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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No. VIII/10-10/Pr.Commr./O&A/2019

DIN- 20260171MN00008808FF

आदेशकीतारीख/Date of Order :21.01.2026

जारीकरनेकीतारीख/Date of Issue :21.01.2026

द्वारापारित :-

शिव कुमार शर्मा, प्रधान आयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-45-2025-26 dated 21.01.2026 in the case of M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382405..

- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ

संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. 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".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-67/Pr.Commr./O&A/2018 dated 03.12.2019 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382405.

BRIEF FACTS OF THE CASE:

Intelligence developed by Directorate of Revenue Intelligence, Mumbai Zonal Unit (MZU), Mumbai (DRI) indicated that certain importers were importing Tin Ingots from M/s. Malaysia Smelting Corporation, Malaysia (hereinafter referred to as 'M/s. MSC') by wrongly availing concessional rate of duty under Notification No.46/2011-Customs dated 01.06.2011 and Notification No. 53/2011-Customs dated 01.07.2011 read with Notification No.189/2009-Customs (NT) dated 31.12.2009 and Notification No. 43/2011-Cus (NT) dated 01.07.2011.

2. M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382 405 (hereinafter referred to as "the Importer"), one such importer, imported 150.00 MT of Tin Ingots (hereinafter referred to as "the said goods") by classifying the same under CTI 80011090 of the Customs Tariff Act, 1975, during the period from 17.08.2016 to 08.08.21017 under 6 (six) Bills of Entry, as detailed in Annexure-A to the show cause notice. The Importer availed the benefit of Notification No. 46/2011-Customs dated 01.06.2011 and Notification No. 53/2011-Customs dated 01.07.2011 for concessional rate of duty.

2.1 The benefit under Notification No. 46/2011-Customs dated 01.06.2011 was available provided the goods were of Malaysian Origin in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the preferential Trade Agreement between the Governments of the Member States of the Association of the Southeast Asian Nations (ASEAN) and Republic of India] Rule 2009, published vide Notification No. 189/2009-Customs (NT) dated 31.12.2009. As per the aforesaid Rules, the 'Certificate of Origin' for the goods imported is required to be issued by the designated authority and in case of goods not wholly produced or obtained product in Malaysia, the AIFTA (ASEAN-India Free Trade Area) content should not be less than 35% of the FOB value.

2.2 The Additional Director General, DRI, Mumbai vide letter F. No. DRI/MZU/F/Misc-F/07/2017/3109 to 3122 dated 20.04.2018 directed not to allow preferential benefits in respect of COOs issued in the name of M/s. MSC both for direct import from M/s. MSC and through traders/suppliers. The letter contained the following:

- a. *On the basis of representation made by the domestic industries regarding alleged violation of Rules of Origin in import of Tin Ingots from Malaysia, the Tin Ingots imported from M/s Malaysian Smelting Corporation, Malasia (MSC) under Notification Nos. 46/2011 - CUS dated 1.6.2011 and 53/2011 - CUS dated 1.7.2011 read with Notification Nos. 189/2009-Cus (NT) dated 31.12.2009 and 43/2011 Cus (Nt) dated 1.7.2011 are being provisionally assessed by some of the Jurisdictional Customs authorities.*
- b. *In the said case as regards the retroactive check on the true origin, in accordance with Paragraph 16 of Annexure-III of the Rules of Origin (Notification No.189/2009-Cus. (N.T) dated 31.12.2009), the requests were made on sample basis by sending the COO certificate (Form- AI) by India to Malaysia. However, owing to lack of any response from Malaysia to the requests for these retroactive checks, Indian Customs had requested the Malaysian authorities to conduct verification visit to the unit of M/s. MSC.*
- c. *Accordingly, a team from DRI, MZU, Mumbai visited the unit of M/s. MSC to examine the value addition and also to ascertain the*

originating criterion for Tin Ingots exported, in terms of paragraph 17 of Annexure-III of the Rule of Origin (Notification No. 189/2009-Cus. (N.T) dated 31.12.2009) and Paragraph 10 of Annexure -III of the India Malaysia Preferential Trade Agreement Rules, 2011.

- d. In order to justify the origin criteria of the Tin Ingots manufactured by M/s. MSC, a cost sheet reflecting cost incurred in production/manufacture of tin ingots during three month period of 2013 (July - September) to calculate the FoB value and Regional Value Contents (RVC) was produced by M/s. MSC. Further, it was observed that it was usual practice of M/s. MSC that the same cost sheet of 2013 would be used by them for obtaining Country of origin certificates over a prolonged period of time. MITI also confirmed that the cost data sheet of 2013 is being used for issuance of COO for a prolonged period of time. The cost data sheet of 2013 does not accurately reflect the RCV for a prolonged period.
- e. Further, another model of their operation, wherein Tin Ingots exported by M/s. MSC to Indian importers are being manufactured by them on job work/works contract basis on behalf of other traders/suppliers. Further, it was observed that the other traders/suppliers use to supply free of cost raw material (tin ore) of origin of Non-ASEAN countries. In such cases, M/s. MSC performed conversion of tin ore into tin ingots on job charge/conversion charge basis. The smelting charges paid by traders/suppliers for such conversion reflect the value addition (RCV) in Malaysia which in percentage terms of total FoB value does not fulfill the criteria of origin. It is further observed that M/s. MSC raised invoice on Indian importer for an amount of FoB value of the shipment arrived on the basis of the traders/suppliers invoice to Indian importers. The said invoices are being submitted by M/s. MSC along with cost data sheet mentioned hereinabove to MITI for obtaining COO.
- f. In both above cases, the cost sheet submitted by M/s. MSC to MITI in the application for COO does not accurately reflect the RCV and FoB of the exported tin ingots as per the Rule of Origin of ASEAN in terms of Notification No.189/2009-Cus (NT) dated 31.12.2009 and of Indian Malaysia Preferential Trade Agreement Rules, 2011.
- g. Based on the recommendation and conclusion of the verification report, the Board vide letter dated 13.3.2018 concurred with the outcome of the verification visit to MSC and requested the DRI to proceed with the finalisation of the investigations denying the benefits and issue of SCNs.

2.3 The Deputy Director, DRI, MZU vide letter F. No. DRI/MZU/F/Misc-F/07/2017/3824 dated May 2018 provided detailed list of such imports (based on data extracted from ISS) made from the ports under the jurisdiction of Ahmedabad Commissionerate and requested to issue SCN to protect the government revenue in respect of wrongly availed benefits of the exemption under Notification No. 46/2011-Customs dated 01.06.2011 and Notification No.53/2011-Customs dated 01.07.2011 for Import of Tin Ingots from M/s. MSC in cases where Bills of Entry have been finally assessed for the imports made.

2.4 Scrutiny of import documents revealed that the Importer had imported Tin Ingot from M/s. MSC through M/s. Engelhard CTP (Singapore) PTE Limited and Traxys Europe SA, on payment of Customs duty at the concessional rate under following Bills of Entry:

Sr. No.	Name of Supplier	BE No. & date	Qty (Kgs.)	Assessable Value
1	Engelhard CTP (Singapore) PTE Ltd.	7573290/ 23.11.2016	25000	36064272
2	Engelhard CTP (Singapore) PTE Ltd.	6388786/ 17.08.2016	25000	30997658
3	Engelhard CTP (Singapore) PTE Ltd.	6704849/ 13.09.2016	25000	31983531
4	Engelhard CTP (Singapore) PTE Ltd.	8422796/ 03.02.2017	25000	37167192
5	Traxys Europe S.A	2771148/ 08.08.2017	25000	33396395
6	Traxys Europe S.A	2510300/ 19.07.2017	25000	33675414
	TOTAL		150000	203284462

2.5 The Importer availed the benefit of Notification No. 46/2011-Customs dated 01.06.2011 on goods manufactured by M/s. MSC on the basis of AIFTA certificates of origin (in form of 'Form-AI'). The 'Form-AI' submitted by the Importer to Customs for claiming the benefits of Notification No. 46/2011-Customs dated 01.06.2011 revealed that:

- a) Form-AI was issued by Ministry of International Trade and Industry, Malaysia (MITI) in terms of ASEAN-INDIA Free Trade Preferential Tariff Agreement (AIFTA);
- b) The country of origin was shown as 'Malaysia';
- c) The exporter was shown as M/s. Engelhard CTP (Singapore) PTE Limited and Traxys Europe SA;
- d) The origin criteria for the goods shown in the 'Form-AI' was "Not wholly produced or obtained products;
- e) The value addition (RVC) was shown more than 35%.

2.6 The evidence gathered revealed that the Importer was aware of the wrong certificate of origin, and still did not seek any verification from M/s. MSC with regard to inflated value addition. Even though no AIFTA material was involved in the manufacturing of Tin Ingots and the manufacturing process of M/s. MSC did not meet the value addition criteria, the importer sought AIFTA Certificate of Origin, and this established their intent to avail undue benefit of the Notification. Therefore, the act on the part of the importer appeared to be a case of connivance for mutual benefit by misrepresenting the RVC>35% to avail preferential duty benefit. The Importer, M/s. Kothari Metals Limited and the exporter M/s. MSC and the indenting agents, M/s. Engelhard CTP (Singapore) PTE Limited and Traxys Europe SA therefore, in connivance obtained 'Form-AI' certificates showing RVC>35%, which they knew were not true and this clearly points to collusion between them. While the Importer evaded the exact Customs Duty, the exporter benefited from higher prices and increased sales and the indenting agents M/s. Engelhard CTP (Singapore) PTE Limited, Traxys Europe SA benefited from increased sales and commission thereof.

3. According to Rule 3 of Customs Tariff (Determination of Origin of Goods Under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011, to qualify for Malaysia origin, product shall be deemed originating and eligible for preferential treatment if they conform to the origin requirement under any of the following conditions:

- (a) Products wholly produced or obtained in the territory of the exporting party in accordance with Rule 4; or

- (b) Products not wholly produced or obtained in the territory of the exporting party, provided that the said products are eligible under Rule 5 or Rule 6.

3.1 As both the criteria mentioned in Rule 3 of Customs Tariff (Determination of Origin of Goods Under the Preferential Trade Agreement Between the Governments of the Republic of India and Malaysia) Rules, 2011 referred hereinabove have not been met, the Importer mis-led the department by producing incorrect certificate of the manufacturer regarding Country of Origin and wilfully mis-stated the facts by suppressing the correct facts about true COO of the imported goods and wrongly availing concessional rate of duty under the said notifications. The differential duty of Rs. 2,81,98,778/-, as worked out in Annexure A to the show cause notice, is required to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with interest payable thereon from the date of assessment of bill of entry to the actual date of payment of differential duty in terms of Section 28AA of the Customs Act, 1962.

4. The Importer by producing incorrect COO and wrongly availing the benefit of concessional rate of duty, has rendered the subject goods valued at Rs. 20,32,84,462/- liable to confiscation in terms of Section 111(m) and Section 111(o) of the Customs Act, 1962. The Importer have by such an act also rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962.

5. It also appeared that the Importer has attempted to short pay the duty by way of wilful mis-declaration and suppression of the facts and thereby they are liable for penalty under Section 114A of the Customs Act, 1962.

5.1 It further appeared that the Importer has knowingly and intentionally mis-declared the goods for the purpose of clearing the imported goods without paying proper amount of Customs Duty, therefore, they appeared to be liable for penalty under Section 114AA of the Customs Act, 1962.

6. Therefore, a Show Cause Notice bearing F.No. VIII/10-67/Pr.Commr./O&A/2018 dated 03.12.2019 was issued to the Importer viz. M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382405, asking them to Show Cause to the Principal Commissioner, Customs House, Ahmedabad, having his office at First Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad-380009, as to why:

- (i) The Bills of Entry, as mentioned in Annexure-A to the show cause notice, should not be assessed at full rate of duty and the benefit of the Notification No. 46/2011-Customs dated 01.06.2011 and Notification No. 53/2011-Customs dated 01.07.2011 should not be denied and duty amounting to Rs. 2,81,98,778/- (Rupees Two Crore, Eighty One Lakh, Ninety Eight Thousand, Seven Hundred and Seventy Eight only) should not be demanded under Section 28(4) of the Customs Act, 1962;
- (ii) Interest in terms of Section 28AA of the Customs Act, 1962 should not be recovered from them on the Customs duty as worked out in respect of each Bill of Entry specified in Annexure-A to the show cause notice;
- (iii) Goods totally valued at Rs. 20,32,84,462/- (Rupees Twenty Crore, Thirty Two Lakh, Eighty Four Thousand, Four Hundred and Sixty Two only) imported under various Bills of Entry, as detailed Annexure 'A' to the show cause notice, should not be confiscated in terms of provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962;

- (iv) Penalty should not be imposed on the Importer under Section 112(a) of the Customs Act, 1962;
- (v) Penalty should not be imposed on the Importer under Section 114A of the Customs Act, 1962 and
- (vi) Penalty should not be imposed on the Importer, under Section 114AA of the Customs Act, 1962.

7. Thereafter, the Importer filed a Writ Petition No. 2491 of 2018 before the Hon'ble High Court of Bombay inter-alia challenging the jurisdiction to issue the show cause notice under the Customs Act. The said writ petition was dismissed by the Hon'ble High Court of Bombay vide Order dated 09.07.2019. Being aggrieved, the Importer filed a Civil Appeal No. 9010 of 2019 [SLP (C) No. 20792/2019] before the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide Order dated 25.11.2019 remanded the case back to the Hon'ble High Court of Bombay with a direction that the issues raised in the writ petition for alleged violation of international treaty provisions needs to be decided by the High Court. Thereafter, on filing an Interim Application by the Importer, the Hon'ble High Court of Bombay vide Order dated 16.12.2020 stayed the operation of the subject Show Cause Notice dated 03.12.2019. Therefore, the show cause notice dated 03.12.2019 was kept in Call Book till the Writ Petition No. 2491 of 2018 is decided by the Hon'ble High Court of Bombay, which was conveyed to the Importer vide letter F.No. VIII/10-10/Pr.Commr./O&A/2019 dated 29.12.2020. The Hon'ble High Court of Bombay vide Order dated 13.06.2025 held that **"there is no legal or jurisdictional infirmity in the issue of such show cause notices and the provisions of Article 24 of AIFTA do not deprive the customs authorities of their powers or jurisdiction to issue such show cause notices"** and dismissed the writ petition filed by the Importer.

8. In view of the above, the subject show cause notice dated 03.12.2019 was retrieved from Call Book for adjudication proceedings. Accordingly, I take up the case for decision.

DEFENCE:

9. The Importer viz. M/s. Kothari Metals Limited, Ahmedabad vide letter dated 19.12.2025 have submitted their defence reply to the above show cause notice dated 03.12.2019, under which they have interalia submitted that:-

9.1 The Hon'ble CESTAT, Ahmedabad vide Final Order No. 10680-10685/2025 dated 07.03.2025 in the case of M/s. Jitendra Overseas & others has dropped identical SCN issued to the appellant. Further, vide Final Order No. 70327-70328/2025 dated 25.04.2025/ 28.05.2025 in the case of M/s India Trade Link Private Limited V/s CC Noida, the Hon'ble CESTAT has set aside Order-In- Original passed in identical show cause Notice. Thus, in view of the above binding orders of the Hon 'ble Tribunal passed in identical Show Cause Notices, the present SCN is required to be dropped, as per the judgment of the Hon 'ble Supreme Court in the case of Kamlakshi Finance Corporation Ltd.

9.2 Further, the Ld. Commissioner (Appeals), Noida also passed an Order-in-Appeal No. NOI-CUSTM-OOO-APPP-844-2021-22 dated 04.01.2022 dropping identical SCN issued to M/s. J. Poonamchand and Sons, Mumbai against which no appeal was filed by the department and thus the same is binding on the department.

9.3 The provisions of Customs Act, only extend to the whole of India and not to any acts of omissions of offensive or contraventions committed outside India by any person. In this case all acts and omissions are alleged to have being committed outside India either by MITI or M/s. Malaysia Smelting Corporation and no acts or omission have taken place in India and thus no proceedings under the provisions of Customs Act, can be initiated either in respect of goods or any person in India and thus the proceeding are beyond the jurisdiction and are in excess of jurisdiction and are thus required to be quashed solely on this ground alone.

9.4 They have not directly dealt with M/s. Malaysia Smelting Corporation in any manner and the goods were independently sourced by the suppliers viz. M/S. Traxy Europe S.A UK and Engelhard CTP (Singapore) Pte Ltd. and exported to them and thus no wrong doing can be imputed to them and thus the impugned SCN has been issued to them without application of mind and without bringing on record any acts or omissions of any wrong doing by them in India.

9.5 That none of the Bills of Entry were assessed under self-assessment procedure but the same were assessed by the proper officer under Section 17 (2) of the Customs Act, 1962 after due verification of the AIFTA certificate and its specific debit. Thus none of the ingredients of Section 28 (4) or Section 114 A or 114AA can be invoked in the present case.

9.6 The goods were cleared pursuant to the orders in assessment passed under Section 17 read with Section 47 of the Custom Act, 1962 and the said orders are final and binding and cannot be interfered with by issuing a SCN and thus the impugned SCN is required to be set aside solely on this ground alone. Reliance in this regard has been placed on the judgment of Priya Blue Industries - 2004 (172) ELT 145 (SC), Flock India Ltd -2000 (120) ELT 285 (SC) and Bimal P. Shah - 2025(33) Centax 226 SC.

9.7 The SCN merely produces the Rules of Origin and miserably fails to bring on record any evidence to show that the RVC, was less than 35 % and the said SCN is merely issued at the behest of the DRI / CBIC as well as on the behest of domestic industry who are interested parties without bringing on record any positive or cogent evidence. Merely reproduction of the Rules of Origin does not, in itself proves, that the RVC was less than 35 % as the same is required to be proved in terms of Rule 5 of the Rules of origin. Thus all the allegations and proposals made in the SCN are without any basis and do not merit any credence.

9.8 There is no evidence produced in support of the allegation that any duty was not levied or short levied by reason of collusion, or any wilful statement, or suppression of facts by them or their agent or any of their employees and there is no allegation that they have violated any of the ingredients of Section 28(4) of the Customs Act, 1962. Further, there is no evidence that they have not followed the procedure and / or not carried out due diligence and the allegation of not carrying out due diligence is merely based on presumption or assumption or on the basis of doubt and suspicion and thus merits no credence. Mere mention of the word 'deliberate' without any supporting evidence in the form of statement or documents cannot prove the deliberate attempt or any intention to evade customs duty. The positive or cogent evidence is required to be produced so as to prove the ingredient of wilfulness as the same is a serious allegation involving fraud. In absence of any such evidence the demand under section 28 (4) cannot be sustained. In this regard, they have placed reliance on the judgment of the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture - 2017 (216) E.L.T. 177 (SC).

9.9 It is settled legal position that when the department was in knowledge of the things, the provision of Section 28 (4) or any collusion or suppression or wilful mis- statement cannot be alleged. In the present case, the fact of remittance to third party was in the knowledge of the department at the time of re-assessment. In this regard, they have placed reliance on the judgment of the Hon'ble Supreme Court in the matter of— CC Mumbai A.S. Muloobhoy & Sons reported in 2015 (3 1 8) EL. T. 576 (S.C.).

9.10 As regards extended period under Section 28 and ingredient of Section 28 regarding collusion, misstatement and suppression are concerned, they have placed reliance on various judgments and have contended that the SCN issued under Section 28 (4) for demand of duty and Section 114A for imposition of penalty is required to be withdraw.

9.11 If the department desire to deny the benefit of Notification No. 46/2011-Customs dated 01.06.2011, then the department is under obligation to get the COO cancelled / annulled from the arbitration tribunal constituted under the ASEAN India DSM agreement and it is a matter of record that none of the COOs are cancelled or annulled in any manner so far, thus, the benefit of Notification No. 46/2011-Cus dated 01.06.2011 cannot be otherwise denied and no duty can be demanded or recovered.

9.12 That claim of notification in a bonafide manner cannot said to be any violation and thus the same cannot prove any fraudulent intention or any of the ingredients of Section 28 (4) of the Custom Act, 1962 and claim of notification further cannot lead to any penal consequences more so when the said certificate is accepted by the Competent authorities. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the matter of Northern Plastics Ltd. [1998 (101) ELT 549 (SC)].

9.13 It is settled law that when the demand of duty on any ground including limitation is not sustainable, no penal action can be taken and thus no penalty can be imposed under the provisions of Customs Act, 1962. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the matter of HMM ltd.

9.14 That all material particulars including value were correctly declared in the Bills of Entry and thus the goods cannot be held liable to confiscation under section 111 (m) of the Custom Act, 1962. There was no post import condition imposed in respect of the goods and thus there was no observance of any of the condition subject to which the exemption from duty was granted and thus the goods cannot be and are not liable to confiscation under the provisions of section 111(o) of the Customs Act, 1962.

9.15 They were not in any collusion or they have not made any mis statement and / or there is no suppression and thus no penalty can be imposed on them under the provisions of Section 114A of the Custom Act, 1962. There is no allegation that any documents were used with knowledge and thus no penalty under section 1 14 AA can be imposed on them.

9.16 In view of the above, they have prayed that the entire Show Cause Notice be quashed and requested for an opportunity of Personal Hearing, before the case is finally decided.

PERSONAL HEARING:

10. Personal hearing in the instant case was held on 23.12.2025 wherein Shri A.S. Sahota, Consultant appeared for personal hearing virtually (online mode) on behalf of the Importer. He reiterated the contents of their

defence reply dated 19.12.2025 and requested to consider the said submissions.

FINDINGS:

11. I have carefully gone through the show cause notice dated 03.12.2019, defence reply dated 19.12.2025 submitted by the Importer and records of the case.

12. The core issues before me for decision in the present case are as under:

- (i) Whether the benefit of Notification No. 46/2011-Customs dated 01.06.2011 and Notification No. 53/2011-Customs dated 01.07.2011, availed by the Importer on the imported goods should be denied and the Bills of Entry, as mentioned in Annexure-A to the show cause notice, should be assessed at the full rate of duty?
- (ii) Whether the Customs duty amounting to Rs. 2,81,98,778/- (Rupees Two Crore, Eighty One Lakh, Ninety Eight Thousand, Seven Hundred and Seventy Eight only) in respect of the goods imported vide bills of entry, as detailed in Annexure-A to the show cause notice, should be demanded and recovered from the Importer, by invoking extended period of five years as per the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962?
- (iii) Whether the imported goods valued at Rs. 20,32,84,462/- (Rupees Twenty Crore, Thirty Two Lakh, Eighty Four Thousand, Four Hundred and Sixty Two only) imported under the Bills of Entry, as mentioned in Annexure-A to the show cause notice, should be held liable to confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962 and since the goods are not available for confiscation, fine as contemplated under Section 125 of the Customs Act, 1962, should be imposed on the Importer in lieu of confiscation?
- (iv) Whether penalty should be imposed upon the Importer under Section 112(a), Section 114A and Section 114AA of the Customs Act, 1962?

13. The brief issue involved in the instant case is that during the period from 17.08.2016 to 08.08.21017, the Importer imported 150.00 MT of Tin Ingots by classifying the same under CTI 80011090 of the Customs Tariff Act, 1975 from Malaysia and filed 6 (six) Bills of Entry at ICD-Khodiyar for home clearance of the imported goods, availing the benefit of Notification No. 46/2011-Cus dated 01.06.2011 and Notification No. 53/2011-Cus dated 01.07.2011. The said imported goods was purchased by the Importer from M/s. Engelhard CTP (Singapore) PTE Limited and Traxys Europe SA, which was manufactured by M/s. Malaysian Smelting Corporation, Malaysia (M/s. MSC). The benefit under Notification No. 46/2011-Customs dated 01.06.2011 was available provided that the imported goods were of Malaysian Origin; a 'Certificate of Origin' for the goods imported was required to be issued by the designated authority and in case of goods not wholly produced or obtained product in Malaysia, the AIFTA (ASEAN-India Free Trade Area) content should not be less than 35% of the FOB value. For availing the benefit of duty exemption, the Importer had submitted Certificate of Origin (COO) issued by Ministry of International Trade and Industry, Malaysia (MITI) wherein the Regional Value Content (RVC) had been mentioned as greater than 35% of FOB Value. However, during the course of investigation conducted by DRI, MZU, Mumbai, it was revealed that M/s.MSC was using the cost data sheet of 2013, reflecting the cost incurred in production/manufacture of Tin Ingots, for

issuance of COO for a prolonged period of time; that Tin Ingots exported by M/s. MSC to Indian importers were being manufactured by them on job work/works contract basis on behalf of other traders/suppliers who used to supply free of cost raw material (Tin ore) of origin of Non-ASEAN countries; that in both the cases, the cost sheet submitted by M/s. MSC to MITI in the application for COO did not accurately reflect the RVC and FoB of the exported Tin Ingots, as per the Rule of Origin of ASEAN in terms of Notification No.189/2009-Cus (NT) dated 31.12.2009 and of Indian Malaysia Preferential Trade Agreement Rules, 2011 and that the actual RVC of the imported goods was less than 35% of the FOB value. Therefore, it is alleged in the show cause notice that by submitting incorrect Certificate of Origin obtained by the manufacturer, the Importer has wrongly availed the benefit of exemption under Notification No. 46/2011-Cus dated 01.06.2011 and Notification No. 53/2011-Cus dated 01.07.2011, thereby they have evaded Customs duty amounting to Rs. 2,81,98,778/- in respect of 6 (Six) Bills of Entry, as detailed in Annexure-A to the show cause notice.

14. Now, I proceed to examine the issues to be decided by me one by one in the light of the records of the case and the submissions made by the Importer.

14.1 The first issue for decision before me is whether the benefit of exemption under Notification of No. 46/2011-Customs dated 01.06.2011 and Notification No. 53/2011-Customs dated 01.07.2011, availed by the Importer for clearance of imported goods, by way of submitting incorrect certificate regarding Country of Origin, should be denied and the Bills of Entry, as mentioned in Annexure-A to the show cause notice, should be assessed at the full rate of duty.

14.1.2 As regards the admissibility of concessional rate of Basic Customs Duty (BCD) under Notification of No. 46/2011-Customs dated 01.06.2011, as amended and Notification No. 53/2011-Customs dated 01.07.2011, as amended, I would like to make a reference to the said notifications. As per Notification No. 46/2011-Customs dated 01.06.2011, as amended, goods of the description as specified in column (3) of the Table and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 as specified in the corresponding entry in column (2) of the said Table, are exempted from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in, column (4) of the Table, when imported into the Republic of India from a country listed in APPENDIX I (Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia, Brunei Darussalam and Lao People's Democratic Republic); or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II (Philippines), provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide Notification No. 189/2009-Customs (N.T.), dated 31.12.2009.

14.1.3 As per Notification No. 53/2011-Customs dated 01.07.2011, as amended, goods of the description as specified in column (3) of the Table and falling under the Chapter, Heading, Sub-heading or tariff item of the First

Schedule to the Customs Tariff Act, 1975 as specified in the corresponding entry in column (2) of the Table, when imported into India from Malaysia, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the aforesaid Table, provided that the exemption shall be available only if importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of Malaysia, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia] Rules, 2011, notified under Notification No.43/2011-Customs (N.T.), dated the 01.07.2011.

14.1.4 I, therefore, find that the exemption Notification No. 46/2011-Customs dated 01.06.2011, as amended, grants the benefit of concessional rate of duty to the goods imported from specified countries under Preferential Trade Agreement (PTA) and Malaysia is one of such countries specified under PTA. The Notification No. 53/2011-Customs dated 01.07.2011, as amended, is Malaysia specific notification according to which the benefit of concessional rate of duty is available on goods imported from Malaysia being one of the specified countries under PTA. By virtue of both these notifications, goods imported from Malaysia enjoys benefit of concessional rate of duty. In the instant case, I find from the Bills of Entry that the Importer has availed the benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended, on the imported goods imported under the subject six Bills of Entry, as mentioned in Annexure-A to the show cause notice.

14.1.5 The Importer, during the period from August, 2016 to August, 2017, had imported 150 M.T. of Tin Ingots valued at Rs. 20,32,84,462/- from M/s. MSC through M/s. Engelhard CT P (Singapore) PTE Ltd & M/s. Traxys Europe SA on the strength of Certificate of Origin issued by Ministry of International Trade and Industry, Malaysia (MITI). Customs duty on the said goods was paid at concessional rate claiming benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended. The investigation done by Directorate of Revenue Intelligence found that the manufacturer company viz. M/s. MSC failed to provide/furnish cost data sheet which was essential for determination of Regional Value Content (RVC). I find that RVC should be more than 35% of FOB value for availing the benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended.

14.1.6 I find that the Investigation done by the DRI, MZU, Mumbai has revealed that M/s. MSC was using cost data sheet of 2013 for obtaining Certificate of Origin in respect of the goods supplied in 2016 and 2017. I find that cost data sheet of 2013 cannot be a basis for determination of RVC in respect of the import effected in 2016 and 2017. The cost data sheet is an essential data to determine Regional Value Content (RVC) and M/s. MSC didn't produce cost data sheet of 2015-2016 during investigation by DRI in Malaysia. I agree with the conclusion of DRI that cost data sheet of 2013 cannot be used for such prolonged period i.e. 3 to 4 years. In the present case, the RVC is the most important element for availing the benefit of concessional rate of duty. Rule 4 of ASEAN Treaty Rules, 2009 is about wholly produced or obtained products. In the present case, there is nothing on record that Tin Ingots (supplied by M/s. MSC) imported by the Importer were wholly produced or obtained in Malaysia. The question of applicability of Rule 3, therefore, does not arise in the present case. Rule 5 of ASEAN Treaty Rules, 2009 deals with products not wholly produced or obtained and it provides that if Regional Value Content is more than 35 percent of FOB value, then the product shall be deemed to be originating and eligible for preferential tariff treatment. When Rule 5 comes into picture, it automatically leads to a formula explained in the

very same rule to calculate Regional Value Content. Thus, I find that the very basis of preferential tariff benefit is AIFTA content and if content itself is in doubt, then the benefit cannot be allowed. In the present case, the DRI investigation has established that cost data sheet of 2013 was used for obtaining Certificate of Origin in respect of the goods imported in 2016 and 2017, thus the method of calculating RVC of AIFTA content of the imported goods is not at all convincing.

14.1.7 I also find that during the course of investigation it has come to light the other mode of operation by M/s. MSC, which has been explained in the letter dated 20.04.2018, as under:

“Further, another mode of their operation, wherein Tin Ingots exported by M/S. MSC to Indian importers are being manufactured by them on job work/works contract basis on behalf of other traders/suppliers. Further It was observed that the other traders/suppliers use to supply free of cost raw material (tin ore) of origin of Non-ASEAN countries. In such cases, M/s MSC performed conversion of tin ore into tin ingots on job charge/conversion charge basis. The smelting charges paid by traders/suppliers for such conversion reflect the value addition (RCV) in Malaysia which in percentage terms of total FOB value does not fulfill the criteria of origin. It is further observed that M/s. MSC raised invoice on Indian importer for an amount of FOB value of the shipment arrived on the basis of the traders/suppliers invoice to Indian importers. The said invoices are being submitted by M/s. MSC along with cost data sheet mentioned hereinabove to MITI for obtaining CCO.”

14.1.7.1 In the present case before me, Tin Ingots imported by the Importer have been routed through M/s. Engelhard CT P (Singapore) PTE Ltd. and M/s. Traxys Europe SA. The investigation has revealed that such traders/suppliers have got manufactured Tin Ingots from M/s. MSC on job charge/conversion charge basis and for the purpose the traders/suppliers have supplied free of cost raw material viz. Tin Ore of Non-ASEAN origin to M/s. MSC. I find that in such cases, the value addition in Malaysia is the conversion charges paid by the traders/suppliers to M/s. MSC, which does not fulfil the criteria of origin in percentage terms of FOB value. Thus, I find that this mode of operation by M/s. MSC has direct impact on authenticity of origin of the imported goods. For fulfilling the Country of Origin criteria, the RVC in the imported goods should be greater than 35% of FOB value of the imported goods. I, therefore, find that the Importer has submitted incorrect and invalid Certificate of Origin for availing undue benefit of concessional rate of duty under Notification of No. 46/2011-Customs dated 01.06.2011, as amended, and the imported goods imported from Malaysia under the six Bills of Entry, as mentioned in Annexure-A to the show cause notice, have not fulfilled the criteria fixed for Country of Origin.

14.1.8 I further find that the letter dated 20.04.2018 of DRI had been circulated advising the field formations to deny the benefit of concessional rate of duty. After investigation conducted by DRI, the investigating agency was given go ahead by the CBIC (Central Board of Indirect Taxes and Customs) which is the apex decision making body of the Customs administration. Relevant para of the letter reads as under:

“Based on the recommendation and conclusion of the verification report, the Board vide letter dated 13.03.2018 concurred with the outcome of the verification visit to MSC and requested the DRI to proceed with the finalisation of the investigations denying the benefits and issue of SCNs.”

14.1.8.1 The clarification issued by CBIC is required to be given due importance. In this regard, I place my reliance on the decision of the Hon'ble Apex Court in the case of M/s. Ranadey Micronutrients Vs Collector of Central Excise [1996 (87) E.L T 19 (S.C.)] wherein it is held that CBIC clarifications are binding in nature for the departmental officers. Similarly, in the case of Collector of Central Excise, Patna Vs Usha Martin Industries [1997 (94) E.L.T. 460 (S.C.)], it was held by the Hon'ble Apex Court that revenue cannot be permitted to take a stand contrary to the instructions issued by the Board.

14.1.8.2 I find that in the case of M/s. Surya Lights Vs Commissioner of Customs [2008 (226) ELT 74 (T)], the Hon'ble CESTAT has taken a similar view and denied the benefit of concessional rate tariff to the importer on being noticed that Certificate of Origin was obtained on the strength of incorrect information. This decision of Hon'ble Tribunal was upheld by the Hon'ble Apex Court, as reported in SC 2015 (315) ELT A 172 (Supreme Court). I also find that in the case of M/s. Alfa Traders Vs Commissioner of Customs, Cochin [2007 (217) ELT 437 (Tri.-Bang)], the Hon'ble Tribunal had denied benefit of SAPTA exemption Notification No. 105/99 on similar grounds and Certificate of Origin produced by the importer was not considered. I find that ratio of the above judgments are squarely applicable to the present case on hand wherein the facts and circumstances are similar to the above cases.

14.1.9 In view of the above, I find that the Importer has wrongly availed the benefit of concessional rate of BCD under Notification of No. 46/2011-Customs dated 01.06.2011, as amended, by submitting incorrect and invalid Certificate of Origin. I, therefore, reject the benefit of concessional rate of duty availed by the importer under Notification of No. 46/2011-Customs dated 01.06.2011, as amended, in respect of the 6 (Six) Bills of Entry, as detailed in Annexure-A to the show cause notice. I hold that the Importer is liable to pay customs duty at the normal rate in respect of the subject six Bills of Entry.

14.2 The second issue for decision before me is whether the non-levied/short-levied Customs duty amounting to Rs. 2,81,98,778/- (Rupees Two Crore, Eighty One Lakh, Ninety Eight Thousand, Seven Hundred and Seventy Eight only), involved in the Bills of Entry, as mentioned in Annexure-A to the show cause notice, should be demanded and recovered from the Importer, by invoking extended period of five years under the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

14.2.1 As discussed at paras supra, the Importer has availed the benefit of concessional rate of BCD under Notification No. 46/2011-Customs dated 01.06.2011, as amended, by submitting incorrect and invalid Certificate of Origin, therefore, the benefit of exemption under the said notification would not be available to the goods imported under the Bills of Entry, as detailed in Annexure-A to the show cause notice. The above acts on the part of the Importer has resulted in evasion of Customs duty amounting to Rs. 2,81,98,778/- (Rupees Two Crore, Eighty One Lakh, Ninety Eight Thousand, Seven Hundred and Seventy Eight only), in respect of six Bills of Entry, as detailed in Annexure-A to the show cause notice, by the said Importer. I find that in order to sensitize the Trade about its benefit and consequences of misuse, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self Assessment 2011' was required as prior to enactment of the provision of 'Self-Assessment', misclassification or wrong availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

- (a) Seek assistance from Help Desk located in each Custom Houses, or
- (b) Refer to information on CBIC/ICEGATE web portal www.cbic.gov.in, or
- (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or
- (d) An Importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied.

Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

14.2.2 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay appropriate duty accordingly. In the instant case, it is apparent that the Importer despite being in knowledge of the fact that no AIFTA material was involved in the manufacturing of imported goods viz. Tin Ingots; that the Regional Value Content (RVC) of the imported goods is not greater than 35% of FOB value and the Certificate of Origin obtained by the manufacturer viz. M/s. MSC is incorrect, the Importer wilfully and intentionally claimed the undue benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended, with malafide intention to evade payment of Customs duty at appropriate rate. The investigation conducted by DRI has revealed that the benefit of concessional rate of duty was availed by the Importer by producing a Certificate of Origin which was issued on the basis of old and insufficient details. The Importer was required to exercise due diligence before producing such Certificate of Origin for claiming the benefit of concessional rate of duty. It is therefore very much apparent that the Importer has wilfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, the Importer has indulged in wrong availment of exemption of BCD under Notification No. 46/2011-Customs dated 01.06.2011, as amended, with clear intent to evade payment of Customs Duty. By adopting this modus in respect of the impugned goods viz. "Tin Ingots", the Importer has short paid Customs duty amounting to Rs. 2,81,98,778/- (Rupees Two Crore, Eighty One Lakh, Ninety Eight Thousand, Seven Hundred and Seventy Eight only), which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. I, therefore, find and hold that the differential Customs Duty amounting to Rs. 2,81,98,778/- in respect of the imported goods viz. "Tin Ingots" under Bills of Entry, as detailed in Annexure-A to the Show Cause Notice, is recoverable from the Importer invoking the provision of extended period under Section 28(4) of the Customs Act, 1962.

14.2.3 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA *ibid* provides that when a person is liable to pay duty in accordance with the provisions of Section 28 *ibid*, in addition to such duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along

with the duty confirmed/determined under Section 28 *ibid*. I have already held that Customs Duty amounting to Rs. 2,81,98,778/- is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) *ibid* is required to be recovered under Section 28AA of the Customs Act, 1962.

14.3 The third issue for decision before me is whether the imported goods viz. "Tin Ingots" valued at Rs. 20,32,84,462/- (Rupees Twenty Crore, Thirty Two Lakh, Eighty Four Thousand, Four Hundred and Sixty Two only), imported vide six Bills of Entry, as mentioned in Annexure-A to the show cause notice, should be held liable to confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962 and since the goods are not available for confiscation, fine as contemplated under Section 125 of the Customs Act, 1962, should be imposed on the Importer in lieu of confiscation.

14.3.1 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) and Section 111(o) of the Customs Act, 1962. I find that if the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. I also find that Section 111(o) of the Customs Act, 1962, speaks about confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof, in respect of which the condition is not observed. In the present case, the Importer has mis-declared the details of exemption notification in the Bills of Entry and availed undue benefit of the notification without having correct and valid Certificate of Origin thereby they have not fulfilled the stipulated conditions of the notification. Therefore, the provisions of both Section 111(m) and Section 111(o) of the Customs Act, 1962 will be applicable to the present case.

14.3.2 In the instant case, the Importer has availed undue benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended, by submitting incorrect and invalid Certificates of Origin which have been obtained by the manufacturer of the imported goods by producing incorrect data regarding Regional Value Content (RVC), thereby they have failed to fulfil the conditions of the Notification, with an intent to evade payment of Basic Customs Duty. The Importer was required to take all necessary steps to ensure that the goods imported from Malaysia satisfy the standard set for origin of the goods. Despite being in the business for many years, the Importer has cleared the imported goods wrongly claiming concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended. Therefore, the said imported goods viz. Tin Ingots totally valued at Rs. 20,32,84,462/- imported vide Bills of Entry, as mentioned in Annexure-A to the show cause notice, are liable for confiscation under the provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962.

14.3.3 I find that in terms of Section 46 (4) of the Customs Act, 1962, the Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty. However, the Importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-declared the details of exemption Notification in the Bills of Entry even though they were not eligible for the exemption under such notification, with an intent to evade payment of BCD. The Importer has availed undue benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended, without having correct and valid Certificate of Origin, thereby they have short paid the duty with clear intent to evade payment of Customs Duty. Thus, I find that they have violated the provisions of Section 46(4) of the Customs Act, 1962. All these acts on the part of Importer have rendered the imported goods liable for

confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962.

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

“SECTION 125. Option to pay fine in lieu of confiscation. — (1)
Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit”

14.3.5 In the instant case, the Importer has wrongly and intentionally availed the benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended, by producing incorrect certificate of Country of Origin with an intent to evade payment of BCD, though they were aware that the imported goods viz. Tin Ingots manufactured by M/s. MSC did not meet the Regional Value Content (RVC) criteria. I find that in the case where goods are not physically available for confiscation, redemption fine is impossible in light of the judgment in the case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras has observed as under:

“23. The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fines in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

....
....
....”

14.3.6 The Hon'ble High Court of Gujarat by relying on aforesaid judgment, in the case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), has held inter alia as under: -

“174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)]*, wherein the following has been observed in Para-23;

“23. The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

14.3.7 I find ratio of decision of jurisdictional Hon’ble Tribunal, Ahmedabad rendered in the case of *M/s. Van Oord India Pvt.Ltd Vs. Commissioner of Customs, Ahmedabad* vide Final Order No. 11039-11040/2025 dated 13.11.2025 is squarely applicable to the present case as the Hon’ble Tribunal after having considered the aforesaid decisions of Hon’ble Madras High Court in case of *M/s. Visteon Automotive Systems India Ltd.* reported at 2018 (009) GSTL 0142 (Mad) and Hon’ble Gujarat High Court rendered in case of *Synergy Fertichem Ltd. Vs. Union of India*, reported in 2020 (33) G.S.T.L. 513 (Guj.), have upheld the confiscation and redemption fine even in absence of physical availability of the goods. Relevant Para of the said Final Order No. 11039-11040/2025 dated 13.11.2025 is re-produced as under:

“5.7 Relying on the decision in the case of *Shiv Kripa Ispat Pvt. Ltd. and Chinku Exports*, the appellant have challenged confiscation of the imported tugs on the ground that these are not physically available as the same were re-exported. We find that this has elaborately been discussed by the Adjudicating Authority in para 20.1 and 20.2 of the impugned order. We find that Hon’ble Madras High Court in the case of *Visteon Automotive Systems India Limited* reported at 2018 (009) GSTL 0142 (Madras) and Hon’ble Gujarat High Court in the case of *Synergy Fertichem Pvt. Ltd.* reported at 2020 (33) G.S.T.L. 513 (Guj.), have held that availability of the goods is not necessary for confiscation of the seized goods. The opening words of Section 125 mention that, “Whenever confiscation of any goods is authorized by this Act.....” brings out the point clearly. Qua power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of

the Act. Once power of authorization of confiscation of goods gets traced to that Section, physical availability of the goods is not so much relevant. The redemption is in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves goods from getting confiscated. Therefore, physical availability of goods does not have any significance for imposition of redemption fine under Section 125 of the Act. We therefore, agree with the learned Adjudicating Authority that non availability of goods physically does not impact their confiscation and imposition of redemption fine. We however find that the learned Adjudicating Authority has imposed very heavy redemption fine equal to 10% of the value of the tugs. What has been saved by the appellant in this case is an amount equal to 5% of the duty because if the appellant had paid full duty, they would have been entitled to 95% of the duty amount as draw back. Therefore, quantum of redemption fine to be imposed in lieu of confiscation in this case should be governed by the amount of benefit that would have been accrued to the appellant.”

14.3.8 In view of the above, I hold that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of the imported goods viz. “Tin Ingots”, totally valued at Rs. 20,32,84,462/- imported vide six Bills of Entry, as mentioned in Annexure-A to the show cause notice, though the said goods are not available for confiscation.

14.4 Now, I proceed to decide the fourth issue i.e. the proposal for imposition of penalty under Section 114A, Section 112(a) and Section 114AA of the Customs Act, 1962 against the Importer. In the present case, the show cause notice has been issued under Section 28 (4) of the Customs Act, 1962.

14.4.1 I find that the Show Cause Notice has proposed penalty under the provisions of Section 114A of the Customs Act, 1962 on the Importer. The penalty under Section 114A can be imposed only if the duty demanded under Section 28 *ibid* by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, the Importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods. Though they were aware that no AIFTA material was involved in the manufacturing of imported goods and the manufacturing process of M/s. MSC did not meet the Regional Value Content (RVC) criteria, they intentionally availed the benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended, by submitting incorrect and invalid Certificate of Origin, with an intent to evade customs duty.

14.4.2 Further, I find that demand of Customs Duty amounting to Rs. 2,81,98,778/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to duty plus interest in cases where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the Importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of duty plus interest in terms of Section 114A *ibid*.

14.4.3 The fifth proviso to Section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under

Section 114A of the Customs Act, 1962 has been imposed and the same 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."

14.4.3.1 In the instant case, I have already found that the Importer is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, I hold that penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

14.4.4 I find that the show cause notice has also proposed imposition of penalty under Section 114AA of the Customs Act, 1962 on the Importer. The text of the said statute is reproduced hereunder for ease of reference:

"114AA. Penalty for use of false and incorrect material.- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

14.4.5 I find that the investigation conducted by DRI, Mumbai has revealed that the Importer was aware of the incorrect Certificate of Origin obtained by producing false data to MITI; that no AIFTA material was involved in the manufacturing of imported goods viz. Tin Ingots and the manufacturing process of M/s. MSC did not meet the Regional Value Content (RVC) criteria. However, the Importer intentionally and knowingly availed the undue benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended, by submitting incorrect and invalid Certificate of Origin, with clear intent to evade payment of BCD and contravened the provision of Section 46 (4) of the Customs Act, 1962 by making false declarations in the Bill of Entry. Hence, I find that the importer has knowingly and intentionally availed the undue benefit of concessional rate of duty under Notification No. 46/2011-Customs dated 01.06.2011, as amended. Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 114AA of the Customs Act, 1962.

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

15. The Importer in their defence reply has placed reliance on the judgment passed by the Hon'ble CESTAT, Ahmedabad vide Final Order No. 10680-10685/2025 dated 07.03.2025 in the case of M/s. Jitendra Overseas & Others wherein identical SCN issued to the appellant was dropped. I have gone through the contents of the above judgment wherein the Hon'ble CESTAT has set aside the Order-in-Appeal No. KDL-CUSTM-000-APP-008-010-21-22 dated 31.08.2021 holding that the verification has been done pertaining to different parties and the verification in respect of the appellant has not been done by the Customs. The relevant paras are re-produced hereunder:

"4. We find that the matter is no more res-integra and has been decided by this Tribunal in the above-cited matter of Shirazee Traders Vs. CC Mundra, particularly in para 4 to 4.1 and 5 are relevant for our purpose and same are reproduced below: -

“4. Considered, we find that in the present case, the lower authorities have confirmed order simply on the basis of a communication of DRI which pertained to different parties about which verification was done. In the present instance, there is no evidence of department having conducted any verification of the certificate of origin as is the requirement under Annexure-III the Customs Tariff (determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011. The relevant Clause of Annexure-III (see under rule-14) is reproduced below:-

.....

4.1 We find that to displace the certificate of origin issued by the Malaysian authority, which is in the nature of documentary evidence, verification process need to be done by the Customs Authorities of India by sending reference to issuing authorities to do a retroactive check. In the present instance, no such request for verification report in respect of the appellant has been brought on record. We find that this fails to comply with the requirement of the Annexure-III (ibid) of the relevant free trade agreement.

5. We are accordingly inclined to allow the appeal with consequential relief. Appeal is allowed.”

15.1 However, in the present case, the DRI has carried out investigation against the manufacturer of the imported goods i.e. M/s. MSC and the investigation has revealed that M/s. MSC has obtained Certificates of Origin from MITI by producing old cost data of the year 2013 in respect of the import effected in 2016 and 2017 and the Regional Value Content (RVC) of the imported goods is not greater than 35% of the FOB value. Therefore, the ratio of the above judgment is not applicable to the present case on hand. Further, as per email dated 29.12.2025 received from Customs, Kandla, the above Final Order dated 07.03.2025 has been accepted by the department on low monetary ground and not on merit.

15.2 The Importer has also placed reliance on the judgment passed by the Hon'ble CESTAT, Allahabad, vide Final Order No. 70327-70328/2025 dated 28.05.2025 in the case of M/s India Trade Link Private Limited V/s CC Noida and on Order-in-Appeal No. NOI-CUSTOM-OOO-APPP-844-2021-22 dated 04.01.2022 passed by the Hon'ble Commissioner (Appeals), Noida. I find that the demands in the said cases were dropped on the ground of limitation of time which is not the case on hand.

16. The importer in their defence reply has contended that the provisions of Customs Act, only extend to the whole of India and not to any acts of omissions of offensive or contraventions committed outside India by any person; that in this case all acts and omissions are alleged to have being committed outside India either by MITI or M/s. Malaysia Smelting Corporation and thus the proceeding are beyond the jurisdiction and are in excess of jurisdiction. In this regard, I find that the Importer had filed a Writ Petition No. 2491 of 2018 before the Hon'ble High Court of Bombay inter-alia challenging the jurisdiction to issue the show cause notice under the Customs Act. The said writ petition was dismissed by the Hon'ble High Court of Bombay vide Order dated 09.07.2019. Being aggrieved, the Importer filed a Civil Appeal No. 9010 of 2019 [SLP (C) No. 20792/2019] before the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide Order dated 25.11.2019 remanded the case back to the Hon'ble High Court of Bombay with a direction that the issues raised in the writ petition for alleged violation of international

treaty provisions needs to be decided by the High Court. Thereafter, the Hon'ble High Court of Bombay vide Order dated 13.06.2025 held that **"there is no legal or jurisdictional infirmity in the issue of such show cause notices and the provisions of Article 24 of AIFTA do not deprive the customs authorities of their powers or jurisdiction to issue such show cause notices"** and dismissed the writ petition filed by the Importer. Therefore, I find that the above contention of the Importer is baseless, misleading and without going into the facts of the case.

17. The importer in their defence reply has also pleaded that the goods were cleared pursuant to the orders in assessment passed under Section 17 read with Section 47 of the Custom Act, 1962 and the said orders are final and cannot be interfered with by issuing a show cause notice. The said plea of the importer is not tenable.

17.1 It can be seen that Section 28 of the Customs Act, 1962 has an exclusive provisions covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. For raising demand under Section 28 on grounds of short payment/short levy in final assessment etc., no review /appeal against final assessment is required. The demand of non-levy, short-levy and of recovery of erroneous refund under Section 28 of the Act is an independent provision. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of show cause notice and to allow the party to have a full hearing on the charges that would be made against them. The proceeding under Section 28 are of exclusive nature, inasmuch as, independent proceedings are held by issue of show cause notice by the Department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The importer gets full opportunity to know the charges levelled against them as well as the evidence on which the charges are levelled and in turn place their case with supporting evidence in defence.

17.2 The aforesaid issue is settled by the higher judicial fora wherein it is held that Section 28 of the Customs Act, 1962 can be invoked for short levy or non levy of customs duty even if assessment order is not appealed under Section 129 of the Customs Act, 1962. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise Vs CC, Chennai, reported in 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue show cause notice under Section 28 of the Act after clearance of the goods. Relevant Para 6 of the judgment is reproduced hereunder:

"6. With regard to question No. 1, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words "where any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the under-valuation and proposed short levy of duty, we do not see any lack of

jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.”

17.3 The Hon'ble CESTAT in the case of Rajesh Gandhi Vs CC(Import), Mumbai reported in 2019 (366) ELT 529 (Tri-Mumbai), has held that demand can be raised without challenging the assessment under Section 17 of the Customs Act, 1962. The relevant Part of the order is reproduced below: -

“6. Before we proceed to adjudge the legality and propriety of the confirmation of differential duty, the confiscation and the imposition of penalties, the preliminaries must be dealt with. These pertain to the permissibility for invoking proviso to Section 28 of Customs Act, 1962 without challenge to the assessment effected under Section 17 of Customs Act, 1962 before the goods were cleared from control of Customs Authorities and the extent of applicability of judicial precedent from the decisions cited by Learned Authorised Representative.

7. The Tribunal, in re Rahul Ramanbhai Patel, as pointed out by Learned Authorised Representative, besides examining the relevancy of statements to fasten the consequences of undervaluation, did also consider the first supra and followed earlier decisions to render the finding that -

‘6..... One of the questions of law framed by the Hon'ble High Court reads thus :-

‘Whether the Tribunal was right in holding that the order of assessment on which no appeal was preferred, can be reopened by issue of fresh show cause notice under Section 28A of Customs Act, in the light of the apex court's decision reported in 2004 (172) E.L.T. 145 (S.C.) in the case of Priya Blue Industries Ltd. v. Commissioner of Customs?’

The Hon'ble High Court answered the above question in favour of the Revenue in paragraph 6 of its judgment, which is reproduced below :-

‘6. With regard to question No. 1, the law is well-settled that show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28(1) of the Act is accepted, we will be rendering the words “whether any duty has been short-levied” as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the misdeclaration and suppression of value, which led to the evaluation and proposed short-levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.’

7. We are told that the SLP filed against the above decision of the High Court was dismissed by the Apex Court [Venus Enterprises v. Commissioner - 2007 (209) E.L.T. A61 (S.C.)].

8. We also note that this Tribunal followed Jain Shudh Vanaspati Ltd. (supra) and Venus Enterprises (supra) in Ford India Private Limited v. Commr. of Customs, Chennai [2008 (228) E.L.T. 71 (Tri.-Chennai)]. On the other hand, in the cases of Hitaishi Fine Kraft Indus Pvt. Ltd. (supra) and

Shimnit Machine Tools & Equipment Ltd. (supra), the decision of the Supreme Court in Jain Shudh Vanaspati (supra) was not considered.

9. *In the result, we reject the plea made by the Ld. Counsel that it was not open to the Department to reopen the assessment under Sec. 28 of the Customs Act.'*

8. *Though in a different context, the ratio of the decision of the Tribunal in disposing of the appeal of Knowledge Infrastructure Systems Private Ltd. & Others v. Additional Director General, Directorate of Revenue Intelligence, Mumbai [Final Order Nos. A/86617-86619/2018, dated 31st May, 2018] is that after the clearances of imported goods effected under Section 47 of Customs Act, 1962, subject as it is to satisfaction of the proper officer that the goods had discharged the appropriate duty liability and were not prohibited for import, subsequent discovery of non-eligibility for such clearance, on either of these two counts, deems such clearances to have been tentative, and rectifiable, under proceedings that invoke Section 28 and/or specific provisions of Section 111 of Customs Act, 1962, is unequivocally applicable here.*

9. *In the light of this consistent stand, demonstrated in judicial precedent reiterated across time and space, the claim of the appellant that the assessment of the impugned goods at the time of clearance precludes any remedy other than appeal is not acceptable.*

17.4 In light of the above well settled principle of law, contention raised by the importer that the assessment orders are final and cannot be interfered with by issuing a show cause notice is not tenable. Accordingly, I hold that the Show Cause Notice issued under Section 28 (4) of the Customs Act is proper, correct and legal.

18. The Importer in their defence reply has further contented that if the department desire to deny the benefit of Notification No. 46/2011-Customs dated 01.06.2011, then the department is under obligation to get the COO cancelled / annulled. I do not agree with the above contention of the Importer. If an Importer avails the exemption benefit of a notification, it is the obligation of the Importer to fulfil all the conditions stipulated in the notification for availing such exemption, failing which the benefit of exemption is liable to be denied. In the era of self assessment, the onus is on the Importer to ensure the benefit of exemption is availed correctly. In the instant case, the Importer has wrongly availed the benefit of concessional rate of BCD under Notification No. 46/2011-Customs dated 01.06.2011, as amended, without having correct and valid Certificate of Origin thereby they have not fulfilled the stipulated conditions of the said notification. Therefore, the benefit of concessional rate of BCD availed by the Importer on the imported goods is liable to be denied. Further, the subject Notification No. 46/2011-Customs dated 01.06.2011, as amended, has not stipulated any condition to the effect that the department has to get the Certificate of Origin cancelled from the issuing authority for denying the exemption benefit. Therefore, the above contention of the Importer is liable to be rejected.

19. I find that the importer in their written submission has placed reliance on various case laws/judgments in support of their contention on issues raised in the Show Cause Notice. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Thus decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble

Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Produced reported in 2004 (170) ELT 135 (SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs. CCE, Delhi reported in 2004 (173) ELT 113(SC) wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again, in the case of Commissioner of Customs(Port), Chennai Vs. Toyato Kirloskar Motor P. Ltd. reported in 2007 (213) ELT 4 (SC), it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

20. In view of my findings in the paras supra, I pass the following order:

ORDER

20.1 I deny the benefit of Notification of No. 46/2011-Customs dated 01.06.2011, availed by the Importer on the imported goods and order for assessment of the Bills of Entry, as mentioned in Annexure-A to the show cause notice, at the full rate of duty.

20.2 I confirm the demand of Customs duty amounting to Rs. 2,81,98,778/- (Rupees Two Crore, Eighty One Lakh, Ninety Eight Thousand, Seven Hundred and Seventy Eight only) in respect of the goods imported vide bills of entry, as detailed in Annexure-A to the show cause notice issued under Section 28(4) of the Customs Act, 1962, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382 405.

20.3 Interest at the appropriate rate shall be charged and recovered from M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382 405, under Section 28AA of the Customs Act, 1962 on the duty confirmed at Para 20.2 above.

20.4 I hold that the imported goods viz. 150 M.T. of "Tin Ingots", totally valued at Rs. 20,32,84,462/- (Rupees Twenty Crore, Thirty Two Lakh, Eighty Four Thousand, Four Hundred and Sixty Two only) imported vide Bills of Entry, as mentioned in Annexure-A to the show cause notice, are liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. However, I give M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382 405, the option to redeem the goods on payment of Fine of Rs.2,00,00,000/- (Rupees Two Crore only) under Section 125 of the Customs Act, 1962 in lieu of confiscation.

20.5 I impose penalty of Rs. 2,81,98,778/- (Rupees Two Crore, Eighty One Lakh, Ninety Eight Thousand, Seven Hundred and Seventy Eight only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the duty demanded and confirmed above on M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382 405, under Section 114A of the Customs Act, 1962. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Importer to pay 25% of the amount of total penalty imposed, subject to the payment of total duty

amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

20.6 I refrain from imposing penalty under Section 112 of the Customs Act, 1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

20.7 I impose penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on M/s. Kothari Metals Limited, Plot No.181, Sub Plot No.20 & 21, Near Bhamria Kunwa, NIDC, Narol-Aslali Highway, Narol, Ahmedabad-382 405, under Section 114AA of the Customs Act, 1962.

21. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

22. The Show Cause Notice bearing F. No. VIII/10-67/Pr.Commr./O&A/2018 dated 03.12.2019 is disposed off in above terms.



(Shiv Kumar Sharma)
Principal Commissioner of Customs

F. No. VIII/10-10/Pr.Commr./O&A/2019

Date: 21.01.2026

DIN- 20260171MN00008808FF

By Speed Post/E-Mail/By Hand

To:

M/s. Kothari Metals Limited,
Plot No.181, Sub Plot No.20 & 21,
Near Bhamria Kunwa, NIDC,
Narol-Aslali Highway, Narol,
Ahmedabad-382405.

Copy to:

- (1) The Chief Commissioner of Customs, Ahmedabad Zone
- (2) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- (3) The Asstt./Deputy Commissioner of Customs, ICD-Khodiyar, Ahmedabad for information please.
- (4) The Superintendent (System), Customs HQ., Ahmedabad for uploading on the Official website of Customs Commissionerate, Ahmedabad.
- (5) Guard File.