M/s. MFY Metal Co. Ltd., China, but in a very less quantity comparatively.

**7.1.5** They import SS CR Coil of grade J3 of various thickness from 0.3 mm to 2mm as stock lot basis from China. With regard to sale of 'SS CR Coil' in trading, the material after import is either taken to their godown located at '26, Shiv Prerna Estate, Nr. Gaay Circle, Pirana, Ahmedabad' or to the premises of their job workers, namely M/s. Laxmi Steel Processors located at Odhav.

**7.1.6** The imported material is cut into shapes at the job worker's premises, as per the requirement of the customers. The prime material obtained after cutting is sold at higher price looking to the market conditions and small cuttings are sold as scrap. Sometimes, the entire consignment is also sold at lump sum rates after keeping their margin.

**7.2 Statement of Shri Madhur Jain recorded on 06.04.2023 (RUD-12)**

**7.2.1** Earlier he was director in M/s. Vasko Metalloys Private Limited. He resigned from the post of director in the year 2018 and started looking after the work of the company as a free business lancer in M/s. Vasko Metalloys Private Limited and M/s. Vasko Steels Private Ltd.

**7.2.2** The main director of the company is Shri Vinaye Jain who is his uncle.

**7.2.3** M/s. Vasko Metalloys Private Limited and M/s. Vasko Steels Private Ltd are mainly engaged in the import of Cold Rolled Stainless Coils and Circles.

**7.2.4** They mainly import Cold Rolled Stainless Coils from China, Indonesia, Vietnam and their main suppliers of the materials for their import/overseas purchase is M/s. ARS Technologies, Hong Kong, who is based at Hong Kong, but supplies materials from China. Further, other suppliers are M/s. MFY Metal Company Limited, China & M/s. Shandong Mengyin Huarun Imp & Exp Co Ltd., China.

**7.2.5** On being asked regarding classification of goods, availment of any exemption viz. Notification No. 50/2018 dated 30th June, 2018, payment of Custom duty, GST and other Anti-dumping duties and CVD etc., he stated that based on the documents, Custom House Agents/Customs broker advises them and accordingly they finalize the classification of goods, availment of any exemption viz. Notification No. 50/2018 dated 30th June, 2018, payment of Custom duty, GST and other Anti-dumping duties and CVD.

**7.2.6** The contact person of supplier M/s. ARS Technologies is Shri Sanjay Goyal, Mr. Will Lai is the contact person of M/s. MFY Metal Company Limited, China.

**7.2.7** On being asked to produce purchase orders, he stated that their overseas supplier had issued Sales Contract in some of the orders on the basis of rates finalized by them on WhatsApp chat.

**7.2.8** On being asked as to how rates and other details were finalized with the overseas suppliers, he stated that the overseas suppliers used to send rates on his WhatsApp number and he finalized the rates on which the goods to be purchased based on their quotations.

**7.2.9** Their major buyers of Cold Rolled Stainless Steel Coils in India are M/s. Arrney Tubes, Mumbai, M/s Rajguru Tubes, M/s. Tirupati Tubes and some other small buyers etc. They do not place any sales order and did not receive any written purchase order from them. Buyers verbally give the sizes of Cold Rolled Stainless Steel Coils and accordingly they arrange the same for them.

**7.2.10** Most probably the product viz. Cold Rolled Stainless Steel Cold Rolled Coils imported by them is used in manufacture of Pipes & furniture fittings etc.

**7.2.11** Cold Rolled Stainless Steel Coils / Stainless Steel Circle are classified under chapter 72.

**7.2.12** There are two types of coils i.e. HRC (Hot Rolled Coil) and CRC (Cold Rolled Coil). Difference between HRC and CRC depends on the rolling mechanism, temperature used on it, and CRC is made from HRC after finishing of it.

**7.2.13** They have imported only one type of coils i.e. Cold Rolled Stainless Steel Coil.

**7.2.14** Regarding the difference between CTH 7219 & 7220, he stated that as per his knowledge, Stainless Steel coils which are more than 600 mm of width are covered under CTH 7219 and those which are less than 600 mm of width are covered under CTH 7220. Further, he stated that he has no knowledge of the classification of these goods in eight digits.

**7.2.15** There are various types of grades of Cold Rolled Stainless Steel Coil, which are Grade J3, 201, 304, 316, 410, 430 etc. The grades are dependent on the basis of their chemical composition and are further classified as prime, ex stock, non-prime on the basis of quality, size, grade and different dimensions.

**7.2.16** On being asked about the placing of order, he stated that he places orders for the supply of J3 grade of cold rolled stainless steel coils having thickness as per their requirement (0.3mm to 1.5mm) to the overseas agent from the Ex stock on the basis of rates mutually agreed.

**7.2.17** On being asked about the type of Cold Rolled Stainless Steel Coils imported by them, he stated that they have imported only Cold Rolled Stainless Steel Coils J3 grade Ex-stock.

**7.2.18** On being asked about grade J3 of Cold Rolled Stainless Steel Coils, he stated that the grade J3 is a customized grade of 200 series having low Nickel content, around 1 % and mainly imported from China. Further, on being asked to explain the meaning of Ex Stock as mentioned in the description of imported Cold Rolled Stainless Steel Coils, he stated that Ex stock means the goods of various types of grade and size, Heat Number and Lot number.

**7.2.19** On being asked to explain whether the imported Cold Rolled Stainless Steel Coils are of various grades, he stated that the imported Cold Rolled Stainless Steel Coils are of only one grade i.e. J3 which is a customized grade of 200 series having low Nickel content around 1 %. Therefore, it appeared that same goods may not be covered under Ex stock.

**7.2.20** They filled most of the Bills of Entry for the goods with description of Cold Rolled Stainless Steel Coils under CTI 72209022 'Nickel Chromium Austenitic Type' and in some case, they filed Bills of Entry under CTIs 72209090, 72209029 and 72202090.

**7.2.21** He was shown a Bill of Entry filed for the clearance of goods declared as CR Stainless Steel Coils Grade- J3 under CTI 72209022 and asked to explain how the goods imported would be classifiable under the CTI 72209022. He stated that he has no idea of CTI of the goods in Eight digits but as per the documents received from the overseas supplier and as per the guidance of CHA, they have filed the BE under CTI 72209022 under the description of 'Nickel Chromium Austenitic Type'.

**7.2.22** As per his knowledge the J3 grade (200 series) is developed by Jindal Stainless and other Indian manufacturers and similar to the grade 201 i.e. international grade. Later, Chinese manufacturers also started manufacturing J3 grade which is as much as grade 200 series only.

**7.2.23** He was shown Bill of Entry for Home Consumption No.4576792 dated 05/07/2021 filed for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade- J3 Ex stock under CTI 72209022 and asked to explain how the goods imported would be classifiable under the CTI 72209022. He stated that he has no idea of CTI of the goods in Eight digits but as per the guidance of CHA and documents received from the overseas supplier i.e. like test mill certificate which shows that it contains Nickel and Chromium, they have filed the BE under CTI 72209022 under the description of 'Nickel Chromium Austenitic Type'.

**7.2.24** He was shown Bill of Entry for Home Consumption No.5001534 dated 10/08/2021 filed for the clearance of goods declared as Stainless Steel Cold Rolled Coils J3 Grade Ex Stock under CTI 72209090 and asked to explain how the goods imported would be classifiable under the CTH 72209090. He stated that he has no idea of CTI of the goods in Eight digits but as per the guidance of CHA and documents received from the overseas supplier they have filed the BE under CTI 72209090.

**7.2.25** He perused the Test Mill Certificate for the Bs/E Nos. 5001534 dated 10.08.2021 and 4576792 dated 05.07.2021 which have similar description of goods i.e. Stainless Steel Cold Rolled Coils, Grade- J3. He perused the Test Mill Certificate no. 210406JI05-5 dated 13.07.2021 issued by M/s. MFY Metal Company Limited, China for the B/E No. 5001534 dated 10.08.2021 and Test Mill Certificate no 210406JI01-2 dated 22.05.2021 issued by M/s. MFY Metal Company Limited, China for the B/E No. 4576792 dated 05.07.2021. He stated that these test mill certificate mentions that the coils contain less than 1 % of Nickel and less than 14% chromium. He further stated that the goods are similar in both BEs. The Bs/E Nos. 5001534 dated 10.08.2021 and 4576792 dated 05.07.2021 and the associated import documents are annexed as **RUD-13 & 14** respectively.

### 7.3 Statement of Shri Madhur Jain recorded on 17.05.2023 (RUD-15)

**7.3.1** He was shown his earlier statement dated 22.11.2022 and 06.04.2023.

**7.3.2** On being asked to produce the literature regarding the Austenitic Nickel Chromium steel he stated that the same is mentioned in IS No16911:2017 wherein under the heading austenitic, various grades have been mentioned including 200 series, N1, N2, N3 and their imported material is similar to N1 grade and besides this, he is not having any literature regarding Austenitic steel.

**7.3.3** He perused the Bill of Entry for Home Consumption No.4576792 dated 05/07/2021 alongwith supportive documents filed for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade- J3 Ex stock under CTI 72209022 and put his dated signature.

**7.3.4** He perused the Bill of Entry for Home Consumption No.5001534 dated 10/08/2021 alongwith supportive documents filed for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade- J3 Ex stock under CTI 72209090 and put his dated signature.

**7.3.5** He was shown the Test report no. 210316JI01-2 dated 22.05.2021 issued by M/s. Foshan Metal Technology Co. Ltd., China accompanying the goods supplied under Commercial Invoice No. MFY210316JI01-2 dated 22.05.2021 by M/s MFY Metal Company Limited and Mill Certificate no 210406JI05-5 dated 13.07.2021 issued by M/s. MFY Metal Company Limited, China accompanying the goods supplied under Commercial Invoice No. MFY210406JI05-5 dated 13.06.2021 by M/s MFY Metal Company Limited, China. He stated that the goods supplied by the overseas supplier under above Commercial Invoices were purchased by M/s. Vasko Steels Private Ltd. Further, as per above Test report/Mill Certificate and Commercial Invoices, it appeared that goods supplied under both the Commercial Invoices were similar i.e. Cold Rolled Stainless Steel Coils Grade-J3-Ex Stock because as per above the Test report & Mill Certificate, the coils contain similar contents i.e. Nickel is less than 1.0 %, chromium is around 13% and the Magnesium is around 10 %.

**7.3.6** He was shown Bill of Entry No. 4576792 dated 05/07/2021 for clearance of goods supplied under Commercial Invoice No. MFY210316JI01-2 dated 22.05.2021 and Bill of Entry No 5001534 dated 10.08.2021 filed by M/s. Vasko Steels Private Ltd. for clearance of goods supplied under Commercial Invoice No. MFY210406JI05-5 dated 13.06.2021 by M/s. MFY Metal Company Limited, China. He stated that the goods supplied by above Commercial Invoices were cleared by M/s. Vasko Steels Private Ltd. by filling above Bills of Entry by declaring the similar description of goods as Cold Rolled Stainless Steel Coils Grade-J3 Ex stock in both the Bills of entry. On being asked, when the goods supplied by M/s MFY Metal Company Limited, China under Commercial Invoice No. MFY210406JI05-5 dated 13.06.2021 and goods supplied by M/s MFY Metal Company Limited, China under Commercial Invoice No. MFY210316JI01-2 dated 22.05.2021 were similar in quality, then why Bills of entry were filed under different CTIs i.e. 72209022 and 72202090, he stated that after the issuance of Notification 50/2018-Customs dated 30.06.2018 when they informed their supplier that the benefit of Notification 50/2018-Customs dated 30.06.2018 is available on the import of Cold Rolled Stainless Steel Coils from China, they (supplier) had supplied them the documents with CTI 72209022 and accordingly they have filed the Bill of Entry by declaring the goods under category of Nickel Chromium Austenitic Type under CTI 72209022 to claim the benefit of Notification 50/2018-Customs dated 30.06.2018.

**7.3.7** He perused a printout taken from the webpage of <https://www.asminternational.org> containing the literature on the topic 'Austenitic Stainless Steels' (**RUD-18A**); and stated that it is categorically elaborated that 'Austenitic Stainless Steels' grades are best viewed as a continuum with a lower boundary at 16%Cr - 6%Ni and an upper boundary at 19%Cr-12%Ni. This represents the range from minimum to maximum austenite stability.

**7.3.8** He perused a printout taken from the webpage of M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder (**RUD-18B**). On perusal, he stated that in their official website <https://www.aalco.co.uk> provided the specification sheets for various products wherein they trade in steel including 200 Series stainless steels. In the Specification Sheet for 200 Series stainless steels, it is categorically mentioned that 200 Series stainless steels austenitics are typically used to replace types 304 and 301 as well as Carbon (Chrome-Manganese) Steels mainly for indoor use for low corrosion applications at room temperature. AISI 201 stainless steel

corresponds to the specifications of 'UNS20100/EN1.4372/JIS SUS 201'. The main features of 200 Series stainless steel are that it has lower nickel than 300 series – with it being replaced by Manganese; thus, lower cost than 300 series; similar mechanical & physical properties to 300 series; Similar fabrication performance to 300 series, including deep-drawing; Non-Magnetic. The specification sheet categorically provided the content by weight (%) of the major alloying elements and nickel content is not less than 2% and chromium is between 16 to 18%.

**7.3.9** On being asked, he stated that they have imported Stainless Steel Cold Rolled Coils Grade J3 under CTI 72209022 under the description of 'Nickel Chromium Austenitic Type' by availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018, from China. He further stated that as per Test Report/Mill Test certificate, Stainless Steel Coils Cold Rolled Grade J3 imported by them contain more percentage of chromium and magnesium instead of Chromium & nickel.

**7.3.10** After going through all the contents he understood that according to <https://www.aalco.co.uk>, <https://www.asminternational.org>, and the test certificate-Inspection Certificate shown to him that the coils imported by them would not fall under nickel chromium Austenitic type steels under CTI 72209022 as Nickel is replaced by the Manganese in 200 series SS coils. He further found and it appeared to him that as per notes on backside of the Country-of-origin certificate they are not eligible for availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018. He further stated that they mainly imported J3 grade which is a customized grade of 200 series.

**7.3.11** He stated that the Cold Rolled Stainless Steel Coils Grade J3 imported by them contains more percentage of chromium and magnesium instead of Chromium & nickel, which do not contain maximum substitute of nickel, does not fall under the category of Nickel chromium austenitic type, hence the product does not fall under CTI 72209022, which clearly specify that Flat Rolled products of stainless steel, of width of less than 600mm of Nickel chromium austenitic type falls under CTI 72209022. On being asked, he stated that as per his knowledge, the Cold Rolled Stainless Steel Coils Grade J3 imported by them falls under CTI 72209090.

**7.3.12** On being asked, he stated that as per the documents shown to him and various print out as above, the said imported goods do not fall under category of Nickel Chromium Austenitic, therefore, it appears that benefit of Notification no. 50/2018-Customs dated 30.06.2018 is not applicable on this product. He further stated that the decision of payment of differential duty would be taken by Shri Vinaye Jain, the main director of the company.

**7.3.13** He perused the CTH 7220 and was asked under which CTH, their imported goods have to be classified. He stated that correct classification of their imported goods should be under CTI 72202090 for Stainless Steel Cold Rolled Coils for use of tubes and pipes, Grade- J3 and CTI 72201290 for Stainless Steel Hot Rolled Coils for use of tubes and pipes, Grade- J3 as described by them prior to the issuance of Notification No 50/2018 dated 30.06.2018.

**7.3.14** On being asked, he stated that similarly they have filed 06 bill of entries in M/s. Vasko Metalloys Private Ltd. under CTI72202090 for Stainless Steel Cold Rolled Coils for use of tubes and pipes, Grade- J3 and claimed the benefit of Notification No 50/2018 dated 30.06.2018.

7.4 Statement of Shri Madhur Jain recorded on 19.09.2023 (RUD-16)

**7.4.1** He was shown his earlier statements dated 22.11.2022, 06.04.2023 & 17.05.2023.

**7.4.2** He perused Panchnama dtd 22.11.2022 drawn at the office premises of M/s. Vasko Steels Private Ltd and M/s. Vasko Metalloys Pvt. Ltd. (**RUD-2**), wherein one Samsung make mobile phone, Serial No: R3CT80B171L, IMEI No. 352849390103905 & IMEI Numbers (eSim): 353019470103907 and one Laptop Make: Apple, Model Number: A1466 EMC2632, S/N: C17LK514F5V used by him were seized and placed in separate envelopes which were sealed for further investigation. Further, he perused letter F. No. DRI/AZU/CI/INT-16/2022 dated 28.11.2022 of DRI, Ahmedabad wherein the said sealed envelopes containing above said mobile phone and Laptop were forwarded to Cyber Defense Centre, National Forensic Science University (NFSU), Gandhinagar for examination and extraction/ retrieval/cloning of data from the devices and to provide working copy of the devices. Further, he perused letter NFSU/CDC/02/23 dated 05.01.2023 of Senior Scientific Officer, National Forensic Science University (NFSU), Gandhinagar addressed to the Assistant Director, DRI, Ahmedabad (**RUD-03**) wherein NFSU, Gandhinagar has forwarded two Hard discs i.e. one Master copy named as MC1 (Seagate 1TB, S/N:NACR02E9, P/N:3EEAP1-570) & one Working Copy named as WC1 (Seagate 1TB, S/N:NACR0ATY, P/N:3EEAP1-570) containing data processed from above Mobile phone, marked as Exhibits-A2 and Laptop, marked as Exhibits-A5.

**7.4.3** Then, in his presence, the Working copy of Hard Disc (WC1) containing data processed from above Mobile phone, marked as Exhibits-A2 and Laptop, marked as Exhibits-A5, provided by the NFSU, Gandhinagar was connected to a desk-top Computer installed at DRI Office for examination. Then the Hard-disk was opened in his presence and files/data present in the Hard-disk marked as Exhibits-A2 were examined by the officer in his presence. On examination of Exhibits-A2, the files stored in his mobile were opened and print out of some relevant data/details which were stored in his Mobile phone were taken and were given running serial no. as 01 to 04 attached to his statement.

**7.4.4** He perused page no. 03 attached to his statement, wherein some alphanumerical words were written. On being asked, he stated that the said printout relates to the notes from his device in which he used to save some information to be remembered. He was asked to peruse a note number 39 (**RUD-05**) which was created on 01/09/2020 and modified on 17/11/2021 and he stated that the said note is about the conversation regarding goods imported from China and for enquiring of particular material & grade and he didn't know the exact enquiry. Further, the actual import prices had no connection with this note. The said note is reproduced as follows:

Sanjay bookings  
Aug 2021  
0.55 2B unslit CIF 1635 : 5 cntrs  
0.30 8A unslit CIF 1720 : 5 cntrs  
0.30 8A unslit CIF 1780 : 10 cntrs  
55806 18.08  
55602 10.09  
52128  
1605 pipe strips  
13-10  
2125 0.30 ba : 12 containers

**7.4.5** He was shown Bill of Entry No 5568735 dtd. 24.09.2021 for the goods imported by M/s Vasko Steels Pvt. Ltd alongwith the commercial invoice number TPG20210803A-2 and packing list dated 10.09.2021. On being asked about the weight of the goods, he stated that it is 55602 kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J3, Ex-Stock and rate is USD 750 per metric ton.

**7.4.6** He was shown Bill of Entry No 5924358 dtd. 21.10.2021 for the goods imported by M/s Vasko Steels Pvt. Ltd alongwith the commercial invoice number ARS-20210929-02-01 and packing list dated 29.09.2021. On being asked about the weight of the goods he stated that it is 52128 kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J 3, Ex-Stock and rate is USD 750 per metric ton.

**7.4.7** He was shown Bill of Entry No 6200546 dtd. 11.11.2021 for the goods imported by M/s Vasko Steels Pvt. Ltd alongwith the commercial invoice number TPG20210803A-4 and packing list dated 16.10.2021. On being asked about the weight of the goods he stated that it is 55194 Kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J 3, Ex-Stock and rate is USD 750 per metric ton.

**7.4.8** He was shown Bill of Entry No 5328725 dtd. 06.09.2021 for the goods imported by M/s Vasko Metalloys Pvt. Ltd alongwith the commercial invoice number TPG20210803A-1 and packing list dated 18.08.2021. On being asked about the weight of the goods he stated that it is 55806 Kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J 3 and rate is USD 750 per metric ton.

**7.4.9** He was shown shown letter F. No. DRI/HQ-CI/A-Cell/50D/Enq-13/Int-12/2022-CI/Vol-II dated 11.07.2023 issued by Senior Intelligence Officer, DRI, HQ, New Delhi addressed to the Assistant Director, DRI, Zonal Unit, Ahmedabad (**RUD-07**), wherein various documents viz. Commercial Invoices, Proforma Invoices, packing lists, Country of Origin certificates, Mill Test Certificates, Bills of lading, copies of Insurance, Sale & Purchase contracts etc. (**RUD-08**). On perusal of the said documents, he stated that the said documents are Commercial Invoices, Proforma Invoices, packing lists, Country of Origin certificates, Mill Test Certificates, Bills of lading, copies of Insurance regarding import of Cold Rolled Stainless Steel Coils from various overseas suppliers based in China by M/s Shree International, Wazirpur, Delhi, Shri Mahadev Ji Exports, Wazirpur, Delhi and M/s Goel Exim, Wazirpur, Delhi. He also found Sale & Purchase contract signed between M/s Guangdong Guangxin Goldtec Holdings Co. Ltd., China and Shri Mahadev Ji Exports, Wazirpur, Delhi for purchase of Stainless Steel Coils Grade J3 Stock Lot from China.

**7.4.10** He perused the page no. 45 of the documents attached to the letter F.No. DRI/HQ-CI/A-Cell/50D/Enq-13/Int-12/2022-CI/Vol-II dated 11.07.2023 of DRI, HQ, New Delhi and stated that these documents available at page no. 45 is the Commercial Invoice No. MFY210324SS02-1 dated 06.07.2021 issued by M/s MFY Metal Company Limited, Hong Kong to M/s Shri Mahadev Ji Exports, Wazirpur, Delhi for supply of Cold Rolled Stainless Steel Coil J3 Ex Stock (**RUD-08A**). On perusal of the said document, he stated that average price of Cold Rolled Stainless Steel Coil J3 Ex Stock was 1363 USD/MT. Then he perused the Bill of Entry No. 4821961 dtd 26.07.2021 filed by M/s Vasko Steels Pvt. Ltd for import of Cold Rolled Stainless Steel Coil J3 Ex Stock and stated that value of the similar goods declared before Indian Customs by M/s Vasko Steels Pvt. Ltd was 750 USD/MT. Further, he perused the Commercial Invoice No.

MFY210317JI03-3 dtd 06.07.2021 issued by M/s MFY Metal Company Limited, Hong Kong to M/s Vasko Steels Pvt. Ltd for supply of Cold Rolled Stainless Steel Coil J3 Ex Stock and found that price of Cold Rolled Stainless Steel Coils was declared as 750 USD/MT. He further stated that the rate of Ex stock material depends on material, shape, Size and Finish. It may vary from lot to lot of the ex-stock goods and quantity and time of purchase.

**7.4.11** On comparison of the Commercial Invoice No. MFY210324SS02-1 dated 06.07.2021 and Commercial Invoice No. MFY210317JI03-3 dtd 06.07.2021 issued by M/s MFY Metal Company Limited, Hong Kong for supply of similar goods i.e. Cold Rolled Stainless Steel Coil J3 Ex Stock on the same date i.e. 06.07.2021 to different buyers in India, i.e. to M/s. Shri Mahadev Ji Exports and M/s. Vasko Steels Private Limited, it appeared that there is a significant difference of value. On being asked, he stated that actual average price of goods i.e. Cold Rolled Stainless Steel Coil J3 Ex Stock during the period was Approx. 1363 USD/MT but in their invoice, it has a lower value i.e. 750 USD/MT.

**7.4.12** He was shown letter dated 05.06.2023 received from M/s Shah Foils Limited addressed to the Assistant Director, DRI Zonal Unit, Ahmedabad, wherein import documents viz. Bills of Entry, Commercial Invoices & packing lists (**RUD-06**) were submitted by M/s Shah Foils Limited regarding import of Cold Rolled Stainless Steel Coils from various overseas suppliers based in China. He perused the said letter along with all documents. On perusal of the said documents, he finds that M/s Shah Foils Limited has also imported similar goods i.e. Cold Rolled Stainless Steel Coils Grade J3 from the same overseas supplier based in China, which they had imported in M/s Vasko Steels Private Ltd and M/s Vasko Metalloys Pvt. Ltd.

**7.4.13** He perused the Bill of Entry No. 9012065 dtd. 07.06.2022 submitted by M/s Shah Foils Limited vide letter dated 05.06.2023 and finds that price/rate of goods i.e. Cold Rolled Stainless Steel Coils Grade J3 is declared as 1525 USD/MT by M/s Shah Foils Limited and said goods were supplied by M/s Star Industrial Group Ltd., Hong Kong.

**7.4.14** He perused the Bill of Entry No. 9012127 dtd. 07.06.2022 filed by M/s Vasko Steels Pvt. Ltd for import of Cold Rolled Stainless Steel Coil J3 Ex Stock and find that value of the similar goods declared before Indian Customs by M/s Vasko Steels Pvt. Ltd was 1200 USD/MT, which is less than the price from the goods imported by M/s. Shah Foils Limited. In similar manner, he perused various Bills of entry submitted by M/s Shah Foils Limited letter dated 05.06.2023 and on comparison the Bills of entry filed by M/s Vasko Steels Pvt. Ltd, wherein goods were supplied by same overseas supplier during the same period but there is much difference in price of similar goods imported from same supplier. The details of such Bs/E are as follows:

Sr. No	Name of Overseas supplier	Details of goods imported by M/s Shah Foils Limited		Details of goods imported by M/s Vasko Steels Pvt. Ltd	
		Bill of Entry No & Date	Rate declared in BoE (USD /MT)	Bill of Entry No & Date	Rate declared in BoE (USD /MT)
1	Star Industrial Group Ltd.	9012065 dtd. 07.06.2022	1525	9012127 dtd. 07.06.2022	1200
2	Foshan Jia Wei Import and Export Co. Ltd	9304663 dtd. 27.06.2022	1650	9822474 dtd. 01.08.2022	1050

3	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	2762913 dtd. 06.10.2022	800
4	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	3123696 dtd. 01.11.2022	800
5	Emetal Company Ltd.	3236062 dtd. 09.11.2022	1375	2849040 dtd. 12.10.2022	800
6	Emetal Company Ltd.	3237180 dtd. 09.11.2022	1375	3075229 dtd. 28.10.2022	850
7	Star Industrial Group Ltd.	3439493 dtd. 23.11.2022	1315	3319105 dtd. 15.11.2022	800
8	Star Industrial Group Ltd.	3540377 dtd. 30.11.2022	1315	3319103 dtd. 15.11.2022	800
9	MFY Metal Company Ltd.	3886806 dtd. 23.12.2022	1270	2795582 dtd. 08.10.2022	810
10	MFY Metal Company Ltd.	3964572 dtd. 29.12.2022	1235	3236765 dtd. 09.11.2022	810

On being asked, he stated that the rate of Ex stock material depends on material, shape, Size and Finish. It may vary from lot to lot of the Ex stock goods and quantity and time of purchase.

**STATEMENTS AND INQUIRY WITH SHRI VINAYE JAIN DIRECTOR OF M/S. VASKO STEELS PRIVATE LTD. AND M/S. VASKO METALLOYS PVT LTD.**

**8.** Statements of Shri Vinaye Jain, Director of M/s. Vasko Steels Private Ltd. and M/s. Vasko Metalloys Pvt Ltd. was recorded under Section 108 of the Customs Act, 1962 on 21.09.2023 **[RUD-17]**, wherein he inter-alia stated that:

**8.1** He appeared for statement in the capacity as Director of M/s. Vasko Steels Private Ltd. and M/s. Vasko Metalloys Pvt Ltd. Being a director in M/s. Vasko Metalloys Private Limited and M/s. Vasko Steels Private Ltd he is responsible for all day to day activities of the company.

**8.2** Shri Madhur Jain was director till the year 2021 in M/s. Vasko Metalloys Private Limited and M/s. Vasko Steels Private Ltd and after that he looked after all the activities of the business as freelancer in the above firms. However, being the director of the firm, he (Shri Vinaye Jain) is responsible for all the activities of the firm.

**8.3** They mainly import Cold Rolled Stainless Coils from China, and their main suppliers are M/s. ARS Technologies, Hong Kong, who supplies material from China, M/s. MFY Metal Company Limited and & M/s. Shandong Mengyin Huarun Imp & Exp Co Ltd., China. He stated that this was not exhaustive list and there might be their other suppliers also. He also stated that the main work of contacting with overseas suppliers is mainly handled by Shri Madhur Jain and he was not able to recall other suppliers' names.

**8.4** He was shown the statement of Shri Madhur Jain dated 22.11.2022, 06.04.2023, 17.05.2023 and 19.09.2023 and panchnama dated 22.11.2022 drawn at their office premises in Ahmedabad.

**8.5** On being asked about the import and clearance of Cold Rolled Stainless Steel Coils, he stated that they are importing these goods since 2014 at Mundra port. They had appointed Customs House Agent/Customs broker namely M/s. Balaji Logistics and M/s. R.R. Logistics for clearance of goods. On being asked specifically, he stated that Shri Jitendra Sehgal is the concerned person of M/s.

Balaji Logistics and Shri Deepak Sawlani is the concerned person of M/s. R R Logistics.

**8.6** He was shown the statement of Shri Deepak Sawlani, Authorised Signatory and 'G' card holder of M/s. R.R. Logistics (CHA) dated 19.12.2022 and statements of Shri Jitender Kumar, Proprietor of Shri Balaji Logistics (CHA) dated 14.12.2022 and 15.12.2022 recorded under Section 108 of the Customs Act, 1962.

**8.7** On being asked regarding classification of goods, availment of any exemption viz. Customs Notification No. 50/2018 dated 30th June, 2018, payment of Custom duty, GST and other Anti-dumping duties and CVD etc., he stated that based on the documents, Custom House Agents/Customs broker advises them and accordingly they mentioned the classification of goods, availment of any exemption viz. Notification No. 50/2018 dated 30th June, 2018, payment of Custom duty, GST and other Anti-dumping duties and CVD.

**8.8** The contact person of M/s. ARS Technologies is Shri Sanjay Goyal, Mr. Will Lai is the contact person of M/s. MFY Metal Company Limited, China. However, since a long time Shri Madhur Jain is in contact with the overseas suppliers.

**8.9** Mainly Shri Madhur Jain contacted with overseas suppliers (broker) on their mobile through WhatsApp for supply of Cold Rolled Stainless Steel Coils.

**8.10** On being asked to produce purchase orders, he stated that as the work related to the sales and purchase in the company is looked after by Shri Madhur Jain, he is the proper person to comment on the same.

**8.11** The overseas suppliers used to send rates to Shri Madhur Jain on his WhatsApp number and Shri Madhur Jain finalized the rates on which the goods to be purchased based on their quotations.

**8.12** As per his knowledge, Cold Rolled Stainless Steel Coils / Stainless Steel Circle are classified under chapter 72.

**8.13** There are two types of coils i.e. HRC (Hot Rolled Coil) and CRC (Cold Rolled Coil). The difference between HRC and CRC depends on the rolling mechanism, temperature used on it, and CRC is made from HRC after finishing of it.

**8.14** They have imported only one type of coils i.e. Cold Rolled Stainless Steel Coil.

**8.15** Regarding difference between CTH 7219 & 7220, he stated that under CTH 7219 Stainless Steel coils which are more than 600 mm of width are covered and less than 600mm are covered under CTH 7220. Further, he stated that he has no knowledge of classification of these goods in eight digits of Harmonized System.

**8.16** There are various types of grades of Cold Rolled Stainless Steel Coil, which are Grade J3, 201, 304, 316, 410, 430 etc. The grades are depended on the basis of their chemical composition and are further classified as prime, ex stock, non-prime on the basis of quality, size, grade and different dimensions.

**8.17** Initially, he and Shri Madhur Jain used to place orders for the supply of J3 grade of cold rolled stainless steel coils having thickness as per their requirement (0.3mm to 1.5mm) to the overseas agent from the Ex stock on the basis of rates mutually agreed by them. Later on, Shri Madhur Jain had started managing purchase and sales by himself.

**8.18** On being asked about the type of Cold Rolled Stainless Steel Coils imported by them, he stated that they have majorly imported only Cold Rolled Stainless Steel Coils J3 grade Ex-stock.

**8.19** On being asked about grade J3 of Cold Rolled Stainless Steel Coils, he stated that grade J3 is a customized grade of 200 series having low Nickel content around 1 % and mainly imported from China. Further, on being asked to explain the meaning of Ex Stock as mentioned in the description of imported Cold Rolled Stainless Steel Coils, he stated that Ex stock means the unsold goods of various types of Grade and size, Heat Number and Lot number.

**8.20** On being asked to explain whether the imported Cold Rolled Stainless Steel Coils are of various grades, he stated that the imported Cold Rolled Stainless Steel Coils by them are of only one grade i.e. J3 which is a customized grade of 200 series having low Nickel content around 1% as I stated earlier.

**8.21** Regarding CTH used by him for filing the B/E for import of Cold Rolled Stainless Steel Coils he stated that on the basis of documents received from overseas suppliers they filed the most of the Bills of Entry for the goods with description of Cold Rolled Stainless Steel Coils under CTI 72209022 'Nickel Chromium Austenitic Type' and in some case they filed Bills of Entry under CTIs 72209090, 72209029 and 72202090.

**8.22** He was asked to go through the Bill of Entry for Home Consumption No. 9068024 dated 05/10/2020 filed for the clearance of goods declared as CR Stainless Steel Coils Grade- J3 under CTI 72209022 and asked to explain how the goods imported would be classifiable under the CTI 72209022. He stated that he has no idea of CTI of the goods in Eight digits but as per the documents received from the overseas supplier and as per the guidance of CHA, they have filed the BE under CTI 72209022 under the description 'Nickel Chromium Austenitic Type'. He stated that in the instant B/E No. 9068024 dated 05/10/2020, the CTI 72209022 is mentioned in the Bill of Lading while in other documents, viz. Certificate of Origin, Invoice etc., either 4 digits (CTH) or 6 digits (CTSH) is mentioned or nothing is mentioned.

**8.23** As per his knowledge, the J1 to J5 grade is developed by Jindal Stainless and other Indian manufacturers. Later, Chinese manufacturers also started manufacturing J3 grade which is similar to 200 series commonly bought by them.

**8.24** He was asked to go through the Bill of Entry for Home Consumption No.4576792 dated 05/07/2021 filed for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade- J3 Ex stock under CTI 72209022 and was asked to explain as to how the goods imported would be classifiable in the CTI 72209022. He stated that he has no idea of CTI of the goods in Eight digits but as per documents received from the overseas supplier and the guidance of CHA, they have filed the B/E under CTI 72209022 under the description 'Nickel Chromium Austenitic Type'.

**8.25** He was asked to go through the Bill of Entry for Home Consumption No.5001534 dated 10/08/2021 filed for the clearance of goods declared as Stainless Steel Cold Rolled Coils J3 Grade Ex Stock under CTI 72209090 and to explain as to how the goods imported would be classifiable under CTI 72209090. He stated that he has no idea of CTI of the goods in Eight digits but as per the guidance of CHA and documents received from the overseas supplier, they have filed the BE under CTI 72209090.

**8.26** He was asked to go through the Bill of Entry for Home Consumption No. 9300342 dated 24/10/2020 filed for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade- J3 Ex stock under CTI 72209022 and to explain as to how the goods imported would be classifiable in CTI 72209022. He stated that he has no idea of CTI of the goods in Eight digits but as per documents received from the overseas supplier and the guidance of CHA, they have filed the B/E under CTI 72209022.

**8.27** He was asked to go through the Bill of Entry for Home Consumption No. 9570483 dated 14/11/2020 filed for the clearance of goods declared as Stainless Steel Cold Rolled Coils J3 Grade Ex Stock under CTI 72209090 and to explain as to how the goods imported would be classifiable under CTI 72209090. He stated that he has no idea of CTI of the goods in Eight digits but as per the guidance of CHA and documents received from the overseas supplier, they have filed the BE under CTI 72209090.

**8.28** He perused the Test Mill Certificate no. 210406JI05-5 dated 13.07.2021 issued by M/s. MFY Metal Company Limited, China for the BE No. 5001534 dated 10/08/2021 and Test Mill Certificate no 210406JI01-2 dated 22.05.2021 issued by M/s. MFY Metal Company Limited, China for the BE No. 4576792 dated 05/07/2021 and he finds that these test mill certificate mentions that the coils contain less than 1 % of Nickel and less than 14% chromium. He further stated that the goods are similar in both BEs.

**8.29** He perused the Bill of Entry for Home Consumption No.4576792 dated 05/07/2021 alongwith supportive documents filed for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade- J3 Ex stock under CTI 72209022.

**8.30** He perused the Bill of Entry for Home Consumption No. 5001534 dated 10/08/2021 alongwith supportive documents filed for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade- J3 Ex stock under CTI 72209090.

**8.31** He was shown the Mill Test Certificate no. 210316JI01-2 dated 22.05.2021 issued by M/s. Foshan Metal Technology Co. Ltd., China accompanying the goods supplied under Commercial Invoice No. MFY210316JI01-2 dated 22.05.2021 by M/s MFY Metal Company Limited and Mill Test Certificate no 210406JI05-5 dated 13.07.2021 issued by M/s. MFY Metal Company Limited, China accompanying the goods supplied under Commercial Invoice No. MFY210406JI05-5 dated 13.06.2021 by M/s MFY Metal Company Limited, China. He stated that that the goods supplied by the overseas supplier under above Commercial Invoices were purchased by M/s. Vasko Steels Private Ltd. Further, as per above Test report/Mill Certificate and Commercial Invoices, it appears that goods supplied under both the Commercial Invoices were similar

i.e. Cold Rolled Stainless Steel Coils Grade-J3-Ex Stock because as per above the Test report & Mill Certificate, the coils contain similar contents i.e. Nickel is less than 1.0 %, chromium is around 13% and the Magnesium is around 10 %.

**8.32** He was shown Bill of Entry No. 4576792 dated 05/07/2021 for clearance of goods supplied under Commercial Invoice No. MFY210316JI01-2 dated 22.05.2021 (**RUD-14**) and Bill of Entry No 5001534 dated 10/08/2021 filed by M/s. Vasko Steels Private Ltd. for clearance of goods supplied under Commercial Invoice No. MFY210406JI05-5 dated 13.06.2021 (**RUD-13**) by M/s MFY Metal Company Limited, China. He stated that the goods supplied by above Commercial Invoices were cleared by M/s. Vasko Steels Private Ltd. by filling above Bills of Entry by declaring the similar description of goods as Cold Rolled Stainless Steel Coils Grade-J3 Ex stock in both the Bills of entry. On being asked, when the goods supplied by M/s MFY Metal Company Limited, China under Commercial Invoice No MFY210406JI05-5 dated 13.06.2021 and goods supplied by M/s MFY Metal Company Limited, China under Commercial Invoice No. MFY210316JI01-2 dated 22.05.2021 were similar in quality, then why Bills of entry were filed under different CTIs i.e. 72209022 and 72202090, he stated that as mentioned earlier, the Bs/E are filed by CHA on behalf of them as per documents received.

**8.33** He was asked to peruse a printout taken from the webpage of <https://www.asminternational.org> the literature on the topic 'Austenitic Stainless Steels' (**RUD-18A**). He stated that he is not technically competent to comment and understand the technical aspect of the goods.

**8.34** He was asked to peruse a printout taken from the webpage of M/s. Aalco Metals Limited (**RUD-18B**), a company registered in England & Wales, the UK's largest independent multi-metals stockholder. He stated that he is not technically competent to comment and understand the technical aspect of the goods.

**8.35** On being asked, he stated that they have imported Stainless Steel Cold Rolled Coils Grade J3 under CTI 72209022 under the description of 'Nickel Chromium Austenitic Type' by availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018, from China. He further stated that as per Test Report/Mill Test certificate, Stainless Steel Coils Cold Rolled Grade J3 imported by them contains more percentage of chromium and magnesium instead of Chromium & nickel.

**8.36** He perused the CTH 7220 and on being asked as to where Cold Roll Coils have to be classified, he stated that he is not able to comment on this aspect.

**8.37** On being asked he stated that similarly they have filed other bills of entries in M/s. Vasko Metalloys Private Ltd and M/s. Vasko Steels Pvt Ltd under CTI 72209022 for Stainless Steel Cold Rolled Coils, Grade- J3 and claimed the benefit of Notification No 50/2018 dated 30.06.2018. In this connection, as he already stated that they classified the imported goods under said CTI as per the documents received.

**8.38** He perused Panchnama dtd 22.11.2022 drawn at the office premises of M/s. Vasko Steels Private Ltd and M/s. Vasko Metalloys Pvt. Ltd. (**RUD-02**), wherein one Samsung make mobile phone, Serial No: R3CT80B171L, IMEI No. 352849390103905 & IMEI Numbers (eSim): 353019470103907 and one Laptop Make: Apple, Model Number: A1466 EMC2632, S/N: C17LK514F5V used by Shri

Madhur Jain were withdrawn and placed in separate envelopes which were sealed under Panchnama dated 22.11.2022 for further investigation. Further, he perused letter F. No. DRI/AZU/CI/INT-16/2022 dated 28.11.2022 of DRI, Ahmedabad wherein the said sealed envelopes containing above said mobile phone and Laptop were forwarded to Cyber Defense Centre, National Forensic Science University (NFSU), Gandhinagar for examination and extraction/retrieval/cloning of data from the devices and to provide working copy of the device. Further, he perused letter NFSU/CDC/02/23 dated 05.01.2023 of Senior Scientific Officer, National Forensic Science University (NFSU), Gandhinagar addressed to the Assistant Director, DRI, Ahmedabad wherein NFSU, Gandhinagar forwarding two Hard discs i.e. one Master copy named as MC1 (Seagate 1TB, S/N:NACR02E9, P/N:3EEAP1-570) & one Working Copy named as WC1 (Seagate 1TB, S/N:NACR0ATY, P/N:3EEAP1-570) containing data processed from above Mobile phone, marked as Exhibits-A2 and Laptop, marked as Exhibits-A5.

**8.39** He was shown the print out taken in the presence of Shri Madhur Jain's from the working copy of hard disc received from the NFSU, Gandhinagar from the files stored in Shri Madhur Jain's mobile phone which were given running serial no. as 01 to 04.

**8.40** He perused page no. 03 attached to statement dated 19.09.2023 of Shri Madhur Jain, wherein some alphanumerical words are written. On being asked about note number 39 (**RUD-05**) on page number 03, he stated that it appears that it is a note number 39 which was created on 01/09/2020 and modified on 17/11/2021 in which some details about the booking of import of goods from Shri Sanjay Goyal from China were mentioned. He further stated that in the said note some numbers of containers and CIF value is mentioned.

**8.41** He was shown Bill of Entry No 5568735 dtd. 24.09.2021 for the goods imported by M/s Vasko Steels Pvt. Ltd along with the commercial invoice number TPG20210803A-2 and packing list dated 10.09.2021. Further, on being asked about the weight of the goods he stated that it is 55602 kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J 3, Ex-Stock and rate is USD 750 per metric ton.

**8.42** He was shown Bill of Entry No 5924358 dtd. 21.10.2021 for the goods imported by M/s Vasko Steels Pvt. Ltd along with the commercial invoice number ARS-20210929-02-01 and packing list dated 29.09.2021. Further, on being asked about the weight of the goods he stated that it is 52128 kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J 3, Ex-Stock and rate is USD 750 per metric ton.

**8.43** He was shown Bill of Entry No 6200546 dtd. 11.11.2021 for the goods imported by M/s Vasko Steels Pvt. Ltd along with the commercial invoice number TPG20210803A-4 and packing list dated 16.10.2021. Further, on being asked about the weight of the goods he stated that it is 55194 Kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J 3, Ex-Stock and rate is USD 750 per metric ton.

**8.44** He was shown Bill of Entry No 5328725 dtd. 06.09.2021 for the goods imported by M/s Vasko Metalloys Pvt. Ltd along with the commercial invoice number TPG20210803A-1 and packing list dated 18.08.2021. Further on being asked about the weight of the goods he stated that it is 55806 Kgs and the description is mentioned as Stainless Steel Cold Rolled Coils Grade J 3 and rate is USD 750 per metric ton.

**8.45** On being asked to compare the weight mentioned in the above Bills of entry no 5568735 dtd. 24.09.202, 5924358 dtd. 21.10.2021, 6200546 dtd. 11.11.2021 and 5328725 dtd. 06.09.2021 to the note number 39 retrieved from Shri Madhur Jain's Mobile phone, Shri Vinaye Jain stated that it appears that the weight is same as mentioned in the note number 39 retrieved from Shri Madhur Jain's Mobile phone and that mentioned in the above said Bills of Entry. Further, on being asked to compare and co-relate the CIF value mentioned in the Bills of entry no 5568735 dtd. 24.09.202, 5924358 dtd. 21.10.2021, 6200546 dtd. 11.11.2021 and 5328725 dtd. 06.09.2021 to the note number 39 retrieved from Shri Madhur Jain's Mobile phone, it appeared that both are not same and there is significant difference in value.

**8.46** He was shown letter F. No. DRI/HQ-CI/A-Cell/50D/Enq-13/Int-12/2022-CI/Vol-II dated 11.07.2023 issued by Senior Intelligence Officer, DRI, HQ, New Delhi (**RUD-07**) addressed to the Assistant Director, DRI. Zonal Unit, Ahmedabad, wherein various documents viz. Commercial Invoices, Proforma Invoices, packing list, Country of Origin certificate, Mill Test Certificate, Bill of lading, copy of Insurance, Sale & Purchase contract etc (**RUD-08**) running from page no. 17 to 226 were attached. On perusal of the said documents, he stated that said documents are Commercial Invoices, Proforma Invoices, packing list, Country of Origin certificate, Mill Test Certificate, Bill of lading, copy of Insurance regarding import of Cold Rolled Stainless Steel Coils from various overseas suppliers based in China by M/s Shree International, Wazirpur, Delhi, Shri Mahadev Ji Exports, Wazirpur, Delhi and M/s Goel Exim, Wazirpur, Delhi.

**8.47** He perused the page no. 45 of the documents attached to the letter F. No. DRI/HQ-CI/A-Cell/50D/Enq-13/Int-12/2022-CI/Vol-II dated 11.07.2023 of DRI, HQ, New Delhi and stated that documents available at page no. 45 is the Commercial Invoice No. MFY210324SS02-1 dated 06.07.2021 issued by M/s MFY Metal Company Limited, Hong Kong to M/s Shri Mahadev Ji Exports, Wazirpur, Delhi for supply of Cold Rolled Stainless Steel Coil J3 Ex Stock (**RUD-08A**). On perusal, he stated that their average purchase price of Cold Rolled Stainless Steel Coil J3 Ex Stock was 1363 USD/MT. He perused the Bill of Entry No. 4821961 dtd 26.07.2021 filed by M/s Vasko Steels Pvt. Ltd for import of Cold Rolled Stainless Steel Coil J3 Ex Stock and stated that value of the similar goods declared before Indian Customs by M/s Vasko Steels Pvt. Ltd was 750 USD/MT. Further, he also perused the Commercial Invoice No. MFY210317JI03-3 dtd 06.07.2021 issued by M/s MFY Metal Company Limited, Hong Kong to M/s Vasko Steels Pvt. Ltd for supply of Cold Rolled Stainless Steel Coil J3 Ex Stock and stated that price of Cold Rolled Stainless Steel Coils was declared as 750 USD/MT. He further stated that the rate of Ex stock material depends on their unsold and defective material, shape, Size and Finish. It may vary from lot to lot of the ex-stock goods and quantity and time of purchase.

**8.48** On comparison of both the Commercial Invoice No. MFY210324SS02-1 dated 06.07.2021 and Commercial Invoice No. MFY210317JI03-3 dtd 06.07.2021 issued by M/s MFY Metal Company Limited, Hong Kong for supply of similar goods i.e. Cold Rolled Stainless Steel Coil J3 Ex Stock on the same date i.e. 06.07.2021 to different buyers in India, it appears that there is significant difference of value.

**8.49** He was shown letter dated 05.06.2023 received from M/s Shah Foils Limited addressed to the Assistant Director, DRI. Zonal Unit, Ahmedabad, wherein import documents viz. Bills of Entry, Commercial Invoices & packing

lists were submitted by M/s Shah Foils Limited (**RUD-06**) regarding import of Cold Rolled Stainless Steel Coils from various overseas suppliers based in China. On perusal of the said documents, he stated that M/s Shah Foils Limited has also imported the similar goods i.e. Cold Rolled Stainless Steel Coils Grade J3 from some of the same overseas supplier based in China, which they had imported in M/s Vasko Steels Private Ltd and M/s Vasko Metalloys Pvt. Ltd.

**8.50** He perused the Bill of Entry No. 9012065 dtd. 07.06.2022 submitted by M/s Shah Foils Limited letter dated 05.06.2023 and stated that price/rate of goods i.e. Cold Rolled Stainless Steel Coils Grade J3 is declared as 1525 USD/MT by M/s Shah Foils Limited and said goods were supplied by M/s Star Industrial Group Ltd., Hong Kong.

**8.51** He perused the Bill of Entry No. 9012127 dtd. 07.06.2022 filed by M/s Vasko Steels Pvt. Ltd for import of Cold Rolled Stainless Steel Coil J3 Ex Stock and stated that value of the similar goods declared before Indian Customs by M/s Vasko Steels Pvt. Ltd was 1200 USD/MT, which is quite less than the price from the goods imported by M/s. Shah Foils Limited. In similar manner, he perused the various Bills of entry submitted by M/s Shah Foils Limited vide letter dated 05.06.2023 and on comparison with the Bills of entry filed by M/s Vasko Steels Pvt. Ltd, wherein goods were supplied by same overseas supplier during the same period, he stated that there is much difference in price of similar goods imported from same supplier. The details of such BoE's are prepared and mentioned below as follows:

Sr. No	Name of Overseas supplier	Details of goods imported by M/s Shah Foils Limited		Details of goods imported by M/s Vasko Steels Pvt. Ltd	
		Bill of Entry No & Date	Rate declared in BoE (USD /MT)	Bill of Entry No & Date	Rate declared in BoE (USD /MT)
1	Star Industrial Group Ltd.	9012065 dtd. 07.06.2022	1525	9012127 dtd. 07.06.2022	1200
2	Foshan Jia Wei Import and Export Co. Ltd	9304663 dtd. 27.06.2022	1650	9822474 dtd. 01.08.2022	1050
3	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	2762913 dtd. 06.10.2022	800
4	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	3123696 dtd. 01.11.2022	800
5	Emetal Company Ltd.	3236062 dtd. 09.11.2022	1375	2849040 dtd. 12.10.2022	800
6	Emetal Company Ltd.	3237180 dtd. 09.11.2022	1375	3075229 dtd. 28.10.2022	850
7	Star Industrial Group Ltd.	3439493 dtd. 23.11.2022	1315	3319105 dtd. 15.11.2022	800
8	Star Industrial Group Ltd.	3540377 dtd. 30.11.2022	1315	3319103 dtd. 15.11.2022	800
9	MFY Metal Company Ltd.	3886806 dtd. 23.12.2022	1270	2795582 dtd. 08.10.2022	810
10	MFY Metal Company Ltd.	3964572 dtd. 29.12.2022	1235	3236765 dtd. 09.11.2022	810

On being asked, he stated that the rate of Ex stock material depends on material, shape, Size and Finish. It may vary from lot to lot of the Ex stock goods, unsold goods, defective goods and quantity and time of purchase.

ANALYSIS OF THE STATEMENTS RECORDED AND MODUS OPERANDI  
ADOPTED FOR EVASION OF CUSTOMS DUTY:

**9.1** In view of the evidence and facts discussed in the foregoing paras, it appears that “M/s VMPL” & “M/s VSPL” were importing the goods namely ‘Cold Rolled Stainless Steel Coils Grade J3’ from China by declaring lower values than the actual transaction values of the said goods to evade the Customs Duty. As per the understanding between Shri Madhur Jain, Shri Vinaye Jain and the overseas suppliers, the overseas suppliers used to issue invoice for lower value in comparison to full negotiated value to be presented before the Customs authority at the time of import.

**9.2** Further, in view of the evidence and facts discussed in the foregoing paras, it also appears that “M/s VMPL” & “M/s VSPL” were importing the goods namely ‘Cold Rolled Stainless Steel Coils’ by mis-classifying the same under CTI 72209022 to wrongly avail the benefit under Notification no. 50/2018-Customs dated 30.06.2018. As per the Notification No. 50/2018-Customs dated 30.06.2018 (Sr. No. 734), exemption was available to the goods falling under CTI 72209022 and not goods falling under CTI 72209090. Shri Vinaye Jain, Director of “M/s VMPL” & “M/s VSPL”, in connivance with Shri Madhur Jain had arranged to import ‘Cold Rolled Stainless Steel Coils’ by mis-declaring the same as ‘Cold Rolled Stainless Steel Coils of Nickle Chromium Austenitic type’ (a product of Stainless Steel of Nickle Chromium Austenitic type) and mis-classifying the same under CTI 72209022 to evade the applicable Customs duty by wrongly availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018.

**9.3** In the manner discussed herein above, Shri Madhur Jain, Marketing Manager and Shri Vinaye Jain, Director of “M/s VMPL” & “M/s VSPL”, had evaded the Customs duty due to the Government Exchequer by way of importing ‘Cold Rolled Stainless Steel Coils Grade J3’ from China and clearing them through Custom at grossly undervalued prices. Further, “M/s VMPL” & “M/s VSPL”, also imported ‘Cold Rolled Stainless Steel Coils’ by mis-declaring the import goods as ‘product of Stainless Steel of Nickel Chromium Austenitic type’ and by mis-classifying the same under CTI 72209022 to evade the applicable Customs duty.

DETAILS OF THE Bs/E WHERE IT IS INFERRED THAT UNDERRVALUATION AND  
MIS-DECLARATION OF THE IMPORTED GOODS WAS RESORTED TO BY ‘M/s.  
VSPL’ AND ‘M/s. VMPL’:

**10.** From the evidences collected during the investigation, it is inferred that both the importers ‘M/s. VMPL’ and ‘M/s. VSPL’ have evaded the Customs Duty by resorting to undervaluation and mis-classification of the imported goods, i.e. ‘Cold Rolled Stainless Steel Coil’. The list of the said Bs/E where such undervaluation and mis-classification are resorted is annexed to the SCN as Annexure-A1, A2, B1 and B2. The relevant details are discussed below:

**Annexure A-1:** List of Bs/E wherein undervaluation is done by ‘M/s. VMPL’

**Annexure A-2:** List of Bs/E wherein mis-classification or undue benefit of APTA is resorted to by ‘M/s. VMPL’

**Annexure B-1:** List of Bs/E wherein undervaluation is done by ‘M/s. VSPL’

**Annexure B-2:** List of Bs/E wherein mis-classification or undue benefit of APTA is resorted to by ‘M/s. VSPL’

SCRUTINY AND ANALYSIS OF THE EVIDENCES INFERRING THE UNDERVALUATION OF THE IMPORTED GOODS:

**11.** The fact that “M/s VMPL” & “M/s VSPL” had imported ‘Cold Rolled Stainless Steel Coils Grade J3’ with gross undervaluation is evidenced from the following evidences on record:

**11.1** Note containing actual rate/CIF value of goods along with the details/particulars of the goods imported by “M/s VMPL” & “M/s VSPL” recovered from the Mobile phone of Shri Madhur Jain is reproduced as follows:

<i>Sanjay bookings</i>	
Aug 2021	
0.55 2B unslit CIF 1635 : 5 contrs	→ Weight of the goods and the dates are comparable to the corresponding values in the Bs/E Nos.
0.30 BA unslit CIF 1720 : 5 contrs	→ 5328725 dated 06.09.2021,
0.30 BA unslit CIF 1780 : 10 contrs	→ 5568735 dated 24.09.2021,
55806 18.08	→ 5924358 dated 21.10.2021
55602 10.09	and 6200546 dated
52128	11.11.2021 filed by M/s.
1605 pipe strips	VMPL and M/s. VSPL
13-10	
2125 0.30 ba : 12 containers	

**PHOTO OF NOTE**

0.55 2B unslit CIF 1635 : 5 contrs 55806 18.08	Weight and invoice date same as in B/E no. 5328725 dated 06.09.2021
0.30 BA unslit CIF 1720 : 5 contrs 55602 10.09	Weight and invoice date same as in B/E no. 5568735 dated 24.09.2021
0.30 BA unslit CIF 1780 : 10 contrs 52128	Weight same as in B/E no. 5924358 dated 21.10.2021
13-10 2125 0.30 ba: 12 containers	Date of invoice near to the invoice date (16.10.21) of B/E no. 6200546 dated 11.11.2021

COMPARISON WITH THE CORRESPONDING VALUES IN Bs/E

In the note retrieved from the phone of Shri Madhur Jain, he had clearly mentioned the bookings of the goods made by him in Aug'2021 through ‘Shri Sanjay’, wherein he had mentioned width, their finish, actual CIF value, weight and date of the invoice and packing list.

**11.2** “M/s VMPL” and “M/s VSPL” imported the goods, i.e. Stainless-Steel Cold Rolled Coils vide Bs/E of dates in the month of Sep’2021 - Nov’2021, which had the weight of goods same as those mentioned in the note retrieved from the phone of Shri Madhur Jain as mentioned at para 11.1 above. The comparative details of the CIF price as mentioned in the said note and the corresponding Bs/E are as follows:

<b>Sr No .</b>	<b>Name of the importer (M/s.)</b>	<b>B/E No. &amp; Date</b>	<b>Date of the invoice and packing list</b>	<b>Weight of the goods as mentioned in the B/E or note contained in the phone of Madhur Jain</b>	<b>CIF price as mentioned in the B/E</b>	<b>CIF price as mentioned in the note contained in the phone of Madhur Jain</b>

1	"VMPL"	5328725 dated 06.09.2021	18.08.2021	55806 kgs	750	1635
2	"VSPL"	5568735 dated 24.09.2021	10.09.2021	55602 kgs	750	1720
3	"VSPL"	5924358 dated 21.10.2021	29.09.2021	52128 kgs	750	1780
4	"VSPL"	6200546 dated 11.11.2021	16.10.2021	55194 kgs	750	2125

**11.3** Thus, on comparison of documents presented before Customs at the time of clearance of goods with the evidences in the form of Note containing actual rate/CIF value of goods along with other details regarding import of 'Cold Rolled Stainless Steel Coils', it appears that "M/s VMPL" & "M/s VSPL" had not declared the correct description and value of goods before the Customs authority at the time of import. The actual value of the goods was substantially higher than the invoices issued by overseas supplier, ARS Technologies, Hong Kong to "M/s VMPL" & "M/s VSPL" for submitting before the Customs for the purpose of payment duty. Thus, it indicates that "M/s VMPL" & "M/s VSPL" by adopting the practice of mis-declaring the description and value of imported goods had indulged in under-valuation of the import consignments.

**11.4** Further, it has been stated by Shri Madhur Jain himself during his statement recorded on 06.04.2023 that all rate finalization were done through whatsapp and the above evidence (Note) has also been retrieved from his mobile phone, hence giving more credence to the evidence as shown above.

**11.5** Further, there are also other import consignments of 'M/s. VMPL' and 'M/s. VSPL' having similar goods and the adjacent dates of invoice comparable to the Bs/E as mentioned in the table in the para 11.2. Thus, it indicates that "M/s VMPL" & "M/s VSPL" by adopting the practice of mis-declaring the description and value of imported goods had indulged in under-valuation of the following import consignments:

Sr. No.	Cust o m House Code	BE No.	BE Date	Name of the importer	Invoice Date	Supplier Name	Quanti ty (kgs)	Declared Unit Price (USD/MT)	Actual/ Ascertaine d price (USD/MT)
1	INMUN 1	532872 5	06-09-2021	M/s. VMPL	18-08-2021	ARS TECHNOLOGIES	55806	750	1635
2	INMUN 1	532964 6	06-09-2021	M/s. VMPL	19-08-2021	ARS TECHNOLOGIES	8434	750	1635
			06-09-2021	M/s.VMP L	19-08-2021	ARS TECHNOLOGIES	19492	750	1635
3	INMUN 1	556873 5	24-09-2021	M/s.VSPL	10-09-2021	ARS TECHNOLOGIES	55602	750	1780
4	INMUN 1	590757 0	19-10-2021	M/s.VSPL	26-09-2021	ARS TECHNOLOGIES	54404	750	1780
5	INMUN 1	590762 2	19-10-2021	M/s.VSPL	26-09-2021	ARS TECHNOLOGIES	54624	750	1780
6	INMUN 1	592435 8	21-10-2021	M/s.VSPL	29-09-2021	ARS TECHNOLOGIES	52128	750	1720
7	INMUN 1	592436 4	21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	1912	768.828	1720
			21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	26600	750	1720
			21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	1252	750	1720
			21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	25900	750	1720
8	INMUN 1	620054 6	11-11-2021	M/s.VSPL	16-10-2021	ARS TECHNOLOGIES	55194	750	2125

9	INMUN 1	645913 1	29-11-2021	M/s.VSPL	10-11-2021	ARS TECHNOLOGIES	55338	750	2125
10	INMUN 1	647504 1	30-11-2021	M/s.VSPL	13-11-2021	ARS TECHNOLOGIES	3602	750	1720
			30-11-2021	M/s.VSPL	13-11-2021	ARS TECHNOLOGIES	51844	750	2125
11	INMUN 1	676590 5	20-12-2021	M/s.VSPL	21-11-2021	ARS TECHNOLOGIES	10388	1200	1720
			20-12-2021	M/s.VSPL	21-11-2021	ARS TECHNOLOGIES	39163	1200	1720
			20-12-2021	M/s.VSPL	21-11-2021	ARS TECHNOLOGIES	2236	1200	1720

- The highlighted Bs/E in the above table mentioned at Sr.Nos. 1, 3, 6 & 8 are those, whose real transaction values have been derived from the note contained in the phone of Shri Madhur Jain.

**11.6** Similarly, on comparison with the import documents of M/s Shah Foils Limited, it appears that “M/s VSPL” had imported similar goods from same overseas suppliers during the same period at much lower prices than the import price of M/s Shah Foils Limited. The details of the import prices of M/s Shah Foils Limited and its comparison with the imports made by “M/s VSPL” is tabulated as under:

Sr. No	Name of Overseas supplier	Details of goods imported by M/s Shah Foils Limited		Details of goods imported by M/s Vasko Steels Pvt. Ltd	
		Bill of Entry No & Date	Rate declared in BoE (USD /MT)	Bill of Entry No & Date	Rate declared in BoE (USD /MT)
1	Star Industrial Group Ltd.	9012065 dtd. 07.06.2022	1525	9012127 dtd. 07.06.2022	1200
2	Foshan Jia Wei Import and Export Co. Ltd	9304663 dtd. 27.06.2022	1650	9822474 dtd. 01.08.2022	1050
3	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	2762913 dtd. 06.10.2022	800
4	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	3123696 dtd. 01.11.2022	800
5	Emetal Company Ltd.	3236062 dtd. 09.11.2022	1375	2849040 dtd. 12.10.2022	800
6	Emetal Company Ltd.	3237180 dtd. 09.11.2022	1375	3075229 dtd. 28.10.2022	800
7	Star Industrial Group Ltd.	3439493 dtd. 23.11.2022	1315	3319105 dtd. 15.11.2022	800
8	Star Industrial Group Ltd.	3540377 dtd. 30.11.2022	1315	3319103 dtd. 15.11.2022	800
9	MFY Metal Company Ltd.	3886806 dtd. 23.12.2022	1270	2795582 dtd. 08.10.2022	810
10	MFY Metal Company Ltd.	3964572 dtd. 29.12.2022	1235	3236765 dtd. 09.11.2022	810

**11.7** Similarly, on comparison with the import documents of various importers mentioned in table below, it appears that “M/s. VMPL” and “M/s VSPL” had purchased similar goods from same overseas suppliers during the same period at much lower prices than the purchase price of such importers. The details of the invoice prices of the said importers are tabulated as under:

Sr. No.	Name of the importer (M/s.)	Name of the supplier	Goods description as per invoice	Invoice date	Invoice rate in USD/MT
1	Shree International	Huaye International Development (HK) Limited	Cold Rolled Stainless Steel Coil Grade J3 Ex Stock	06.09.2021	1685

2	Maha Shakti Exims	Leo Metals Limited	Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock	05.08.2021	1700
3	Maha Shakti Exims	Foshan Xuanzheng Trading Co., Ltd.	Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock	19.08.2021	1425
4	Shri Mahadev Ji Exports, Delhi	Jiayao (Hongkong) International Group Limited	Cold Rolled Stainless Steel Coil Grade J3 Stock Lot	12.03.2021	1410
5	<b>Shri Mahadev Ji Exports, Delhi</b>	<b>MFY Metal Company Limited</b>	<b>Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock</b>	<b>06.07.2021</b>	<b>1363</b>
6	Shri Mahadev Ji Exports, Delhi	Guangdong Guangxin Goldtec Holdings Co. Ltd	Cold Rolled Stainless Steel Coil Grade J3 Stock Lot	12.03.2021	1430

While, M/s. VMPL and M/s. VSPL has imported the similar goods during almost the same period from same supplier i.e. MFY Metal Company Ltd. at a much lower price, the same being tabulated as follows:

Sr No	Custom House Code	BE No.	BE Date	Name of the importer	Invoice Date	Supplier Name	Quantity (kgs)	Unit Price (USD /MT)	Actual/Ascertaine d price (USD/MT)
1	INMUN 1	512615 7	20-08-2021	M/s. VMPL	17-07-2021	MFY METAL COMPANY LIMITED	105460	750	1363
2	INMUN 1	416275 2	01-06-2021	M/s. VSPL	24-04-2021	MFY METAL COMPANY LIMITED	52140	750	1363
3	INMUN 1	416274 8	01-06-2021	M/s. VSPL	24-04-2021	MFY METAL COMPANY LIMITED	27051	910	1363
4	INMUN 1	445895 0	26-06-2021	M/s. VSPL	03-06-2021	MFY METAL COMPANY LIMITED	53334	750	1363
5	INMUN 1	445894 8	26-06-2021	M/s. VSPL	03-06-2021	MFY METAL COMPANY LIMITED	54986	750	1363
6	INMUN 1	457685 1	05-07-2021	M/s. VSPL	10-06-2021	MFY METAL COMPANY LIMITED	80820	750	1363
7	INMUN 1	457679 6	05-07-2021	M/s. VSPL	04-06-2021	MFY METAL COMPANY LIMITED	54646	750	1363
8	INMUN 1	457679 2	05-07-2021	M/s. VSPL	22-05-2021	MFY METAL COMPANY LIMITED	54850	750	1363
9	INMUN 1	477718 0	22-07-2021	M/s. VSPL	26-06-2021	MFY METAL COMPANY LIMITED	52528	750	1363
10	INMUN 1	480598 7	24-07-2021	M/s. VSPL	30-06-2021	MFY METAL COMPANY LIMITED	80243	750	1363
11	INMUN 1	482196 1	26-07-2021	M/s. VSPL	06-07-2021	MFY METAL COMPANY LIMITED	52392	750	1363
12	INMUN 1	500153 4	10-08-2021	M/s. VSPL	13-06-2021	MFY METAL COMPANY LIMITED	54116	750	1363
13	INMUN 1	613801 9	05-11-2021	M/s. VSPL	13-06-2021	MFY METAL COMPANY LIMITED	27624	750	1363

**11.8** The evidences relating to undervaluation, as mentioned above, are enough to prove the liability of the importers in the Bs/E as mentioned in the Annexures

attached to the SCN. The fact of the accuracy or the mathematical precision of the evidences as mentioned in the preceding paras has been supported by various judgements of Tribunals/Courts. For example, in the case of **Collector of Customs, Madras and Ors vs D. Bhoormull- 1983(13)ELT 1546(S.C.)**, the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise, it would be impossible to prove everything in a direct way.

**11.9** It is also pertinent to mention that the goods imported by the coils have been imported by including text in the description, 'ex stock'. As per the statements of the representatives of Customs Brokers and the importers, the Ex stock means the goods of various types of size, Heat Number and Lot number. However, it is revealed from the import documents and also admitted by the Custom Brokers and Shri Madhur Jain in their respective statements that the imported Cold Rolled Stainless Steel Coils are of only one grade i.e. J3 which is a customized grade of 200 series having low Nickel content around 1 %. Thus, it is apparent that the said goods may not be covered under Ex stock.

**12.1** From the facts discussed in the foregoing paras and material evidences available on record, it transpires that "M/s VMPL" & "M/s VSPL" had imported 'Cold Rolled Stainless Steel Coils Grade J3' from various overseas suppliers based in China and had resorted to undervaluation, by suppressing the actual transaction value in the invoice and the documents filed before the Customs Authority at the time of imports, with an intent to evade customs duty leviable thereon. The prices declared by "M/s VMPL" & "M/s VSPL" before the Customs Authority for clearance of the imported consignments of 'Cold Rolled Stainless Steel Coils Grade J3' were very low and it is evident from the Note depicting actual rate/CIF value of goods of the imported 'Cold Rolled Stainless Steel Coils Grade J3' that actual price of the goods were much more than the price declared by "M/s VMPL" & "M/s VSPL" for the import of impugned goods, which were not declared before the customs, though the same must be part of the transaction value.

**12.2** Thus, the value declared by "M/s VMPL" & "M/s VSPL" before the Customs authorities as mentioned in the invoices and the import documents cannot be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act 1962 read-with Rule 3(1) of the Customs Valuation (Determination of value of the imported goods) Rules, 2007. In terms of the provisions of the Section 14 read with Rule 3(1) of the Customs Valuation (Determination of value of the imported goods) Rules, 2007, the transaction value of the imported goods is the total amount actually paid or payable for the said imported goods. Thus, in cases where total amount paid or payable can be ascertained, the correct transaction value shall be a sum total of all such amounts and the same will be determined under Rule 3(1) ibid. In terms of the provisions of Rule 11 of the Customs Valuation (Determination of value of the imported goods) Rules 2007, "M/s VMPL" & "M/s VSPL" were required to furnish a declaration disclosing full & accurate details relating to the value of the imported goods along with other documents & information including the invoice in respect of the actual transaction price. However, in the instant case, "M/s VMPL" & "M/s VSPL" furnished wrong declarations, statements & documents to the Customs authority while filing of Bills of Entry (as detailed in Annexure-A-1 & B-1 to the SCN) thereby suppressing the actual transaction value with an intention to evade Customs duty leviable thereon, by adopting the modus as detailed herein above.

**12.3** The fact of under-valuation is clear from the statements of Shri Madhur Jain, Marketing Manager of “M/s VMPL” & “M/s VSPL”, which are duly corroborated with the documentary evidences discussed herein above. There is a reasonable doubt regarding the truth & accuracy of the values declared by “M/s VMPL” & “M/s VSPL” and the actual transaction value of such imported goods can be gathered from the evidences discussed herein above. Further once the mis-declaration is noticed, the department is required to establish degree of probability and is not required to prove the actual value with mathematical precision, thus, the declared value in respect of the said imported consignments of ‘Cold Rolled Stainless Steel Coils Grade J3’ merits rejection under Section 14 of the Customs Act, 1962 read with Rule 12 of the Customs valuation (Determination of value of the imported goods) Rules 2007. In the instant case, evidences available, as discussed hereinabove, indicate that the invoices produced by “M/s VMPL” & “M/s VSPL” before the Customs Authority at the time of clearance of the imported goods, did not indicate the true and correct transaction value of the said goods and there are various evidences, as discussed herein above, indicating the true, correct and actual transaction value of the consignments imported from overseas supplier by “M/s VMPL” & “M/s VSPL” and cleared under the various Bills of Entry filed as detailed in **Annexure -A-1 & B-1** to the SCN.

**12.4** It appears that the invoices raised by overseas suppliers to “M/s VMPL” & “M/s VSPL” which were submitted before Indian Customs in respect of the goods imported by them, did not indicate the true and correct value of the said goods in as much as the same were much lower than the actual transaction value as detailed above. The evidences regarding undervaluation of said imported goods is *the retrieval of the Note depicting actual rate/CIF value of goods along with other details recovered from the mobile of Shri Madhur Jain, withdrawn from the premises of “M/s VMPL” & “M/s VSPL” during panchnama dated 22.11.2022* which is further corroborated from the statement of Shri Madhur Jain. In respect of the said consignments which were undervalued, the declared value by the importer before the designated authority of Customs cannot be treated as true transaction value as per Section 14 of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules 2007. Since, the actual price paid or payable is available in the instant case as discussed herein above, recourse is taken to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007 as applicable for re-determining the value of the said consignments, as mentioned at **Sr. No. 02 to 03 of the Annexure-A-1** and at **Sr. No. 12 to 16 & 18 to 21 of the Annexure-B-1** to the SCN.

**12.5** In case of goods imported by “M/s VSPL” where actual price paid or payable as per Rule 3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007 is not available, recourse is taken to Rule 5 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007, *wherein price of the similar goods of same overseas supplier are available as provided by M/s Shah Foils Limited vide letter dated 05.06.2023*. Accordingly, in respect of consignments of Cold Rolled Stainless Steel Coils Grade J3 as shown at **Sr. No. 22 to 31 of Annexure-B-1** of the Investigation Report imported by “M/s VMPL” & “M/s VSPL”, the transaction value is ascertained by taking the value of similar goods which were imported by M/s Shah Foils Limited as detailed in Para 11.6 of the Investigation Report.

**12.6** Similarly, in case of goods imported by “M/s. VMPL” and “M/s VSPL” where actual price paid or payable as per Rule 3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007 is not available,

recourse is taken to Rule 5 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007, wherein price of the similiar goods of same overseas supplier are available as pertaining to various Delhi based importers received through letter dated 11.07.2023 of Senior Intelligence Officer, DRI (HQ), Delhi. Accordingly, in respect of consignments of Cold Rolled Stainless Steel Coils Grade J3 as shown at Sr. No. 1 of Annexure-A1 and Sr. No. 01 to 11 & Sr. No. 17 of Annexure-B-1 of the Investigation Report imported by "M/s VMPL" & "M/s VSPL", the transaction value is ascertained by taking the value of similiar goods which were imported by such Delhi based importers as detailed in Para 11.7 of the Investigation Report.

**12.7** Accordingly, the value declared by the importer before the Customs authorities as mentioned in the invoices and the import documents cannot be treated as correct transaction value in terms of provisions of section 14 of the Customs Act, 1962 read with Rule-3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007. Accordingly, the transaction value of the imported goods should be based on the value of similiar goods imported by the other importers (in this case M/s Shah Foils Limited and other Delhi based importers as discussed above) and the same will be determined under Rule 5 ibid. In terms of the provisions of Rule 11 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007, the importer is required to furnish a declaration disclosing full and accurate details relating to the value of imported goods along with other documents & information including the invoice in respect of the actual transaction price. However, in the instant case, "M/s VMPL" & "M/s VSPL" had furnished wrong declarations, statements & documents to the Customs authority while filing of Bills of Entry in as much as they had not declared the correct description and value of the imported goods thereby suppressing the actual transaction value with an intention to evade Customs duty leviable thereon, by adopting the modus as detailed herein above.

**12.8** From the above, it appears that "M/s VMPL" & "M/s VSPL" had willfully misstated the value of the 'Cold Rolled Stainless Steel Coils Grade J3' before the Customs at the time of import with a view to evading the customs duty. The correct and actual transaction value of the 'Cold Rolled Stainless Steel Coils Grade J3' imported by them was also suppressed at the time of filing of Bills of Entry by presenting an invoice of a much lower value than the actual value of the imported 'Cold Rolled Stainless Steel Coils Grade J3' and also not declaring the correct description/make of the goods. Thus, it appears that the applicable customs duty liability had not been discharged by the importer by way of willful mis-statement and suppression of facts and therefore, the differential customs duty is liable to be recovered by invoking the provisions of the extended period of limitation under Section 28(4) of the Customs Act, 1962.

**13.** In view of the facts discussed in foregoing paras and material evidence available on record, it transpires that:-

(i) M/s Vasko Metalloys Private Limited had declared the total assessable value of imported 'Cold Rolled Stainless Steel Coils Grade J3' assessed by the customs authority as **Rs. 1,05,91,930/-** only (as detailed in **Annexure-A-1** to the SCN) at the time of clearance of the goods in the corresponding Bills of Entry, as against the actual transaction value (assessable value) of **Rs.2,03,71,572/-** and suppressed the value amounting to **Rs. 97,79,642/-** from the Customs, resulting in evasion of Customs duty amounting to **Rs.27,12,384/-**, as detailed in **Annexure-A-1** to the SCN.

(ii) M/s Vasko Steels Private Limited had declared the total assessable value of imported 'Cold Rolled Stainless Steel Coils Grade J3' assessed by the customs authority as **Rs.9,52,48,270/-** only (as detailed in **Annexure-B-1** to the SCN) at the time of clearance of the goods in the corresponding Bills of Entry, as against the actual transaction value (assessable value) of **Rs.18,27,95,327/-** and suppressed the value amounting to **Rs. 8,75,47,057/-** from the Customs, resulting in evasion of Customs duty amounting to **Rs.2,35,75,732/-**, as detailed in **Annexure-B-1** to the SCN.

Therefore, the above declared/assessed value is required to be re-determined as mentioned in **Annexure-A-1& B-1** to the SCN, under Section 14 of the Customs Act, 1962 read with Rule 3(1) or Rule-5 (as applicable) of the Customs Valuation (Determination of value of the imported goods) Rules, 2007 as applicable.

#### SCRUTINY AND ANALYSIS OF THE EVIDENCES INFERRING THE MIS-CLASSIFICATION OF THE IMPORTED GOODS:-

**14.** The fact that "M/s VMPL" & "M/s VSPL" had imported 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTI 72209022 to wrongly avail the benefit under Notification no. 50/2018-Customs dated 30.06.2018 is evident from the following:

##### EXEMPTION CONDITIONS:

**14.1** As per the Notification no. 50/2018-Customs dated 30.06.2018 (**RUD-1**), there is "Extent of tariff concession (45% percentage of applied rate of duty)" on certain goods of tariff heading mentioned in the notification if imported from the country listed in APPENDIX I & APPENDIX II of the said notification from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in the Notification.

**14.2** For the purpose of implementing the Asia-Pacific Trade Agreement Rules, 2006, certain criteria are required to be followed for issuance of Country of Origin Certificate. As per Notes of completing a certificate of origin in "Box 1. Goods consigned from", the name must be the same as the exporter described in the invoice. Moreover, the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision for accepting a certificate of origin for which invoice is issued by a non-party.

**14.3** The Country-of-Origin certificates submitted by "M/s. VMPL" and "M/s. VSPL" for the purpose of claiming benefits under Asia Pacific Trade Agreement (APTA) have been issued by the exporters who are also the manufacturers of the said goods, i.e. Cold Rolled Stainless Coils and mention the Hong Kong based suppliers as non-party operators. However, the corresponding export invoices have been issued by the non-party operators or the Hong Kong based suppliers, which were other than the original manufacturer of the goods, thus the same is contrary to the conditions to qualify for the preference as per the APTA.

**15.** On scrutiny of documents viz. Mill Test Certificates/ Test Certificate-Inspection Certificate along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificate, Marine Cargo Insurance Policy submitted by "M/s VMPL" & "M/s VSPL", it appears that the Mill Test Certificates/Test Certificate-Inspection Certificates issued by the manufacturer of goods, the coils contains more percentage of chromium and magnesium instead of Chromium & nickel

and do not contain maximum substitute of nickel. Thus, the said goods do not fall under the category of Nickel chromium austenitic type and hence, do not qualify to be declared under CTI72209022, which clearly covers goods having description as Flat Rolled products of stainless steel, of width of less than 600MM of Nickel chromium austenitic type. Further, as per Country of Origin certificate issued by China based manufacturers in the name of importer and name of suppliers based in Hong Kong, who issued the invoices were mentioned as third party operator which were other than the original manufacturer of the goods. Thus, "M/s VMPL" & "M/s VSPL" had wrongly availed the benefit of Notification no. 50/2018-Customs dated 30.06.2018 by claiming the product as 'Nickel chromium austenitic type' under Customs Tariff Heading 72209022 and producing Country of Origin certificates issued by China based manufacturers by mentioning suppliers based in Hong Kong as third party operators. The mis classification and mis-declaration of goods was evident from the following evidences on record: -

**15.1** Mill Test Certificates no. 210406JI05-5 dated 13.07.2021 and no. 210406JI01-2 dated 22.05.2021 were issued for the goods supplied under Commercial Invoice No. MFY210406JI05-5 dated 13.06.2021 and Commercial Invoice No. MFY210316JI01-2 dated 22.05.2021 respectively to 'M/s VSPL'. As per the Mill Test Certificates and Commercial Invoices, it appears that goods supplied under both the Commercial Invoices were similar i.e. 'Cold Rolled Stainless Steel Coils Grade J3' and as per both the Mill Test Certificates, the coils contain less than **1.3% of Nickel and less than 14% chromium**, wherein the Magnesium was around 10%. In order to provide a view, both the Test Certificates are reproduced as follows:

(i) Mill Test certificate no. 210406JI05-5 dated 13.07.2021 **[RUD-13A]**:

MFY METAL COMPANY LIMITED MILL CERTIFICATE														Cr-13.11%		Ni-0.773%	
MFY (FS) 21/A CUSTOMER: VASCO STEELS PRIVATE LIMITED SPEC. /TYPE: 13 CI NO.: MFY210406JI05-5					PRODUCT: Stainless Steel Cold Rolled Coil J3 Grade Ex-Stock thickness Mix					CERTIFICATION NO: 210406JI05-5				ISSUE DATE: 20210713 PAGE: 1/1			
Coil No.	Heat No.	EDGE	Specification MM	QTY PKG NO	Weight KGS	(% Chemical Composition)								TENSILE TEST		HARDNESS	
						C	S1	Mn	P	S	Cr	Ni	Cu	T.S.	0.2% Y.S.	EL	HRB
S061037	MFY0713	M	0.28MM	1	3622	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596				
S061037-1	MFY0713	M	0.28MM	2	3470	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596				
S061034	MFY0714	M	0.28MM	3	3734	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565				
S061034-1	MFY0714	M	0.30MM	4	3370	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565				
S061039	MFY0715	M	0.30MM	5	3532	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604				
S061039-1	MFY0715	M	0.30MM	6	3700	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604				
S061036	MFY0716	M	0.32MM	7	3786	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.565				
S061038-1	MFY0718	M	0.32MM	8	2250	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575				
S061036-1	MFY0716	M	0.28MM	9	3292	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596				
S061035	MFY0717	M	0.28MM	10	3370	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596				
S061035-1	MFY0717	M	0.28MM	11	3426	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578				
S061040	MFY0720	M	0.30MM	12	3652	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578				
S061040-1	MFY0720	M	0.30MM	13	3600	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575				
S061033	MFY0719	M	0.30MM	14	2466	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565				
S061033-1	MFY0719	M	0.32MM	15	3236	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604				
S061038	MFY0718	M	0.32MM	16	3610	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604				
TOTAL:					/	/	54116										
REMARKS:	1. EDGE: M-MILL EDGE, C-CUT EDGE 2. NON-RADIATION CONTAMINATION													MANUFACTURER: MFY METAL COMPANY LIMITED 名風揚金属有限公司			
NOTES:	WE HEREBY CERTIFY THAT THE MATERIAL DESCRIBED HEREIN HAS BEEN MANUFACTURED AND TESTED WITH SATISFACTORY RESULT IN ACCORDANCE WITH THE REQUIREMENT OF THE ABOVE MATERIAL SPECIFICATION.													STAMP:  Authorized Signature(s)			

(ii) Mill Test certificate no. 210406JI01-2 dated 22.05.2021 [RUD-14A]:

FOSHAN MFY METAL TECHNOLOGY CO.,LTD TEST REPORT														Cr-13.11%			Ni-0.773%		
MFY (FS) 21/A			CUSTOMER: VASKO STEELS PRIVATE LIMITED SPEC. /TYPE: J3 CI NO.: MFY210316JI01-2			PRODUCT: COLD ROLLED STAINLESS STEEL COIL GRADE: J3			CERTIFICATION NO: 210316JI01-2			ISSUE DATE: 20210522 PAGE: 1/1							
Coil No.	Heat No.	EDGE	Specification	QTY	Weight	(%) Chemical Composition								TENSILE TEST		HARDNESS		BEND	
						MM	PKG	KGS	C	Si	Mn	P	S	Cr	Ni	Cu	T.S.		0.2% Y.S.
030801	D7EC	M	0.30*510*C	1	3460	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596						
030801-1	D7EC	M	0.30*510*C	1	3438	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596						
031448	KJ6B	M	0.30*510*C	1	3590	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565						
031448-1	KJ6B	M	0.30*510*C	1	3388	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565						
045715	C5WQ	M	0.30*510*C	1	3326	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604						
045715-1	C5WQ	M	0.30*510*C	1	3578	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604						
045786	X9ZN	M	0.30*510*C	1	3546	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.565						
045786-1	X9ZN	M	0.30*510*C	1	3436	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575						
045808	3M9S	M	0.30*510*C	1	3492	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596						
045808-1	3M9S	M	0.30*510*C	1	3500	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596						
045878	XP10	M	0.30*510*C	1	3428	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578						
045878-1	XP10	M	0.30*510*C	1	3480	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578						
30792	DR45	C	0.30*406*C	1	2616	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575						
MFY2103062	YL86	C	0.30*280*2C	1	3708	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565						
045713	94GH	M	0.30*510*C	1	3594	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604						
045713-1	94GH	M	0.30*510*C	1	3270	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604						
TOTAL:			/	16	54850														
REMARKS:			1. EDGE: M-MILL EDGE, C-CUT EDGE 2. NON-RADIATION CONTAMINATION											For and on behalf of MFY METAL COMPANY LIMITED 名 廉 金 属 有 限 公 司			MANUFACTURER:		
NOTES:			WE HEREBY CERTIFY THAT THE MATERIAL DESCRIBED HEREIN HAS BEEN MANUFACTURED AND TESTED WITH SATISFACTORY RESULT...IN ACCORDANCE WITH THE REQUIREMENT OF THE ABOVE MATERIAL SPECIFICATION.											S/No. <i>95</i> Authorized Signature(s)					

**15.2** Thus, it is apparent that the imported consignments corresponding to the above two Mill Test Certificates were having the similar quality of goods. However, the corresponding Bs/E were filed by the importer, i.e. B/E No. 5001534 dated 10.08.2021 and 4576792 dated 05.07.2021 under different CTIs. The B/E No. 5001534 dated 10.08.2021 was filed declaring goods under CTI 72202090 and B/E No. 4576792 dated 05.07.2021 was filed declaring goods under CTI 72209022. The table depicting the details of the said Bs/E and the goods imported are as follows:

B/E No. & date	Goods description in the B/E	CTI of the goods in the B/E	Mill Test certificate No.	Average Percentage of constituent metals as per Mill Test Certificate
5001534 dated 10.08.2021	Cold Rolled Stainless Steel Coils Grade J3	72202090	210406JI05-5 dated 13.07.2021, issued by M/s. MFY Metal Company Limited, China	Nickel-0.77% Chromium-13.11%
4576792 dated 05.07.2021	Cold Rolled Stainless Steel Coils Grade J3	72209022	210406JI01-2 dated 22.05.2021 issued by M/s. Foshan Metal Technology Co. Ltd., China	Nickel-0.77% Chromium-13.11%

**15.3** On perusal of the above documents viz. Mill Test certificates or Test reports, it is apparent that both the test certificates mention the percentage of constituents, particularly the percentages of Nickel and Chromium almost similar in both test certificates. However, the Bs/E were filed by declaring the goods under different CTIs, i.e. B/E no. 5001534 dated 10.08.2021 was filed by declaring goods under CTI 72202090, i.e. without taking benefit of the tariff concession as

available under Notification no. 50/2018-Customs dated 30.06.2018, while the B/E no. 4576792 dated 05.07.2021 was filed declaring the goods under CTI 72209092 thus taking benefit of the tariff concession as available under Notification no. 50/2018-Customs dated 30.06.2018.

**15.4** Similarly, on perusal of the other Bills of Entry filed by “M/s VMPL” & “M/s VSPL”, it appears that “M/s VMPL” & “M/s VSPL” has imported similar goods from China by declaring it as ‘Cold Rolled Stainless Steel Coils Ex Stock Grade-J3 less than 600MM’ under heading ‘Others’ of CTH 7220 but after issuance of Notification No. 50/2018-Customs dated 30.06.2018, “M/s VMPL” & “M/s VSPL” started classifying the goods under CTI 72209022 to avail the benefit of said Notification. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by “M/s VMPL” & “M/s VSPL” are in fact Stainless Steel of other Grades and be correctly classified under CTI 72209090 for which the said benefit of concessional rate of duty is not available.

**15.5** The Country of Origin Certificate No. 0000091140857 dated 25.05.2021 corresponding to the B/E No. 4576792 dated 05.07.2021 (**RUD-14B**), the name of supplier i.e. M/s. MFY Metal Company Limited was mentioned as third party operator which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Guangyulong Trade Co., Ltd, Shenzhen, China. Further, as per the notes written on the said Country of Origin Certificate, "the name must be the same as the exporter described in the invoice" but in the said Country of Origin Certificate, name of supplier was not written. In order to provide a view, Country of Origin Certificate No. 0000091140857 dated 25.05.2021 is reproduced below:

1 Goods consigned from (Exporter's business name, address, country)			2 Goods consigned to (Consignee's name, address, country)		
SHENZHEN GUANGYULONG TRADE CO., LTD. C-8B, FULIGE, HAIFU GARDEN, SHENNAN EAST ROAD, HUANGBEI STREET LUOHU DISTRICT, SHENZHEN CHINA			Reference No. B215571670002170		
			<b>CERTIFICATE OF ORIGIN</b> Asia-Pacific Trade Agreement (Combined Declaration and Certificate) Issued in The People's Republic of China (Country)		
			3. For Official use		
			Verification: origin.customs.gov.cn		
4. Means of transport and route FROM SHEKOU, CHINA TO MUNDRA, INDIA BY SEA.					
5 Tariff item number	6 Marks and number of Packages	7. Number and kind of packages/description of goods	8. Origin criterion (see notes overleaf)	9 Gross weight or other quantity	10 Number and date of invoices
7220. 90	N/M	COLD ROLLED STAINLESS STEEL COIL GRADE J3 HS CODE 72209022  TOTAL:SIXTEEN (16) PACKAGES ONLY *** *** *** *** *** THIRD-PARTY OPERATOR: MFY METAL COMPANY LIMITED FLAT/RM A1, 9/F SILVERCORP INT'L TOWER 707-713 NATHAN RD MONGKOK KLN, HONG KONG, CHINA	"A"	55170KGS	MFY210316J10 1-2 MAY 22, 2021
11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct. The following documents were produced in  and that they comply with the origin requirements specified for these goods in the Asia-Pacific Trade Agreement for goods exported to  THE REPUBLIC OF INDIA (Importing Country)					
12. Certificate  It is hereby certified on the basis of control carried out, that the declaration by the exporter is correct. Shenzhen, China MAY 25, 2021					
Place and date, signature of authorized Signatory Shenzhen, China MAY 25, 2021 Place and date, signature and stamp of Certifying Authority					

On perusal of the Country of Origin certificate issued by China based manufacturers in the name of importer, it is observed that M/s. MFY Metal

Company Limited, Hong Kong, who issued the invoice was mentioned as third party operator which was other than the original manufacturer of the goods. The said goods were imported by "M/s VSPL" under Bill of entry No. 4576792 dated 05.07.2021 through Mundra Port.

**15.6** Similarly, on perusal of all the Country of Origin certificates issued by China based manufacturers in the name of importers- 'M/s. VSPL' and 'M/s. VMPL', it was observed that the supplier based in Hong Kong which issued the invoices were mentioned as third party operator, were other than the original manufacturer of the goods. The said goods were imported by "M/s VMPL" & "M/s VSPL" under various Bills of entry as mentioned in the Annexure A2 and B2.

**15.7** Shri Madhur Jain, freelancer/Manager of "M/s VMPL" & "M/s VSPL" in his statements has stated that the J3 grade (200 series) of Cold Rolled Stainless Steel Coils were developed by Jindal Stainless and other Indian manufacturers, similar to the grade 201 i.e. international grade. Later, Chinese manufacturers also started manufacturing J3 grade which was equal to grade 201. Shri Vinaye Jain in his statement also stated that J3 is a customized grade of 200 series having low Nickel content around 1% as I stated earlier.

**15.8** Shri Madhur Jain in his statements stated that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the goods under same CTI 72202090. Also, on verification of import data of "M/s VMPL" & "M/s VSPL", prior to the issuance of the said notification, "M/s VMPL" & "M/s VSPL" had classified the said coils under the correct CTIs.

**15.9** The Bs/E filed by 'M/s. VSPL' and 'M/s. VMPL' wherein the goods are misclassified under CTI 72209022 in the aforesaid manner are mentioned in the Annexure A-2 and Annexure B-2 of the SCN.

#### THE NICKEL-CHROMIUM AUSTENITIC STAINLESS STEEL (NICKEL CHROMIUM AUSTENITIC STAINLESS STEEL) & 200 SERIES STAINLESS STEEL

**16.** On the basis of the plethora of the materials regarding stainless steel, it can be broadly made out that stainless steel is a generic term used to refer to iron based alloys which contain chromium and there are more than 100 grades of stainless steel. These are differentiated by the percentage of chromium, nickel, molybdenum, and other alloying elements. Each grade is used for specific purposes and comes with its own advantages and disadvantages. The grades are grouped within five main categories: austenitic, ferritic, martensitic, duplex, and precipitation-hardened (PH). Austenitic steel is the most commonly used type of stainless steel, as with its exceptional resistance to heat and corrosion, it is used extensively in many industries including medical, automotive, aerospace, and industrial applications. This category is known for unsurpassed strength and formability and that it cannot be hardened by heat treatment.

**17.** The benefit of Notification No. 50/2018-Customs dated 30.06.2018, claimed by 'VMPL' and 'M/s. VSPL' under CTI: 72209022 is liable to be rejected on account of the following two reasons which have been discussed separately:

**17.1** Wrong availment of benefit of Notification No. 50/2018-Customs dated 30.06.2018, by the importer on the strength of invoices issued by a Non-Party:

17.1.1 'M/s VSPL' and 'M/s. VMPL' had wrongly availed the benefit of the concessional rate of duty under Notification No. 50/2018-Customs dated

30.06.2018 on the basis of Country-of-Origin certificates issued by China based manufacturers in the name of importer, whereas invoices were issued by other supplier based at Hong Kong. However, under the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] a certificate of origin for which invoice is issued by a non-party is not valid. Therefore, even just on the ground that the Country of Origin certificates submitted by 'M/s VSPL' and 'M/s. VMPL' were got issued by the manufacturers other than the actual exporters (Invoice issuing suppliers) the benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to them.

**17.2** However additionally, on account of mis-classification of the Imported Goods also, the benefit of Notification No. 50/2018-Customs dated 30.06.2018, claimed by the importer is wrong as the correct CTI is not covered under the exemption notification.

**17.2.1** Classification of the imported goods is to be derived by following the General Rules of Interpretation of the Import tariff. As per Rule 1 of the General Rules for the Interpretation '*the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions (i.e. G.R. 2 to 6)'*.

17.2.2 Classification of the goods imported by the importer is discussed herein under:

#### Stainless Steels

As per Chapter Note relating to Stainless Steel of Chapter 72, stainless steels are alloy steels containing by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without the elements.

Since the Mill test certificates of the importer indicate that the imported goods have 1.2% or less of carbon and 10.5% or more of chromium, it is inferred that there is no doubt about 4 level classification of the imported items under CTH 7220. For further determination of chapter tariff sub-heading/chapter tariff item, the explanatory notes to Harmonized System of Nomenclature along with technical literature regarding the goods has to be referred with due regards to the General Rules of Interpretation.

Further, as per the Customs Tariff, CTH 7220 covers the goods – Flat Rolled products of stainless steel, of a width less than 600 mm. The relevant portion of Customs Tariff 1975, is reproduced as follows:

<b>7220 20</b>	-	<b>Not further worked than cold-rolled (cold- reduced)</b>
7220 20 10	---	Skelp for pipes and tubes
	---	Strips for pipes and tubes (other than skelp)
7220 20 21	----	Chromium type
7220 20 22	----	Nickel chromium austenitic type
7220 20 29	----	Other
<b>7220 20 90</b>	---	<b>Other</b>
<b>7220 90</b>	-	<b>Other</b>
7220 90 10	---	Skelp (strips for pipes and tubes)
	---	Strips for pipes and tubes (other than skelp)

7220 90 21	----	Chromium type
<b>7220 90 22</b>	----	<b>Nickel chromium austenitic type</b>
<b>7220 90 29</b>	----	<b>Other</b>
<b>7220 90 90</b>	---	<b>Other</b>

**17.2.3** M/s. ASM International, the world's largest and most established materials information society providing access to trusted materials information through reference content, data and research, education courses and international events, in their official website <https://www.asminternational.org> (**RUD-18A**) provided the literature on the topic '**Austenitic Stainless Steels**'; wherein it is categorically elaborated that '**Austenitic Stainless Steels**' grades are best viewed as a continuum with a lower boundary at 16%Cr-6%Ni and an upper boundary at 19%Cr - 12%Ni. This represents the range from minimum to maximum austenite stability. The topic '**Austenitic Stainless Steels**' also provide the content by weight (%) of the major alloying elements, as shown in table below:

**Table 1 Typical compositions of the most commonly used lean austenitic alloys**

Alloy	Designation	C	N	Cr	Ni	Mo	Mn	Si	Other	Other	Other
201	S20100	0.08	0.07	16.3	4.5	0.2	7.1	0.45	0.001 S	0.03 P	0.2 Cu
201 drawing	S220100	0.08	0.07	16.9	5.4	0.02	7.1	0.5	0.001 S	0.30 P	0.6 Cu
201LN	S20153	0.02	0.13	16.3	4.5	0.2	7.1	0.45	0.001 S	0.03 P	0.5 Cu
301 tensile	S30100	0.08	0.4	16.6	6.8	0.2	1.0	0.45	0.001 S	0.03 P	0.3 Cu
301 drawing	S30100	0.08	0.04	17.4	7.4	0.02	1.7	0.45	0.007 S	0.03 P	0.6 Cu
303	S30300	...	...	...	...	...	...	...	...	...	...
304	S30400	0.05	0.05	18.3	8.1	0.3	1.8	0.45	0.001 S	0.03 P	0.3 Cu
304 drawing	S30400	0.05	0.04	18.4	8.6	0.3	1.8	0.45	0.001 S	0.03 P	0.3 Cu
304 extra drawing	S30400	0.06	0.04	18.3	9.1	0.3	1.8	0.45	0.001 S	0.030 P	0.4 Cu
304L tubing	S30403	0.02	0.09	18.3	8.1	0.3	1.8	0.45	0.013 S	0.030 P	0.4 Ci
305	S30500	0.05	0.02	18.8	12.1	0.2	0.8	0.60	0.001 S	0.02 P	0.2 Cu
321	S32100	0.05	0.01	17.7	9.1	0.03	1.0	0.45	0.001 S	0.03 P	0.4 Ti
316L	S31603	0.02	0.0	16.4	10.5	2.1	1.8	0.50	0.010 S	0.03 P	0.4 Cu

**17.2.4** M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder, in their official website <https://www.aalco.co.uk> provided the specification sheets for various products wherein they trade, including 200 Series stainless steels (**RUD-18B**). The specification sheet categorically provided the content by weight (%) of the major alloying elements, as shown below:

**CHEMICAL COMPOSITION**

Element	% Present
Chromium (Cr)	16.00 - 18.00
Manganese (Mn)	6.80 - 8.50
Nickel (Ni)	2.00 - 6.00
Nitrogen (N)	0.0 - 0.25
Iron (Fe)	Balance

**Extract from BS EN 10088-2: Chemical Compositions**

Designation		Chemical composition % by mass max unless stated										
	EN	C	Si	Mn	P	S	N	Cr	Mo	Ni	Others	
<b>201</b>	1.4372	0.15	1.00	5.5/7.5	0.045	0.015	0.05/0.25	16.0/18.0	-	3.5/5.5	-	
<b>201L</b>	1.4371	0.030	1.00	6.0/8.0	0.045	0.015	0.15/0.20	16.0/17.0	-	3.5/5.5	-	
<b>202</b>	1.4373	0.15	1.00	7.5/10.5	0.045	0.015	0.05/0.25	17.0/19.0	-	4.0/6.0	-	
<b>204C</b>	1.4597	0.10	2.00	6.5/8.5	0.040	0.030	0.15/0.30	16.0/18.0	1.00	2.00	B:0.0005/0.0050 Cu: 2.00/3.5	

**17.2.5** In this regard, the User Guide of Salem Steel which is under the Steel Authority of India Ltd (RUD-18C), can also be relied upon for guidance and as authoritative reference to what category of stainless steel qualifies for categorization as “Austenitic”. For ready reference, the relevant part of the available literature in the said source is reproduced below:

**“Austenitic:** This category of stainless steel contains 16 to 26% Chromium and 6 to 22% Nickel. They are non-magnetic in annealed condition and have excellent corrosion resistance. They are not hardenable by heat treatment. However, they can develop high strength on cold working. They have excellent weldability, formability, hygiene factor and cryogenic properties. On cold working they exhibit different degrees of magnetism. They are identified in the AISI 300 series.”

**17.2.6** Shri Madhur Jain and Shri Vinaye Jain in their respective statements have stated that J3 is a customized grade of 200 series. In this connection, IS 6911:2017 specifically covers the specifications of several grades of stainless steel under various grades. The IS 6911:2017 relating to Stainless Steel Plate, Sheet and Strip-Specification (Second Revision) is annexed as **RUD-18D** to the SCN. Further, the chemical composition by percentage as per the IS 6911:2017 for the Austenitic Steels of 201, 201A and 202 grades are reproduced below for ready reference:

SI. No.	Grade Designation	Numerical Symbol	C Max	Si, Max	Mn	Ni	Cr	Mo	S, Max	P, Max	N	Others
iii)	Austenitic Steel											
	X 10Cr17Mn6Ni4N20	201	0.15, Max	1.00	5.5-7.5	3.5-5.5	16.0-18.0	-	0.030	0.060	0.25, Max	-
	X 07Cr17Mn12Ni4	201 A	0.12, Max	1.00	10.0-14.0	3.5-5.5	16.0-18.0	-	0.030	0.090	0.25, Max	-
	X 10Cr18Mn9Ni5	202	0.15, Max	1.00	7.5-10.0	4.0-6.0	17.0-19.0	-	0.030	0.060	0.25, Max	-

Thus, as evident from the above, it is apparent that the austenitic steel contains more than 3.5% of Nickel and 16% of Chromium, however the Mill Test Certificate/ Test Certificate/ Inspection Certificate produced by the importer at the time of Import reveals that the impugned goods contain Nickel content is about 1%. Therefore, the impugned goods cannot be deemed as 200 series or J3 series of Stainless Steel Coils and thus are not Austenitic Steel.

**17.2.7** In view of the above, it is clearly evident that the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 3.5%-12%. Whereas, the chemicals compositions shown in the Mill Test Certificates/Test Certificate-Inspection Certificates produced by the importer at the time of import shows the content of Chromium (Cr) as nearly 13% and Nickel as nearly 1%, which ruled out its classification as Austenitic Stainless-Steel grades. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium

Austenitic Type by “M/s VMPL” & “M/s VSPL” is in fact Stainless Steel of other Grades and be correctly classifiable under CTI 72209090.

**18.** In view of above, it appears that the impugned goods are not covered under CTI 7220 9022 but as indicated in the Test Certificate/ Inspection Certificates the impugned goods are rightly classifiable under CTI: 7220 9090. This makes the importer ineligible for benefit under Notification No. 50/2018–Customs dated 30.06.2018.

**19.** In view of the above, it is further evident that “M/s VMPL” & “M/s VSPL” had imported the goods namely ‘Cold Rolled Stainless Steel Coils’ by mis-declaring ‘Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)’ and by mis-classifying the same under CTI 72209022 and wrongly availed the benefit of Customs Notification No. 50/2018–Customs dated 30.06.2018 during the period from Nov’2019 to July’2021. As per the Notification no. 50/2018–Customs dated 30.06.2018, the exemption was available to goods falling under CTI 72209022 and not to the goods falling under CTI: 72209090.

**REJECTION OF CLASSIFICATION OF COLD ROLLED STAINLESS STEEL COILS  
UNDER CUSTOMS TARIFF HEADING 72209022 AND RE-CLASSIFICATION  
UNDER CTH 72209090:**

**20.1** “M/s VMPL” & “M/s VSPL” had imported ‘Cold Rolled Stainless Steel Coils’ by wrongly claiming classification under Customs Tariff Item 72209022 during the period from Nov’2019 to July’2021. The invoices being issued by a non-party operator renders the COO certificates ineligible for the availment of the benefit of the concessional rate of duty as provided for in the Notification No 50/2018–Customs dated 30.06.2018. Further, from the evidences available in the form of Test Mill Certificates/Test Certificate–Inspection Certificate produced by the importer at the time of imports which shows the content of Chromium (Cr) as nearly 12.5% and Nickel as nearly 1%, which ruled out its classification as Austenitic Stainless-Steel grades as per the discussion made in the preceding paras relating to literature available of Nickel Austenitic Stainless Steel. Shri Madhur Jain also admitted that prior to the issuance of Notification No 50/2018–Customs dated 30.06.2018, they were classifying the goods under “other “subheading/Item of CTH 7220. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by “M/s VMPL” & “M/s VSPL” were in fact Stainless Steel of other Grades and Cold Rolled Stainless Steel Coils should be correctly classified under CTI 72209090.

**20.2** It appears that Shri Madhur Jain and Vinaye Jain tried to put entire burden of classification and wrong availment of benefit under Notification No. 50/2018 dated 30th June, 2018 on the custom brokers. Whereas Shri Madhur Jain was handling all the import related affairs of both the companies alongwith Shri Vinaye Jain and being importer, it was their responsibility to be sure of the exact classification of the goods and whether benefit of the Notification No. 50/2018 dated 30th June, 2018 is available.

**20.3** On the question of similar goods from same supplier being declared under two different CTIs 72209022 and 72202090, Shri Mahduri Jain himself stated that after the issuance of issuance of Notification 50/2018–Customs dated 30.06.2018 they informed their supplier that the benefit of Notification 50/2018–Customs dated 30.06.2018 is available on the import of Cold Rolled Stainless

Steel Coils from China and the supplier had supplied them the documents with CTI 72209022 and accordingly they filed the Bill of Entry by declaring the goods under category of Nickel Chromium Austenitic Type under CTI 72209022 to claim the benefit of Notification 50/2018-Customs dated 30.06.2018. This clearly shows that to avail undue benefit of Notification 50/2018-Customs dated 30.06.2018 the declared CTI was changed and goods were mis-classified on the direction of Shri Madhur Jain, who was handling purchase/import of both the companies viz. "M/s VMPL" & "M/s VSPL".

**21.** From the investigations carried out in the case, it appears that "M/s VMPL" & "M/s VSPL" were well aware of the fact that the benefit of Notification No 50/2018-Customs dated 30.06.2018 was available under CTI: 72209022 and not under CTI 72209090. They therefore, wrongly claimed classification under CTI 72209022 with a mala-fide intention of evading Customs duty by wrongly availing the benefit of Notification No 50/2018-Customs dated 30.06.2018. The importers with an intent to evade payment of Custom Duty had consciously and intentionally mis-declared the goods under CTI 72209022 in the import documents by suppressing the fact that, Cold Rolled Stainless Steel Coils were not Nickel Chromium Austenitic Type'. Therefore, it appears that the importers had knowingly involved themselves in the suppression & mis-statement of the material facts.

**22.** From the facts and evidences discussed in the foregoing, it is established that the goods-Cold Rolled Stainless Steel Coils imported by "M/s VMPL" & "M/s VSPL" should have been appropriately classified under CTI: 72209090 and the benefit of Notification No. 50/2018-customs dated 30.06.2018 was not available under CTH 72209090 during the relevant period.

#### *VIOLETION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962*

*23.1 The relevant provisions of Customs Act, 1962 are reproduced here as follows:*

*(i) Section 14 relating to valuation of goods states that the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. Further, it also states that the rules made in this behalf may provide for the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.*

*(ii) Section 11A of the Customs Act, 1962 defines "illegal import" as the import of any goods in contravention of the provisions of the Customs Act or any other law for the time being in force.*

*(iii) Section 17(1) of the Customs Act, 1962 states that an importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

(iv) Section 17(4) of the Customs Act, 1962 states that where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(v) Section 28(4) of the Customs Act, 1962 states that where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of collusion, any wilful mis-statement, suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(vi) As per section 111(m) of the Customs Act, 1962, any goods which do not correspond in respect of value or in any other particular, with the entry made under this Act or in the case of baggage with the declaration made under section 77; in respect thereof or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54 are liable to confiscation.

(vii) As per Section 112(a) of the Customs Act, 1962, any person, who, in relation to any goods, does or omits to do any act, the commission or omission of which would render such goods liable to confiscation under section 111 of the Act, or abets the doing, or omission of such an act shall be liable to penalty.

(viii) As per Section 112(b) of the Customs Act, 1962, any person, who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable to penalty.

(ix) As per Section 114A of the Customs Act, 1962, 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.

(x) As per Section 114AA of the Customs Act, 1962, 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.

23.2 As the case relates to the re-determination of the value of the goods, the relevant provisions of the Customs Valuation Rules, 2007 are also iterated as follows:

(i) As per Rule 2, "identical goods" means imported goods -

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
- (ii) produced in the country in which the goods being valued were produced;
- (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(ii) Further, as per Rule 2, "similar goods" means imported goods - (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

- (ii) produced in the country in which the goods being valued were produced;
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(iii) Rule 5 relating to transaction value of similar goods states that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued, provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

23.3 From the evidences discussed hereinabove, it is apparent that the values declared in the subject Bills of Entry by the said importers were highly suppressed and not the true and actual transaction value of the imported goods. The said transaction values are liable to be rejected under Rule 12 of the Customs Valuation Rules, 2007.

23.4. As per explanation given in para 1(iii) to Rule 12 of the CVR, 2007, for raising doubts on the truth or accuracy of the declared value, there are certain reasons which may include -

- (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- (c) the sale involves special discounts limited to exclusive agents;
- (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- (f) the fraudulent or manipulated document

Further, the grounds mentioned in explanation (1) (iii) of Rule 12 are only indicative and not exclusive. Ample evidences like the Note retrieved from Shri Madhur Jain's phone have been unearthed and corroborated with declared value in the respective Bes to show that the values declared to Indian Customs were not the actual transaction values as mandated in Section 14 of the Customs Act.

23.5 All the reasons recorded in the foregoing paragraphs, both individually and collectively, cast reasonable doubt on the veracity of the truth or the accuracy of the values declared in relation to the goods imported in as much as the importers did not declare the correct value of the goods before the Customs which is evident from the Note retrieved from Shri Madhur Jain's phone and the value of the similar goods declared by other importers. The details enumerated above indicate that the values declared by 'M/s. VMPL' and "M/s. VSPL" are liable to be rejected on the grounds as mentioned in explanation (1)(iii) (a) to Rule 12 of CVR, 2007 and the same are required to be re-determined in terms of the provisions of the relevant Rules of the CVR, 2007, read with Section 14 of the Customs Act, 1962.

23.6 For the re-determination of the transaction values, the evidences clearly indicate that the value declared by the importer is not the true transaction value and therefore, in terms of the provisions of Rule 12 of CVR, 2007, the transaction value of the goods imported by the instant importers cannot be determined under the provisions of Rule 3(1) of CVR, 2007 except for the goods imported vide the Bs/E nos. 5328725 dated 06.09.2021, 5568735 dated 24.09.2021, 5924358 dated 21.10.2021 and 6200546 dated 11.11.2021 for which the evidences were retrieved from the phone of Shri Madhur Jain and their values may be determined accordingly. Hence, as per Rule 3(4) & 12(1) of CVR, 2007, the value of the said imported goods is required to be determined by proceeding sequentially through Rule 4 to 9 of the CVR, 2007

23.7 **Application of Rule 4 of CVR, 2007:** From the plain reading of Rule 4, it is evident that the said Rule provides for the determination of transaction value of the imported goods by comparing the declared value with the contemporaneous imports of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. In the instant case, the nature and production process of the imported goods, i.e. Stainless Steel Coils is such that the said goods cannot ever be stated to be identical to the Stainless Steel Coils imported by any other importer on account of the minor difference of sizes, composition or other physical characteristics, however, the same may be not be relevant to the functional characteristic of the same goods. Against this backdrop, it is not feasible to re-determine the transaction value of the imported goods under Rule 4 of CVR, 2007.

23.8 **Application of Rule 5 of CVR, 2007:** Rule 5 of the CVR 2007 provides for the determination of the transaction value of the imported goods by comparing the declared transaction value of the similar goods imported by other importers at or around the same time and goods which can be considered as similar goods are specified in Rule 2(f) of the CVR, 2007. The prices of the subject goods imported by 'M/s. VMPL' and 'M/s. VSPL' are re-determined in three aspects:

- (i) goods imported vide Bs/E for which invoice dates are in the vicinity of the Bs/E for which evidence in the form of Note was retrieved from Shri Madhur Jain's phone.

- (ii) goods for which values were determined by comparison against the similar goods imported by M/s. Shah Foils Limited
- (iii) goods for which values were determined by comparison against the similar goods imported by other importers for which documents were shared by DRI, HQRS, New Delhi.

Further, the said goods can be stated as similar as they have like characteristics, like component materials which enable them to perform the same functions and commercially interchangeable with the goods being valued. Thus, in the instant case, the value of the imported goods is liable to be re-determined by resorting to Rule 5 of the CVR, 2007.

*23.9 Vide Finance Act, 2011 w.e.f. 08.04.2011 "Self-Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the importer about the product & its value and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI. Therefore, it appears that "M/s VMPL" & "M/s VSPL" have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty by suppressing the true and actual transaction value while filing the declaration seeking clearance at the time of the importation of the impugned goods as well as wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018 on the import of Cold Rolled Stainless steel Coils as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. It appears that "M/s VMPL" & "M/s VSPL" had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as "M/s VMPL" & "M/s VSPL" while filing Bill of Entry failed to ensure the accuracy and completeness of the information filed by them and thereby failed to fulfill their legal obligation of providing true and actual transaction value and correct classification of the imported goods, in the Bills of Entries and other documents filed by them.*

#### CULPABILITY AND LIABILITY OF NOTICEES

(i) **'M/s. VSPL' and 'M/s. VMPL'**

**24.** From the aforesaid, it appears that the importer had knowingly and deliberately indulged in suppression of facts regarding actual value and description and had willfully misrepresented/mis-stated the material facts regarding the goods imported by them, in the declarations made in the import documents including Check lists presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty by suppressing the true and actual transaction value and by wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018. Therefore, the duty not paid/short paid is liable to be recovered from "M/s VMPL" & "M/s VSPL" by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the duty is short paid on account of wilful mis-statement as narrated above. Accordingly, the differential Customs duty amounting to **Rs.68,70,721/-** as

detailed in Annexure- **A-1 & A-2** attached to the SCN is liable to be recovered from “M/s VMPL” and Customs duty amounting to **Rs. 2,94,01,991/-** as detailed in Annexure- **B-1 & B-2** attached to the SCN is liable to be recovered from “M/s VSPL” under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

**25.** “M/s VMPL” have imported Cold Rolled Stainless Steel Coils Grade J3 valued (re-determined) at **Rs. 2,09,33,287/-** as detailed in Annexure- **A-1** and **Rs. 9,47,52,595/-** as detailed in Annexure- **A-2** attached to the SCN and “M/s VSPL” have imported Cold Rolled Stainless steel Coils Grade J3 valued (re-determined) at **Rs.19,18,06,242/-** as detailed in Annexure-**B-1** and **Rs.3,58,05,499/-** as detailed in Annexure-**B-2** attached to the SCN, by deliberately resorting to mis-statement & suppression of the material fact about the actual transaction value as well as the description of the said goods classifiable under CTI72209090, in contravention of the provisions of Section 46 (4) of the Customs Act, 1962. In terms of Section 46(4) of Customs Act, 1962, the importer was required to made a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, which in the instant case, “M/s VMPL” & “M/s VSPL” had failed to fulfill in respect of the imports of ‘Cold Rolled Stainless steel Coils’ through various ports. For these contraventions and violations, the goods fall under the ambit of ‘smuggled goods’ within the meaning of Section 2(39) of the Customs Act, 1962, and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

**26.** The aforesaid acts of suppression of facts and willful mis-statement led to evasion of Customs duty of **Rs.68,70,721/-** by “M/s VMPL” and **Rs.2,94,01,991/-** by “M/s VSPL”, thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Customs duty amounting to **Rs. 67,14,930/-** and **Rs. 2,94,01,991/-** respectively was evaded by reason of willful mis-statement and suppression of facts with a malafide intention. All the aforesaid acts of omission and commission on the part of “M/s VMPL” have rendered the subject imported goods totally valued at **Rs.11,56,85,882/-** (as detailed in Annexure-A-1 & A-2 to the investigation Report) & “M/s VSPL” have rendered the subject imported goods totally valued at **Rs. 22,76,11,740/-** (as detailed in Annexure-B-1 & B-2 to the investigation Report) liable for confiscation under Section 111(m) of the Customs Act, 1962. “M/s VMPL” & “M/s VSPL” are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

**(ii) Shri Vinaye Jain, Director of ‘M/s. VSPL’ and ‘M/s. VMPL’**

**27.1** Being the director of both the companies viz. M/s. Vasko Metalloys Pvt. Ltd. and M/s. Vasko Steels Private Ltd., Shri Vinaye Jain was responsible for all the activities of the firm including import and clearance of goods. It appears that mis-declaration of the value, description and mis-classification of goods in the import documents viz. Bills of Entry presented by “M/s VMPL” & “M/s VSPL” before the Customs authorities, was done on the directions and under the guidance of Shri Vinaye Jain, Director of “M/s VMPL” & “M/s VSPL” to willfully suppress the correct value, description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Vinaye Jain had full knowledge about the mis-declaration of actual value and mis-classification of the said imported goods in as much as Shri Vinaye Jain was overall responsible for all imports and declaration of value and finalization of classification of imported goods. Shri Vinaye Jain in his statement had stated that he used to communicate

with the overseas suppliers along with Shri Madhur Jain for the purchase of the goods.

**27.2** Thus, it appears that he orchestrated or he was well aware of the scheme to manage documents for lower value and mis-classification of goods, which were presented before customs for clearance. "M/s VMPL" & "M/s VSPL" received the Test certificate-Inspection Certificate/Mill Test Report, wherein the chemicals compositions of goods were given and as per the chemicals compositions of goods, goods were rightly classified under CTIs 72209090 & 72201290. Shri Vinaye Jain has himself stated that he was not aware of the correct classification of goods upto Eight Digits. It appears that Shri Vinaye Jain was aware that the consignments, imported by "M/s VMPL" & "M/s VSPL" were actually Cold Rolled Stainless Steel Coils falling under CTI: 72209090, as for the past consignments imported by "M/s VMPL" & "M/s VSPL" before issuance of Notification No 50/2018-Customs dated 30.06.2018, "M/s VMPL" & "M/s VSPL" were classifying the said goods under correct CTI.

**27.3** From the discussions as made in the preceding part of the SCN, it appears that Shri Vinaye Jain and Shri Madhur Jain had willfully mis-stated the value of the 'Cold Rolled Stainless Steel Coils Grade J3' before the Customs at the time of import by M/s VMPL" & "M/s VSPL with a view to evading the customs duty. The correct and actual transaction value of the 'Cold Rolled Stainless Steel Coils Grade J3' imported by them was also suppressed at the time of filing of Bills of Entry by presenting an invoice of a much lower value than the actual value of the imported 'Cold Rolled Stainless Steel Coils Grade J3' and also not declaring the correct description/make of the goods.

**27.4** From the investigations carried out in the case it appears that Shri Vinaye Jain and Shri Madhur Jain were well aware of the fact that the benefit of Notification No 50/2018-Customs dated 30.06.2018 was available under CTH 72209022 and not under CTH 72209090. They therefore, wrongly claimed classification under CTH 72209022 with a mala-fide intention of evading Customs duty by wrongly availing the benefit of Notification No 50/2018-Customs dated 30.06.2018. They with an intent to evade payment of Custom Duty had consciously and intentionally mis-declared the goods under CTH 72209022 in the import documents by suppressing the fact that, Cold Rolled Stainless steel Coils were not 'Nickel Chromium Austenitic Type'. Therefore, it appears that they had knowingly involved themselves in the suppression & mis-statement of the material facts.

**27.5** Shri Vinaye Jain and Shri Madhur Jain knowingly and deliberately indulged in suppression of facts and had willfully misrepresented /mis-stated the material facts regarding the goods imported by M/s VMPL" & "M/s VSPL, in the declarations made in the import documents presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty. All the aforesaid acts of omission and commission on the part of Shri Madhur Jain and Vinaye Jain have rendered the said imported goods liable for confiscation under Section 111 of the Customs Act, 1962.

**27.6** It appears that Shri Vinaye Jain and Shri Madhur Jain did not divulge proper information during the course of recording of their statements. Both Shri Vinaye Jain and Shri Madhur Jain stated that they were not aware of the correct classification of goods upto Eight Digits.

**27.7** All the aforesaid acts of omissions and commissions on the part of Shri Vinaye Jain have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and consequently rendered himself liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. Further, it also appears that Shri Vinaye Jain had knowingly and intentionally prepared/got prepared, signed/got signed and used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct value and actual classification of the imported goods, and has therefore rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

**(iii) Shri Madhur Jain, Marketing Manager of 'M/s. VSPL':**

**28.1** From the statements dated 14.12.2022 and 15.12.2022 of Shri Jitender Kumar, proprietor of M/s Shri Balaji Logistics, Gurgaon (Customs broker) and statement dated 19.12.2022 of Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics (Customs broker), it is evident that Shri Madhur Jain was not only Marketing Manager of M/s. Vasko Steels Private Ltd. but he was handling all the affairs related to import of goods for both the companies viz. M/s. Vasko Metalloys Pvt. Ltd. and M/s. Vasko Steels Private Ltd. Shri Madhur Jain was in contact with customs brokers and was handling the work related to clearance of goods imported by both companies. In his statement recorded on 06.04.2023, Shri Madhur Jain has himself stated that he started looking after the work of the both companies as free business lancer and the said fact was further confirmed by Shri Vinaye Jain, Director of both the companies. Shri Madhur Jain was also director of M/s. Vasko Metalloys Private Limited till 2018. Hence role of Shri Madhur Jain is not restricted as a marketing manager of M/s. Vasko Steels Private Ltd. but he was handling work related to import and clearance of both the companies. It was well confirmed from the statements of Shri Madhur Jain, Shri Vinaye Jain and the Custom Brokers that the work of dealing with the overseas suppliers for purchase of the goods and the customs clearance work was mainly handled by Shri Madhur Jain on behalf of both the firms.

**28.2** Shri Madhur Jain has himself stated that he was not aware of the correct classification of goods upto Eight Digits. On the question of similar goods from same supplier being declared under two different CTHs 72209022 and 72202090, Shri Mahdur Jain stated that after the issuance of issuance of Notification 50/2018-Customs dated 30.06.2018, they informed their supplier that the benefit of Notification 50/2018-Customs dated 30.06.2018 is available on the import of Cold Rolled Stainless Steel Coils from China and the supplier had supplied them the documents with CTH 72209022 and accordingly they filed the Bill of Entry by declaring the goods under category of Nickel Chromium Austenitic Type under CTH 72209022 to claim the benefit of Notification 50/2018-Customs dated 30.06.2018. This clearly shows the malafide intention of Shri Madhur Jain that to avail undue benefit of Notification 50/2018-Customs dated 30.06.2018, the CTH was changed and goods were mis-classified on the direction of Shri Madhur Jain, who was handling import of both the companies viz. M/s VMPL" & "M/s VSPL".

**28.3** A note containing detail of actual rate/CIF value of goods imported by "M/s VMPL" & "M/s VSPL" was found available in the Mobile Phone of Shri Madhur Jain. The same clearly shows involvement of Shri Madhur Jain in mis-declaration of value in import by M/s VMPL" & "M/s VSPL.

**28.4** From the discussion and evidences above, it appears that Shri Madhur Jain was involved in mis-classification of goods in import by M/s. Vasko Metalloys Pvt. Ltd. and M/s. Vasko Steels Private Ltd., in order to avail undue benefit of Notification No. 50/2018 dated 30th June, 2018. He also mis-declared the value of the goods on import by M/s. Vasko Metalloys Pvt. Ltd. and M/s. Vasko Steels Private Ltd.

**28.5** All the aforesaid acts of omissions and commissions on the part of Shri Madhur Jain have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and consequently rendered himself liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. Further, it also appears that Shri Madhur Jain had knowingly and intentionally prepared/got prepared, signed/got signed and used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct value and actual classification of the imported goods, and has therefore rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

#### **DUTY LIABILITY**

**29.1** The duty liability determined on account of the mis-classification and under-valuation of the imported goods are detailed in the Annexure-A1, A2, B1 and B2 attached to the SCN. However, the same are summarized here for the ease of reference:

<b>Name of the importer</b>	<b>M/s. VMPL</b>	<b>M/s. VSPL</b>
Duty Liability on account of mis-classification (in Rs.)	40,02,546/-	53,29,349/-
Duty Liability on account of undervaluation (in Rs.)	28,68,175/-	2,40,72,642/-
<b>Total (in Rs.)</b>	<b>68,70,721/-</b>	<b>2,94,01,991/-</b>

**29.2** The Port/ICD wise details of goods imported by M/s Vasko Metalloys Private Limited (IEC-815900295) having registered office at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad along with **re-determined** assessable value and Differential Duty demanded is as detailed below:

<b>Sr. No.</b>	<b>Bills of Entry No. &amp; Date</b>	<b>Ports/ICDs of imports</b>	<b>re-determined Value of goods imported (Rs.)</b>	<b>Duty paid/to be recovered (Rs.)</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1	As per Annexure-A-1 & A-2 to the notice	Mundra port (INMUN1), Gujarat	10,42,55,016/-	62,83,696/-
2	As per Annexure-A-1 & A-2 to the notice	Nhava Sheva (INNSA1)	1,14,30,866/-	5,87,025/-
<b>Grand Total</b>			<b>11,56,85,882/-</b>	<b>68,70,721/-</b>

**29.3** The Port/ICD wise details of goods imported by M/s Vasko Steels Private Limited (IEC-AAHCV6582A) having registered office at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad along with **re-determined** assessable value and Differential Duty demanded is as detailed below:

<b>Sr. No.</b>	<b>Bills of Entry No. &amp; Date</b>	<b>Ports/ICDs of imports</b>	<b>Value of goods imported (Rs.)</b>	<b>Duty Short paid / to be recovered (Rs.)</b>
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<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1	As shown at Annexure - B-1 & B-2 to the notice	Mundra port (INMUN1), Gujarat	22,76,11,740/-	2,94,01,991/-
<b>Grand Total</b>			<b>22,76,11,740/-</b>	<b>2,94,01,991/-</b>

The SCN pertains to demand of duty involved in the goods imported through multiple ports viz. Mundra port (INMUN1) & Nhava Sheva (INNSA1).

**30.1** In view of the above, **M/s Vasko Metalloys Private Limited (IEC-815900295)** having registered office at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad, Gujarat, is hereby called upon to show cause to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

- i. The value of goods, **Rs. 1,05,91,930/-** declared by them/assessed at the time of clearance of goods imported by them under Bills of Entry mentioned in **Annexure-A-1** to the SCN should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and **re-determined at Rs.2,09,33,287/- (Rupees Two Crores Nine Lakh Thirty Three Thousand Two Hundred Eighty Seven Only)**, as detailed in **Annexure-A-1** to the SCN under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 3 (1) or Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable;
- ii. The goods valued at **Rs.2,09,33,287/- (determined)** as detailed in **Annexure-A-1** to the SCN which have been cleared and not available for seizure should not be held liable to confiscation under the provisions of Section 111 of the Customs Act, 1962,
- iii. The declared classification of the subject goods under CTI 72209022 in the Bills of Entry as detailed in **Annexure-A-2** attached to the SCN should not be rejected and goods be re-classified under Customs Tariff Item 72209090 of the First Schedule to the Customs Tariff Act, 1975 and the subject Bills of Entry may be reassessed accordingly;
- iv. The goods valued at **Rs. 9,47,52,595/-** as detailed in **Annexure-A-2** to the SCN which have been cleared and not available for seizure should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- v. Differential Customs duty amounting to **Rs. 68,70,721/- (Rs. Sixty Eight Lakh Seventy Thousand Seven Hundred Twenty One Only)** as detailed in **Annexure-A-1 & A-2** attached to the SCN should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid;
- vi. Penalty should not be imposed upon M/s Vasko Metalloys Private Limited under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for goods mentioned at (ii) &(iv) above.
- vii. Penalty should not be imposed upon M/s Vasko Metalloys Private Limited under the provisions of Section 114A of the Customs Act, 1962 for duty mentioned at (v) above.

- viii. Penalty should not be imposed upon Shri Vinaye Jain, Director of M/s Vasko Metalloys Private Limited under Section 112 (a), 112(b) and 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.
- ix. Penalty should not be imposed upon Shri Madhur Jain, Freelancer of M/s Vasko Metalloys Private Limited under Section 112 (a), 112(b) and 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.

**30.2** In view of the above, **M/s Vasko Steels Private Limited (IEC-AAHCV6582A)** having registered office at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad, Gujarat is hereby called upon to show cause to the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

- i. The value of goods, **Rs. 10,24,67,549/-** declared by them/assessed at the time of clearance of goods imported by them under Bills of Entry mentioned in **Annexure-B-1** to the SCN should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined as **Rs. 19,18,06,242/- (Rupees Nineteen Crores Eighteen Lakhs Six Thousand Two Hundred Forty Two Only)**, as detailed in **Annexure-B-1** to the SCN under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 3 (1) or Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable;
- ii. The goods valued at **Rs. 19,18,06,242/- (re-determined)** as detailed in **Annexure-B-1** to the SCN which have been cleared and not available for seizure should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- iii. The declared classification of the subject goods under CTH 72209022 in the Bills of Entry as detailed in **Annexure-B-2** attached to the SCN should not be rejected and goods should not be re-classified under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and the subject Bills of Entry should not be reassessed accordingly;
- iv. The goods valued at **Rs. 3,58,05,499/- (re-determined)** as detailed in **Annexure-B-2 (Except goods shown at Sr. No. 01 & Sr. Nos. 03 to 07 of Annexure-B-1, which have already been covered in Annexure-B-1)** to the SCN which have been cleared and not available for seizure should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- v. Differential Customs duty amounting to **Rs. 2,94,01,991/- (Rs. Two Crore Ninety Four Lakhs One Thousand Nine Hundred Ninety One Only)** as detailed in **Annexure-B-1 & B-2** attached to the SCN should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid;
- vi. Penalty should not be imposed upon M/s Vasko Steels Private Limited under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for goods mentioned at (ii) & (iv) above.

- vii. Penalty should not be imposed upon M/s Vasko Steels Private Limited under the provisions of Section 114A of the Customs Act, 1962 for duty mentioned at (v) above.
- viii. Penalty should not be imposed upon Shri Vinaye Jain, Director of M/s Vasko Steels Private Limited under Section 112 (a), 112(b) and 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.
- ix. Penalty may be imposed upon Shri Madhur Jain, Freelancer of M/s Vasko Steels Private Limited under Section 112 (a), 112(b) and 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.

**WRITTEN SUBMISSION/DEFENSE REPLY:-**

**31.** The Noticees vide their letter dated 15.10.2025 has submitted their written submission/defense reply wherein they interalia stated that;

31.1. At the outset, they deny each and every allegation made in the SCN under reply and nothing that is alleged therein is admitted or deemed to be admitted unless so specifically stated herein; that the SCN under reply is ex-facie, erroneous and the proceedings initiated through it deserves to be set aside.

31.2. The dispute at hand revolves around two issues as enumerated under:

- a) Demand amounting to Rs. 40,02,546/- (as detailed at Annex. A-2 to the notice) on account of denial of exemption under Notification No. 50/2018-Cus dated 30.6.2018;
- b) Demand amounting to Rs. 26,68,175/- (as detailed at Annex. A-1 to the notice) on account of alleged under-valuation of the goods

**Denial of exemption under Notification No. 50/2018-Cus**

31.3 The proposal for denial of exemption is based on two grounds as under:

- i) The Country of Origin certificates were issued by China based manufacturers in the name of the importers, whereas, invoices were issued by other supplier based at Hong Kong
- ii) The goods under consideration were classifiable under CTH 72209090 and the said CTH was not covered under Notn. No. 50/2018-Cus

31.3 The exemption under Notn. No. 50/2018-Cus is governed by the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement Rules, 2006 (hereinafter referred to as the Origin Rules for short). The goods that enjoy the exemption under the said Origin Rules have been defined at Rule 3 which reads as under:

*Products covered by preferential trade within the framework of the Agreement imported into the territory of a Participating State from*

*another Participating State which are consigned directly within the meaning of Rule 6 hereof, shall be eligible for preferential concessions if they conform to the origin requirement under any one of the following conditions :*

- (a) Products wholly produced or obtained in the exporting Participating State as defined in Rule 3; or*
- (b) Products not wholly produced or obtained in the exporting Participating State, provided that the said products are eligible under Rule 4 or Rule 5.*

A plain reading of the above statute expressly demonstrates that the goods which are covered by the preferential trade and that which are consigned directly from one participating State to another participating State are eligible to the preferential concessions subject to fulfilment of the condition (a) OR (b). In the instant case, there is no dispute regarding non-fulfilment of either of the condition (a) OR (b). Thus, all that remains to be examined is whether the goods under dispute are covered under the preferential trade and are consigned directly within the meaning of Rule 6.

31.4 Rule 6 of the Origin Rules reads as under:

*The following shall be considered as directly consigned from the exporting Participating State to the importing Participating State :*

- (a) if the products are transported without passing through the territory of any non-Participating State :*
- (b) the products whose transport involves transit through one or more intermediate non- Participating States with or without transshipment or temporary storage in such countries, provided that :*
  - (i) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements;*
  - (ii) the products have not entered into trade or consumption there; and*
  - (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.*

In the instant case, the goods have been transported without passing through the territory of any non-participating State. These facts are evident on the face of the documents submitted at the time of filing of Bill of Entry. Thus, it

is a case where the goods under consideration have been imported into the territory of a Participating State (India) from another Participating State (China) and are consigned directly within the meaning of Rule 6 of the Origin Rules. Thus, the eligibility condition for preferential treatment stands fulfilled if the goods are found to be covered by preferential trade which will be taken up hereinafter in as much as the same is dependent on the correct classification of the goods.

31.5 The Origin Rules nowhere make any provision that the preferential trade will not be admissible if the invoice is issued by a non-party. All that the Origin Rules stipulate is that the goods ought to be covered under the preferential trade and be consigned directly from the participating State within the meaning of Rule 6. Thus, the premise that the invoice has been issued by a third party is not a legal ground for rejection of the benefits of preferential trade. The same analogy has also been applied by the Board in Circular No, 53/2020-Cus wherein the issue of third-party exports vis-à-vis the eligibility of preferential trade was in consideration and the relevant text of the same is reproduced under for ease of reference:

*The Board is of the view that where value of goods does not have impact on the originating status, i.e. the originating criteria is 'wholly obtained', the Certificate of Origin issued in terms of Duty Free Tariff Preference Scheme for Least Developed Countries with third party commercial invoice may be accepted. This is subject to ensuring that the goods referred to in the Certificate of Origin, and the invoice correspond to each other and that the goods satisfy the applicable rules of origin. The normal due diligence to check for authenticity of COO and correctness of claim should continue to be observed. Needless to state the existing stipulation of RBI in regard to third party invoicing, would apply.*

31.6 Even otherwise, it is submitted that the Certificate of Origin as well as the Commercial Invoices were uploaded in the e-sanchit at the time of filing of Bill of Entry and all the relevant details thereof were available with the department. Objection regarding inadmissibility of Notn. No. 50/2018-Cus on the ground of third-party invoicing could have been raised at the time of assessment of the concerned Bills of Entry. However, no such objections have been raised at the material time and the Bills of Entry have been duly assessed by allowing the benefit of Notn. No. 50/2018-Cus. In such circumstances, the allegation of suppression of facts is not sustainable. The Bills of Entry pertain to the period from Nov 19 to Feb 21 as evident from Annexure A-2 to the Show Cause Notice and the notice has been issued on 21.11.2024 i.e. well beyond the normal period

of 2 years as stipulated under Section 28(1) of the Customs Act. Thus, the demand is barred by limitation as well.

31.7 As regards the question of appropriate CTH of the goods under consideration is concerned, it is submitted that the sole ground for proposing the classification under CTH 72209022 is that the Austenitic Stainless Steels have essentially Chromium content ranging from 16%-19% and Nickel content ranging from 3.5%-12%. The goods under consideration have a Chromium content of 13% and Nickel content of 1% and as such the same do not fall under the category of Austenitic Stainless Steel. These facts are evident from the narrations at paras 17.2.2 to 17.2.7 of the Show Cause Notice.

31.8 At the outset it is submitted that the criteria of Chromium content ranging from 16%-19% and Nickel content ranging from 3.5%-12% has been derived at from the websites of M/s ASM International, M/s Aalco Metals Limited and M/s Steel Authority of India which is evident from paras 17.2.3 to 17.2.5 of the Show Cause Notice. Thus, the only yardstick adopted by the department is the information available on the internet and no authentic definition of Austenitic Stainless Steel has been brought on record. Before addressing the issue, we would like to point out the veracity and authenticity of the information on which reliance has been placed in the impugned notice. A comparative table of the information, as referred to in the impugned notice, is reproduced under to have a better understanding:

Sl. No.	Name of the Firm and the website	Range of Chromium Content	Range of Nickel Content
1	M/s ASM International – <a href="https://www.asminternational.org">https://www.asminternational.org</a>	16.3 to 18.8	4.5 to 10.5
2	M/s Aalco Metal Ltd. – <a href="https://www.aalco.co.uk">https://www.aalco.co.uk</a>	16 to 19	2 to 6
3	User Guide of M/s Salem Steel	16 to 26	6 to 22

A primary comparison of the above amply demonstrates that the Stainless Steel having Nickel content of 2% is Austenitic Stainless Steel as per the standards of M/s Aalco Metal Ltd., however, the same is not Austenitic Steel as per the standards of M/s ASM International and M/s Salem Steel. Likewise, Stainless Steel having 4.5% of Nickle would be Austenitic as per M/s ASM International, however, the same is not Austenitic Stainless Steel as per the standards of M/s Salem Steel.

31.9 Comparing the above data with the IS 6911:2017, as referred to at para 17.2.6 of the notice, adds to more absurdity to the conclusions arrived at in the

notice. As per the IS 6911:2017, the Nickel content of Austenitic Steel is ranging from 3.5% to 6%. As per the information M/s Salem Steel, the lowest Nickel content for Austenitic Steel is 6% which debars the entire range specified in IS 6911:2017 from the category of Austenitic Steel in as much as the highest Nickel content of the same is 6%. It is not prudent to come to such a conclusion since it would tantamount to saying that the IS has been issued without application of mind. Thus, the data relied upon in the notice is self-contradictory and any conclusions arrived at from such information would obviously be faulty.

31.10 Notwithstanding the above data analysis, it is submitted that the proposal to reject the classification under CTH 72209022 is solely based on the observation of low percentage of Nickel content. However, it needs to be appreciated that Austenitic Steel is not dependent on Nickel content which is evident from IS 15997:2012 which specifies the standards for 'Low Nickel Austenitic Stainless Steels'. of which a copy is attached hereto as **Exhibit A**. The chemical composition of such Low Nickel Austenitic Steels is as under:

#### IS 15997 : 2012

**Table 1 Chemical Composition**  
(Clauses 8.1, 8.1.1 and 10.1)

Sl No.	Letter Symbol [see IS 1762 (Part 1)]	Grade Designation	Constituents, Percent								
			C Max	Si Max	Mn	Ni	Cr	S Max	P Max	Cu	N
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
i)	X10Cr15Mn9Cu2Ni1N	N 1	0.12	0.75	8.5-10.5	1-2	14.5-16.0	0.03	0.08	1.5-2.5	0.08-0.2
ii)	X8Cr16Mn8Cu2Ni2N	N 2	0.10	1.00	6.5-9.0	1.5-3.5	15.5-17.0	0.03	0.07	2-4	0.10-0.25
iii)	X8Cr16Mn7Cu2Ni4N	N 3	0.09	0.75	6-8	4-6	16.0-17.5	0.03	0.07	1.5-2.5	0.05-0.15

NOTE — Elements not specified shall not be intentionally added to the steel without the agreement of purchaser except for the finish of the cast. All precautions must be taken to avoid addition of elements from scrap metal and raw material used in production of elements likely to affect Mechanical characteristics as well as the suitability for use of steel for utensils.

The said standards were amended in March 23 wherein grades N4, N5 and N6 were included in and the same is reproduced under:

#### IS 15997 : 2012 LOW NICKEL AUSTENITIC STAINLESS STEEL SHEET AND STRIP FOR UTENSILS AND KITCHEN APPLIANCES — SPECIFICATION

[Page 2, Table 1, Sl No. (iii)] — Insert the following new grades in the existing table at the end:

iv)	X06Cr15Mn10 Cu2NiN	N5	0.12	1.0	9.5 - 11.5	0.45 - 0.95	14.0 - 16.5	0.030	0.10	1.5 - 2.5	0.10 - 0.25
v)	X06Cr14Mn10 Cu1NiN	N6	0.12	1.0	9.25 - 11.5	0.25 - 0.95	13.5 - 16.0	0.030	0.10	1.0 - 2.0	0.10 - 0.25
vi)	X07Cr14Mn1 0CuNiN	N7	0.14	1.0	9.0 - 11.5	0.20 - 0.95	13.5 - 16.0	0.030	0.10	0.4 - 0.8	0.10 - 0.25

The above table expressly demonstrates that Stainless Steel having a Nickel content ranging from 0.2%-0.95% is also covered under the category of Austenitic Stainless Steel. Thus, the basic premise of the department that the

goods under consideration cannot be covered under Austenitic Steels owing to the fact that the Nickel content is in the range of 1% is not sustainable in light of IS 15997:2012

31.11 The IS 15997:2012 leaves no room for doubt that Stainless Steel with Nickel content in the range of 1% - 2% is covered under the category of Austenitic Stainless Steel. Further, it is submitted that there is no definition of Nickel Chromium Austenitic type and as such it is very clear that the percentage of Nickel and Chromium is not the determining factor to decide the classification of the goods. In the instant case, the Mill Test certificates clearly indicate that the goods under consideration contain Nickel and Chromium and also, IS 15997:2012 stipulates such grades as Austenitic Stainless Steels. Thus, the goods under consideration are Nickel Chromium Austenitic Steel and correctly classifiable under CTH 72209022.

31.12 An identical matter pertaining to classification and admissibility of Sr. No. 734 of Notn. No. 50/2018-Cus was under consideration with respect to the same category of goods in the case of M/s Shah Foils Ltd. reported at (2024) 19 Centax 248 (T) wherein the classification of the goods was held under CTH 72209022 and it was held that the benefit of Sr. No. 734 of Notn. No. 50/2018-Cus was admissible. The ratio of the said case law is squarely applicable to the facts of the case at hand in as much as the allegation levelled in the said case were identical wherein the classification was challenged solely on the basis of percentage content of Chromium and Nickel by placing reliance on the data of M/s ASM International Ltd. and M/s Aalco Metals Ltd. In the facts of the case at hand, the classification has been challenged on the basis of the same data of M/s ASM International Ltd. and M/s Aalco Metals Ltd. Further, the chemical composition of the goods under question in the said case is similar to the chemical composition in the facts of the case at hand which is evident from para 1.2 of the order. The relevant findings on the classification aspect are reproduced under:

*From the above clarification particularly second para in para b, it was clarified that in IS 15997:2012, there are many grades on Austenitic Stainless Steel ranging from Nickel as low as 0.2% to 14% with a varying Chromium range of 13.5% to 24%. It was further clarified that irrespective of chemical composition and percentage of alloying element of these grades in 200 series. (such as 201, 202, N1, N2, N3, N5, N6, N7 are called austenitic stainless steels together with 300 series grades). With this specific clarification, it is seen that in austenitic stainless steel, the Nickel content can vary as low as 0.2% to 14%, whereas in the present case the goods contain 1.010-1.060% and Chromium is 12.5%, therefore, it is clearly in compliance to the*

*specification for classifying the product as 'Austenitic Nickel Chromium Stainless Steel'. We find that department's reliance on the websites of M/s Aalco metals ltd. (England and Wales) and M/s ASM international Limited cannot be a conclusive factor to classify the product as other than Austenitic Nickel Chromium Stainless Steel for the reason that from the said evidence it is clear that not only those products which contain 4.5% to 12% Nickel will fall under Austenitic Stainless Steel but even the low content Nickel in Stainless Steel will also fall under Austenitic Stainless Steel. Therefore, the mere reliance on the websites of M/s Aalco metals ltd. (England and Wales) and M/s ASM international Limited is incorrect for arriving at classification. Therefore, on the fact of the case which is not under dispute and on the authority mainly Indian Standards, the goods imported by the appellant are correctly classifiable under Chapter Tariff Heading 7220 9022 as Nickel Chromium Austenitic Type.*

A copy of the said judgment is attached hereto as **Exhibit B** which clearly indicates that the same has been delivered on identical facts and as such the proposal to deny the benefit of Notn. No. 50/2018-Cus deserves to be set aside on this ground only.

31.13 It is submitted that the provisions of Section 28(4) of the Customs Act are not applicable in the facts of the case at hand in as much as there is no suppression of facts. It may be appreciated that they had uploaded all the relevant documents such as Invoice, Packing List, Bill of Lading, Mill Test Certificate, Certificate of Origin, etc. in e-sanchit at the time of filing the Bill of Entry and the same were available to the assessing officer at the time of assessment. Further, it is submitted that they had correctly declared the description of the imported goods in the Bill of Entry. Thus, it is a case where all the relevant information was available with the department and there is no case for suppression of facts or mis-declaration. The Appraising Officer had assessed the Bill of Entry on the basis of the documents and no query was raised at the relevant time. The Appraising Officer, at the time of assessment was having all the documents and details with regard to the import, and the issue regarding appropriate classification of the goods under import could have easily have been observed at the time of assessment.

31.14 The fact that all the documents were presented to the department at the time of filing of Bill of Entry amply demonstrate that they had not suppressed any information, documents and material from the revenue. The period of import is from Nov. 19 to Feb 21. The Show Cause Notice is issued on 21-11-2024 i.e. beyond two years from the date of imports. The whole case is made out based on composition of goods as provided in the Mill Test Certificate, which is evident

from para 15.1 of the impugned notice, and the same were already submitted by the importer at the time of filing the Bills of Entry. Thus, there is no question of suppression or mis-declaration of goods therefore, demand is barred by limitation. It may be also be appreciated that the department has invoked the extended period of limitation without bringing on record any material evidence to establish that they had indulged in suppression of facts. Thus, the same is liable to be set aside on the ground of limitation only. Further, with regard to the submissions on limitation, they have referred some case laws.

31.15 they further submitted that even otherwise, the claim of classification or claim of exemption cannot be treated as mis-declaration as the issue relates to interpretation of law. In the instant case, demand under Section 28(4), proposal for confiscation and imposition of penalty under Section 114A are not sustainable on merits in as much as the case relates to classification and exemption under a notification which is nothing but matter concerning interpretation of law. In this regard the importer craves leave to place reliance on case law of M/s Daxen Agritech India Pvt. Ltd. reported at (2024) 20 Centax 467 (T) .

31.16 Further, it is a well settled law that claiming a different classification does not make the goods liable to confiscation. In this regard, they crave leave to place reliance on the case laws of M/s Lewek Altair Shipping reported at 2019 (366) ELT 318 (T):

31.17 Moreover, it is submitted that the instant case deals with classification dispute of the goods under import. It is a settled law that penalty cannot be imposed when the matter is pertaining to classification dispute since it is only a matter of interpretation. Reliance is placed on the laws of M/s Eastern Steel Industries reported at 2017 (349) ELT 324 (T) and in case of M/s Thyssenkrupp Industries India P. Ltd. reported at 2016 (343) ELT 533 (T) wherein it has been held that '*The issue involved is of classification dispute of the goods imported by the appellant. It is settled law that in case where the issue is related to interpretation of classification of the goods, penalty should not be imposed in such cases. The ratio of the various judgments on this issue cited by the appellant squarely applicable in the present case. Therefore, the mala fide intention to evade duty is not established in the present case, therefore the appellant is not liable for penalty under Section 114A of Customs Act, 1962.*'

M/s INdofil Chemicals Co. reported at 2016 (333) ELT 115 (T) Exhibit L wherein it has been held that '***The entire issue being of classification dispute, in our view, there is no necessity to impose any penalty on the appellant.***'

M/s Bharti Airtel reported at 2009 (235) ELT150 (T) Exhibit M wherein it has been held that '*Once the assessee had declared the description of the goods*

*imported correctly, it was the duty of the assessing officer to correctly assess the goods. Classification of the goods, along with valuation and import policy, was a major aspect of assessment, the proper officer was entrusted with. We find that the assessees have been unfairly penalized by the Commissioner. We find that even in a case where the goods are classified by the proper officer in a heading other than the one declared, penalty is not justified.*

M/s Abraham J Thakaran reported at 2007 (210) ELT 112 (T) Exhibit N wherein it has been held that there is no justification in imposing penalty on the appellants in cases of classification dispute.

The analogy of the above case laws is squarely applicable to the facts of the present case in as much as the entire case is pertaining to classification dispute.

#### **Demand on account of allegation of under-valuation**

32. The allegation of under-valuation is based on three purported evidences presented by the department which are enumerated as under:

- a) Note No. 39 purportedly retrieved from the Whatsapp chat of the mobile phone of Shri Madhur Jain
- b) Comparison of import prices of other importers from the same overseas suppliers during the same period

32.1 They submitted that the valuation with respect to the Bills of Entry at Sr. Nos. 2 and 3 appears to have been arrived at on the basis of the Mobile Phone Evidence as apparent from the remark's column in Annexure A-1 to the Show Cause Notice. At the outset, it is submitted that the print-out of the chat messages is not admissible in evidence. The admissibility or otherwise of any electronic evidence has been provided for under Section 138C of the Customs Act ,

32.2 Further, the provisions of Section 65B of the Indian Evidence Act and 138C of the Customs Act expressly stipulates that the electronic evidence In view of the above statutory provisions, the electronic record is admissible in evidence if and only if the conditions at sub-section (2) of Section 138C of the Customs Act are satisfied. In the instant case, the said conditions are not fulfilled for the following reasons:-

- a) The mobile phone was a personal device belonging to Shri Madhur Jain and was not regularly used for the storing or processing information pertaining to our business activities.
- b) There is no regular supply of information pertaining to our business activities in the said mobile phone during the period under consideration.

c) There is no supply of information to the said mobile device in the ordinary course of business activities and as such the information is not derived from the information supplied to the device in ordinary course of business. The above averments are evident from the fact that no other information or data pertaining to the business activities of the firm has been found in the said mobile device. Thus, the conditions at clauses (a), (b) and (d) of Section 138C(ii) of the Customs Act are not satisfied in the facts of the case at hand and accordingly, the purported data derived from the mobile device of Shri Madhur Jain is not admissible in evidence and no cognizance of the same can be resorted to in the adjudication proceedings.

32.3. They further submitted that the data purportedly retrieved from the mobile phone is not sustainable in evidence in as much as the genuineness of the entire process is not established. In this regard, they would like to draw your kind attention to the statement dated 19.9.2023 of Shri Madhur Jain of which the relevant part is reproduced under:

Today, I perused Panchnama dtd 22.11.2022 drawn at the office premises of M/s. Vasko Steels Private Ltd and M/s. Vasko Metalloys Pvt. Ltd., wherein one Samsung make mobile phone, Serial No: R3CT80B171L, IMEI No. 352849390103905 & IMEI Numbers (eSim): 353019470103907 and one Laptop Make: Apple, Model Number: A1466 EMC2632, S/N: C17LK514F5V used by me were seized and placed in separate envelopes which were sealed under Panchnama dated 22.11.2022 for further investigation. Further, I perused letter F. No. DRI/AZU/CI/INT-16/2022 dated 28.11.2022 of DRI, Ahmedabad wherein the said sealed envelopes containing above said mobile phone and Laptop were forwarded to Cyber Defense Centre, National Forensic Science University (NFSU), Gandhinagar for examination and extraction/retrieval/cloning of datas from the devices and to provide working copy of the device. Further, I perused letter NFSU/CDC/02/23 dated 05.01.2023 of Senior Scientific Officer, National Forensic Science University (NFSU), Gandhinagar addressed to the Assistant Director, DRI, Ahmedabad wherein NFSU, Gandhinagar forwarded the two Hard discs i.e. one Master copy named as MC1 (Seagate 1TB, S/N:NACR02E9, P/N:3EEAP1-570) & one Working Copy named as WC1 (Seagate 1TB, S/N:NACR0ATY, P/N:3EEAP1-570) containing data processed from above Mobile phone, marked as Exhibits-A2 and Laptop, marked as Exhibits-A5.

Then, in my presence, the Working copy of Hard Disc (WC1) containing data processed from above Mobile phone, marked as Exhibits-A2 and Laptop, marked as Exhibits-A5, provided by the NFSU, Gandhinagar is connected to a desk-top Computer installed at DRI Office for examination. Then the Hard-disk was opened in my presence and files/data present in the Hard-disk marked as Exhibits-A2 are examined by the officer in my presence. On examination of Exhibits-A2, the files stored in my mobile are opened and print out of some relevant datas /details were taken, which were stored in my Mobile phone are given running serial no. as 01 to 04 attached to this statement of mine. I have put my dated signature on each of the said pages in token of taken from working copy of hard disc received from the NFSU, Gandhinagar in my presence.

The above narration, which has also been taken cognisance of in the impugned notice at paras 7.4.2 and 7.4.3 indicates that the mobile phone was seized under panchnama dated 22.11.2022 and placed in sealed envelope which was sent to the Cyber Defense Centre, NFSU, Gandhinagar. The next thing Shri Madhur Jain was shown is a letter dated 5.1.2023 of the Scientific Officer, NFSU, Gandhinagar

vide which 2 hard-disks viz. one Master Copy and one Working copy had been sent which purportedly contained the data processed from the mobile phone. The next narration is that in the presence of Shri Madhur Jain, the Working copy of Hard Disc (WC1), provided by NFSU, Gandhinagar, was connected to desk-top computer installed at DRI Office for examination and thereafter the print-out of Note No. 39 was taken.

32.4 Analysis of the above version in the statement as well as the show cause notice raises some grave issues of concern. The first issue is that the mobile phone which was sealed in an envelope during the course of panchnama dated 22.11.2022 was sent to the NFSU. There is nothing on record to indicate that the sealed envelope was opened by the NFSU authorities in presence of independent witnesses or Shri Madhur Jain. Further, there is nothing on record to indicate whether the data retrieval process had been undertaken in presence of Shri Madhur Jain and independent witnesses or otherwise. Once the sealed device is opened in absence of the owner and independent witnesses, examination and retrieval of the data from such device itself is a big question. The second issue that arises for consideration is whether the retrieved data was copied in the Hard-disks in presence of witnesses and Shri Madhur Jain and sealed in their presence or otherwise. The third issue that arises for consideration is whether the sealed cover (if any) containing the Hard-disks sent by the NFSU were opened in presence of independent witnesses and Shri Madhur Jain at the DRI office. These issues arise on the count that no documentary evidence has been relied upon in the Show Cause Notice to show that the act of opening the sealed covers containing the mobile phone, retrieval of data therefrom, transfer of such data in the Hard-disk and sealing of such Hard-disk were undertaken in the presence of Shri Madhur Jain and independent witnesses. Further, there is no documentary evidence in the Show Cause Notice showing that the Hard-disks were received from the NFSU in sealed condition and the seals were opened in presence of Shri Madhur Jain and independent witnesses. In such circumstances, print out of the data taken from the purported Working Copy of the Hard-Disk itself is in doubt since there are so many points for tampering of the original device.

32.5 The above fact gains all the more importance in light of the fact that the NFSU report indicates that the file under consideration was created on 1.9.2020 and modified on 17.11.2021 which is evident from the data retrieval details which are attached to RUD-16 of which the relevant screen-shot is reproduced

under:-

<b>Title:</b>	
<b>Creation time:</b>	9/1/2020 3:21:32 PM (UTC +0)
<b>Modification Time:</b>	11/17/2021 6:37:51 AM (UTC -0)
<b>Last Modifier:</b>	
<b>Source:</b>	Samsung Notes
<b>Account:</b>	
<b>Extraction:</b>	File System
<b>Manually decoded:</b>	False
<b>Source file:</b>	Detected Model_SM-F721B.zip/data/data/com.samsung.android.app.notes/databases/sdoc.db : 0x335DB (Table: sdoc, Size: 237568 bytes)

**Summary** [E] [S]

**Body** [M] [S] [HTML] [Text]

Sanjay bookings  
 Aug 2021  
 0.55 2B unslit CIF 1635 : 5 cntrs  
 0.30 BA unslit CIF 1720 : 5 cntrs  
 0.30 BA unslit CIF 1780 : 10 cntrs  
 55806 18.08  
 55602 10.09  
 52128  
 1665 pipe strips  
 13-10  
 2125 0.30 ba : 12 containers

The first question that arises is the authenticity of the data since the same stands modified and what was the actual data at the time of creation of the file.

32.6 Without admitting the data under Note 39, it is further submitted that the data is not in consonance with the actual import goods on the following counts:

- The data '0.55 2B unslit CIF 1635: 5 cntrs' is co-related to goods imported under Bill of Entry No. 5328725 as evident from para 11.1 of the impugned notice. The thickness of goods imported under the said Bill of Entry is 0.3 mm and not 0.55 mm as evident from Invoice No. TGP20210803A-1 dated 18.8.2021. Secondly, the data shows 5 containers whereas the Bill of Entry and other relevant documents such as B.L and Packing List establishes that only 2 containers have been imported under the said Bill of Entry. Thus, the goods under Bill of Entry No. 5328725 are not found to be in consonance with the data available in Note 39.
- The data '0.30 BA unslit CIF 1720: 5 cntrs' is co-related to goods imported under Bill of Entry No. 5568735 as evident from para 11.1 of the impugned notice. The data shows 5 containers whereas the Bill of Entry and other relevant documents such as B.L and Packing List establishes that only 2 containers have been imported under the said Bill of Entry. Thus, the goods under Bill of Entry No. 5568735 are not found to be in consonance with the data available in Note 39.
- The data '0.30 BA unslit CIF 1780: 5 cntrs' is co-related to goods imported under Bill of Entry No. 5924358 as evident from para 11.1 of the impugned notice. The thickness of goods imported under the said Bill of Entry is 0.9 mm and 1.15 mm not 0.30 mm as evident from Invoice No. ARS 20210929-02-1 dated 29.9.2021. Secondly, the data shows 10 containers whereas the Bill of Entry and other relevant documents such as B.L and Packing List establishes that only 2 containers have been

imported under the said Bill of Entry. Thus, the goods under Bill of Entry No. 5924358 are not found to be in consonance with the data available in Note 39.

- d) The data '*13-10 2125 0.30 ba: 12 cntrs*' is co-related to goods imported under Bill of Entry No. 6200546 as evident from para 11.1 of the impugned notice. The data shows 12 containers whereas the Bill of Entry and other relevant documents such as B.L and Packing List establishes that only 2 containers have been imported under the said Bill of Entry. Thus, the goods under Bill of Entry No. 6200546 are not found to be in consonance with the data available in Note 39.
- e) The marking 0.30 BA refers to the type of goods which is evident from Invoice Nos. CK20120019 dated 20.12.2020 (BoE 2346887), CK 20120024 dated 23.12.2020 (BoE 2347069) and 2101CK0012 dated 8.1.2021 (BoE 2639362) issued by Ningbo Tierslia Imp. & Exp. Co. Ltd. None of the Invoices issued by M/s ARS Technologies contain the description of the type of goods as '0.30 BA' or '0.55 2B'. As opposed to the same, the goods supplied by Ningbo Tierslia Imp. & Exp. Co. Ltd. contains the description and type of goods as 0.30 BA which is evident from the invoices issued by them. Thus, the goods 0.30 BA are the goods imported from Ningbo Tierslia Imp. & Exp. Co. Ltd. and not ARS Technologies. However, the purported data retrieved from the mobile device shows the heading 'Sanjay Bookings' and Shri Sanjay Goyal is the contact person of ARS Technologies as evident from the statement dated 22.11.2022 (RUD 11) of Shri Madhur Jain. How can the goods of the type procured from Ningbo Tierslia Imp. & Exp. Co. Ltd. be at all connected to Sanjay Bookings (person of ARS Technologies)

All the above discrepancies clearly indicate that the data under Note No. 39 is not at all in consonance with the goods under Bills of Entry Nos. 5328725, 5568735, 5924358 and 6200546. Thus, the data as per Note No. 39 is not admissible in evidence and the charges of under-valuation based on such notes are bad in the eyes of law.

32.7 Further, it may please be appreciated that no certificate of Shri Madhur Jain as required under Section 138C(iv) of the Customs Act has been placed on record and as such the data is not admissible in evidence.

32.8 In support of our above arguments, they crave leave to place reliance on the some judicial pronouncements in the case laws of M/s S N Agrotech reported at 2018 (361) ELT 761 ,M/s Premier Instruments & Controls Ltd. reported at 2005 (183) ELT 65, M/s Ambica Organics reported at 2016 (334) ELT 97,M/s

Belgium Glass & Ceramics Pvt. Ltd , M/s Shah Foils reported at 2020 (372) ELT 632 (Guj)

32.9 Even otherwise, the mobile data purportedly pertains to the Bill of Entry at Sr. No. 2. It is a well settled position of law that incriminating documents can be considered as evidence only for the purpose of goods to which the same pertain and cannot be extrapolated to be made applicable to Bills of Entry at Sr. No. 3. In this regard, reliance is placed on the case law of M/s Nav Karnataka Steels P. Ltd. reported at 2008 (226) ELT 454 (T)

32.10 Further, your kind attention is invited to the following text of the statement dated 6.4.2023 of Shri Madhur Jain:

Q. Have you issued any purchase order or overseas supplier has issued sales order, if any. Pl produce the same.

Ans: Our overseas supplier had issued Sales Contract in some of the orders on the basis of rates finalised by us on WhatsApp chat.

Q. How the payment is made to overseas supplier? Have they given any credit limit time?

Ans: The amount was paid through banks. No credit limit or time was given by overseas supplier. In some cases 100% payment was given in advance and in some cases part payment was given on advance.

Q. How the rates and other details were finalized with the overseas supplier ?

Ans : The overseas suppliers used to send us rates on my WhatsApp number and I finalize the rates on which the goods to be purchased based on their quotations.

It is pertinent to note that no incriminating data has been found in the Whatsapp chat by the NFSU authorities during the course of examination of the mobile phone of Shri Madhur Jain. When the rates were finalised on Whatsapp chat it was of vital importance to check the said data so as to bring on record incriminating evidence if any available. The very fact that no such data has been brought on record demonstrates that no incriminating data was available in the Whatsapp chat for the simple reason that they have not indulged in any under-valuation whatsoever.

32.11 Further, they crave leave to draw your kind attention to the statement dated 19.9.2023 of Shri Madhur Jain wherein he has categorically stated that the actual import prices have no connection with Note No. 39. The relevant extract of the said statement is reproduced under for ease of reference:

I perused page no. 03 attached to this statement of mine, wherein some alphanumerical words are written. On being asked, I state that the said printout relates to the notes from my device in which I used to save some information to be remember. Now I have been asked to peruse a note number 39 which was created on 01/09/2020 and modified on 17/11/2021 and I further state that the said note is about the conversation regarding goods imported from China and for enquiring of particular material & grade and I didn't know the exact enquiry. Further the actual import prices have no connection with this note.

However, the investigating officers have not taken cognizance of the said averment but proceeded to consider the same as import price without any cogent corroborative evidence.

32.12 In view of the above, it is amply demonstrated that the purported data retrieved from the Mobile device is not admissible as evidence and the charges of under-valuation deserve to be set aside on this ground only.

32.13. The value of the goods covered under Bill of Entry at Sr. No. 1 of Annex. A-1 to the Show Cause Notice has been proposed to be enhanced on the basis of imports by other importers by application of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as the Valuation Rules for short). The said rule provides for application of the transaction value of similar goods and the term 'similar goods' has been defined at Rule 2(f) of the Valuation Rules as under:

*"similar goods" means imported goods –*

*which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark.*

The first and the foremost fact for consideration is that for application of Rule 5, the goods should be able to perform the same functions and be commercially interchangeable with the goods being valued. In the instant case, the department has not placed on record any documents to compare the quality of the goods sought to be compared with the goods under consideration. It may be appreciated that prime grade coils are generally used by manufacturers for further cold rolling process. As opposed to the same, we are engaged into trading activities and the chunk of our customers are manufacturers of furniture fittings. For the purpose of manufacture of furniture fittings, prime grade coils are not required and even b-grade or c-grade coils would serve the purpose. It may be appreciated that the furniture market is highly competitive and cost of production is one of the major factors in the industry. Thus, to manufacture cost-efficient furniture fittings, b-grade or c-grade coils are used and also the

coils are odd lots which differ from the standard width coils. In absence of the comparable parameters, the price of other importers cannot be adopted in as much as the same have not been established to be similar goods in terms of Rule 5 of the Valuation Rules.

32.14 In this regard it is submitted that the value of USD 1363 has been arrived at on the basis of Invoice No. MFY210324SS02-1 dated 6.7.2021 issued by M/s MFY Metal Company Ltd. to M/s Shri Mahadevji Exports as evident from the table to para 11.7 of the impugned notice. A careful scrutiny of the said invoice indicates that the said rate pertains to goods having thickness of 0.4 mm. Further, the said invoice also indicates that the rate of the goods of thickness other than 0.4 mm is different. In the instant case, the thickness of the goods under import are 0.36 mm and 0.38 mm and the same are varying from the thickness of the comparable goods considered. Thus, the goods under import are of a different thickness and as already mentioned hereinabove, the prices vary on the basis of the thickness of the goods.

32.15 Secondly, the comparable Invoice No. MFY210324SS02-1 dated 6.7.2021 issued by M/s MFY Metal Company Ltd. does not indicate the grade/ quality of the goods so as to ascertain whether the same can be commercially interchanged with the goods under consideration. Additionally, the quantity is not comparable in as much as the quantity under Bill of Entry No. 5126157 dated 20.8.2021 is 105.46 MT as opposed to the quantity of 54.83 MT under Invoice No. MFY210324SS02-1 dated 6.7.2021.

32.16 Thirdly, it may be appreciated that the value would be dependent on the quality viz. prime, b-grade, c-grade, etc. Further, the surface finish type of the goods is also a parameter which alters the price of the goods. Also, various parameters such as evenness of the surface, ductility, tensile strength, etc. would play a significant role in ascertaining the value of the goods of such kind. In the instant case, there is nothing on record to identify such parameters and quality of the base goods so as to compare the same to the goods under consideration. In such circumstances, application of Rule 5 of the Valuation Rules for the purpose of arriving at the value of the Bill of Entry at Sr. No. 1 is not sustainable in the eyes of the law and the charges of under-valuation is required to be set aside on this count only.

32.17. Rule 3 of the Valuation Rules stipulates that the value of the imported goods shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. Further, sub-rule 2 of Rule 3 stipulates that shall be accepted in the circumstances specified therein and the relevant text of the same is reproduced under:

*Value of imported goods under sub-rule (1) shall be accepted:*

**Provided** that -

- (a) *there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*
  - (i) *are imposed or required by law or by the public authorities in India;*  
*or*
  - (ii) *limit the geographical area in which the goods may be resold; or*
  - (iii) *do not substantially affect the value of the goods;*
- (b) *the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*
- (c) *no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*
- (d) *the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*

The word 'shall' has been used which indicates that the value is mandatorily required to be accepted if the conditions (a) to (d) are fulfilled. In the instant case, no restrictions as to the disposition or use of the goods by the buyer have been imposed by the seller and as such condition (a) is fulfilled. Secondly, the sale is at arm's length and is not subject to any condition or consideration for which a value cannot be determined and as such condition (b) is fulfilled. Thirdly, no part of proceeds of any subsequent resale, disposal or use of the goods has been accrued to the seller in the instant case and thereby, the condition (c) stands fulfilled. Lastly, the importer is not related to the supplier as each entity is a distinct juristic person registered under the laws of the respective countries and thereby the condition (d) is also fulfilled. It is pertinent to note at this juncture that the Show Cause Notice fails to adduce any evidence whatsoever to the effect that either of the conditions at (a) to (d) above are not fulfilled. Further, there is not a whisper in the impugned order or the Show Cause Notice that either one of the above conditions is violated. Thus, by virtue of the mandate under Rule 3(2) of the Valuation Rules, the declared value is mandatorily required to be accepted.

32.18 Even otherwise, transaction value cannot be rejected in absence of any contrary evidence. In this regard the appellants crave leave to place reliance on the case laws M/s Jeen Bhavani International reported at (2023) 6 Centax 11

32.19 In the instant case, no evidence of remittance of extra amount over and above the invoice value has been brought on record and as such the charges the

undervaluation cannot be sustained in light of the above judicial pronouncements.

32.20. Even otherwise, the demand is hit by limitation in as much as the Bills of Entry are covering a period from Aug 21 to Sept. 21 whereas the Show Cause Notice has been issued on 21.11.2024 i.e. after a passage of 2 years. The charges of undervaluation have been made on the basis of data of value declared by other importers. The said data was already available with the department in NIDB at the time of assessment of the concerned Bills of Entry. It needs to be appreciated that the present Show Cause Notice relies upon all the data that was available to them at the time of assessment of the subject Bill of Entry and no new evidence has been brought on record. However, the subject Bill of Entry has been assessed at the declared value and no objection had been raised at the time of assessment. All the relevant documents such as Invoice, Packing List, Mill Test Certificate, etc. had been filed along with the Bill of Entry and they have not resorted to any suppression of facts or mis-statement. Thus, the provisions of Section 28(4) of the Customs Act are not applicable and the demand is liable to be set aside on limitation.

32.21. It is an undisputed fact that the said goods are not available for confiscation and in such cases where the goods itself are not available for confiscation, confiscation cannot be done. Hence, in absence of any confiscation no redemption fine can be imposed. In this regard, they crave leave to place reliance on the case laws of M/s Finesse Creation Inc. reported at 2009 (248) ELT 122 (Bom)

32.22. It is a settled law that for the purpose of imposition of penalty something positive other than mere inaction or failure on the part of the appellants or conscious or deliberate withholding of information when the appellant knew otherwise, is required to be established. In the instant case, there are no evidence to the effect that the importer was indulged in some conscious or deliberate events which led to the issuance of Show Cause Notice. The present case is concerned with mere classification dispute and valuation of other importers which is in the nature of interpretation open to scrutiny at the time of import of the consignment and as such no penalty is imposable. In this regard, they crave leave to rely on the case laws in this regard: M/s Anand Nishikawa Co Ltd reported at 2005 (188) ELT 149 (SC) :

32.23. It is further submitted that penalty under Sec. 114A of the Customs Act is imposable only in cases involving short payment or non-payment of duty by reason of collusion or any wilful mis-statement or suppression of facts. In the instant case, they have furnished all the documents at the time of filing of Bill of Entry and the said Bill of Entry was duly assessed by the competent authority. No query regarding inadmissibility of exemption or declaration of inappropriate

value had been raised by the competent authority. On the contrary, the Bill of Entry was assessed and order permitting clearance of goods in terms of the provisions of Section 47 of the Customs Act was made. they have not suppressed any facts from the department as amply discussed hereinabove and as such the elements of suppression of facts and willful mis-statement are not satisfied in the facts of the case at hand. Resultantly, the question of imposition of penalty under Section 114A of the Customs Act does not arise.

32.24. The Show Cause Notice proposes imposition of penalty under Section 112 as well as Section 114A of the Customs Act. In this regard your kind attention is invited to the 5<sup>th</sup> proviso to Section 114A of the Customs Act which reads as under:

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

In the instant case, the impugned notice proposes penalty under Section 114A and as such the proposal for penalty under Section 112 of the Customs Act is bad in law.

32.25. In view of the above submissions, it is humbly prayed that the demand raised against them may be vacated in toto. They reserve their right to add, alter, modify the submissions at any time during the course of adjudication process.

32.26 In case of Vasko Steels Pvt.Ltd, they submitted that the relied upon documents also establish that the goods imported by us are not comparable and cannot be termed as similar to that imported by M/s Shah Foils Ltd. A comparative table of the specification of the goods for which the comparison has been made in table to para 11.6 of the Show Cause Notice is reproduced under:

	Shah Foils Ltd.				Vasko Steels P Ltd				<u>Exhibit</u>
Sr. No.	BoE No.	Thickness (mm)	Width (mm)	Surface type	BoE No.	Thickness (mm)	Width (mm)	Surface type	
1	9012065	2.2	600 and 605		9012127	0.29	510	BA	Y1
2	9304663	0.9	600, 620, 720 and 730	2B	9822474	0.54	730		Y2
3	9701677	0.8	600, 610 and 615	2B	2762913	0.29	510	BA	Y3
4	9701677	0.8	600, 610 and 615	2B	3123696	0.29	510	BA	Y3
5	3236062	0.8 & 0.9	603 and 650	2B	2849040	0.29	510	2BA	Y4

6	3237180	0.8 & 0.9	650	2B	3075229	0.29	510	2BA	Y5
7	3439493	0.9 & 1.45	600	2B	3319105	0.29	510	BA	Y6
8	3540377	1.2 & 1.45	600	2B	3319103	0.29	510	BA	Y7
9	3886806	0.5 & 0.65	690 & 730	2B	2795582	0.26, 0.3, 0.32, 0.33, 0.4, 0.45, 0.5	49.5, 79, 58.5, 79.5, 77.5		Y8
10	3964572	0.9 & 1.2	690 & 730	2B	3236765	0.38	305, 355, 406, 457, 510		Y9

The above comparative table amply demonstrates that the goods vary in thickness, width and type and as such the same cannot be considered as similar goods. At this juncture it may be appreciated that the value of the goods varies depending on the parameters such as thickness and width which is very much evident from Invoice No. MFY210324SS02-1 dated 6.7.2021 **Exhibit Z** issued by M/s MFY Metal Company Ltd. to M/s Shri Mahadevji Exports which is one of the relied upon document to the Show Cause Notice (RUD 8A).

32.27 In view of the above, application of Rule 5 of the Valuation Rules for the purpose of arriving at the value of the Bills of Entry at Sr. Nos. 22 to 31 is not sustainable in the eyes of the law and the charges of under-valuation is required to be set aside on this count only.

32.28. Likewise, the value of the goods covered under Bills of Entry at Sr. Nos. 1 to 11 of Annx. B-1 to the Show Cause Notice has been proposed to be enhanced on the basis of imports by other importers. In this regard it is submitted that the value of USD 1363 has been arrived at on the basis of Invoice No. MFY210324SS02-1 dated 6.7.2021 issued by M/s MFY Metal Company Ltd. to M/s Shri Mahadevji Exports as evident from the table to para 11.7 of the impugned notice. A careful scrutiny of the said invoice indicates that the said rate pertains to goods having thickness of 0.4 mm. Further, the said invoice also indicates that the rate of the goods of thickness other than 0.4 mm is different. In the instant case, the thickness of the goods under import are varying from the thickness of the comparable goods considered. The thickness of the goods under consideration is tabulated as under:

Sr. No.	BoE No.	Thickness (mm)	
1	4162752	0.3	
2	4458950	0.28, 0.3, 0.31 and 0.29	

3	4458948	0.33, 0.34, 0.35, 0.56 and 0.59	<b>Exhibit-AA</b>
4	4576851	0.29 to 0.37	
5	4576796	0.29, 0.33, .037 and 0.41	
6	4576792	0.3	
7	4777180	0.51, 0.53 and 0.54	
8	4805987	0.36 to 0.39	
9	4821961	0.36 and 0.38	
10	5001534	0.28, 0.3 and 0.32	

The above clearly shows that the goods under import are of a different thickness and as already mentioned hereinabove, the prices vary on the basis of the thickness of the goods.

32.29 Secondly, the comparable Invoice No. MFY210324SS02-1 dated 6.7.2021 issued by M/s MFY Metal Company Ltd. does not indicate the grade/ quality of the goods so as to ascertain whether the same can be commercially interchanged with the goods under consideration.

32.30 Thirdly, it may be appreciated that the value would be dependent on the quality viz. prime, b-grade, c-grade, etc. Further, the surface finish type of the goods is also a parameter which alters the price of the goods. Also, various parameters such as evenness of the surface, ductility, tensile strength, etc. would play a significant role in ascertaining the value of the goods of such kind. In the instant case, there is nothing on record to identify such parameters and quality of the base goods so as to compare the same to the goods under consideration. In such circumstances, application of Rule 5 of the Valuation Rules for the purpose of arriving at the value of the Bills of Entry at Sr. Nos. 1 to 11 is not sustainable in the eyes of the law and the charges of under-valuation is required to be set aside on this count only.

32.31 In respect of Noticee no 03 and 04, they have submitted that it is a well settled law that claiming a different classification does not make the goods liable to confiscation. They relied upon the case laws of M/s Lewek Altair Shipping reported at 2019 (366) ELT 318 (T), further, they submitted that, where the goods are not liable to confiscation, the provisions of Section 112 of the Customs Act are not applicable.

32.32 Moreover, it is submitted that the instant case deals with classification dispute of the goods under import. It is a settled law that penalty cannot be imposed when the matter is pertaining to classification dispute since it is only a matter of interpretation. They relied on the case laws of M/s Eastern Steel Industries reported at 2017 (349) ELT 324 (T)

32.33. There is nothing in the impugned notice which attributes any action on their part which has led to the purported mis-classification and undervaluation. There is no evidence to show that the prices shown in the invoice issued by the overseas supplier were not the actual prices. Also there is nothing in the notice to show that they had knew or had played an active role in the alleged act of undervaluation. In a nutshell, there is no evidence whatsoever in the notice to establish *mens rea* on their part. It may be appreciated that for the purpose of imposition of penalty, *mens rea* is absolutely necessary. It is a well settled principle of law that penalty cannot be imposed in absence of *mens rea*.

32.34 It is a settled law that for the purpose of imposition of penalty something positive other than mere inaction or failure on the part of the appellants or conscious or deliberate withholding of information when the appellant knew otherwise, is required to be established. In the instant case, there are no evidence to the effect that the importer was indulged in some conscious or deliberate events which led to the issuance of Show Cause Notice. The present case is concerned with mere classification dispute and valuation of other importers which is in the nature of interpretation open to scrutiny at the time of import of the consignment and as such no penalty is imposable. In this regard, we crave leave to rely on the following case laws in this regard:

32.35. As regard penalty under Section 114AA of the Customs Act, 1962 is concerned it is submitted that the same is applicable only in cases where a person has knowingly or intentionally signed or caused to be signed a declaration or statement. The text of the said statute is reproduced under for ease of reference:

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

The language employed in the above statute implies that the penalty has been provided for in cases where a person has knowingly or intentionally made, signed, used any false declaration, statement or document or caused to have made, signed or used any false declaration, statement or document. In the instant case, the Show Cause Notice fails to bring on record as to which particular declaration or statement which is false or incorrect has been **knowingly or intentionally** signed or caused to be signed by them. Thus, the facts and circumstances of the case at hand are not covered under the provisions of Section 114AA of the Customs Act, 1962.

32.36 Further, the rationale for introduction of Section 114AA of the Customs Act, 1962 has been specified at para 63 & 65 of the Twenty Seventh Report of the Standing Committee on Finance (2005-06) in relation to The Taxation Laws (Amendment) Bill, 2005 as under:

*63. The information furnished by the Ministry states as follows on the proposed provision:*

*“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.*

*65. The Ministry also informed as under:*

*“The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes.”*

The above clearly indicates that the intent of insertion of Section 114AA of the Customs Act, 1962 was to provide penalty for serious frauds where no goods were exported but only papers were created to avail the benefits of the export promotion schemes. In view of the above, it is requested that the proposal to impose penalty on me may be set aside.

#### **RECORD OF PERSONAL HEARING.**

**33.** The Personal Hearing was attended by Mr. John F.Christian and Mr. Ashish Kumar Jain, both Consultants on behalf of all the four noticees on 06.11.2025 at 3:30 PM via Virtual Mode. They reiterated the submission and contentions already made in the written reply dated 15.10.2025 and requested that the case be considered in a fair and for judicious manner. They also requested that a sympathetic and reasoned decision be taken based on the facts and circumstances of the case.

## **DISCUSSIONS AND FINDINGS:-**

**34.** After having carefully gone through the Show Cause Notice, relied upon documents, submissions made by the Noticee's and the records available before me, I now proceed to decide the case. The main issues involved in the case which are required to be decided in the present adjudication are as under: -

- (i) Whether the imported goods can be considered as '*Nickel Chromium Austenitic*' type of Stainless Steel classifiable under CTH 7220 9022, as claimed by the noticees, and consequently, whether they qualify for the concessional rate of duty under Notification No. 50/2018-Customs dated 30.06.2018;
- (ii) Whether the goods have been imported at undervalued price in light of the evidences placed on record as relied upon during the investigation or otherwise;
- (iii) Whether they are liable for payment of differential duty as proposed in the show cause notice by invoking extended period under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962;
- (iv) Whether the goods are liable to confiscation under Section 111(m) of the Customs Act, 1962 and whether redemption fine is imposable under Section 125 of the Customs Act, 1962;
- (v) Whether penalties under the respective statutory provisions cited in the show cause notice are liable to be imposed.

### **Correct nature of goods-**

**35.** The investigation has revealed that M/s Vasko Metalloys Private Limited (VMPL) and M/s Vasko Steels Private Limited (VSPL) have been importing '*Cold Rolled Stainless Steel Coils grade J3*' from China by declaring the same under CTI 7220 9022 and by availing concessional benefit of 45% of the BCD under Notification No. 50/2018-Customs dated 30.06.2018 for products of "*Nickel Chromium Austenitic*" type. The investigation further revealed that the imported goods were not of Nickel Chromium Austenitic type and therefore were correctly classifiable under CTI 72209090 as others. It is in this background that the nature, characteristics and correct classification of the imported goods, as well as the applicability of the said Notification, require examination in light of the evidence on record and the submissions made by the noticees.

**35.1** It is important to understand the chemical composition of Stainless steels specifically Nickel Chromium Austenitic type (CTH 72209022). As per chapter Note (e) of Chapter 72, Stainless steel is defined as *Alloy steels containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements*. Clearly, the imported goods are stainless steel as they contain

more than 10.5% of Chromium and less than 1.2% of Carbon as evident from the Mill test Certificates, referred in the next paragraphs. Further, the nature of goods being Stainless Steel is neither disputed by the importers nor by the department. Stainless Steels are broadly categorized in five categories namely Austenitic, Ferritic, Martensitic, Duplex and Precipitation hardening stainless steel grades. These categories are defined based on the atomic structure and alloying elements resulting in range of properties required for various end use. Austenitic is the most widely used type of stainless steel. It has excellent corrosion and heat resistance with good mechanical properties over a wide range of temperatures. These are further categorised as 300 and 200 (also known as J3 grade) series grades which are non-magnetic in nature. The main difference is that the 300 series stainless steel has *higher nickel content*, providing superior corrosion resistance and durability, while the 200 series (also known as J3 grade) replaces much of the nickel with manganese and nitrogen to lower cost, resulting in lower corrosion resistance and suitability for less demanding applications. Both are austenitic stainless steels and are non-magnetic in nature. The importers have declared their goods i.e. Cold Rolled Stainless steel of J3 grade. During the recording of statement dated 06.04.2023, Shri Madhur Jain, Marketing Manager and business freelancer of both the importers, stated that grade J3 is a customised grade of 200 series having low nickel content, around 1%. He further stated that their imported product is similar to N1 grade. Thus, the chemical composition of both 200 series and N1 as per IS 6911:2017 is reproduced here for ease of reference:-

SI. No .	Grade Designation	Numerical Symbol	C Max	Si, Max	Mn	Ni	Cr	Mo	S, Max	P, Max	N	Others
iii)	Austenitic Steel											
	X 10Cr17Mn6Ni4N20	201	0.15 , Max	1.0 0	5.5- 7.5	3.5 - 5.5	16.0 - 18.0	-	0.03 0	0.06. 0	0.25 , Max	-
	X 07Cr17Mn12Ni4	201 A	0.12 , Max	1.0 0	10.0 - 14.0	3.5 - 5.5	16.0 - 18.0	-	0.03 0	0.09 0	0.25 , Max	-
	X 10Cr18Mn9Ni5	202	0.15 , Max	1.0 0	7.5- 10.0	4.0 - 6.0	17.0 - 19.0	-	0.03 0	0.06 0	0.25 , Max	-
	X 10Cr15Mn9Cu2Ni1N	N1	0.12 , Max	0.7 5	8.5- 10.5	1.0 - 2.0	14.5 - 16.0	-	0.03 0	0.08 0	0.08 - 0.20	

**35.2** Therefore, in order to consider the imported goods as 200 series or J3 grade, as declared by the importers in their Bills of Entry, the different parameters of chemical constituents must fall within the range as discussed below:-

Subgroups of Austenitic stainless steel	Minimum-Maximum range of Nickel (Ni) (% by weight)	Minimum-Maximum range of Chromium (Cr) (% by weight)	Minimum-Maximum range of Manganese (Mn) (% by weight)
200 Series	3.5 - 6	16-19	5.5-14.0
N1	1.0-2.0	14.5-16	8.5-10.5

**35.3** However on examination of the Mill Test Certificate/Report uploaded by importing firms, the content of Nickel (Ni) and Chromium (Cr) in the imported goods (Cold Rolled Stainless Steel Coil of J3 grade) was not found as per specification required to qualify in any of the two subgroups (200&N1) of Austenitic stainless steel. Some of the Mill Test Certificates are reproduced herein below:-

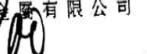
Mill Test certificate no. 210406JI05-5 dated 13.07.2021 in respect of Bill of Entry No. 5001534 dated 10.08.2021 **[RUD-13A]**:

**MFY METAL COMPANY LIMITED**  
**MILL CERTIFICATE**

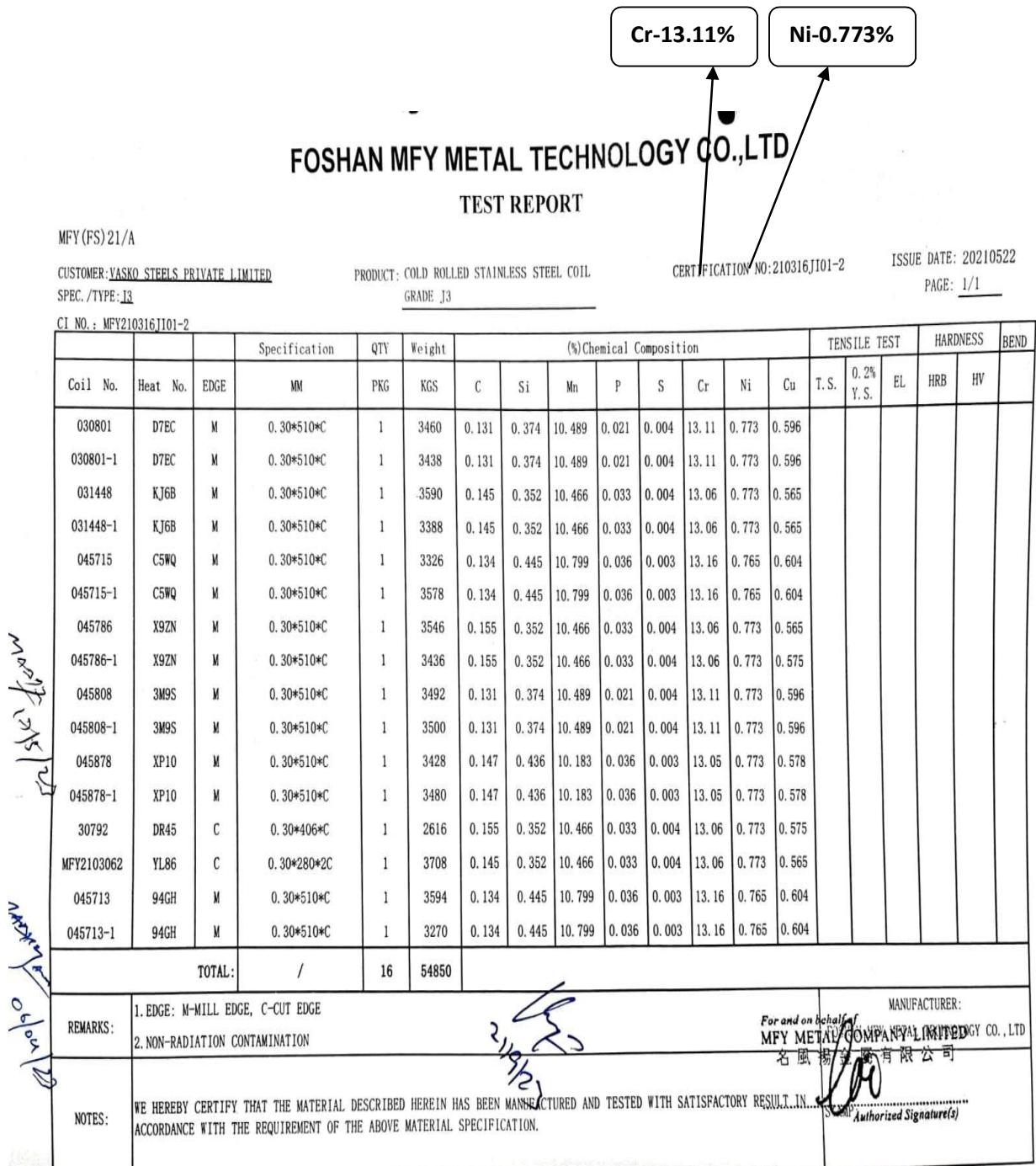
MFY (FS) 21/A  
CUSTOMER: VASKO STEELS PRIVATE LIMITED  
SPEC. /TYPE: J3  
CI NO.: MFY210406JI05-5

PRODUCT: Stainless Steel Cold Rolled Coil J3 Grade  
Ex-Stock thickness Mix

CERTIFICATION NO: 210406JI05-5  
ISSUE DATE: 20210713  
PAGE: 1/1

Coil No.	Heat No.	EDGE	Specification MM	QTY	Weight KGS	(% Chemical Composition)								TENSILE TEST		HARDNESS		BEND
						C	Si	Mn	P	S	Cr	Ni	Cu	T.S.	0.2% Y.S.	EL	HRB	
S061037	MFY0713	M	0.28MM	1	3622	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
S061037-1	MFY0713	M	0.28MM	2	3470	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
S061034	MFY0714	M	0.28MM	3	3734	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
S061034-1	MFY0714	M	0.30MM	4	3370	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
S061039	MFY0715	M	0.30MM	5	3532	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
S061039-1	MFY0715	M	0.30MM	6	3700	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
S061036	MFY0716	M	0.32MM	7	3786	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
S061038-1	MFY0718	M	0.32MM	8	2250	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575					
S061036-1	MFY0716	M	0.28MM	9	3292	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
S061035	MFY0717	M	0.28MM	10	3370	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
S061035-1	MFY0717	M	0.28MM	11	3426	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578					
S061040	MFY0720	M	0.30MM	12	3652	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578					
S061040-1	MFY0720	M	0.30MM	13	3600	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575					
S061033	MFY0719	M	0.30MM	14	2466	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
S061033-1	MFY0719	M	0.32MM	15	3236	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
S061038	MFY0718	M	0.32MM	16	3610	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
TOTAL:				/	/	54116												
REMARKS:	1. EDGE: M-MILL EDGE, C-CUT EDGE 2. NON-RADIATION CONTAMINATION												MANUFACTURER: MFY METAL COMPANY LIMITED MFY METAL COMPANY LIMITED 名風揚金属有限公司					
NOTES:	WE HEREBY CERTIFY THAT THE MATERIAL DESCRIBED HEREIN HAS BEEN MANUFACTURED AND TESTED WITH SATISFACTORY RESULT IN ACCORDANCE WITH THE REQUIREMENT OF THE ABOVE MATERIAL SPECIFICATION.												STAMP:  Authorized Signature(s)					

(ii) Mill Test certificate No. 210406JI01-2 dated 22.05.2021 in respect of Bill of Entry No. 4576792 dated 05.07.2021 [RUD-14A]:



Cr-13.11% Ni-0.773%

**FOSHAN MFY METAL TECHNOLOGY CO., LTD**  
TEST REPORT

MFY (FS) 21/A  
CUSTOMER: VASKO STEELS PRIVATE LIMITED  
SPEC./TYPE: 13  
CI NO.: MFY210316JI01-2

PRODUCT: COLD ROLLED STAINLESS STEEL COIL  
GRADE: J3  
CERTIFICATION NO: 210316JI01-2  
ISSUE DATE: 20210522  
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Coil No.	Heat No.	EDGE	MM	PKG	QTY	Weight	(% Chemical Composition)							TENSILE TEST			HARDNESS	BEND
							C	Si	Mn	P	S	Cr	Ni	Cu	T.S.	0.2% Y.S.	EL	
030801	D7EC	M	0.30*510*C	1	3460	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
030801-1	D7EC	M	0.30*510*C	1	3438	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
031448	KJ6B	M	0.30*510*C	1	3590	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
031448-1	KJ6B	M	0.30*510*C	1	3388	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
045715	C5WQ	M	0.30*510*C	1	3326	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
045715-1	C5WQ	M	0.30*510*C	1	3578	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
045786	X9ZN	M	0.30*510*C	1	3546	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
045786-1	X9ZN	M	0.30*510*C	1	3436	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575					
045808	3M9S	M	0.30*510*C	1	3492	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
045808-1	3M9S	M	0.30*510*C	1	3500	0.131	0.374	10.489	0.021	0.004	13.11	0.773	0.596					
045878	XP10	M	0.30*510*C	1	3428	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578					
045878-1	XP10	M	0.30*510*C	1	3480	0.147	0.436	10.183	0.036	0.003	13.05	0.773	0.578					
30792	DR45	C	0.30*406*C	1	2616	0.155	0.352	10.466	0.033	0.004	13.06	0.773	0.575					
MFY2103062	YL86	C	0.30*280*2C	1	3708	0.145	0.352	10.466	0.033	0.004	13.06	0.773	0.565					
045713	94GH	M	0.30*510*C	1	3594	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
045713-1	94GH	M	0.30*510*C	1	3270	0.134	0.445	10.799	0.036	0.003	13.16	0.765	0.604					
TOTAL:			/	16	54850													
REMARKS:	1. EDGE: M-MILL EDGE, C-CUT EDGE 2. NON-RADIATION CONTAMINATION														For and on behalf of MFY METAL TECHNOLOGY CO., LTD 名風揚金屬有限公司	MANUFACTURER:		
NOTES:	WE HEREBY CERTIFY THAT THE MATERIAL DESCRIBED HEREIN HAS BEEN MANUFACTURED AND TESTED WITH SATISFACTORY RESULT, IN ACCORDANCE WITH THE REQUIREMENT OF THE ABOVE MATERIAL SPECIFICATION.														Authorized Signature(s)			

**35.4** On perusal of the Mill Test Certificates reproduced above, it is evident that the chemical composition of the imported coils reflects Chromium in the range of 13.05–13.16%, Nickel between 0.765–0.773%, and Manganese between 10.183–10.799%. In contrast, IS 6911:2017 prescribes that Chromium must be within 14.5–19% and Nickel within 1.0–6.0% for the relevant Austenitic grades, therefore, it is amply clear that the imported goods do not conform either to the specifications of J3 grade (200 series) as declared in the Bills of Entry, or to the N1 grade as subsequently claimed during the investigation.

**35.5** It is pertinent to note that as per the Mill Test Certificates reproduced above, the composition of Chromium is less than 14.5%, lowest for any Austenitic type of stainless steel as per IS 6911:2017. The chemical composition of various stainless steel as per IS 6911:2017 is reproduced below:-

Table I Chemical Composition, Percent  
(Clauses 7.1 and 7.2)

Sl No.	Grade Designation	Numerical Symbol ISS	C Max	Si, Max	Mn	Ni	Cr	Mo	S, Max	P, Max	N	Others
	Letter Symbol [see IS 1762 (Part 1)]											
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
i)	<i>Ferritic Steels</i>											
1)	X 04Cr12Al	405	0.08, Max	1.00	1.00, Max	0.60, Max	11.5-14.5	-	0.030	0.040	-	Al 0.10-0.30
	X 07Cr17	430	0.12, Max	1.00	1.00, Max	0.75, Max	16.0-18.0	-	0.030	0.040	-	-
2)	X 02Cr12TiNb	409	0.030, Max	1.00	1.00, Max	0.50, Max	10.5-11.7	-	0.020	0.040	0.030, Max	Ti 6x (C+N), Min - 0.50 Max; Nb 0.17, Max
3)	X 02Cr12	409 M	0.030, Max	1.00	0.50-1.50	1.50, Max	10.5-12.5	-	0.030	0.040	-	-
4)	X 04Cr12	410 S	0.08, Max	1.00	1.00, Max	0.60, Max	11.5-13.5	-	0.030	0.040	-	-
5)	X 02Cr18Ti	439	0.030, Max	1.00	1.00, Max	0.50, Max	17.0-19.0	-	0.030	0.040	0.030, Max	Ti [0.2+4 (C+N)], Min - 1.1, Max; Al 0.15, Max
ii)	<i>Martensitic Steels</i>											
1)	X 12Cr12	410	0.08-0.15	1.00	1.00, Max	0.75, Max	11.5-13.5	-	0.030	0.040	-	-
2)	X 20Cr13	420 S1	0.16-0.25	1.00	1.00, Max	1.00, Max	12.0-14.0	-	0.030	0.040	-	-
3)	X 30Cr13	420 S2	0.26-0.35	1.00	1.00, Max	1.00, Max	12.0-14.0	-	0.030	0.040	-	-
4)	X 40Cr13	420 S3	0.35-0.45	1.00	1.00, Max	1.00, Max	12.5-14.0	-	0.030	0.040	-	-
5)	X 15Cr16Ni2	431	0.10-0.20	1.00	1.00, Max	1.25-2.50	15.0-17.0	-	0.030	0.045	-	-
6)	X 108Cr17Mo	440	0.95-1.20	1.00	1.00, Max	0.50, Max	16.0-18.0	0.75, Max	0.030	0.045	-	-
iii)	<i>Austenitic Steels</i>											
1)	X 10Cr17Mo6Ni4N20	201	0.15, Max	1.00	5.5-7.5	3.5-5.5	16.0-18.0	-	0.030	0.060	0.25, Max	-
2)	X 07Cr17Mo12Ni4	201 A	0.12, Max	1.00	10.0-14.0	3.5-5.5	16.0-18.0	-	0.030	0.090	0.25, Max	-
3)	X 10Cr18Mo9Ni5	202	0.15, Max	1.00	7.5-10.0	4.0-6.0	17.0-19.0	-	0.030	0.060	0.25, Max	-
4)	X 10Cr17Ni7	301	0.15, Max	1.00	2.00, Max	6.0-8.0	16.0-18.0	-	0.030	0.045	0.10, Max	-
5)	X 07Cr18Ni9	302	0.15, Max	0.75	2.00, Max	8.0-10.0	17.0-19.0	-	0.030	0.045	0.10, Max	-
6)	X 02Cr17Ni7	301 L	0.03, Max	1.00	2.00, Max	6.0-8.0	16.0-18.0	-	0.030	0.045	0.20, Max	-
7)	X02Cr17Ni7N	301 LN	0.03, Max	1.00	2.00, Max	6.0-8.0	16.0-18.0	-	0.030	0.045	0.07-0.20	
	X04Cr19Ni9	304 S1	0.07, Max	0.75	2.00, Max	8.0-10.5	17.5-19.5	-	0.030	0.045	0.10, Max	-
8)	X 02Cr19Ni10	304 S2	0.030, Max	0.75	2.00	8.0-12.0	17.5-19.5	-	0.030	0.045	0.10, Max	-
9)	X 07Cr19Ni9	304 H	0.04-0.10	0.75	2.00, Max	8.0-10.5	18.0-20.0	-	0.030	0.045	-	-
10)	X 02Cr19Ni10N	304 LN	0.030, Max	0.75	2.00, Max	8.0-12.0	18.0-20.0	-	0.030	0.045	0.10-0.16	-

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Table 1—(Concluded)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
11) X 04Cr19Ni9N	304 N	0.08, Max	0.75	2.00, Max	8.0-10.5	18.0-20.0	—	0.030	0.045	0.10-0.16	—	—
12) X15Cr24Ni13	309	0.20, Max	1.5	2.00, Max	11.0-15.0	22.0-25.0	—	0.030	0.045	—	—	—
13) X 04Cr23Ni14	309 S	0.08, Max	0.75	2.00, Max	12.0-15.0	22.0-24.0	—	0.030	0.045	—	—	—
14) X20Cr25Ni20	310	0.25, Max	2.50	2.00, Max	18.0-21.0	24.0-26.0	—	0.030	0.045	—	—	—
15) X 04Cr25Ni20	310 S	0.08, Max	1.50	2.00, Max	19.0-22.0	24.0-26.0	—	0.030	0.045	—	—	—
16) X 04Cr17Ni12Mo2	316	0.08, Max	0.75	2.00, Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	0.10, Max	—	—
17) X 02Cr17Ni12Mo2	316 L	0.030, Max	0.75	2.00, Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	0.10, Max	—	—
18) X 07Cr17Ni12Mo2	316 H	0.04-0.10	0.75	2.00, Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	—	—	—
19) X 02Cr17Ni12Mo2N	316 LN	0.030, Max	0.75	2.00, Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	0.10-0.16	—	—
20) X 04Cr19Ni13Mo3	317	0.08, Max	0.75	2.00, Max	11.0-15.0	18.0-20.0	3.0-4.0	0.030	0.045	0.10	—	—
21) X 02Cr19Ni13Mo3	317 L	0.030, Max	0.75	2.00, Max	11.0-15.0	18.0-20.0	3.0-4.0	0.030	0.045	0.10, Max	—	—
22) X 04Cr17Ni12Mo2Ti	316 Ti	0.08, Max	0.75	2.00, Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	0.10, Max	Ti 5 x (C + N), Min — 0.70, Max	—
23) X 04Cr18Ni10Ti	321	0.08, Max	0.75	2.00, Max	9.0-12.0	17.0-19.0	—	0.030	0.045	0.10, Max	Ti 5 x (C + N), Min — 0.70, Max	—
24) X 04Cr18Ni10Nb	347	0.08, Max	0.75	2.00, Max	9.0-13.0	17.0-19.0	—	0.030	0.045	—	Nb 10 x C — 1.00, Max	—
25) X 10Cr15Mn9Cu2Ni1N	N1	0.12, Max	0.75	8.5-10.5	1.0-2.0	14.5-16.0	—	0.030	0.080	0.08-0.20	Cu 1.5-2.50	—
26) X 8Cr16Mn8Cu2Ni2N	N2	0.10, Max	1.00	6.5-9.0	1.5-3.5	15.5-17.0	—	0.030	0.070	0.10-0.25	Cu 2.0-4.0	—
27) X 8Cr16Mn7Cu2Ni4N	N3	0.09, Max	0.75	6.0-8.0	4.0-6.0	16.0-17.5	—	0.030	0.070	0.05-0.15	Cu 1.5-2.50	—
(iv) Duplex												
1) X 02Cr22Ni6Mo3N	2205	0.030, Max	1.00	2.00, Max	4.5-6.5	22.0-23.0	3.0-3.5	0.020	0.03	0.14-0.20	—	—
2) X 02Cr23Ni4CuN	2304	0.030, Max	1.00	2.50, Max	3.0-5.5	21.5-24.5	0.05-0.6	0.030	0.04	0.05-0.20	Cu 0.05-0.60	—
3) X 02Cr25Ni7Mo4CuN	2507	0.030, Max	0.80	1.20, Max	6.0-8.0	24.0-26.0	3.0-5.0	0.020	0.035	0.24-0.32	Cu 0.50, Max	—

Constituent	Limits, Percent, Max													
	Ferritic and Martensitic Steels					Austenitic Steels								
						Without Specified Molybdenum						With Specified Molybdenum		
Titanium	—						0.10	—						0.10
Niobium	—						0.20	—						0.20
Molybdenum	0.30						0.70	—						—
Copper	0.30						0.50	—						0.70

**35.6** On examining the chemical composition parameters of the various categories of stainless steel—namely Ferritic, Martensitic and Austenitic—it is noted that stainless steel can be characterised as ‘Austenitic’ only where the Chromium content exceeds 14.5%. Where the Chromium content falls below this threshold, the material would ordinarily fall within the Ferritic or Martensitic categories, as the case may be. It is pertinent to mention here that Chromium is essential for austenitic stainless steel because it creates a passive, protective oxide layer on the surface, providing exceptional corrosion resistance. This layer, composed mainly of chromium oxide, prevents rust and oxidation even in extreme environments. Therefore, the chemical composition of Chromium as per

IS 6911:2017 is a crucial factor in categorising any stainless steel to be "Austenitic". In view of the foregoing findings, the imported goods cannot be regarded as 'Austenitic'; consequently, the question of treating them as 'Nickel Chromium Austenitic type' does not arise.

**35.7** Further, it is noticed that the imported consignments corresponding to the above two Mill Test Certificates were having the similar quality of goods. However, the corresponding Bs/E were filed by the importer, i.e. B/E No. 5001534 dated 10.08.2021 and 4576792 dated 05.07.2021 under different CTIs. The B/E No. 5001534 dated 10.08.2021 was filed declaring goods under CTI 72202090 and B/E No. 4576792 dated 05.07.2021 was filed declaring goods under CTI 72209022. The table depicting the details of the said Bs/E and the goods imported are as follows:

B/E No. & date	Goods description in the B/E	CTI of the goods in the B/E	Mill Test certificate No.	Average Percentage of constituent metals as per Mill Test Certificate
5001534 dated 10.08.2021	Cold Rolled Stainless Steel Coils Grade J3	72202090	210406JI05-5 dated 13.07.2021, issued by M/s. MFY Metal Company Limited, China	Nickel-0.77% Chromium-13.11%
4576792 dated 05.07.2021	Cold Rolled Stainless Steel Coils Grade J3	72209022	210406JI01-2 dated 22.05.2021 issued by M/s. Foshan Metal Technology Co. Ltd., China	Nickel-0.77% Chromium-13.11%

**35.8** On perusal of the above documents viz. Mill Test certificates or Test reports, it is apparent that both the test certificates mention the percentage of constituents, particularly the percentages of Nickel and Chromium almost similar in both test certificates. However, the Bs/E were filed by declaring the goods under different CTIs, i.e. B/E no. 5001534 dated 10.08.2021 was filed by declaring goods under CTI 72202090, i.e. without taking benefit of the tariff concession as available under Notification no. 50/2018-Customs dated 30.06.2018, while the B/E no. 4576792 dated 05.07.2021 was filed declaring the goods under CTI 72209022 thus taking benefit of the tariff concession as available under Notification no. 50/2018-Customs dated 30.06.2018. Similarly, on perusal of the other Bills of Entry filed by "M/s VMPL" & "M/s VSPL", it is observed that "M/s VMPL" & "M/s VSPL" has imported similar goods from China by declaring it as 'Cold Rolled Stainless Steel Coils Ex Stock Grade-J3 less than 600MM' under heading 'Others' of CTH 7220 but after issuance of Notification No. 50/2018-Customs dated 30.06.2018, "M/s VMPL" & "M/s VSPL" started classifying the goods under CTI 72209022 to avail the benefit of said Notification.

**35.9** In this regard, it is pertinent to note that Shri Madhur Jain in his statement dated 17.05.2023 admitted that after the issuance of issuance of Notification 50/2018-Customs dated 30.06.2018 they informed their supplier that the benefit of Notification 50/2018-Customs dated 30.06.2018 is available on the import of Cold Rolled Stainless Steel Coils from China, their supplier had supplied them the documents with CTI 72209022 and accordingly they have filed the Bill of Entry by declaring the goods under category of Nickel Chromium Austenitic Type under CTI 72209022 to claim the benefit of Notification 50/2018-Customs dated 30.06.2018. Therefore, it is crystal clear that the imported goods were mis-classified under CTI 72209022 in order to wrongly avail the benefit of Notification No. 50/2018-Cus dated 30.06.2018.

**35.10** The noticee has argued that Austenitic steel is not dependent on Nickel content by relying upon the IS 15997:2012 which specifies the standards for "Low Nickel Austenitic Stainless Steels". The noticee has further argued that the IS 15997:2012 demonstrates that Stainless Steel having Nickel content ranging from 0.2% to 0.95% can also be called as Austenitic Stainless Steel. In this context, I note that IS 15997:2012 pertains specifically to stainless steel sheets and strips intended for utensils and kitchen appliances, and therefore has no relevance to the classification of the goods under import in the present case.

**35.11** In view of the above discussion and findings, I hold that the imported goods were not "Nickel Chromium Austenitic" type as claimed by the noticees.

#### **Classification-**

**36.** For determining the correct classification of the imported goods, the relevant extract of customs tariff is reproduced below for ease of reference:-

<b>7220</b>	<b>Flat-rolled products of stainless steel, of a width of less than 600 mm</b>
-	<b>Not further worked than hot rolled:</b>
7220 11	-- Of a thickness of 4.75 mm or more:
7220 11 10	--- Skelp for pipes and tubes
	--- Strips for pipes and tubes (other than skelp):
7220 11 21	--- Chromium type
7220 11 22	--- Nickel chromium austenitic type
7220 11 29	--- Other
7220 11 90	--- Other
7220 12	-- Of a thickness of less than 4.75 mm:
7220 12 10	--- Skelp for pipes and tubes
	--- Strips for pipes and tubes (other than skelp):
7220 12 21	--- Chromium type
7220 12 22	--- Nickel chromium austenitic type
7220 12 29	--- Other
7220 12 90	--- Other
<b>7220 20</b>	<b>Not further worked than cold-rolled (cold- reduced)</b>
7220 20 10	--- Skelp for pipes and tubes

	---	Strips for pipes and tubes (other than skelp)
7220 20 21	----	Chromium type
7220 20 22	----	Nickel chromium austenitic type
7220 20 29	----	Other
7220 20 90	---	Other
<b>7220 90</b>	-	<b>Other</b>
7220 90 10	---	Skelp (strips for pipes and tubes)
	---	Strips for pipes and tubes (other than skelp)
7220 90 21	----	Chromium type
7220 90 22	----	<i>Nickel chromium austenitic type</i>
7220 90 29	----	Other
7220 90 90	---	<i>Other</i>

**37.** As discussed earlier, in terms of chapter Note (e) of Chapter 72, Stainless steel is defined as *Alloy steels containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements.* Clearly, the imported goods are stainless steel as they have more than 10.5% of Chromium and less than 1.2% of Carbon as evident from the Mill test Certificates, referred in the foregoing paragraphs. Further, the nature of goods being stainless steel is neither disputed by the importers nor by the department. Since there is no specific tariff entry covering high-Manganese and low Nickel Flat Rolled products of stainless steel of a width of less than 600 mm, the goods are correctly classifiable under CTI 7220 9090 as "Others".

***Whether the importers are eligible for the benefit of Notification No. 50/2018-Cus dated 30.06.2018-***

**38.** In this regard, I find that the said Notification dated 30.06.2018 does not provide concessional benefit of BCD to those good which are classified under CTH 72209090.

**39.** Further, I observe that under the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] a certificate of origin for which invoice is issued by a non-party is not valid. 'M/s VSPL' and 'M/s. VMPL' had wrongly availed the benefit of the concessional rate of duty under Notification No. 50/2018-Customs dated 30.06.2018 on the basis of Country-of-Origin certificates issued by China based manufacturers in the name of importer, whereas invoices were issued by other supplier based at Hong Kong. Therefore, the benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to them.

**VALUATION OF IMPORTED GOODS-**

**40.** On perusal of the statements of the concerned persons, the documents retrieved during the search proceedings, and all other evidences placed on record it is observed that M/s VMPL and M/s VSPL have imported 'Cold Rolled Stainless

Steel Coils (Grade J3)' at grossly undervalued prices on the grounds mentioned below:-

### **1. Retrieval of contemporaneous Note showing actual CIF values:-**

I find that a handwritten digital Note containing actual CIF prices, container quantities, weights, invoice dates and product specifications relating to imports of M/s VMPL and M/s VSPL was recovered from the mobile phone of Shri Madhur Jain during the search. The Note records the following data:

<b>Sanjay bookings</b>	
Aug 2021	Weight of the goods and the dates are comparable to the corresponding values in the Bs/E Nos.
0.55 2B unslit CIF 1635 : 5 cntrs	5328725 dated 06.09.2021,
0.30 BA unslit CIF 1720 : 5 cntrs	5568735 dated 24.09.2021,
0.30 BA unslit CIF 1780 : 10 cntrs	5924358 dated 21.10.2021
55806 18.08	and 6200546 dated
55602 10.09	11.11.2021 filed by M/s.
52128	VMPL and M/s. VSPL
1605 pipe strips	
13-10	
2125 0.30 ba : 12 containers	

### **PHOTO OF NOTE**

0.55 2B unslit CIF 1635 : 5 contrs 55806 18.08	Weight and invoice date same as in B/E no. 5328725 dated 06.09.2021
0.30 BA unslit CIF 1720 : 5 contrs 55602 10.09	Weight and invoice date same as in B/E no. 5568735 dated 24.09.2021
0.30 BA unslit CIF 1780 : 10 contrs 52128	Weight same as in B/E no. 5924358 dated 21.10.2021
13-10 2125 0.30 ba: 12 containers	Date of invoice near to the invoice date (16.10.21) of B/E no. 6200546 dated 11.11.2021

On scrutiny of this aforementioned Note, it is clearly found that records bookings finalised in August 2021 with details such as width, finish, CIF value, weight and invoice date, corresponding directly with the shipments later declared in Bills of Entry filed by the said importers. Hence, I find that the importers were in possession of the true commercial details, which were subsequently not disclosed to Customs. In this regard, I find that Shri Madhur Jain in his voluntary statement dated 19.09.2023 had perused the above mentioned Note and stated that the said note was about the conversation regarding goods imported from China and for inquiring of particular material and grade. Although he stated that the actual import prices had no connection with his note, he could not provide any satisfactory response in this regard.

### **2. Comparison with Bills of Entry:-**

I observe that the notice M/s VMPL and M/s VSPL imported the goods i.e. Stainless Steel Cold Rolled Coils vide B/Es of dates in the Month of Sept' 2021-Nov-2021, which had the weight of goods same as those mentioned in the note retrieved from the phone of Shri Madhur Jain as mentioned above. The

comparative details of the CIF price as mentioned in the said note and the corresponding B/E are as follows:

Sr No.	Name of the importer (M/s.)	B/E No. & Date	Date of the invoice and packing list	Weight of the goods as mentioned in the B/E or note contained in the phone of Madhur Jain	CIF price as mentioned in the B/E	CIF price as mentioned in the note contained in the phone of Madhur Jain
1	"VMPL"	5328725 dated 06.09.2021	18.08.2021	55806 kgs	750	1635
2	"VSPL"	5568735 dated 24.09.2021	10.09.2021	55602 kgs	750	1720
3	"VSPL"	5924358 dated 21.10.2021	29.09.2021	52128 kgs	750	1780
4	"VSPL"	6200546 dated 11.11.2021	16.10.2021	55194 kgs	750	2125

I observed that on comparison of documents presented before Customs at the time of clearance of goods with the evidences in the form of Note containing actual rate/CIF value of goods along with other details regarding import of 'Cold Rolled Stainless Steel Coils', it is found that "M/s VMPL" & "M/s VSPL" had not declared the correct description and value of goods before the Customs authority at the time of import. The actual value of the goods was substantially higher than the invoices issued by overseas supplier, ARS Technologies, Hong Kong to "M/s VMPL" & "M/s VSPL" for submitting before the Customs for the purpose of payment duty. Hence, it found that "M/s VMPL" & "M/s VSPL" by adopting the practice of mis-declaring the description and value of imported goods had indulged in under-valuation of the import consignments.

The noticee has argued that the Note referred above was created on 01.09.2020 and modified on 17.11.2021 and therefore the authenticity of the data is in question as what was the actual data at the time of creation of file is not ascertainable. In this regard, I find that the argument of the noticee has no merit as the date of initiation of investigation is after the said modified data and the investigation is relying on the modified data only.

### **3. Admission by the concerned person (Shri Madhur Jain)**

I noticed that the authenticity of the Note is further strengthened by the admission of Shri Madhur Jain in his statement dated 06.04.2023, wherein he confirmed that all rate finalisation was done through WhatsApp, and that the Note retrieved from his phone contained actual prices.

### **4. Other consignments following the same pattern**

It is also noticed that there are also other import consignments of 'M/s. VMPL' and 'M/s. VSPL' having similar goods and the adjacent dates of invoice comparable to the Bs/E as mentioned in the table above para 35.3(2). Thus, it is found that "M/s VMPL" & "M/s VSPL" by adopting the practice of mis-

declaring the description and value of imported goods had indulged in under-valuation of the following import consignments:

Sr. No.	Custodian House Code	BE No.	BE Date	Name of the importer	Invoice Date	Supplier Name	Quantity (kgs)	Declared Unit Price (USD/MT)	Actual/Ascertaine d price (USD/MT)
1	INMUN 1	532872 5	06-09-2021	M/s. VML	18-08-2021	ARS TECHNOLOGIES	55806	750	1635
2	INMUN 1	532964 6	06-09-2021	M/s. VML	19-08-2021	ARS TECHNOLOGIES	8434	750	1635
			06-09-2021	M/s.VML	19-08-2021	ARS TECHNOLOGIES	19492	750	1635
3	INMUN 1	556873 5	24-09-2021	M/s.VSPL	10-09-2021	ARS TECHNOLOGIES	55602	750	1780
4	INMUN 1	590757 0	19-10-2021	M/s.VSPL	26-09-2021	ARS TECHNOLOGIES	54404	750	1780
5	INMUN 1	590762 2	19-10-2021	M/s.VSPL	26-09-2021	ARS TECHNOLOGIES	54624	750	1780
6	INMUN 1	592435 8	21-10-2021	M/s.VSPL	29-09-2021	ARS TECHNOLOGIES	52128	750	1720
7	INMUN 1	592436 4	21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	1912	768.828	1720
			21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	26600	750	1720
			21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	1252	750	1720
			21-10-2021	M/s.VSPL	30-09-2021	ARS TECHNOLOGIES	25900	750	1720
8	INMUN 1	620054 6	11-11-2021	M/s.VSPL	16-10-2021	ARS TECHNOLOGIES	55194	750	2125
9	INMUN 1	645913 1	29-11-2021	M/s.VSPL	10-11-2021	ARS TECHNOLOGIES	55338	750	2125
10	INMUN 1	647504 1	30-11-2021	M/s.VSPL	13-11-2021	ARS TECHNOLOGIES	3602	750	1720
			30-11-2021	M/s.VSPL	13-11-2021	ARS TECHNOLOGIES	51844	750	2125
11	INMUN 1	676590 5	20-12-2021	M/s.VSPL	21-11-2021	ARS TECHNOLOGIES	10388	1200	1720
			20-12-2021	M/s.VSPL	21-11-2021	ARS TECHNOLOGIES	39163	1200	1720
			20-12-2021	M/s.VSPL	21-11-2021	ARS TECHNOLOGIES	2236	1200	1720

- The highlighted Bs/E in the above table mentioned at Sr.Nos. 1, 3, 6 & 8 are those, whose real transaction values have been derived from the note contained in the phone of Shri Madhur Jain.

## 5. Comparison with import prices of M/s Shah Foils Ltd.

I noticed that on comparing similar goods imported from the same overseas suppliers by M/s Shah Foils Ltd. during the same period, it is evident that the prices declared by M/s VSPL are significantly lower and commercially untenable. The import prices of Shah Foils Ltd. provide a reasonable and reliable benchmark for transaction value, further substantiating the undervaluation resorted to by M/s VSPL.

The details of the import prices of M/s Shah Foils Limited and its comparison with the imports made by "M/s VSPL" is tabulated as under:

Sr. No	Name of Overseas supplier	Details of goods imported by M/s Shah Foils Limited		Details of goods imported by M/s Vasko Steels Pvt. Ltd	
		Bill of Entry No & Date	Rate declared in BoE (USD /MT)	Bill of Entry No & Date	Rate declared in BoE (USD /MT)
1	Star Industrial Group Ltd.	9012065 dtd. 07.06.2022	1525	9012127 dtd. 07.06.2022	1200
2	Foshan Jia Wei Import and Export Co. Ltd	9304663 dtd. 27.06.2022	1650	9822474 dtd. 01.08.2022	1050
3	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	2762913 dtd. 06.10.2022	800
4	Star Industrial Group Ltd.	9701677 dtd. 24.07.2022	1400	3123696 dtd. 01.11.2022	800

5	Emetal Company Ltd.	3236062 dtd. 09.11.2022	1375	2849040 dtd. 12.10.2022	800
6	Emetal Company Ltd.	3237180 dtd. 09.11.2022	1375	3075229 dtd. 28.10.2022	800
7	Star Industrial Group Ltd.	3439493 dtd. 23.11.2022	1315	3319105 dtd. 15.11.2022	800
8	Star Industrial Group Ltd.	3540377 dtd. 30.11.2022	1315	3319103 dtd. 15.11.2022	800
9	MFY Metal Company Ltd.	3886806 dtd. 23.12.2022	1270	2795582 dtd. 08.10.2022	810
10	MFY Metal Company Ltd.	3964572 dtd. 29.12.2022	1235	3236765 dtd. 09.11.2022	810

## 6. Comparison with import prices of Delhi-based importers

I also noticed that comparison with contemporaneous imports made by various Delhi-based importers shows that M/s VMPL and M/s VSPL declared values substantially lower than market prices for identical goods from the same suppliers. These values have therefore been used for redetermination under Rule 5 wherever Rule 3 values were not directly ascertainable.

The details of the invoice prices of the said importers are tabulated as under:

Sr. No.	Name of the importer (M/s.)	Name of the supplier	Goods description as per invoice	Invoice date	Invoice rate in USD/MT
1	Shree International	Huaye International Development (HK) Limited	Cold Rolled Stainless Steel Coil Grade J3 Ex Stock	06.09.2021	1685
2	Maha Shakti Exims	Leo Metals Limited	Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock	05.08.2021	1700
3	Maha Shakti Exims	Foshan Xuanzheng Trading Co., Ltd.	Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock	19.08.2021	1425
4	Shri Mahadev Ji Exports, Delhi	Jiayao (Hongkong) International Group Limited	Cold Rolled Stainless Steel Coil Grade J3 Stock Lot	12.03.2021	1410
5	Shri Mahadev Ji Exports, Delhi	MFY Metal Company Limited	Cold Rolled Stainless Steel Coil Grade J3 Ex-Stock	06.07.2021	1363
6	Shri Mahadev Ji Exports, Delhi	Guangdong Guangxin Goldtec Holdings Co. Ltd	Cold Rolled Stainless Steel Coil Grade J3 Stock Lot	12.03.2021	1430

While, M/s. VMPL and M/s. VSPL has imported the similar goods during almost the same period from same supplier i.e. MFY Metal Company Ltd. at a much lower price, the same being tabulated as follows:

Sr No	Cust o m House Code	BE No.	BE Date	Name of the importer	Invoice Date	Supplier Name	Quantit y (kgs)	Unit Price (USD /MT)	Actual/ Ascertained price (USD/MT)
1	INMUN 1	512615 7	20-08-2021	M/s. VMPL	17-07-2021	MFY METAL COMPANY LIMITED	105460	750	1363

2	INMUN 1	416275 2	01-06-2021	M/s.VSP L	24-04-2021	MFY METAL COMPANY LIMITED	52140	750	1363
3	INMUN 1	416274 8	01-06-2021	M/s.VSP L	24-04-2021	MFY METAL COMPANY LIMITED	27051	910	1363
4	INMUN 1	445895 0	26-06-2021	M/s.VSP L	03-06-2021	MFY METAL COMPANY LIMITED	53334	750	1363
5	INMUN 1	445894 8	26-06-2021	M/s.VSP L	03-06-2021	MFY METAL COMPANY LIMITED	54986	750	1363
6	INMUN 1	457685 1	05-07-2021	M/s.VSP L	10-06-2021	MFY METAL COMPANY LIMITED	80820	750	1363
7	INMUN 1	457679 6	05-07-2021	M/s.VSP L	04-06-2021	MFY METAL COMPANY LIMITED	54646	750	1363
8	INMUN 1	457679 2	05-07-2021	M/s.VSP L	22-05-2021	MFY METAL COMPANY LIMITED	54850	750	1363
9	INMUN 1	477718 0	22-07-2021	M/s.VSP L	26-06-2021	MFY METAL COMPANY LIMITED	52528	750	1363
10	INMUN 1	480598 7	24-07-2021	M/s.VSP L	30-06-2021	MFY METAL COMPANY LIMITED	80243	750	1363
11	INMUN 1	482196 1	26-07-2021	M/s.VSP L	06-07-2021	MFY METAL COMPANY LIMITED	52392	750	1363
12	INMUN 1	500153 4	10-08-2021	M/s.VSP L	13-06-2021	MFY METAL COMPANY LIMITED	54116	750	1363
13	INMUN 1	613801 9	05-11-2021	M/s.VSP L	13-06-2021	MFY METAL COMPANY LIMITED	27624	750	1363

Further, I find that the cumulative evidences—digital Note, corroborating statements, matching shipment details, and market/comparative import prices—are more than adequate to discharge the Department's burden as held by the Hon'ble Supreme Court in **Collector of Customs v. D. Bhoormull (1983)**, mathematical precision is not required; circumstantial evidence of a credible pattern of undervaluation is sufficient.

#### 7. Misuse of the term “ex-stock”

I noticed that the importers described their consignments as “ex-stock”, implying assorted lots of varying sizes, heat numbers, etc. However, statements and import documents establish that all shipments comprised **a single customized grade (J3)** with uniform characteristics. Thus, the declaration of “ex-stock” was misleading and part of the undervaluation mechanism.

**41.** The noticees has argued that the data purportedly retrieved from the mobile phone is not sustainable in evidence in as much as the genuineness of the entire process is not established. In this regard, they have relied upon the statement of Shri Madhur Jain. In this regard, I find that the mobile phone was seized under Panchnama dated 22.11.2022 in the presence of two independent witnesses and Shri Madhukar Jain. Further, I find that Shri Madhur Jain has given certificate under Section 138C of the Customs Act, 1962 and Section 65-B of the Indian Evidence Act, 1872 certifying that during the said period, the said mobile phone was under his control and the same was functioning properly

and secured from unauthorized access and had built-in security mechanism. Further, on perusal of the statement of Shri Madhur Jain, I find that in his presence, the working copy of Hard Disc containing data processed from the said mobile phone marked as Exhibits-A2 provided by the NFSU, Gandhinagar was connected to a desktop computer installed at DRI office for examination. The Hard Disk was opened in his presence and the files/data present in the Hard Disk were examined in his presence and print out of the same were taken. Shri Madhur Jain has put his dated signature on each of the said pages. It is pertinent to note that Shri Madhur Jain, during the proceedings of statement dated 19.09.2023, has perused the data retrieved from his mobile phone and on being asked, he stated that the said printout relates to the notes from his device. Nowhere in his statement he contested the authenticity of the data retrieved from his mobile phone.

**42.** In view of the above discussion and findings, I hold that the transaction values declared by the importers are liable to be rejected under Rule 12 of the CVR, 2007.

#### **RE-DETERMINATION OF VALUE OF GOODS-**

**43.** I observed that the value declared by "M/s VMPL" & "M/s VSPL" before the Customs authorities as mentioned in the invoices and the import documents cannot be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act 1962 read-with Rule 3(1) of the Customs Valuation (Determination of value of the imported goods) Rules, 2007.

**43.1** In case of imported goods where actual price paid or payable is available, the assessable value is determined in terms of provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007. As discussed above, the evidences regarding undervaluation of imported goods is the retrieval of the Note depicting actual rate/CIF value of goods along with other details recovered from the mobile of Shri Madhur Jain, withdrawn from the premises of "M/s VMPL" & "M/s VSPL" during panchnama dated 22.11.2022 which is further corroborated from the statement of Shri Madhur Jain. Since, the actual price paid or payable is available in the instant case as discussed herein above, recourse is taken to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007 as applicable for re-determining the value of the said consignments, as mentioned at Sr. No. 02 to 03 of the Annexure-A-1 and at Sr. No. 12 to 16 & 18 to 21 of the Annexure-B-1 to the SCN.

**43.2** In case of goods imported where actual price paid or payable as per Rule 3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007 is not available, recourse is taken to Rule 5 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007, wherein price of the

similar goods of same overseas supplier are available as provided by M/s Shah Foils Limited vide letter dated 05.06.2023. Accordingly, in respect of consignments of Cold Rolled Stainless Steel Coils Grade J3 as shown at Sr. No. 22 to 31 of Annexure-B-1 of the Show Cause Notice, the transaction value is ascertained by taking the value of similar goods which were imported by M/s Shah Foils Limited as detailed in Para 11.6 of the Show cause Notice.

**43.3** In case of goods imported where actual price paid or payable as per Rule 3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007 is not available, recourse is taken to Rule 5 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007, wherein price of the similar goods of same overseas supplier are available as pertaining to various Delhi based importers received through letter dated 11.07.2023 of Senior Intelligence Officer, DRI (HQ), Delhi. Accordingly, in respect of consignments of Cold Rolled Stainless Steel Coils Grade J3 as shown at Sr. No. 1 of Annexure-A1 and Sr. No. 01 to 11 & Sr. No. 17 of Annexure-B-1 of the of the Show Cause Notice, the transaction value is ascertained by taking the value of similiar goods which were imported by such Delhi based importers as detailed in Para 11.7 of the notice.

#### **QUANTIFICATION OF DIFFERENTIAL DUTY-**

**44.** As discussed above, both undervaluation and misclassification were thus intentional and designed to obtain inadmissible duty benefits. Therefore, the differential duty of Customs amounting to Rs. 68,70,721/-as detailed in Annexure-A1 & A-2 to the Show cause notice is liable to be recovered from M/s Vasko Metalloys Private Limited (IEC-815900295) and differential Customs duty of Rs.2,94,01,991/- is liable to be recovered from M/s Vasko Steels Private Limited (IEC-AAHCV6582A), under the provisions of Section 28(4) of the Customs Act, 1962 along with the interest at the appropriate rate thereon under Section 28AA of the Customs Act, 1962.

**45.** I find that the noticee's contention that the extended period under Section 28(4) is not invokable on the ground that all documents were presented before Customs is wholly untenable. As regards undervaluation, the investigation has clearly established that the noticee was engaged in suppressing the actual transaction value, as evidenced from the data retrieved from the seized electronic devices, comparative import data of contemporaneous importers, and the admission of Shri Madhur Jain under Section 108. Such deliberate undervaluation, supported by concrete documentary evidence, constitutes wilful misstatement and active suppression with intent to evade duty. As regards misclassification, the Mill Test Certificates and statements conclusively show that J3 grade stainless steel coils imported by the noticee contained less than 1% Nickel, and therefore could not qualify as 'Nickel Chromium Austenitic Type'

under CTI 72209022; yet the noticee knowingly declared this incorrect tariff heading solely to wrongfully claim the benefit of Notification No. 50/2018-Cus. The deliberate adoption of an incorrect classification with the malafide intent to evade Customs duties amounts to positive suppression of facts and constitutes a valid ground for invoking the extended period under Section 28(4) of the Customs Act, 1962. Under the regime of self-assessment, a substantial onus rests upon the importer to correctly declare all particulars in the Bills of Entry; accordingly, the noticee cannot contend that mere presentation of documents before Customs absolves them of this responsibility. Both undervaluation and misclassification were thus intentional and designed to obtain inadmissible duty benefits, squarely attracting the extended period under Section 28(4). Thus, only when the issue was investigated by DRI, the duty evasion came to light. Hence, I find that Section 28(4) is rightly invokable in the present case.

Since the demand of differential duty is recoverable under Section 28(4) of the Customs Act, 1962, both the importers viz. M/s. VMPL and M/s. VSPL are liable for penal action under Section 114A of the Customs Act, 1962. However, I refrain from imposing penalty upon them under Sections 112(a) and 112(b) of Customs Act as penalties under Section 112 and Section 114A are mutually exclusive in terms of fifth proviso to Section 114A of the Act.

#### **46. Confiscation of the goods under Section 111(m) of the Customs Act, 1962 and imposition of Redemption fine:**

**46.1** SCN has alleged that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

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

**46.1.1** On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962, it is clear that any goods, which don't correspond in respect of value or in any other particular with the entry made, will be liable to confiscation. As discussed in the foregoing paras, the importer has fraudulently evade the customs duty by declaring the undervalued price of the imported goods and also by declaring incorrect or incomplete description and classification of the goods in order to evade duties of customs. Hence, the impugned imported goods as imported vide Bill of Entry mentioned at Annexure A-1/A-2 and B-1/B-2 are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

**46.1.2.** In the present proceedings, it is observed that the goods are not physically available for confiscation as the matter pertains to improper importation of goods cleared in the past. Thus, in such cases, option of

redemption fine in lieu of confiscation can not be given to the owner of goods as provided under Section 125(1) of the Customs Act, 1962. Therefore, redemption fine is not imposable in the instant case. In this regard, I rely upon the decision of Hon'ble High Court of Bombay in the matter of Commissioner of Customs (Import), Mumbai vs Finesse Creation (Inc.) 2009 (248) E.L.T 122 (Bom.) wherein Para 5 and 6, the Hon'ble Court held that-

*"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*

*6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed."*

The above decision of the Hon'ble High Court of Bombay has been affirmed by the Hon'ble Supreme Court of India 2010 (255) E.L.T. A120 (S.C.) [12-05-2010].

#### **47. Imposition of Penalties on Co-Notices**

**47.1** It is observed that being the Director of both the companies viz. M/s. Vasko Metalloys Pvt. Ltd. and M/s. Vasko Steels Private Ltd., Shri Vinaye Jain was responsible for all the activities of the firm including import and clearance of goods. Shri Vinaye Jain had full knowledge about the mis-declaration of actual value and mis-classification of the said imported goods in as much as Shri Vinaye Jain was overall responsible for all imports and declaration of value and finalization of classification of imported goods. Shri Vinaye Jain in his statement had stated that he used to communicate with the overseas suppliers along with Shri Madhur Jain for the purchase of the goods. Thus, it is clear that he was well aware of the scheme to manage documents for lower value and mis-classification of goods, which were presented before customs for clearance as for the past consignments imported by "M/s VMPL" & "M/s VSPL" before issuance of Notification No 50/2018-Customs dated 30.06.2018, "M/s VMPL" & "M/s VSPL" were classifying the said goods under correct CTI. Thus, his action has rendered the goods liable for confiscation under Section 111 of the Customs Act, 1962 and consequently he has rendered himself liable for penal action under Section 112(a)(ii) of the Customs Act, 1962. However, penal action under Section 112(b) is not warranted as he has already been penalized for his role under

Section 112(a) of the Act. Further, for his action of filing/causing to file the incorrect documents before the customs, he is liable for penal action under Section 114AA of the Customs Act, 1962.

**47.2** I find that Shri Madhur Jain, Marketing Manager and Business Freelancer of M/s Vasko Metalloys Private Limited (IEC-815900295) and M/s Vasko Steels Private Limited (IEC-AAHCV6582A) was in contact with custom brokers and was handling all the work related to clearance of goods imported by both the companies. Further, I find that on the question of similar goods from same supplier being declared under two different CTHs 72209022 and 72202090, Shri Mahduri Jain stated that after the issuance of Notification 50/2018-Customs dated 30.06.2018, they informed their supplier that the benefit of Notification 50/2018-Customs dated 30.06.2018 was available on the import of Cold Rolled Stainless Steel Coils from China and the supplier had supplied them the documents with CTH 72209022 and accordingly they filed the Bill of Entry by declaring the goods under category of Nickel Chromium Austenitic Type under CTH 72209022 to claim the benefit of Notification 50/2018-Customs dated 30.06.2018. This clearly shows the malafide intention of Shri Madhur Jain that to avail undue benefit of Notification 50/2018-Customs dated 30.06.2018, the CTH was changed and goods were mis-classified on the direction of Shri Madhur Jain, who was handling import of both the companies viz. M/s VMPL" & "M/s VSPL". Further, a note containing detail of actual rate/CIF value of goods imported by "M/s VMPL" & "M/s VSPL" was found available in the Mobile Phone of Shri Madhur Jain. The same clearly shows involvement of Shri Madhur Jain in mis-declaration of value in import by M/s VMPL" & "M/s VSPL. Thus, I find that he was actively involved in the improper import as well as the clearance of the goods. Therefore, he has rendered himself liable for penal action under Section 112(b)(ii) of the Customs Act, 1962. However, penal action under Section 112(a) is not warranted as he has already been penalized for his role under Section 112(b) of the Act. Further, I find that Shri Madhur Jain had knowingly and intentionally prepared/got prepared, signed/got signed and used the declaration, statements and/or documents and presented to the customs which were incorrect in as much as they were not representing the true, correct value and actual classification of the goods and has therefore rendered himself liable for penal action under Section 114AA of the Customs Act, 1962.

**48.** In view of discussion and findings supra, I hereby pass the following order:

**ORDER-**

**A. ORDER IN RESPECT OF M/S VASKO METALLOYS PRIVATE LIMITED (IEC-815900295):-**

- i. I reject the value of goods i.e. Rs. 1,05,91,930/-declared by them/assessed at the time of clearance of goods imported by them under Bills of Entry

mentioned in Annexure-A-1 to the SCN under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same as Rs.2,09,33,287/- (Rupees Two Crores Nine Lakh Thirty Three Thousand Two Hundred Eighty Seven Only), as detailed in Annexure-A-1 to the SCN under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 3 (1) or Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable;

- ii. I hold that the goods valued at Rs.2,09,33,287/- (determined), as detailed in Annexure-A-1 to the SCN, are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

Since the goods were cleared in the past and not physically available for confiscation, I refrain from imposing any Redemption Fine under Section 125 of the Customs Act, 1962.

- iii. I reject the declared classification of the subject goods under CTI 72209022 in the Bills of Entry as detailed in Annexure-A-2 attached to the SCN and order to re-classify the goods under Customs Tariff Item 72209090 of the First Schedule to the Customs Tariff Act, 1975 and order to re-assess the subject Bills of Entry accordingly;
- iv. I hold that the goods, valued at Rs. 9,47,52,595/- as detailed in Annexure-A-2 to the SCN, are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

Since the goods were cleared in the past and not physically available for confiscation, I refrain from imposing any Redemption Fine under Section 125 of the Customs Act, 1962.

- v. I determine and confirm the differential Customs Duty amounting to Rs. 68,70,721/- (Rs. Sixty Eight Lakhs Seventy Thousand Seven Hundred Twenty One Only) as detailed in Annexure-A-1 & A-2 attached to the SCN under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid;
- vi. I impose Penalty of Rs. 68,70,721/- (Rs. Sixty Eight Lakhs Seventy Thousand Seven Hundred Twenty One Only) upon M/s Vasko Metalloys Private Limited under the provisions of Section 114A of the Customs Act, 1962.

vii. I don't impose Penalty upon M/s Vasko Metalloys Private Limited under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962, in terms of fifth proviso to Section 114A of the Customs Act, 1962.

viii. I impose penalty of Rs.6,50,000/- (Rupees Six lakhs Fifty thousand only) upon Shri Vinaye Jain, Director of M/s Vasko Metalloys Private Limited under Section 112(a)(ii) of the Customs Act, 1962. However, I don't impose penalty upon Shri Vinaye Jain, Director of M/s Vasko Metalloys Private Limited under Section 112(b) of the Customs Act, 1962 for the reasons discussed above.

ix. I impose penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) upon Shri Vinaye Jain, Director of M/s Vasko Metalloys Private Limited under Section 114AA of the Customs Act, 1962.

x. I impose penalty of Rs.6,50,000/- (Rupees Six lakhs Fifty thousand only) upon Shri Madhur Jain, Marketing Manager/Business Freelancer of M/s Vasko Metalloys Private Limited under Section 112(b)(ii) of the Customs Act, 1962. However, I don't impose penalty under Section 112(a) of the Customs Act, 1962 for the reasons discussed above.

xi. I impose penalty of Rs.40,00,000/- (Rupees Forty Lakhs only) upon Shri Madhur Jain, Marketing Manager/Business Freelancer of M/s Vasko Metalloys Private Limited under Section 114AA of the Customs Act, 1962.

**B. ORDER IN RESPECT OF M/s Vasko Steels Private Limited (IEC-AAHCV6582A):-**

- i. I reject the value of goods i.e. Rs. 10,24,67,549/- declared by them/assessed at the time of clearance of goods imported by them under Bills of Entry mentioned in Annexure-B-1 to the SCN under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same as Rs. 19,18,06,242/- (Rupees Nineteen Crores Eighteen Lakhs Six Thousand Two Hundred Forty Two Only), as detailed in Annexure-B-1 to the SCN under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 3 (1) or Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable;
- ii. I hold that the goods, valued at Rs. 19,18,06,242/- (re-determined) as detailed in Annexure-B-1 to the SCN, are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

Since the goods were cleared in the past and not physically available for confiscation, I refrain from imposing any Redemption Fine under Section 125 of the Customs Act, 1962.

- iii. I reject the declared classification of the subject goods under CTH 72209022 in the Bills of Entry as detailed in Annexure-B-2 attached to the SCN and order to re-classify the same under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and order to reassess the subject Bills of Entry accordingly;
- iv. I hold that the goods valued at Rs. 3,58,05,499/- (re-determined) as detailed in Annexure-B-2 (Except goods shown at Sr. No. 01 & Sr. Nos. 03 to 07 of Annexure-B-1, which have already been covered in Annexure-B-1) to the SCN liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

Since the goods were cleared in the past and not physically available for confiscation, I refrain from imposing any Redemption Fine under Section 125 of the Customs Act, 1962.

- v. I determine and confirm the differential Customs duty amounting to Rs. 2,94,01,991/- (Rs. Two Crore Ninety Four Lakhs One Thousand Nine Hundred Ninety One Only) as detailed in Annexure-B-1 & B-2 attached to the SCN under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid;
- vi. I impose penalty of Rs. 2,94,01,991/- upon M/s Vasko Steels Private Limited under Section 114A of the Customs Act, 1962.
- vii. I don't impose penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962, upon M/s Vasko Steels Private Limited, in terms of fifth proviso to Section 114A of the Customs Act, 1962.
- viii. I impose penalty of Rs.29,00,000/-(Rupees Twenty Nine Lakhs only) upon Shri Vinaye Jain, Director of M/s Vasko Steels Private Limited under Section 112(a)(ii) of the Customs Act, 1962. However, I don't impose penalty upon Shri Vinaye Jain, Director of M/s Vasko Steels Private Limited under Section 112(b) of the Customs Act, 1962.

ix. I impose penalty of Rs.50,00,000/- (Rupees Fifty Lakhs only) upon Shri Vinaye Jain, Director of M/s Vasko Steels Private Limited under Section 114AA of the Customs Act, 1962

x. I impose penalty of Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) upon Shri Madhur Jain, Freelancer of M/s Vasko Steels Private Limited under Section 112(b)(ii) of the Customs Act, 1962. However, I don't impose penalty under Section 112(a) of the Customs Act, 1962.

xi. I impose penalty of Rs.80,00,000/- (Rupees Eighty Lakhs only) upon Shri Madhur Jain, Freelancer of M/s Vasko Steels Private Limited under Section 114AA of the Customs Act, 1962.

**49.** This order is issued without prejudice to any action that can be taken against the importer or any other person under this Act or any other law for the time being in force.

**(NITIN SAINI)**  
**Commissioner of Customs, Mundra**

**To (the Noticees) :-**

- (v) M/s Vasko Metalloys Private Limited (IEC-815900295) having registered office at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad, Gujarat,
- (vi) M/s Vasko Steels Private Limited (IEC-AAHCV6582A) having registered office at B-703 & 704, Solitaire Park, Near Divya Bhaskar Office, S.G. Highway, Ahmedabad-380054
- (vii) Shri Vinaye Jain, Director of M/s Vasko Metalloys Private Limited ((IEC-815900295) and M/s Vasko Steels Private Limited (IEC-AAHCV6582A) residing at A-54, Amaltas Apartments, Nr. Wide Angel, Satellite, Ahmedabad-380015,
- (viii) Shri Madhur Jain, Freelancer of M/s Vasko Metalloys Private Limited ((IEC-815900295) and M/s Vasko Steels Private Limited (IEC-AAHCV6582A) residing at E-101, Takshshila Apartment, Vastrapur Ahmedabad-380015

**Copy to:**

- (i) The Chief Commissioner of Customs, Gujarat Zone for Review.
- (ii) The Additional Director, Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit Zonal Unit 15, Magnet Corporate Park, Off S.G. Highway, Near Sola Over Bridge, Thaltej, Ahmedabad-380054.

- (iii) The Deputy Commissioner of Customs, EDI Section, Mundra Customs for uploading on the website.
- (iv) Guard file/Office Copy.