



1214 to 1226

	<p align="center">OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</p>		
A. File No.	:	GEN/ADJ/COMM/273/2022-Adjn-O/o Pr. Commr- Cus-Mundra	
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-10-24-25	
C. Passed by	:	K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue	:	09.05.2024. 09.05.2024.	
E. SCN No. & Date	:	SCN NO. GEN/ADJ/COMM/273/2022-Adjn, dated 12.05.2023.	
F. Noticee(s) / Party/ Importer	:	M/s Bhagvan Shri Strips Private Limited (IEC- 0513066454), having office at A-26, 27A, Adarsh Society, Gate No-4, ITI Circle, Jodhpur, Rajasthan; and others.	
G. DIN	:	20240571MO000000F31E	

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र 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 अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd 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, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

Appeal shall be filed within three months from the date of communication of this order.

o/c

4. 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 बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (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.

7. 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.

1. FACTS OF THE CASE IN BRIEF:

M/s Bhagvan Shri Strips Private Limited (IEC-0513066454) having office at B-56, Wazirpur Industrial Area, Wazirpur Delhi-110052 (hereinafter referred to as 'M/s BSSPL' for the sake of brevity) engaged in trading of Cold Rolled Stainless Steel Coils and Stainless Steel Circles. 'M/s BSSPL' is having branch office/go-down at 39, GVMM, Odhav Road, Odhav, Ahmedabad, Gujarat-382415. 'M/s BSSPL' imports Cold Rolled Stainless Steel Coils and Stainless Steel Circles from overseas suppliers based in China, Indonesia and Malaysia.

1.2. 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.

1.3. The Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as *DRI*) collected Intelligence that 'M/s BSSPL' were importing the goods namely 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTH 72209022 and wrongly availing the benefit under Notification no. 50/2018-Customs dated 30.06.2018. 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 of Nickel Chromium Austenitic Type falling under CTH 72209022. 'M/s BSSPL' imported the goods viz. Cold Rolled Stainless Steel Coils, which were not Nickel Chromium Austenitic Type, classifiable under CTH 72209022 but to avail the benefit under Notification no. 50/2018-Customs dated 30.06.2018, they wrongly classified the imported goods under CTH 72209022 instead of CTH 72209090.

1.4 Intelligence further indicated that 'M/s BSSPL' is importing "Cold Rolled Stainless Steel Coils Grade J3" which contained more percentage of Chromium. The J3 grade (200 series) of Stainless Steel Coils was developed by Indian Stainless Steel manufacturers, which is similar to the grade 201 i.e. international grade. Later, Chinese manufacturers also started manufacturing J3 grade which is equal to grade 201. J3 Grade is a chromium-manganese austenitic stainless steel with moderate amounts of copper, nickel and nitrogen. Balancing of the alloying elements produces an austenitic structure in the annealed condition.

1.5. As per Wikipedia, there are two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small amount of nickel content. Thus, the stainless steels, that does not contain maximum substitute of nickel does not falls under the category of Nickel chromium austenitic type and therefore is not classified under CTH 72209022, which specifies that the Flat Rolled products of stainless steel of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022.

1.6. Acting on the aforesaid intelligence enquiry was initiated against 'M/s BSSPL'. Summons were issued to Shri Mohan Jain, Director of 'M/s BSSPL' to produce all the documents related to goods imported under CTH 7219/7220 along with details of sales of goods and GST Returns. In response, 'M/s BSSPL' vide letter dated 07.04.2021, produced copies of import documents viz. Bills of Entry, Commercial invoices, packing list, Mill Test certificate/ Inspection Certificate-Test Certificate, Country of origin certificates and Bills of Landing etc.

2. SCRUTINY OF RECORDS/DOCUMENTS

2.1. During preliminary scrutiny of the documents produced by 'M/s BSSPL', it appears that 'M/s BSSPL' has imported Stainless Steel Cold Rolled Coils Grade J3 under CTH 72209022 from China and has availed benefit under Notification no. 50/2018-Customs dated 30.06.2018 i.e. availed concession benefit of 45% of the BCD during the period from January 2019 to March 2021. Further, on scrutiny of the Mill Test certificates/Test certificates-Inspection Certificates issued by the overseas suppliers, it appears that 'M/s BSSPL' had imported Stainless Steel Cold Rolled Coils Grade J3, which contains more percentage of Chromium and Magnesium instead of Chromium & Nickel. Thus it appears that Stainless Steel Cold Rolled Coils Grade J3 imported by 'M/s BSSPL' does not meet the standards of Nickel Chromium Austenitic type coils and the said goods does not falls under the CTH 72209022 in the category of Nickel Chromium Austenitic Type. Thus, it appears that 'M/s BSSPL' had wrongly classified the goods under CTH 72209022 to avail benefit of Notification no. 50/2018-Customs dated 30.06.2018. It was felt that statement of Customs brokers/clearing agents, who arranged the clearance of goods were to be recorded with regards to these documents. Accordingly, investigation was extended to the clearing agents/Customs Brokers, who had arranged the clearance of imported goods.

2.2. The import documents related to goods cleared under CTH 72209022 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	16.07.2021	RUD-02
2	Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd	13.12.2021	RUD-03
3	Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics	13.01.2022	RUD-04
4	Shri Rajesh Balan Nair, G-card Holder and authorized person of M/s. Kashish Impex	17.01.2022	RUD-05
5	Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers	17.01.2022	RUD-06

2.3. The above responsible persons of Customs House Agent/Customs Broker have categorically stated that they have cleared Cold Rolled Stainless Steel Coils Grade J3 under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' by availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018, imported by 'M/s BSSPL' from China. They stated that technically they were not aware of the Nickel Chromium Austenitic Type Steels but they filed the Bills of Entry under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' on behalf of the Importer, after the receipt of checklist, finalized by the importer. They further stated that as per Mill Test Certificate/Test Certificate-Inspection Certificate, Cold Rolled Stainless Steel Coils Grade J3 imported by 'M/s BSSPL' contains more percentage of chromium and magnesium instead of Chromium & nickel. They perused the printout taken from https://en.wikipedia.org/wiki/Austenitic_stainless_steel titled as

Austenitic stainless steel and understand that as per the Wikipedia, there are two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small nickel content therein. Therefore, the stainless steels, which do not contain maximum substitute of nickel, do not fall under the category of Nickel chromium austenitic type, and therefore the product cannot be classified under CTH 72209022, which clearly specifies that Flat Rolled products of stainless steel, of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022. They admitted that as per the Mill Test Certificates/Test Certificate-Inspection Certificate and print out of Wikipedia of Austenitic stainless steel, goods imported by 'M/s BSSPL' do not meet the standards of Nickel Chromium Austenitic type coils and the said goods do not fall under the CTH 72209022 in the category of Nickel Chromium Austenitic Type; that they have wrongly classified the goods imported by 'M/s BSSPL' under CTH 72209022 and availed benefit of Notification no. 50/2018-Customs dated 30.06.2018. The gist of their statements are given below for ease of reference:

2.4 Statement of Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics (Customs broker) was recorded under Section 108 of the Customs Act, 1962 on 16.07.2021, wherein he inter-alia stated that:

- He was responsible for all work related to custom clearance of import and export of goods in the name of M/s Shri Balaji Logistics; that they filed Bill of Entry on behalf of the Importers after the receipt of checklist, finalized by the importers. He stated that on the basis of documents received from the importers, they advised the client for 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 applicable as per Customs Tariff (CTH).
- He perused the Bill of Entry No. 2483243 dated 24/01/2021 filed on behalf of M/s. Bhagvan Shri Strips Pvt Ltd., for the clearance of goods declared as Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate-Inspection Certificate no. 21002-TC dated 11.01.2021 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 2483243 dated 24/01/2021, which has description of goods i.e. Stainless Steel Cold Rolled Coils and stated that as per the Test Certificate-Inspection Certificate the coils contain less than 1.0 % of Nickel and less than 14% chromium.
- He perused the printout taken from https://en.wikipedia.org/wiki/Austenitic_stainless_steel titled as Austenitic stainless steel and understood that the stainless steels, which do not contain maximum substitute of nickel, do not falls under the category of Nickel chromium austenitic type, and therefore the product cannot be classified under CTH 72209022. He agreed that after going through all the contents of Wikipedia and the Mill Test certificates/Test certificates/Inspection Certificates, the coils imported by M/s Bhagvan Shri Strips Pvt Ltd. would not fall under nickel chromium Austenitic type steels under CTH 72209022 as Nickel is replaced by the Manganese in 200 series SS coils and the benefit under Notification no. 50/2018-Customs dated 30.06.2018 was not applicable on this product.

2.5 Statement of Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics & and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd (Customs brokers) was recorded under Section 108 of the Customs Act, 1962 on 13.12.2021, wherein he inter-alia stated that:

- He was G-card holder and Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd; that he has been authorized by Shri Sundar Raman of M/s R. R. Logistics and Shri Santosh Mange of M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd to give statement on behalf of their respective firms and produced Authorisation letters; that he was responsible for all the clearance of import and export in the name of M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd for the period June 2017 to June 2019 and from June 2019 to till date in M/s. R R Logistics.
- He perused the Bill of Entry No. 4069887 dated 15/07/2019 filed by M/s. R R Logistics on behalf of M/s. Bhagvan Shri Strips Pvt Ltd., for the clearance of goods declared as Stainless Steel Cold Rolled Coils Ex stock Grade-J3 under CTH 72209022 and stated that they filed the BE under CTH 72209022 by declaring the description of goods as 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate-Inspection Certificate no. 19131 TC dated 24.06.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 4069887 dated 15/07/2019 and stated that as per the Test Certificate- Inspection Certificate the coils contain less than 0.85 % of Nickel and less than 12.52% chromium.
- He perused the Country of Origin certificate bearing Sr. No. CCPIT70001190103386 dated 26.06.2019 for the BE No. 4069887 dated 15/07/2019 filed by M/s. R R Logistics on behalf of M/s. Bhagvan Shri Strips Pvt Ltd. and stated that in the CCO, the name of supplier i.e. M/s Comet International was mentioned as nonparty operator, which was other than the original manufacturer of the goods and country. He also perused the notes on backside of the country of origin certificate in Box 1, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.
- He perused the Bill of Entry No. 2159633 dated 22/02/2019 filed by M/s. Shivam Clearing Agency (Mumbai) Ltd on behalf of M/s. Bhagvan Shri Strips Pvt Ltd., for the clearance of goods declared as Cold Rolled Stainless Steel Coils Ex stock Grade-J3 under CTH 72209022 and stated that they filed the BE under CTH 72209022 by declaring the description of goods as 'Nickel Chromium Austenitic Type'. He further perused Test Certificate-Inspection Certificate no. HXL-CMTZ-18156TC dated 04.02.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 2159633 dated 22/02/2019 and stated that as per the Test Certificate- Inspection Certificate the coils contain less than 1.22 % of Nickel and less than 13.2% chromium.
- He perused the Country of Origin certificate bearing Sr. No. CCPIT70001190094806 dated 06.02.2019 for the BE No. 2159633 dated 22/02/2019 filed by M/s. Shivam Clearing Agency (Mumbai) Ltd on behalf of M/s. Bhagvan Shri Strips Pvt. Ltd. and stated that in the CCO, the name of supplier i.e. M/s Comet International was mentioned as nonparty

operator, which was other than the original manufacturer of the goods and country. He also perused the notes on backside of the country of origin certificate in Box 1, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.

- He agreed that after going through all the contents of Wikipedia and the Test certificate-Inspection Certificates, the coils imported by M/s. Bhagvan Shri Strips Pvt. Ltd. would not fall under nickel chromium Austenitic type steels under CTH 72209022 as Nickel is replaced by the Manganese in 200 series SS coils and the benefit of Notification no. 50/2018-Customs dated 30.06.2018 was not applicable on this product; that they have filed 05 BEs on behalf of M/s. Bhagvan Shri Strips Pvt. Ltd. in which benefit of Notification no. 50/2018-Customs dated 30.06.2018 has been claimed by the importer which was not applicable to them.
- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

2.6 Statement of Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics (Customs broker) was recorded under Section 108 of the Customs Act, 1962 on 13.01.2022, wherein he inter-alia stated that:

- He was Proprietor and F-card of M/s. Maffick Logistics; that he was responsible for all day to day work of the company and overall work related to custom clearance of import and export of goods in the name of M/s. Maffick Logistics; that they had filed three Bills of entry for M/s. Bhagvan Shri Strips Pvt. Ltd. in which benefit of Notification 50/2018-Customs dated 30.06.2018 has been claimed by the importer.
- He perused the Bill of Entry No. 9665487 dated 16/01/2019 filed on behalf of M/s. Bhagvan Shri Strips Pvt. Ltd., for the clearance of goods declared as Stainless Steel Cold Rolled Coils Ex stock Grade-J3 under CTH 72209022 and stated that the Country of Origin certificate No. CCPIT70001180383275 dated 19.12.2018 having CTH 722090 upto six digits so they filed the Bill of Entry under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate-Inspection Certificate no HXL-CMTSZ-18111C dated 19.12.2018 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 9665487 dated 16/01/2019, which has description of goods i.e. Stainless Steel Cold Rolled Coil Ex stock Grade-J3 and stated that as per the Test Certificate-Inspection Certificate the coils contain less than 1.12 % of Nickel and less than 13.2% chromium and the percentage of Manganese was equal to 9.52; that the percentage of nickel and chromium was less than the percentage of manganese and chromium.
- He agreed that after going through all the contents of Wikipedia and the Test certificate-Inspection Certificates, the coils imported by M/s. Bhagvan

Shri Strips Pvt. Ltd. would not fall under nickel chromium Austenitic type steels under CTH 72209022 as Nickel is replaced by the Manganese in 200 series SS coils and the benefit of Notification no. 50/2018-Customs dated 30.06.2018 was not applicable on this product.

- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

2.7 Statement of Shri Rajesh Balan Nair, G-card Holder and authorized person of M/s. Kashish Impex (Customs broker) was recorded under Section 108 of the Customs Act, 1962 on 17.01.2022, wherein he inter-alia stated that:

- He was G-card holder and Authorized signatory of M/s. Kashish Impex; that he has been authorized by Shri Rajesh Mehta, Proprietor of M/s. Kashish Impex and produced Authorization letter dated 11.01.2022; that he was responsible for dealing with the clients, day to day business activities of the company and overall work related to custom clearance of import and export goods in the name of M/s. Kashish Impex; that they had filed 63 Bills of entry for M/s. Bhagvan Shri Strips Pvt. Ltd. in which benefit of Notification 50/2018-Customs dated 30.06.2018 has been claimed by the importer.
- He perused the Bill of Entry No. 5930606 dated 03.12.2019 filed on behalf of M/s. Bhagvan Shri Strips Pvt. Ltd., for the clearance of goods declared as Stainless Steel Cold Rolled Coils Ex stock Grade-J3 under CTH 72209022 and stated that and stated that they filed the BE under CTH 72209022 by declaring the description of goods as 'Nickel Chromium Austenitic Type'. He further perused Test Certificate- Inspection Certificate no. 19249-TC dated 09.11.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 5930606 dated 03.12.2019 and stated that as per the Test Certificate-Inspection Certificate the coils contain less than 0.9 % of Nickel and less than 13% chromium and the percentage of Manganese was equal to 9.5; that the percentage of nickel and chromium was less than the percentage of manganese and chromium.
- He perused the Country of Origin certificate No. CCPIT70001190002676 dated 11.11.2019 and stated that said CCO was having CTH 722090 upto six digits so they filed the Bill of Entry under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further stated that in the CCO, the name of supplier i.e. M/s. Comet International was mentioned as non-party operator which was other than the original manufacturer of the goods and country.
- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

2.8 Statement of Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers (Customs broker) was recorded under Section 108 of the Customs Act, 1962 on 17.01.2022, wherein he inter-alia stated that:

- He was G-card holder and Authorized signatory of M/s. Image Cargo Movers; that he has been authorized by Shri Charanjeet Arora, Proprietor of M/s. Image Cargo Movers and produced Authorisation letter dated 10.01.2022; that he was responsible for dealing with the clients, day to day business activities of the company and overall work related to custom clearance of import and export goods in the name of M/s. Image Cargo Movers; that they had filed 13 Bills of entry for M/s. Bhagvan Shri Strips Pvt. Ltd. in which benefit of Notification 50/2018-Customs dated 30.06.2018 has been claimed by the importer.
- He perused the Bill of Entry No. 9878575 dated 08.12.2020 filed on behalf of M/s. Bhagvan Shri Strips Pvt. Ltd., for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade-J3 Ex stock under CTH 72209022 and stated that and stated that they filed the BE under CTH 72209022 by declaring the description of goods as 'Nickel Chromium Austenitic Type'. He further perused Test Certificate- Inspection Certificate no. 20358-TC dated 26.10.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 9878575 dated 08.12.2020 and stated that as per the Test Certificate-Inspection Certificate the coils contain less than 0.9 % of Nickel and less than 13% chromium and the percentage of Manganese was equal to 9.5; that the percentage of nickel and chromium was less than the percentage of manganese and chromium.
- He perused the Country of Origin certificate No. CCPIT70001201122351 dated 14.11.2020 and stated that said CCO was having CTH 722090 upto six digits so they filed the Bill of Entry under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further stated that in the COO, the name of supplier i.e. M/s. Comet International was mentioned as non-party operator which was other than the original manufacturer of the goods and country.
- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

3. STATEMENTS AND INQUIRY WITH DIRECTOR OF IMPORTING COMPANY

Statements of **Shri Mohan Jain, Director of 'M/s BSSPL'** were recorded under Section 108 of the Customs Act, 1962 on 21.06.2021 & 29.04.2022, wherein he inter-alia stated that:

3.1 He was one of the director of M/s Bhagvan Shri Strips Private Limited looking after day to day work related to all the activities like sales, purchase, import etc.; that M/s Bhagvan Shri Strips Private Limited trading of Stainless Steel Cold Rolled Coils/Stainless Steel Circle; that they import Stainless Steel Cold Rolled Coils/Stainless Steel Circle from overseas suppliers viz. M/s. Comet

International, Hong Kong, M/s Shandong Mengyin Huarun Imp and Exp. Co. Ltd, China and M/s. NINGBO Tierslia Imp and Exp Co Ltd. etc. based in China, Indonesia, Malaysia and Hongkong; that after payment of applicable custom duty, the goods were sold out without any manufacturing to various buyers in domestic market.

3.2 They were importing Cold Rolled Stainless Steel Coils at through Mundra port but some consignments have also been imported from ICD Sabarmati, ICD Dadri and ICD Loni and for the purpose of clearance they had appointed Customs House Agent namely M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. M/s. Maffick Logistics, M/s. Kashish Impex, and M/s. Image Cargo Movers; that he coordinate with the Customs House Agent for the clearance of the Imported goods; that Custom House Agents advises them for classification of goods based on the documents and accordingly they finalized the classification of goods, availment of any exemption viz. Notification No. 50/2018-Customs dated 30th June, 2018, payment of Custom duty, GST and other Anti-dumping duties and CVD etc.

3.3 He contacted with overseas supplier on mobile through WhatsApp & Wechat for supply of goods; that overseas suppliers also have agents in Delhi, who took the purchase order of goods verbally; that they send the amount through banks; that No credit limit or time was given by overseas supplier; that in some cases 100% payment was given in advance and in some cases part payment was given in advance.

3.4 He stated that Cold Rolled Stainless Steel Coils and Stainless Steel Circles imported by them were used in manufacturing of pipes and utensils; that Cold Rolled Stainless Steel Coils/Stainless Steel Circle were classified under chapter 72. He stated that Stainless Steel coils more than 600 mm of width were classified under CTH 7219 and Stainless Steel coils less than 600MM of width were classified under CTH 7220 of Customs Tariff; that they had filed most of the Bills of Entry for the goods with description, Cold Rolled Stainless Steel Coils under CTH 72209022 'Nickel Chromium Austenitic Type'.

3.5 He stated that here were two types of Stainless Steel coils i.e. HRC (Hot Rolled Coil) and CRC (Cold Rolled Coil). The difference between HRC and CRC depend on the rolling mechanism, temperature used on it, and CRC was made from HRC after finishing of it. He stated that the J3 grade (200 series) of CR Stainless Steel Coils was 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 was equal to 201.

3.6 He perused the Test Certificate-Inspection Certificate no HXL-SZG2017-010TC dated 21.05.2017 issued by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China accompanying the goods supplied under Commercial Invoice No. SZG2017-010 date 21.05.2017 by M/s Great China Alliance Ltd., Hong Kong and Test Certificate-Inspection Certificate no. 20504-TC dated 28.11.2020 issued by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China accompanying the goods supplied under Commercial Invoice No. CMTSZ-20504 dated 28.11.2020 by M/s Comet International Ltd., Hong Kong. On being asked, he stated that the goods supplied by the overseas suppliers under above Commercial Invoices were purchased by M/s Bhagvan Shri Strips Private Limited and as per Test Certificate-Inspection Certificates and Commercial Invoices, the goods supplied under both the Commercial Invoices were similar

i.e. Cold Rolled Stainless Steel Coils Grade-J3-Ex Stock; that as per both the Test Certificate-Inspection Certificates, the coils contain less than 1.0 % of Nickel and less than 13% chromium, wherein the Magnesium was around 10 to 12%.

3.7 He perused Bill of Entry No 9964561 dated 05.06.2017 filed by M/s Bhagvan Shri Strips Private Limited for clearance of goods supplied under Commercial Invoice No. SZG2017-010 date 21.05.2017 by M/s Great China Alliance Ltd., Hong Kong and Bill of Entry No. 2010917 dated 18.12.2020 for clearance of goods supplied under Commercial Invoice No. CMTSZ-20504 dated 28.11.2020 by M/s Comet International Ltd., Hong Kong and stated that the goods supplied by above Commercial Invoices were cleared by M/s Bhagvan Shri Strips Private Limited 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 Great China Alliance Ltd., Hong Kong under Commercial Invoice No. SZG2017-010 date 21.05.2017 and goods supplied by M/s Comet International Ltd., Hong Kong under Commercial Invoice No. CMTSZ-20504 dated 28.11.2020 were similar in quality, than why Bills of entry were filed under different CTHs i.e. 72202090 and 72209022, he stated that Bill of Entry No 9964561 dated 05.06.2017 was filed prior to issuance of Notification 50/2018-Customs dated 30.06.2018 and Bill of Entry No 2010917 dated 18.12.2020 was filed after issuance of Notification 50/2018-Customs dated 30.06.2018. He stated that prior to issuance of Notification 50/2018-Customs dated 30.06.2018, they were filling the Bill of Entry under CTH 72202090 but after issuance of Notification 50/2018-Customs dated 30.06.2018, they filed the Bill of Entry by declaring the goods under category of Nickel Chromium Austenitic Type under CTH 72209022.

3.8 He perused Mill Test Certificate dated 17.01.2021 accompanying the goods supplied under Commercial Invoice No. 2101CK0030 dated 17.01.2021 and Mill Test Certificate dated 25.01.2021 accompanying the goods supplied under Commercial Invoice No. 2101CK0034 dated 25.01.2021 by M/s. Ningbo Tierslia Imp and Exp Co Ltd., China. On being asked, he stated that the goods supplied by the overseas supplier under above Commercial Invoices were purchased by M/s Bhagvan Shri Strips Private Limited and as per Mill Test Certificates and Commercial Invoices, the goods supplied under both the Commercial Invoices were similar i.e. Cold Rolled Stainless Steel Coils Grade-J3 Ex stock less than 6500 MM; that as per both the Test Certificate-Inspection Certificates, the coils contain less than 1.0 % of Nickel and less than 14% chromium, wherein the Magnesium was around 10%.

3.9 He perused Bill of Entry No 2577519 dated 31.01.2021 filed by M/s Bhagvan Shri Strips Private Limited for clearance of goods supplied under Commercial Invoice No. 2101CK0030 dated 17.01.2021 and Bill of Entry No. 2781549 dated 16.02.2021 for clearance of goods supplied under Commercial Invoice No. 2101CK0034 dated 25.01.2021 by M/s. Ningbo Tierslia Imp and Exp Co Ltd., China and stated that the goods supplied by above Commercial Invoices were cleared by M/s Bhagvan Shri Strips Private Limited by filling above Bills of Entry by declaring the similar description of goods as Cold Rolled Stainless Steel Coils Grade-J3 Ex stock less than 6500 MM in both the Bills of entry. On being asked, when the goods supplied by M/s. Ningbo Tierslia Imp and Exp Co Ltd., China under Commercial Invoice No. 2101CK0030 dated 17.01.2021 & Commercial Invoice No. 2101CK0034 dated 25.01.2021 were similar in quality, than why Bills of entry were filed under different CTHs i.e. 72209022 and 72209090, he stated that Bill of Entry No 2577519 dated 31.01.2021 was filed

by declaring the goods under category of Nickel Chromium Austenitic Type under CTH 72209022 to get the benefit of Notification 50/2018-Customs dated 30.06.2018; that after DRI enquiry was initiated, they stop filling Bills of entry under CTH 72209022 and accordingly, the said Bill of Entry No 2781549 dated 16.02.2021 was filed under CTH 72209090.

3.10 He perused Test Certificate-Inspection Certificate no 20348-TC dated 22.10.2020 issued by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China and Country of Origin No. CCPIT70001201075104 dated 10.11.2020 accompanying the goods supplied under Commercial Invoice No. CMTSZ-20348 dated 22.10.2020 by M/s Comet International Ltd., Hong Kong and stated that as per the Test certificate-Inspection Certificate the coils contain approximately, 0.90% of Nickel, 12.50% of chromium and 9.40% of Manganese. He stated that Country of Origin certificate No. CCPIT70001201075104 dated 10.11.2020 issued by the People's Republic of China for supply of Stainless Steel Cold Rolled Coils Ex Stock was having CTH 722090, upto six digits only but same were cleared by M/s Bhagvan Shri Strips Private Limited under Bill of entry No. 9756760 dated 30.11.2020 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Grade-J3 Ex stock' (a product of Stainless Steel of Nickle Chromium Austenitic type) under CTH 72209022.

3.11 He perused Country of Origin No. CCPIT70001201122342 dated 14.11.2020 accompanying the goods manufactured by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China and supplied under Commercial Invoice No. CMTSZ-20356 date 26.10.2020 by M/s Comet International Ltd., Hong Kong, wherein the name of supplier i.e. M/s Comet International Ltd., Hong Kong was mentioned as nonparty operator which was other than the original manufacturer i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China of the goods and country. He also perused the notes on backside of the country of origin certificate, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.

3.12 He agreed that the Cold Rolled Stainless Steel Coils Grade J3 imported by them contains more percentage of chromium and magnesium instead of Chromium & nickel, which does not contain maximum substitute of nickel, does not falls under the category of Nickel chromium austenitic type, hence the product does not falls under CTH 72209022, which clearly specify that Flat Rolled products of stainless steel, of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022. He stated that the Cold Rolled Stainless Steel Coils Grade J3 imported by them falls under CTH 72209090.

3.13 He perused the printout taken from https://en.wikipedia.org/wiki/Austenitic_stainless_steel titled as Austenitic stainless steel and stated that as per the Wikipedia, there were two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there was still a small nickel content Austenitic stainless steel. He stated that after going through all the contents and Wikipedia it appears that that the coils imported by them would not falls under nickel chromium Austenitic type steels as Nickel was replaced by the Manganese in 200 series SS coils. He stated that the goods, Stainless Steel Cold Rolled Coils for use of tubes

and pipes, Grade- J3 should be classified under CTH 72202090. He stated that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the goods under CTH 7220209.

3.14 He perused the printout taken from internet https://nickelinstitute.org/media/1638/austeniticchromium_nickelstainlesssteelsatsubzero temperatures_mechanicalandphysicalproperties_313.pdf which gives an explanation about chromium nickel austenitic type and stated that the characteristic of Chromium Nickel Austenitic Nickel was 3.5 to 16 percent while the percentage of Chromium was 16 to 26 percent.

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

3.16 He perused the 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 and stated that in their official website <https://www.aalco.co.uk> provided the specification sheets for various products wherein they trade including 200 Series stainless steels. In the Specification Sheet for 200 Series stainless steels, it was categorically mentioned that 200 Series stainless steels austenitics were typically used to replace types 304 and 301 as well as Carbon (Chromc-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 were 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 percent.

3.17 He stated that after going through the contents of websites, <https://www.aalco.co.uk>, <https://www.asminternational.org>, Mill Test certificate/Test certificate-Inspection certificate, it appears that that the coils imported by them would not falls under nickel chromium Austenitic type steels as Nickel was replaced by Manganese in 200 series SS coils. He stated that documents received from the overseas supplier were having CTH up to six digits so they classified the goods under the description of 'Nickel Chromium Austenitic Type' and filed the Bills of Entry under CTH 72209022 to claim the benefit of Notification no 50/2018 dated 30th June, 2018 but as per the literature available on website it does not fall under category of Nickel Chromium Austenitic Type and the goods imported by them should have been rightly classified under CTH 72209090 for Stainless Steel Cold Rolled Coils, Grade-J3 as classified by them prior to the issuance of Notification No 50/2018 dated 30.06.2018.

4. MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY:

4.1 In view of the evidence and facts discussed in the foregoing paras, it appears that 'M/s BSSPL' was importing the goods namely 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTH 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. A734) the exemption was available only to the goods falling under CTH 72209021 and 72209022 and not the goods falling under other sub-heading of CTH 72209090. Shri Mohan Jain, Director of 'M/s BSSPL', in connivance with overseas suppliers had arranged to import 'Cold Rolled Stainless Steel Coils' by mis-declaring 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 CTH 72209022 to evade the applicable Customs duty by wrongly availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018.

4.2 In the manner discussed herein above, Shri Mohan Jain, Director of 'M/s BSSPL', in connivance with overseas suppliers, had evaded the Customs duty due to the Government Exchequer by way of mis-declaring the goods imported as 'product of Stainless Steel of Nickle Chromium Austenitic type' and by mis-classifying the same under CTH 72209022 to evade the applicable Customs duty.

5. EXEMPTION CONDITIONS:

5.1. 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 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. Further, as per the provision of said notification the importer has to prove 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 or APPENDIX II, as the case may be, in accordance with the Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976, published in the notification of the Government of India in the Department of Revenue and Banking (Revenue Wing) No. 430-Customs, dated the 1st November, 1976.

5.2. For the purposes 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.

6. DISCUSSION OF THE EVIDENCES: On scrutiny of documents viz. Mill Test Certificates/ Test Certificate-Inspection Certificates along with Commercial Invoices, Packing Lists, Bills of Lading, Country of Origin Certificates submitted by 'M/s BSSPL' vide letter dated 07.04.2021, 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, which does not contain maximum substitute of nickel, does not falls under the category of Nickel chromium austenitic type, hence the product does not falls under CTH 72209022, which clearly specify that

6.1. Two such Test Certificate-Inspection Certificates no. HXL-SZG2017-010TC dated 21.05.2017 and no. 20504-TC dated 28.11.2020 were issued by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China for the goods supplied under Commercial Invoice No. SZG2017-010 date 21.05.2017 by M/s Great China Alliance Ltd., Hong Kong and Commercial Invoice No. CMTSZ-20504 dated 28.11.2020 by M/s Comet International Ltd., Hong Kong to 'M/s BSSPL'. As per the Test Certificate-Inspection 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-Ex Stock and as per both the Test Certificate-Inspection Certificates, the coils contain less than **1.0 % of Nickel and less than 13% chromium**, wherein the Magnesium was around 10 to 12%. In order to provide a view, Test certificate-Inspection Certificate no. HXL-SZG2017-010TC dated 21.05.2017 and Test certificate-Inspection Certificate no. 20504-TC dated 28.11.2020 issued by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China are reproduced below:

Shenzhen Jinniang Industry & Trading Co., Ltd.																							
Address: 深圳市宝安区沙井街道新沙路201号 Tel: 0086-755-23181128; Fax: 0086-755-23185438																							
Quality Manufacture and exporter of Stainless Steel Cook, Sheets, Cooks, Plates and Tubs																							
www.shenzhenjinniang.com																							
TEST CERTIFICATE - INSPECTION CERTIFICATE																							
Customer		SINCE 2014-04-01										Production		3 May 17									
Material		SINCE 2014-04-01																					
Inspection Type		SINCE 2014-04-01																					
Top Production		SINCE 2014-04-01																					
10 years		SINCE 2014-04-01																					
11 years		SINCE 2014-04-01																					
Lot No.	Quantity	Weight	Length	Width	Thickness	Material	Grade	Standard	Inspection	Result	Remarks	Lot No.	Quantity	Weight	Length	Width	Thickness	Material	Grade	Standard	Inspection	Result	Remarks
1	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
2	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
3	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
4	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
5	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
6	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
7	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
8	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
9	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
10	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
11	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
12	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
13	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
14	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
15	100	100	100	100	100	304	304	304	304	304	304	100	100	100	100	100	100	304	304	304	304	304	304
16																							

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Page 17 of 71

dated 25.01.2021 for the goods supplied under Commercial Invoice No. 2101CK0034 dated 25.01.2021 to M/s BSSPL' were issued by M/s. Ningbo Tierslia Imp and Exp Co Ltd., China. 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 Ex stock less than 6500 MM and as per both the Test Certificate-Inspection Certificates, the coils contain less than **1.0 % of Nickel and less than 14% chromium**, wherein the Magnesium was around 10%. In order to provide a view, Mill Test Certificate dated 17.01.2021 and Mill Test Certificate dated 25.01.2021 issued by M/s. Shenzhen Jimminghui Industry & Trading Co. Ltd., China are reproduced below:

(i) Mill Test Certificate dated 17.01.2021:

NINGBO TIERSLIA IMP. & EXP. CO., LTD.											
MILL TEST CERTIFICATE											
SALES ORDER NO.: 2101SC0003				INVOICE NO.: 2101CK0034				DATE: JAN. 17, 2021			
HEAT NO.	SPECIFICATION			CHEMICAL COMPOSITION(%)							
	THICKNESS (MM)	WIDTH (MM)	WEIGHT (KGS)	C	Mn	P	S	Si	Ni	Cr	Mo
COLD ROLLED STAINLESS STEEL COILS GRADE J3 EX STOCK LESS THAN 6500MM											
2101000001	0.29	510	3900	0.024	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000002	0.29	510	3423	0.023	0.030	<0.001	0.015	0.030	1.000	13.010	0.030
2101000003	0.29	510	3362	0.023	0.030	<0.001	0.015	0.030	1.010	13.004	0.030
2101000004	0.29	510	3357	0.023	0.030	<0.001	0.015	0.030	1.000	13.004	0.030
2101000005	0.29	510	3440	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000006	0.29	510	2900	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000007	0.29	510	2200	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000008	0.29	510	3300	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000009	0.29	510	3347	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000010	0.29	510	3378	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000011	0.29	510	3403	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000012	0.29	510	3374	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000013	0.29	510	3384	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000014	0.29	510	3330	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000015	0.29	510	3423	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000016	0.29	510	3304	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
Remarks:				2101SC0003							

(ii) Mill Test Certificate dated 25.01.2021:

NINGBO TIERSLIA IMP. & EXP. CO., LTD.											
MILL TEST CERTIFICATE											
SALES ORDER NO.: 2101SC0003				INVOICE NO.: 2101CK0034				DATE: JAN. 25, 2021			
HEAT NO.	SPECIFICATION			CHEMICAL COMPOSITION(%)							
	THICKNESS (MM)	WIDTH (MM)	WEIGHT (KGS)	C	Mn	P	S	Si	Ni	Cr	Mo
COLD ROLLED STAINLESS STEEL COILS GRADE J3 EX STOCK LESS THAN 6500MM											
2101000017	0.29	510	3342	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000018	0.29	510	3440	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000019	0.29	510	3362	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000020	0.29	510	3357	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000021	0.29	510	3440	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000022	0.29	510	2900	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000023	0.29	510	3300	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000024	0.29	510	3347	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000025	0.29	510	3378	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000026	0.29	510	3403	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000027	0.29	510	3374	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000028	0.29	510	3384	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000029	0.29	510	3330	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030
2101000030	0.29	510	3423	0.023	0.030	<0.001	0.015	0.030	1.010	13.006	0.030

Original (Customs copy)
Indian Customs EDI System: Imports V1.58001
MUNDRA SEZ PORT MUNDRA, GUJARAT
BILL OF ENTRY FOR HOME CONSUMPTION

[Customs Stamp: INMUNDRA] CHA : NABEW9092RCH001 TRASHISH IMPKX
BE No/Date/Doc/Typ: 2781549/16/02/2021/HZB
Importer Details: 0513066454 PAN: BAPBN1688P001 AD Code : 633051B
BHAGVAN SURE STRIPS PRIVATE LIMITED
2 39, GVM, CDHAY
ODHAR ROAD
AHMEDABAD 382415 Payment Method : Transaction
IGM No : 2274959/12/02/2021 16/02/2021 Port of Loading : Ningbo
Country of Origin : CHINA Country of Consign :
EA No : NEMDNUCL0141 HVEL No :
Date : 30/01/2021 Date :
No. of Pkgs. : 10 BLS Gross Wt : 27024.000 KGS
Marks: AS PER BL & Nos:

Inv No & Dt. : 2101CK0034 25/01/2021 NINGBO TIENSIN IMP. & EXP. CO. LTD.
Inv Val : 20043.00 USD TOF: CIF SHANGHAI, WANGSANGCON,
Freight : 0.00 NEMUDU, YUYAO, ZHEJIANG
Insurance : 0.00
SVA Load (Ass): Cus. House: CHINA
SVA Load (Dty): Ass Load Rate: 0.00% Amount: 0.00
Elec. Charges: 0.00 0.00
Discount Rate: 0.00% Discount Amount: 0.00

ADD : 0.00 KSE Duty Free Inv: 0.00
Third Party: Buyer/Seller: Seller

Exchange Rate: 1.00 USD = 73.2000 INR

Sino	RITE	Description	CTH	C. Noth	C. USNO	RSP	Lead	200V
Qty		Unit Price	CTH	S. Noth	NSNO	Cus Dty Rt	BCD amt (Rs)	
Unit		Ass Val	CTH	S. Noth	NSNO	Exc Dty Rt	CVD amt (Rs)	

1	72209090	COLD-ROLLED STAINLESS STEEL COILS GRADE J3 EX STOC						
Y LESS THAN 600MM (SAMS RSG STS222402)								
26.72	750.000000	72209090 053/2017 3765.60				7.50 %	110338.50	
	Cus ADPO	01/2021 17				0.00 %	0.00	
MTS	1479173.40	NO EXCISE				0.00 %	0.00	
	Educational Cess on CVDs					0.00 %	0.00	
	Sec & Higher Edu. Cess on CVD					0.00 %	0.00	
	Customs Educational Cess					0.00 %	0.00	
	Customs Sec & Higher Edu. Cess					0.00 %	0.00	
	Social Welfare Surcharge					10.00 %	11093.50	
	IGST	001/2017 17.500				19.00 %	282216.51	
	GST Cess	001/2017 5%				0.00 %	0.00	

Rs.	1479173.40	Page Total	Rs.	410248.70	
BCD	Rs.	110938.50	BB Gross Total	Rs.	410248.70
INTID	Rs.	0.00	NCED Duty	Rs.	0.00
CVD	Rs.	0.00	SAFEGUARD Duty	Rs.	0.00
CESS	Rs.	0.00	Sch 2 & 3 Excise Duty	Rs.	0.00
TEA	Rs.	0.00	GST	Rs.	0.00
Edu. Cess CVD	Rs.	0.00	Customs Edu. Cess	Rs.	0.00
Health CVD	Rs.	0.00	Sch. Duty - (Imports)	Rs.	0.00
SHE, Cess CVD	Rs.	0.00	SH Cust. Edu. Cess	Rs.	0.00

Duty Payable: Rs. 410248
Rs. Four Lakh Ten Thousand Two Hundred and Forty Nine only

Mak-I
21/6
Mak-II
21/6
Mak-III
21/6

On perusal of the respective Bills of entry, it appears that Bill of entry No. 2577519 dated 31.01.2021 was filed by declaring the goods under category of Nickel Chromium Austenitic Type under CTH 72209022 to get the benefit of Notification 50/2018-Customs dated 30.06.2018. But when DRI enquiry was initiated, they filed Bill of Entry No 2781549 dated 16.02.2021 under CTH

72209090 and same has been stated by the Director of M/s BSSPL' in his statement recorded on 29.04.2022.

6.3. Similarly, on perusal of the Bills of Entry filed by 'M/s BSSPL', it appears that 'M/s BSSPL' has imported the similar goods from China by declaring it as 'Cold Rolled Stainless Steel Coils Grade-J3 Ex stock less than 600MM' under heading others of CTH 72202090 but after issuance of Notification No. 50/2018-Customs dated 30.06.2018, 'M/s BSSPL' started classifying the goods under CTH 72209022 to avail the benefit of said Notification. However, when the inquiry was initiated by DRI, M/s BSSPL' again started filling Bills of entry under CTH 72209022. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by 'M/s BSSPL' is in fact Stainless Steel of other Grades and be correctly classified under CTH 72209090.

6.4. On scrutiny of documents viz. Mill Test certificates/Test certificates-Inspection Certificates along with Commercial Invoices, Packing Lists, Bills of Lading, Country of Origin Certificates submitted by 'M/s BSSPL' vide letter dated 07.04.2021, it appears that a Test certificates- Inspection Certificate No. 20348-TC dated 22.10.2020 was issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-20348 dated 22.10.2020 by M/s Comet International Ltd., Hong Kong to 'M/s BSSPL'. As per the Test certificate-Inspection Certificate the coils contain approximately, **0.90% of Nickel, 12.50% of chromium and 9.40% of Manganese**. Further, it appears that Country of Origin certificate No. CCPIT70001201075104 dated 10.11.2020 issued by the People's Republic of China for supply of Stainless Steel Cold Rolled Coil Ex Stock by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., which is having CTH 722090, upto six digits. In order to provide a view, Test certificates- Inspection Certificate No. 20348-TC dated 22.10.2020 and Country of Origin certificate No. CCPIT70001201075104 dated 10.11.2020 issued by the People's Republic of China are reproduced below:

(i) Test certificates- Inspection Certificate No. 20348-TC dated 22.10.2020:

Quality Manufacture and Export of Stainless Steel Coils, Sheets, Circles, Plates and Tubes
www.brahmansteel.com




TEST CERTIFICATE-INSPECTION CERTIFICATE

[illegible]

Summary	During the year, all items of value produced and consumed in the various departments were inventoried and recorded.	Continued by Daily Department
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Sally
M. King
9/6/2000

(ii) Country of Origin certificate No. CCPIT70001201075104 dated 10.11.2020:

1. Goods consigned from: (Exporter's business name, address, country) SHENZHEN JINMANGSHUI INDUSTRY & TRADING CO., LTD. ROOM 2111-2116, ORIENTAL PLAZA 1012 JIANXIE ROAD LUOCHU DISTRICT, SHENZHEN, CHINA		Serial No.: DCPITE0001281075104 Certificate No.: 0126141700182147  CERTIFICATE OF ORIGIN Asia-Pacific Trade Agreement (Combined Declaration and Certificate) Issued in: People's Republic of China (Country)			
2. Goods consigned to: (Consignee's name, address, country) BHAGWAN SHIPSTRIPS PVT. LTD. 28 VYAPARI MAHAMANDAL, ODHAV AHMEDABAD GUJARAT INDIA REC NO: 0513066454 GSTIN: 24AAEC07088174 E-MAIL: BHAGWANSHIPSTRIPS@HOTMAIL.COM		3. For Official use: VERIFY URL: http://check.dcpiteco.net/			
4. Means of transport and route: FROM NINGBO, CHINA TO MUMBAI, INDIA BY SEA					
5. Entry (Name, number) 722064	6. Marks and number of packages: M34	7. Number and kind of packages/description of goods: COLD ROLLED STAINLESS STEEL COILS-EX STOCK REC: VNCGN-220081 TOTAL SIXTEEN (16) COILS ONLY NON-PARTY OPERATOR CORJET INTERNATIONAL LTD. FLAT/BA 7204B T1 WANG CHEONG FACTORY ESTATE 7B LAI CHI KOE ROAD CHEUNG SHA WAN KOWLOON HONG KONG	8. Origin (Country) CHINA	9. Gross weight or other quantity: 22800KGS	10. Number and date of invoice: CMT22-20348 OCT 22 2020
11. Declaration by the exporter: The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in CHINA (Country) and that they comply with the requirements specified for these goods in the relevant trade agreement for goods exported to		12. Declaration: I, the undersigned, certify on the basis of evidence formed out, that the declaration by the exporter is correct.			
 SHENZHEN JINMANGSHUI INDUSTRY & TRADING CO., LTD. 11 NOV 2020 Place and date, signature of authorized signatory		 CHINA COUNCIL FOR THE PROMOTION OF FOREIGN TRADE Address: 100001 Beijing, China Tel: 86-10-65434567 Fax: 86-10-65434560 11 NOV 2020 Place and date, signature and Stamp of Designating Authority			

On perusal of above Test certificate-Inspection Certificate, it appears that the coils contain approximately, **0.90% of Nickel, 12.50% of chromium and 9.40% of Manganese.** Further, Country of Origin certificate No. CCPIT70001201075104 dated 10.11.2020 is having CTH 722090, upto six digits. The said coils supplied by M/s Comet International Ltd., Hong Kong vide Commercial Invoice No. CMTSZ-20348 date 22.10.2020 accompanying the Country of Origin certificate No. CCPIT70001201075104 dated 10.11.2020 were cleared by 'M/s BSSPL' under Bill of entry No. 9756760 dated 30.11.2020 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Grade-J3 Ex stock' (a product of Stainless Steel of Nickle Chromium Austenitic type) under CTH 72209022.

6.5. Similarly as per all the Mill Test certificates/Test certificates- Inspection Certificates, the Cold Rolled Stainless steel Coils, imported by 'M/s BSSPL' contains more percentage of chromium and magnesium instead of Chromium &

nickel. However, 'M/s BSSPL' imported the same by declaring as 'product of Stainless Steel of Nickle Chromium Austenitic type' and by mis-classifying the same under CTH 72209022 to evade the applicable Customs duty.

6.6. On scrutiny of documents viz. Mill Test certificates/ Test certificates- Inspection Certificates along with Commercial Invoices, Packing Lists, Bills of Lading, Country of Origin Certificates submitted by 'M/s BSSPL' vide letter dated 07.04.2021, it appears that the Country of Origin Certificate No. CCPIT70001201122342 dated 14.11.2020 issued by the People's Republic of China for goods manufactured by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China and supplied vide Commercial Invoice No. CMTSZ-20356 dated 26.10.2020 by M/s Comet International Ltd., Hong Kong to 'M/s BSSPL'. On perusal of CCO No. CCPIT70001201122342 dated 14.11.2020, it appears that the name of supplier i.e. M/s. Comet International, Hong Kong was mentioned as nonparty operator which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd. Further, as per the notes written on the back side of 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. CCPIT70001201122342 dated 14.11.2020 is reproduced below:

Copy

1. Goods consigned from (Exporter's business name, address, country) SHENZHEN JINSHIJI INDUSTRY & TRADING CO., LTD. ROOM 2111/21F, ORIENTAL PLAZA 1072 JIANGHE ROAD LUOHU DISTRICT, SHENZHEN, CHINA		2. Goods consigned to (Consignee's name, address, country) SHAGWAN SHIN STRIPS PVT. LTD. 32-VYAPARI MAHAMANDAL, CHHAY, AHMEDABAD GUJARAT (INDIA) GSTIN: 24AAFCB7018B12A E-MAIL ID: SHAGWANSHINSTRIPS@HOTMAIL.COM		3. For Official Use 32 32	
4. Means of transport and route FROM KONGBO, CHINA TO MINGRA RIDA BY SEA		5. Goods consigned from (Country) CHINA			
6. Goods consigned from (Country) CHINA	7. Goods consigned to (Country) INDIA	8. Goods consigned from (Country) CHINA			
9. Goods consigned to (Country) INDIA	10. Goods consigned from (Country) CHINA				
11. Goods consigned to (Country) INDIA	12. Goods consigned from (Country) CHINA				
13. Goods consigned to (Country) INDIA	14. Goods consigned from (Country) CHINA				
15. Goods consigned to (Country) INDIA	16. Goods consigned from (Country) CHINA				
17. Goods consigned to (Country) INDIA	18. Goods consigned from (Country) CHINA				
19. Goods consigned to (Country) INDIA	20. Goods consigned from (Country) CHINA				
21. Goods consigned to (Country) INDIA	22. Goods consigned from (Country) CHINA				
23. Goods consigned to (Country) INDIA	24. Goods consigned from (Country) CHINA				
25. Goods consigned to (Country) INDIA	26. Goods consigned from (Country) CHINA				
27. Goods consigned to (Country) INDIA	28. Goods consigned from (Country) CHINA				
29. Goods consigned to (Country) INDIA	30. Goods consigned from (Country) CHINA				
31. Goods consigned to (Country) INDIA	32. Goods consigned from (Country) CHINA				
33. Goods consigned to (Country) INDIA	34. Goods consigned from (Country) CHINA				
35. Goods consigned to (Country) INDIA	36. Goods consigned from (Country) CHINA				
37. Goods consigned to (Country) INDIA	38. Goods consigned from (Country) CHINA				
39. Goods consigned to (Country) INDIA	40. Goods consigned from (Country) CHINA				
41. Goods consigned to (Country) INDIA	42. Goods consigned from (Country) CHINA				
43. Goods consigned to (Country) INDIA	44. Goods consigned from (Country) CHINA				
45. Goods consigned to (Country) INDIA	46. Goods consigned from (Country) CHINA				
47. Goods consigned to (Country) INDIA	48. Goods consigned from (Country) CHINA				
49. Goods consigned to (Country) INDIA	50. Goods consigned from (Country) CHINA				
51. Goods consigned to (Country) INDIA	52. Goods consigned from (Country) CHINA				
53. Goods consigned to (Country) INDIA	54. Goods consigned from (Country) CHINA				
55. Goods consigned to (Country) INDIA	56. Goods consigned from (Country) CHINA				
57. Goods consigned to (Country) INDIA	58. Goods consigned from (Country) CHINA				
59. Goods consigned to (Country) INDIA	60. Goods consigned from (Country) CHINA				
61. Goods consigned to (Country) INDIA	62. Goods consigned from (Country) CHINA				
63. Goods consigned to (Country) INDIA	64. Goods consigned from (Country) CHINA				
65. Goods consigned to (Country) INDIA	66. Goods consigned from (Country) CHINA				
67. Goods consigned to (Country) INDIA	68. Goods consigned from (Country) CHINA				
69. Goods consigned to (Country) INDIA	70. Goods consigned from (Country) CHINA				
71. Goods consigned to (Country) INDIA	72. Goods consigned from (Country) CHINA				
73. Goods consigned to (Country) INDIA	74. Goods consigned from (Country) CHINA				
75. Goods consigned to (Country) INDIA	76. Goods consigned from (Country) CHINA				
77. Goods consigned to (Country) INDIA	78. Goods consigned from (Country) CHINA				
79. Goods consigned to (Country) INDIA	80. Goods consigned from (Country) CHINA				
81. Goods consigned to (Country) INDIA	82. Goods consigned from (Country) CHINA				
83. Goods consigned to (Country) INDIA	84. Goods consigned from (Country) CHINA				
85. Goods consigned to (Country) INDIA	86. Goods consigned from (Country) CHINA				
87. Goods consigned to (Country) INDIA	88. Goods consigned from (Country) CHINA				
89. Goods consigned to (Country) INDIA	90. Goods consigned from (Country) CHINA				
91. Goods consigned to (Country) INDIA	92. Goods consigned from (Country) CHINA				
93. Goods consigned to (Country) INDIA	94. Goods consigned from (Country) CHINA				
95. Goods consigned to (Country) INDIA	96. Goods consigned from (Country) CHINA				
97. Goods consigned to (Country) INDIA	98. Goods consigned from (Country) CHINA				
99. Goods consigned to (Country) INDIA	100. Goods consigned from (Country) CHINA				

Notes for completing Certificate of Origin

I. General Conditions:

To qualify for preference, products must:

- fall within a description of products eligible for preference in the list of concessions of an Asia-Pacific Trade Agreement country of destination;
- comply with Asia-Pacific Trade Agreement rules of origin. Each article in a consignment must qualify separately in its own right; and
- comply with the consignment conditions specified by the Asia-Pacific Trade Agreement rules of origin. In general, products must be consigned directly within the meaning of Rule 5 hereof from the country of exportation to the country of destination.

II. Entries to be made in the boxes:

Box 1 Goods Consigned from

Type the name, address and country of the exporter. The name must be the same as the exporter described in the invoice.

Box 2 Goods Consigned to

Type the name, address and country of the importer. The name must be the same as the importer described in the invoice. For third party trade, the words "To Order" may be typed.

Box 3 For Official Use

Reserved for use by certifying authority.

Box 4 Means of Transport and Route

State in detail the means of transport and route for the products exported. If the L/C terms etc. do not require such details, type "By Air" or "By Sea". If the products are transported through a third country this can be indicated as follows:

e.g. "By Air"

"Laos to India via Bangkok"

Box 5 Tariff Item Number

Type the 6-digit HS heading of the individual items.

Box 6 Marks and Number of Packages

Type the marks and number of the packages covered by the Certificate. This information should be identical to the marks and number on the packages.

Box 7 Number and Kind of Packages; Description of Goods

Type clearly the description of the products exported. This should be identical to the description of the products contained in the invoice. An accurate description will help the Customs Authority of the country of destination to clear the products quickly.

Box 8 Origin Criterion

Preference products must be wholly produced or obtained in the exporting Participating State in accordance with Rule 2 of the Asia-Pacific Trade Agreement Rules of Origin, or where not wholly produced or obtained in the exporting Participating State must be eligible under Rule 3 or Rule 4:

a) Products wholly produced or obtained: enter the letter "A" in Box 8.

b) Products not wholly produced or obtained: the entry in Box 8 should be as follows:

1. Enter letter "B" in Box 8 for products which meet the origin criteria according to Rule 3. Entry of letter "B" would be followed by the sum of the value of materials, parts or produce originating from non-Participating States, or undetermined origin used, expressed as a percentage of the f.o.b. value of the products; (example "B" 50 per cent);

2. Enter letter "C" in Box 8 for products which meet the origin criteria according to Rule 4. Entry of letter "C" would be followed by the sum of the aggregate content originating in the territory of the exporting Participating State expressed as a percentage of the f.o.b. value of the exported product; (example "C" 60 per cent);

3. Enter letter "D" in Box 8 for products which meet the special origin criteria according to Rule 10.

4. Enter letter "E" in Box 8 for products which meet the origin criteria according to Rule 3 (b). Entry of letter "E" would be followed by the criteria of the RoO (example "E" CTH)

Box 9 Gross Weight or Other Quantity

Type the gross weight or other quantity (such as pieces, kg) of the products covered by the Certificate.

Box 10 Number and Date of Invoices

State number and date of the invoice in question. The date of the invoice attached to the Application should not be later than the date of approval on the Certificate.

Box 11 Declaration by the Exporter

The term "Exporter" refers to the shipper who can either be a trader or a manufacturer. Type the name of the producing country and the importing country and the place and date when the declaration is made. This box must be signed by the Company's authorized signatory.

Box 12 Certification

The certifying authority will certify in this Box.

On perusal of above said Country of Origin certificate issued by the People's Republic of China for goods manufactured by M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China in the name of importer and name of supplier i.e. M/s. Comet International, Hong Kong, who issued the invoice was mentioned as nonparty operator, which was other than the original manufacturer of the goods. The said goods were imported by 'M/s BSSPL' under Bill of entry No. 9778008 dated 01.12.2020.

6.7. Similarly, as per all the Country of Origin certificates issued by the People's Republic of China for goods manufactured by China based manufacturers,

imported by 'M/s BSSPL', the name of supplier i.e. M/s Comet International, Hongkong was mentioned as nonparty operator, which was other than the original manufacturer of the goods and country. However, 'M/s BSSPL' imported the same by availing the benefit of Notification No 50/2018-Customs dated 30.06.2018.

6.8. Shri Mohan Jain, Director of 'M/s BSSPL' in his statements recorded on 21.06.2021 and 29.04.2022 himself admitted that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the said coils under CTH 72209090. He also admitted that Stainless Steel Cold Rolled Coils Grade- J3 should be classified under CTH 72209090. Also, on verification of import data of 'M/s BSSPL', prior to the issuance of the said notification, 'M/s BSSPL' had classified the said coils under CTH 72209090.

200 SERIES STAINLESS STEEL

6.9. 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**. 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, as shown below:

CHEMICAL COMPOSITION

Element	% Present
Chromium (Cr)	16.00 - 18.00
Manganese (Mn)	6.80 - 8.50
Nickel (Ni)	2.00 - 5.00
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
201	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	-
201L	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	-
202	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	-
204C	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

AUSTENITIC STAINLESS STEEL (NICKEL CHROMIUM AUSTENITIC STAINLESS STEEL)

6.10. Austenitic refers to an alloy consisting mainly of austenite. The most widely used grade of stainless steel is austenitic. The Austenitic alloys contain a high percentage of nickel and chromium, which makes them, and the steel made from them, very resistant to corrosion. Austenitic stainless steels are used in a wide range of applications, including Automotive trim, Aircraft, Cookware, Food and beverage equipment, Industrial equipment. Austenitic stainless steels have also been used in conventional and nuclear power plants' super-heaters and heating components.

6.11. A multilingual, web-based, free-content encyclopedia **Wikipedia** https://en.wikipedia.org/wiki/Austenitic_stainless_steel clearly shows that the Austenitic stainless steel is one of the five classes of stainless steel by crystalline structure (along with ferritic, martensitic, duplex and precipitation hardened). There are two subgroups of austenitic stainless steel i.e. 200 and 300 series. 300 series stainless steels achieve their austenitic structure primarily by a nickel addition while 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small nickel content. Its primary crystalline structure is austenite (face-centered cubic) and it prevents steels from being hardenable by heat treatment and makes them essentially non-magnetic. This structure is achieved by adding enough austenite stabilizing elements such as nickel, manganese and nitrogen. The website categorically provided the average content by weight (%) of the major alloying elements of most common Cr-Ni austenitic stainless steel grades, as shown below:

Euro norm (EN) number	EN designation	AISI grade	C	Cr	Mo	Ni	Others
1.4310	X10CrNi18-8	301	0.10	17.5	NS	8	NS
1.4301	X5CrNi18-10	304	< 0.07	18.5	NS	9	NS
1.4307	X2CrNi18-9	304L	< 0.030	18.5	NS	9	NS
1.4305	X8CrNiS18-9 *	303	< 0.10	18	NS	9	0.3
1.4541	X6CrNiTi18-10	321	< 0.08	18	NS	10.5	Ti: $5 \times C \leq 0.70$
1.4401	X5CrNiMo17-12-2	316	< 0.07	17.5	2.2	11.5	NS
1.4404	X2CrNiMo17-12-2	316L	< 0.030	17.5	2.25	11.5	NS
1.4571	X6CrNiMoTi17-12-2	316Ti	< 0.08	17.5	2.25	12	Ti: $5 \times C \leq 0.70$

6.12. **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> 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 Cu
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

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 4.5%-12%. Whereas, the chemicals compositions shown in the Test certificate-Inspection Certificate 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 and Hot Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by 'M/s BSSL' is in fact Stainless Steel of other Grades and be correctly classifiable under CTH 72209090.

8. In view of the above, it is further evident that 'M/s BSSPL' 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 CTH 72209022 and wrongly availed the benefit of Customs Notification No. 50/2018-Customs dated 30.06.2018 during the period from January 2019 to March 2021. As per the Notification no. 50/2018-Customs dated 30.06.2018, the exemption was available to goods falling under CTH 72209022 and not to the goods falling under other sub-heading CTH 7220.

9. It is also forthcoming from the evidences on records that 'M/s BSSPL', had availed the benefit of payment of appropriate duty under Notification No. 50/2018-Customs dated 30.06.2018 on the 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, in terms of 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 and 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. Therefore, the benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to the Country of Origin certificates issued by the manufacturers other than the actual exporters (Invoice issuing suppliers). The details of such Bills of Entry filed by mis-declaring 'Cold Rolled Stainless Steel Coils Grade-J3 of various sizes under CTH 72209022 on which 'M/s BSSPL' has availed the benefit of exemption under Notification No. 50/2018-Customs dated 30.06.2018 on the COO issued by manufacturers but invoices were issued by a non-party are as detailed vide Annexures to notice.

Whereby, it appears that Country of Origin certificates issued by the manufacturers based in China, who is not actual exporters (Invoice issuing suppliers), therefore benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to 'M/s BSSPL'.

PAYMENT OF CUSTOMS DUTY:

10. During the course of investigation, 'M/s BSSPL' have voluntarily made payment of differential duty amounting to Rs. 25,00,000/- (Rs. 15,00,000/- vide TR-6 Challan no. BSSPL/01/2021 dated 17.09.2021 & Rs. 10,00,000/- vide TR-6 Challan no. BSSPL/02/2022 dated 24.05.2022, arises due to misclassification of goods imported by them.

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

11. Further, as per the General Rules for the Interpretation of the Harmonized System, the classification of goods in the Nomenclature shall be governed by certain principles. 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)'*

11.1. 'M/s BSSPL' had imported 'Cold Rolled Stainless Steel Coils' by wrongly claiming classification under Customs Tariff Heading 72209022 during the period from January 2019 to March 2021. Further, from the evidences available in the form of Test certificate-Inspection Certificates produced by the importer at the time of import which shows the content of Chromium (Cr) as nearly 13% and Nickel as nearly 1%, which ruled out its classification as Austenitic Stainless-Steel grades. As per website of M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder and as per multilingual, web-based, free-content encyclopedia Wikipedia https://en.wikipedia.org/wiki/Austenitic_stainless_steel, the Austenitic Stainless-Steel grades have major % of Nickel. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by 'M/s BSSPL' are in fact Stainless Steel of other Grades and be correctly classified under CTH 72209090.

12. From the investigations carried out in the case it appears that 'M/s BSSPL' was 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. The importer 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 the importer had knowingly involved themselves in the suppression & mis-statement of the material facts.

13. From the facts and evidences discussed in the foregoing, it is established that the goods Cold Rolled Stainless Steel Coils imported by 'M/s BSSPL' should have been appropriately classified under CTH 72209090 and the benefit of Notification No. 50/2018-customs dated 30.06.2018 was not applicable under CTH 72209090 during the relevant period.

14. VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962

14.1. 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 and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI. Therefore, it appears that 'M/s BSSPL' have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty by 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 BSSPL' had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as 'M/s BSSPL' 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 correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs.

15. CULPABILITY AND LIABILITY OF NOTICEES

15.1. From the aforesaid, it appears that the importer had knowingly and deliberately indulged in suppression of facts 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 filling 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 wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018. Therefore, the provisions of Section 28(4) of the Customs Act, 1962, is applicable for demand of duty not paid/short paid. The differential Customs duty amounting to **Rs. 1,56,93,535/-** in respect of imports at various ports/ICD's viz. Mundra port (INMUN1), ICD Sabarmati (INSBI6), Ahmedabad, Dadri ACPL CFS (INAPL6), Noida-Dadri, ICD (INDER6) and ICD Loni (INLON6) as indicated in **Annexure-A to E** the SCN (**Rs. 1,36,15,390/-** in respect of the imports at Mundra port (INMUN1) as detailed in **Annexure-A, Rs. 6,63,457/-** in respect of the imports at ICD Sabarmati (INSBI6) as detailed in **Annexure-B, Rs. 9,82,093/-** in respect of the imports at Dadri ACPL CFS (INAPL6) as detailed in **Annexure-C, Rs. 3,09,613/-** in respect of the imports at Noida-Dadri, ICD (INDER6) as detailed in **Annexure-D** and **Rs. 1,22,982/-** in respect of the imports at ICD Loni (INLON6) as detailed in **Annexure-E**), is liable to be recovered from 'M/s BSSPL', under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

16. 'M/s BSSPL' have imported Cold Rolled Stainless Steel Coils valued at **Rs. 29,35,51,630/-**, (as detailed in Annexure-A to E to the SCN) by deliberately resorting to mis-statement & suppression of the material fact that the said goods are classifiable under CTH 72209090 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 make 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 BSSPL' had failed to fulfill the conditions in respect of the imports of 'Cold Rolled Stainless steel Coils through various ports/ICD's viz. Mundra port (INMUN1), ICD Sabarmati (INSBI6), Ahmedabad, Dadri ACPL CFS (INAPL6), Noida-Dadri, ICD (INDER6) and ICD Loni (INLON6). 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.

17. The aforesaid acts of suppression of facts and willful mis-statement by 'M/s BSSPL' had led to evasion of Customs duty of **Rs. 1,56,93,535/-** thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Customs duty amounting to **Rs. 1,56,93,535/-** 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 BSSPL' have rendered the subject imported goods totally valued at **Rs. 29,35,51,630/-** (as detailed in Annexure-A to E to the SCN) liable for confiscation under Section 111(m) of the Customs Act, 1962. 'M/s BSSPL' are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it is also evident that the actual facts were only known to the importer about the product and its actual classification. However, it appears that 'M/s BSSPL' had knowingly and intentionally made, signed or 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 and actual classification of the imported goods, and have therefore rendered themselves liable for penalty under section 114AA of the Customs Act, 1962 also. Since 'M/s BSSPL' have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962.

18. It further appears that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by 'M/s BSSPL' before the Customs authorities, was done on the direction and under the guidance of Shri Mohan Jain, Director of 'M/s BSSPL' to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Mohan Jain had full knowledge about the mis-classification of the said imported goods in as much as Shri Mohan Jain was overall responsible for all imports and finalization of classification of imported goods. He was in constant touch with the overseas supplier of goods to manage documents for misclassification of goods and instruct Customs broker to produce the same before customs for clearance. 'M/s BSSPL' received the Test certificate-Inspection Certificate, wherein the chemicals compositions of goods and country of origin certificate received was given, as per that goods were rightly classified under CTH 72209090 but Shri Mohan Jain instructed Customs brokers to file the Bills of entry under CTH 72209022 to

evade duty. Shri Mohan Jain was aware that the consignments imported by 'M/s BSSPL' was actually Cold Rolled Stainless Steel Coils falling under CTH 72209090, as it was evident from the documents available in the form of Mill Test Certificate/Test certificate-Inspection Certificate, country of origin certificate produced by the importer as well as the past consignments imported by 'M/s BSSPL' before issuance of Notification No 50/2018-Customs dated 30.06.2018, 'M/s BSSPL' were classifying the said goods under correct CTH and admitted by Shri Mohan Jain, Director of 'M/s BSSPL'. All the aforesaid acts of omission and commission on the part of Shri Mohan Jain have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. Further, it also appears that Shri Mohan 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 and actual classification of the imported goods, and has therefore rendered himself liable for penalty under section 114AA of the Customs Act, 1962. Since Shri Mohan Jain, Director of 'M/s BSSPL' has also violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under Section 117 of Customs Act, 1962.

19. It also appears that M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers, all Customs Broker firms acted on behalf of 'M/s BSSPL' for clearance of consignments of Cold Rolled Stainless steel Coils from customs. 'M/s BSSPL' handed over the documents to the Customs Brokers for filing of Bills of Entry and to arrange clearance of the goods. M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers, who handles clearance activities in the capacity as the Custom Brokers are responsible for having indulged in the conspiracy of mis-declaration of description and mis-classification of goods. M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers had hatched a conspiracy with Shri Mohan Jain, Director of 'M/s BSSPL' with sole aim to clear the Cold Rolled Stainless steel Coils without payment of applicable Customs duty by willfully mis-declaring its description and correct CTH No. M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers were very much aware that the consignments imported by 'M/s BSSPL' by declaring as Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)' was actually Cold Rolled Stainless Steel Coils falling under heading others of chapter 7220, as it was evident from the documents available in the form of Mill Test Certificate/Test certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Mohan Jain, Director of 'M/s BSSPL'. The commissions and omissions on the part of M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers who are Licensed Customs Broker Firms were in violation of the obligations casted on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018.

By these deliberate acts and omissions, they abetted 'M/s BSSPL' in mis-declaring the description of goods and mis-classifying the CTH of imported goods in the Bills of Entry filed by them. M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers connived with 'M/s BSSPL' and facilitated them the import goods without payment of applicable Customs duty in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. All the aforesaid acts of omission and commissions on part of M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers have rendered themselves liable to penalty under provisions of Section 112 (a), 112(b) of Customs Act, 1962. They prepared/got prepared, signed/got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of Customs Act, 1962.

20. It further appears that mis-declaration of description and mis-classification of the goods in the import documents viz. Bills of Entry filed by M/s Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., M/s. Maffick Logistics, M/s. Kashish Impex and M/s. Image Cargo Movers on behalf of 'M/s BSSPL' before the Customs authorities, was done on the direction of Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, Authorized signatory and G-card of M/s. R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics, Shri Rajesh Balan Nair, G-card Holder and authorized person of M/s. Kashish Impex and Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers. Shri Mohan Jain, Director of 'M/s BSSPL' handed over the documents to Shri Jitender Kumar, Shri Deepak Sawlani, Shri Devendra N Thakker, Shri Rajesh Balan Nair, and Shri Bharat Malik i.e. responsible persons of respective Customs Brokers for filing of Bills of Entry and to arrange clearance of the goods. Shri Jitender Kumar, Shri Deepak Sawlani, Shri Devendra N Thakker, Shri Rajesh Balan Nair, and Shri Bharat Malik were aware of the correct classification of the goods but as per the directions of Shri Mohan Jain, Director of 'M/s BSSPL', they willfully & knowingly suppressed the true, correct and actual description and classification of the goods with an intent to facilitate 'M/s BSSPL' for evasion of applicable Customs Duty. Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, Authorized signatory and G-card of M/s. R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics, Shri Rajesh Balan Nair, G-card Holder and authorized person of M/s. Kashish Impex and Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers, who handled clearance activities in the capacity as the Custom Brokers are responsible for having indulged in the conspiracy of mis-declaration of description and mis-classification of the goods. Shri Jitender Kumar, Shri Deepak Sawlani, Shri Devendra N Thakker, Shri Rajesh Balan Nair, and Shri Bharat Malik had hatched conspiracy with Shri Mohan Jain, Director of 'M/s BSSPL' with sole aim to clear

the Cold Rolled Stainless steel Coils without payment of applicable Customs duty by willfully mis-declaring its description and correct CTH No. Shri Jitender Kumar, Shri Deepak Sawlani, Shri Devendra N Thakker, Shri Rajesh Balan Nair, and Shri Bharat Malik were very much aware that the consignments imported by 'M/s BSSPL' by declaring as Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type) was actually Cold Rolled Stainless Steel Coils falling under heading others of chapter 7220, as it was evident from the documents available in the form of Test certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Mohan Jain, Director of 'M/s BSSPL' Steel. The commissions and omissions on the part of Shri Jitender Kumar, Shri Deepak Sawlani, Shri Devendra N Thakker, Shri Rajesh Balan Nair, and Shri Bharat Malik who were G-card holder and Authorized signatory of the Licensed Customs Broker Firms was in violation of the obligations casted on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they abetted 'M/s BSSPL' in mis-declaring the description of goods and mis-classifying the CTH of imported goods in the Bills of Entry filed by them. Shri Jitender Kumar, Shri Deepak Sawlani, Shri Devendra N Thakker, Shri Rajesh Balan Nair, and Shri Bharat Malik facilitated 'M/s BSSPL' to clear the import goods without payment of applicable Customs duty in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. All the aforesaid acts of omissions and commissions on the part of Shri Jitender Kumar, Shri Deepak Sawlani, Shri Devendra N Thakker, Shri Rajesh Balan Nair, and Shri Bharat Malik have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, Authorized signatory and G-card of M/s. R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics, Shri Rajesh Balan Nair, G-card Holder and authorized person of M/s. Kashish Impex and Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers have rendered themselves liable to penalty under provisions of Section 112 (a), 112(b) of Customs Act, 1962. He prepared/got prepared, signed/got signed documents which he had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of Customs Act, 1962.

21. The Port/ICD/SEZ wise details of goods imported by M/s Bhagvan Shri Strips Private Limited (IEC-0513066454) having office at B-56, Wazirpur Industrial Arca, Wazirpur, Delhi-110052 suppressing the description and Classification of goods, along with assessable value and Differential Duty demanded is as detailed below:

Table-1

Sr. No.	Bills of Entry No. & Date	Ports / ICDs/ SEZ of imports	Value of goods imported (Rs.)	Duty Short paid/ to be recovered (Rs.)
1	2	3	4	5
1	As shown in Annexure-A to the notice	Mundra port (INMUN1), Gujarat	266231965	13615390

2	As shown in Annexure-B to the notice	ICD Sabarmati (INSBI6), Ahmedabad	12919191	663457
3	As shown in Annexure-C to the notice	Dadri ACPL CFS (INAPL6)	5976738	982093
4	As shown in Annexure-D to the notice	Noida-Dadri, ICD (INDER6)	6028962	309613
5	As shown in Annexure-E to the notice	ICD Loni (INLON6)	2394774	122982
	Total		293551630	15693535

22. SHOW CAUSE NOTICE:

22.1. In view of above, a **Show Cause Notice No. GEN/ADJ/COMM/273/2022-Adjn dated 12.05.2023** was issued to **M/s Bhagvan Shri Strips Private Limited (IEC-0513066454)** having office at B-56, Wazirpur Industrial Area, Wazirpur Delhi-110052, and made answerable to the Principal Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, wherein it has been proposed to:-

- (i) Reject the declared classification of the subject goods in the Bills of Entry as detailed in Annexure's attached to impugned show cause notice and detailed vide Annexure A to E attached to impugned show cause notice, should not be rejected and goods be re-classified under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and why the subject Bills of Entry should not be reassessed;
- (ii) Confiscate the goods valued of **Rs. 29,35,51,630/- (Rupees Twenty-Nine Crore Thirty-Five Lacs Fifty-One Thousand Six Hundred Thirty only)** as detailed vide Annexure A to E attached to impugned show cause notice under the provisions of Section 111(m) of the Customs Act, 1962; however the same have been cleared and are not physically available for confiscation.
- (iii) Demand and recover the differential/Short paid Customs duty amounting to **Rs. 1,56,93,535/- (Rupees One Crore Fifty Six Lacs Ninety Three Thousand Five Hundred Thirty Five only)** as per as detailed vide Annexure A to E attached to this Notice, under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid;
- (iv) Appropriate the Customs Duty amounting of **Rs. 25,00,000/- (Rupees Twenty-Five Lacs Only)** already paid by M/s Bhagvan Shri Strips Private Limited, towards their Duty Liabilities mentioned at (iii) above;
- (v) Impose Penalty upon **M/s Bhagvan Shri Strips Pvt. Ltd.** under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for goods mentioned at (ii) above.
- (vi) Penalty should not be imposed upon **M/s Bhagvan Shri Strips Pvt. Ltd.** under the provisions of Section 114A, 114AA and 117 of the Customs Act, 1962 for duty mentioned at (iii) above.

- (vii) Impose penalty upon **Shri Mohan Jain, Director of M/s Bhagvan Shri Strips Private Limited (IEC-0513066454)** under Section 112 (a), 112(b), 114AA and 117 of the Customs Act, 1962 separately for his role as discussed in para supra.

22.2. The impugned Show Cause Notice was also issued to following persons/companies/firms/concerns as appearing in Column 2 of the following Tables, wherein it has been proposed to impose penalty on them as under:

Sr. No.	Name	Penal provisions under Customs Act, 1962				
		(3)	(4)	(5)	(6)	(7)
1	M/s Shri Balaji Logistics;	112(a)	112(b)	---	114AA	117
2	M/s. R R Logistics;	112(a)	112(b)	---	114AA	117
3	M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.;	112(a)	112(b)	---	114AA	117
4	M/s. Maffick Logistics;	112(a)	112(b)	---	114AA	117
5.	M/s. Kashish Impex;	112(a)	112(b)	---	114AA	117
6.	M/s. Image Cargo Movers	112(a)	112(b)	---	114AA	117
7.	Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics;	112(a)	112(b)	---	114AA	117
8.	Shri Deepak Sawlani, Authorized signatory and G-card of M/s. R R Logistics, and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.,	112(a)	112(b)	---	114AA	117
9.	Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics,	112(a)	112(b)	---	114AA	117
10.	Shri Rajesh Balan Nair, G-card Holder and authorized person of M/s. Kashish Impex; and	112(a)	112(b)	---	114AA	117
11.	Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers	112(a)	112(b)	---	114AA	117

23. DEFENSE SUBMISSION:

23.1. M/s Bhagvan Shri Strips Private Limited (IEC-0513066454) (Noticee-1), and Shri Mohan Jain, Director of 'M/s BSSPL' Steel (Noticee-2) vide their email dated, 16.04.2024 have submitted their reply in respect of impugned Show Cause Notice i.e. **SCN F.No. GEN/ADJ/COMM/273/2022-Adjn, dated 12.05.2023;** wherein they interalia submitted as under:

- (i) That they deny the allegations and insinuations levelled in the Notice as if each one of them were set out herein below and individually traversed.
- (ii) That they have short-paid the Customs duty and that we are liable to pay the same along with interest and penalty as sought in the SCN.

- (iii) That they deny on the willfully suppressing of the facts from the Department so as to be liable for invocation of extended period of limitation.
- (iv) That there is no statutory definition of Ni Cr Austenitic Steel neither there is bifurcation that what is Ni Cr Steel. Further they stated that the matter is more of Technical and interpretation based and so there is no suppression as such.
- (v) That the classification adopted by them has been rejected by the department by relying on websites of certain suppliers and Wikipedia, which are not recognized technical authority on the subject.
- (vi) That the Department cannot reject the Certificate of Country of Origin without holding any consultations with the issuing authority.
- (vii) That the allegation of suppression of facts and wilful misrepresentation/ misstatement to invoke the provisions of Section 28(4) is a bare allegation and without any basis. A difference of opinion on classification cannot be the basis to claim suppression of facts.

That their detailed submissions on the afore-mentioned points are as under:

REG.: SCOPE OF CLASSIFICATION & REFERENCE TO INDIAN STANDARDS (IS) ISSUED BY THE BUREAU OF INDIAN STANDARDS (BIS)

- (viii) For the purpose of classification of imported goods, the scope of Customs Tariff heading is of paramount importance. The scope of any heading is to be determined by the language used in the heading and the relevant section notes, chapter notes and heading/subheading notes. The heading 7220 is relevant for them.

7220	Flat-rolled products of stainless steel, of a width of less than 600 mm
-	Not further worked than hot rolled:

7220 20	- Not further worked than cold rolled (cold-reduced):

7220 90	- Other:
7220 9010	--- Skelp (strips for pipes and tubes)
	--- Strips for pipes and tubes (other than skelp)
7020 9021	---- Chromium Type
7020 9022	---- Nickel chromium austenitic type
7020 9029	---- Other
7020 9090	--- Other

At the six-digit level, the goods are classifiable under CTH 7020 90. In the HSN, there is no entry at the 8-digit level. The entries at the 8-digit level have been introduced by the national customs administrations depending on their requirements and the same vary from country to country. In this background, the scope of the entry "7020 9022 ---- Nickel Chromium Austenitic Type" under the Indian Customs Tariff Act is to be seen in terms of the description given in the CTH along with the Section and Chapter Notes. A perusal of the Section Notes under Section

XV of the Customs Tariff and Chapter Notes under Chapter 72 of the Customs Tariff indicates that the terminology 'Nickel chromium austenitic steel' has not been defined anywhere in the Customs Tariff. In this factual matrix, the scope of this entry can be understood in terms of the national standards published by the Bureau of Indian Standards. In the said Indian standards (IS), the description used is 'austenitic steel'. There is no further classification of austenitic steel provided under the Indian standards.

- (ix) It is to be noted that three Indian Standards as applicable to stainless steel are relevant for their consideration. These are:
- a. *IS 6911: 2017 (reaffirmed in 2022) – Stainless Steel Plate, Sheet and Strip – Specification*
 - b. *IS 5522: 2014 (reaffirmed in 2019) – Stainless Steel Sheets and Strips for Utensils – Specification*
 - c. *IS 15997: 2012 (reaffirmed in 2018 and 2022) - Low Nickel Austenitic Stainless Steel Sheet and Strip for Utensils and Kitchen Appliances – Specification*
- (x) In IS 6911, four major categories of stainless steel mentioned are Austenitic steel, Ferritic stainless steel, Martensitic stainless steel and Duplex stainless steel. As far as austenitic type steel is concerned, as per IS 6911 (as reaffirmed in 2022), the different grades of steel mentioned are 200 series, 300 series and N series. In 200 series, the percentage of Nickel is lower than the percentage of Nickel in 300 series. However, the percentage of Nickel is lowest for the 'N' series, i.e. for N1 grade, Nickel percentage prescribed is from 1.00-2.00 percent.
- (xi) Further, IS 15997:2012 deals with Low Nickel Austenitic stainless steel sheets and strips for utensils and kitchens appliances. In this standard, the austenitic steel grades N1, N2 and N3 are mentioned. This standard has been amended in March 2023 (effective 01.09.23) and three grades of steel, i.e. N5, N6 and N7 have been incorporated wherein the Nickel percentage has been prescribed between 0.20 to 0.95 percent.
- (xii) From the above analysis, it is clear that there are certain grades of austenitic steel which can have very low percentage of nickel. Further, there are no separate categories of austenitic steel defined in the Indian standards such as 'Nickel Chromium Austenitic Steel' or 'Manganese Chromium Austenitic Steel'. The IS simply provide for the percentage of different components in the austenitic steel without defining the same as 'Nickel-chromium' type or 'Manganese Chromium' type.
- (xiii) The Department has alleged such a stipulation in the SCN wherein it has been concluded that an austenitic steel having more manganese chromium than nickel chromium will not be a 'Nickel Chromium Austenitic Steel'. There is no such categorization in the Indian Standards or in any other statutory literature. The Indian standards do not also stipulate calculation of percentage of manganese chromium on one hand and that of nickel and chromium on the other hand to arrive at what type of austenitic steel it is. Once it is established that the item imported (J3 grade) is an austenitic steel and it comes out clearly from the chemical analysis that both Nickel and Chromium are present in the same, the item imported will squarely fall in the category of 'Nickel chromium austenitic

steel' under CTH 7220 9022. They submit that the steel strips imported by them are austenitic steel and contain both Nickel as well as Chromium and are therefore, correctly classifiable under heading 7220 9022.

- (xiv) Therefore, the conclusion drawn by the revenue in the SCN is erroneous and the impugned Notice thus deserves to be dropped on this count alone.

REG.: RELIANCE PLACED BY THE DEPARTMENT ON VARIOUS WEBSITES TO SUPPORT ITS ALLEGATION ABOUT MISCLASSIFICATION IS GROSSLY INCORRECT

- (xv) The Department has relied upon the information provided on the website of 'Wikipedia' about austenitic steels. It is mentioned therein that there are two subgroups of austenitic stainless steels, i.e. 300 series stainless steel achieve their austenitic structure primarily by a nickel addition while 200 series stainless steel substitute manganese and nitrogen for nickel, though there is still a small nickel content. Based on this information, the department has alleged that 'J3 grade' of steel imported by them has less nickel and more manganese and therefore, is not a 'Nickel Chromium austenitic steel'.
- (xvi) In this regard, it is submitted that as already submitted above, the relevant Indian Standards do not categorise the austenitic steels into separate categories such as 'Nickel Chromium Austenitic Steel' and 'Manganese Chromium Austenitic Steel'. CTH 7220 9022 covers 'Nickel Chromium austenitic steel'. The steel sheets imported by them have Nickel, Chromium, Manganese and other alloying materials. There is no dispute that the item imported by them is an austenitic steel. The issue to be decided is that in an austenitic stainless steel, if Nickel is present in less percentage and percentage of Manganese is more, whether the austenitic steel can be considered as an 'austenitic steel other than Nickel Chromium type'. The department has not cited any authoritative technical literature or authorised standards such as Indian Standards or international standards in support of its contention that such an austenitic steel will not fall in the category of 'Nickel Chromium austenitic steel'. In fact, no definition of 'Nickel Chromium austenitic steel' has been cited by the department.
- (xvii) Further, Wikipedia is an open source website wherein any person can upload any content and any person can edit the content. There is no requirement of citing any technical literature in support of the content uploaded on Wikipedia. There is no system of any validation of such content for its correctness and accuracy by any technically competent person. It can be a good source of general information about any topic but is not an authoritative source which can be cited in any techno legal proceedings. In support of this contention they rely on the following judgements:
- Ponds India Ltd. vs. Commr. of Trade Tax, Lucknow* [2008 (227) E.L.T. 497 (S.C.)]
 - Hewlett Packard India Sales Pvt. Ltd. vs. Commr. of Cus. (Import), Nhava Sheva* [2023 (383) E.L.T. 241 (S.C.)]
 - Commissioner of Customs, Bangalore vs. Acer India Pvt. Ltd.* [2007 (218) E.L.T. 17 (S.C.)]

- (xviii) From the above analysis about the lack of credibility of Wikipedia as an authentic source on technical matters, it is submitted that no reliance can be placed on this website to conclude that the goods imported were 'Manganese Chromium Austenitic Steel' and not 'Nickel Chromium Austenitic Steel'.
- (xix) In the SCN, reliance has also been placed on the official website of Aalco Metals Limited, a company registered in UK and Wales. The company trades in 200 series stainless steel. As per the website, the main feature of 200 series stainless steel is that it has lower Nickel than 300 series, which is replaced by Manganese. Reliance has also been placed on the website of ASM International, a material information society. It has been mentioned 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.
- (xx) As mentioned above, the SCN has been issued on the premise that in the item imported by them, there is less percentage of nickel and chromium than the percentage of Manganese and Chromium and therefore the same cannot be considered as 'Nickel Chromium Austenitic Steel'. A careful perusal of the material on the website of Aalco Metals Limited indicates that there is no mention therein that 200 series austenitic steel cannot be considered as Nickel Chromium Austenitic Steel. Mere presence of more Manganese in the item imported along with presence of Nickel in smaller quantity cannot disqualify the item imported from classification under CTH 7220 9022. The information on the said website shows the percentage of Nickel for 200 series as 2.00% - 6.00%. However, with the improved technology, the percentage of Nickel in the 'N' series is as low as 1-2% (N1, N2). Further, in N5, N6 and N7 series, the Nickel percentage varies from 0.20% to 0.95%. However, even with lower percentage of Nickel, these are still classified as austenitic steel.
- (xxi) Further, as per the conclusion drawn by the Department on the basis of the information available on the website of ASM International, the austenitic steel should have Nickel percentage from 6% to 12% which represent the range from minimum to maximum austenitic stability. However, this conclusion, besides being not supported by any authentic technical basis, is also not even supported by the Indian Standards. The Nickel percentage in some austenitic steels is as low as 1-2 % (N1, N2) and 0.45% to 0.95% (N5, N6, N7). Even in austenitic stainless steels of numerical symbol 201, 201A, 202, 201S, 201LN, 201N, 204, 204 Cu1, 204 Cu2, 204 Cu3, the Nickel limit is permitted to be less than 6% while the website of ASM International mentions the lower limit to be not less than 6% for austenitic stability. It is therefore clear that the information mentioned in this website is outdated and cannot be relied upon for its accuracy.
- (xxii) Therefore, as already established earlier, since the item imported by them contains Nickel as well as Chromium and are austenitic type, these are correctly classifiable as Nickel Chromium Austenitic Steel under CTH 7220 9022.

REG.: DEPARTMENT CANNOT REJECT THE CERTIFICATE OF COUNTRY OF ORIGIN WITHOUT HOLDING ANY CONSULTATIONS WITH THE ISSUING AUTHORITY

- (xxiii) In this regard, it is submitted that although the name of the invoice issuing exporter is not mentioned in the column 1 of the COO which is for 'Goods consigned from', the said exporter's name is mentioned in column no. 7 which is for 'Description of goods' as a Non-Party Operator. Therefore, the invoice issuing exporter's name is mentioned in the COO and just because the same is mentioned in a different column does not render the COO as 'invalid'.
- (xxiv) Without prejudice to the above, it is submitted that if the importing member nation has any queries regarding the Certificate, it is within the Asia-Pacific Rules of Origin, specifically at 'Clause 5 of Annexure B to the Rules of Origin', for the importing member nation to initiate consultations with the Designated Authority of the exporting member nation. The said Clause 5 stipulates that where the importing Contracting State has reasonable doubt as to the authenticity of a Certificate of Origin or regarding the true origin of the products in question or it feels that the Rules of Origin are being circumvented, it may initiate consultations with the relevant Contracting State and Issuing Authority, and even inspect the goods in question. In cases of suspected fraudulent acts, the concerned Issuing Authorities are bound to cooperate in the action to be taken in the territory of each Contracting State against the persons involved, including imposing legal sanctions for fraudulent acts. They have reproduced relevant extract of clause 5.
- (xxv) that in the present case, there is no consultation initiated by the revenue with the issuing authority in the exporting country and has simply sought to reject the COO on the grounds as mentioned above. Such an action on the part of the revenue is not at all in accordance with the provisions of the APTA agreement and the impugned SCN thus deserves to be dropped on this count alone.

REG.: ALTERNATIVE CLASSIFICATION PROPOSED BY THE REVENUE UNDER CTH 7220 9090 IS NOT CORRECT

- (xxvi) that the Department has proposed in the SCN that the item imported by them is classifiable under CTH 7220 9090 as 'Other'. This proposed classification runs contrary to the premise based on which the SCN has been issued. A careful perusal of the scheme of entries in heading 7220 will indicate that at single dash level there are three entries. These are (i) Not further worked than hot-rolled (7220 11, 7220 12); (ii) Not further worked than cold rolled (7220 20) and (iii) Other (7220 90). It is an admitted position even in the SCN that the item imported will fall under heading 7220 90 at six-digit level. The only ground on which the declared classification under heading 7220 9022 is being denied is that though the goods imported by them are austenitic type but these are 'Manganese Chromium Austenitic Type' and not 'Nickel Chromium Austenitic Type'. Assuming, without admitting that this classification proposed by the Department is correct and the goods are austenitic type but not 'Nickel-chromium' type, even in that case, the goods will remain classifiable at three dash level after 7220 90 10 as -

- - - Strips for pipes and tubes (other than skelps):

and under this, at four dash level in any of the three entries, i.e.

7220 9021 (Chromium type);

7220 9022 (Nickel chromium austenitic type); or

7220 9029 (Other).

It will not be classified under the other three dash level entry i.e. 7220 9090 which covers 'Other'. Therefore, it is submitted that the classification adopted by the Noticee has been rejected without proper understanding of the scheme of classification for the heading 7220 90.

- (xxvii) Without accepting that the classification adopted by the Noticee under CTH 7220 9022 is incorrect, if the same were to be disregarded, even in that case, the correct classification will be 7220 9029 and not 7220 9090 as proposed by the revenue. In that case also, they will be entitled to an exemption of 15% on the BCD rate under serial number 735 of Notification No. 50/2018-Cus dated 30.06.2018. Thus, the classification proposed by the Department is incorrect irrespective of the fact whether the classification adopted by the Noticee is accepted or not.

REG.: A MERE CLAIM OF DIFFERENT CLASSIFICATION CANNOT MEAN SUPPRESSION OF FACTS AND INVOCATION OF EXTENDED PERIOD OF LIMITATION

- (xxviii) The SCN has also invoked extended period of limitation of five years under Section 28(4) of the Customs Act alleging that the imports were deliberately mis-declared and misclassified by them with an intention to evade the applicable duty, leading to suppression of facts and wilful mis-statement. In this regard, they wish to state that prior to the issue of notification no. 50/2018-Cus, there was no difference in the rate of duty applicable to the heading 7220 9022 as adopted by the Noticee or CTH 7220 9090 as proposed by the Department. However, after the issue of notification no. 50/2018-Cus, they claimed the benefit of the notification by classifying the goods under 7220 9022 as the item imported by them was more appropriately classifiable under this heading. No adverse inference can be drawn against them on the ground that they changed the classification. Every importer is entitled to claim the benefit of an exemption if he has bonafide belief that he is entitled to the avail the benefit of exemption. Similarly, they changed the classification after the DRI investigation to 7220 9090, as this was the classification being adopted by DRI during different investigations. This was done to avoid any further controversy regarding the future consignments as such enquiry has affected their business adversely.

- (xxix) The SCN has been issued for the import which took place in January, 2019 to January, 2021. The SCN has been issued in terms of section 28(4) of Customs Act, 1962 which covers provisions for demand of duty short paid by reason of collusion, misstatement or suppression of facts. In such a case, the department is empowered to issue SCN within five years from the relevant date i.e. within the extended period of limitation. However, when there is no suppression of facts or misstatement etc., the SCN has to be issued within two years of the relevant date in terms of Section 28(1) of the Customs Act, 1962 i.e. within the normal period

of limitation. The relevant date is the date when out of charge order is given by the proper officer of Customs. This date can be taken as near to the date of filing of the Bill of Entry, as the date of such order passed by the proper officer has not been mentioned in the SCN. In this case, the SCN has been issued on 12.05.2023, which is beyond the normal period of two years from the relevant in entire Bills of Entry covered in the notice. It is submitted that there is no suppression of facts or misstatement on our part in the present case. Therefore, the SCN could not have been issued in terms of section 28(4) of Customs Act, 1962.

- (xxx) that they had truthfully declared all the material facts at the time of imports. The department had examined their claim at the time of each import and found their claim acceptable. The SCN only makes a bland allegation that they had resorted to misstatement and suppression of facts without specifying as to what specific action was taken by them and how the same can be considered as misstatement and/ or suppression of facts.
- (xxxi) Noticees have referred to Compulsory Compliance Requirements as mentioned in the Bill of entry, which are required to be checked by each Customs Officer before the clearance. That they had categorically declared that the item imported was of J3 grade. The invoice also mentions the grade of stainless steel coils imported as J3. The classification claimed was also 7220 9022. In a number of Bills of Entries, the test certificate issued by the manufacturer was also enclosed with the Bills of Entries. The compulsory compliance requirement for this heading was quite clear and unambiguous. The Departmental officers were required to check whether the goods imported fell within the classification claimed or not. They had claimed the classification under heading 7220 9022. The grade of J3 was also specifically mentioned in the Bill of Entry. The compulsory compliance requirement was meant to ensure that the goods covered under heading 7220 9022 meet these requirements including the IS 6911:2017 mentioned therein. As there was no objection from the department and the goods were cleared in accordance with their claim for concessional rate of customs duty, it is clear that their claim was accepted by the department. Now SCN only makes a bland allegation of suppression of facts and misstatement without specifically mentioning as to how exactly this suppression or misstatement was resorted to by them. They categorically deny that any suppression of facts was done by them or they had resorted to any misstatement.

A careful perusal of this SCN will indicate that there is not a single specific action which was done by them and based on which the learned authority has arrived at this conclusion that they were well aware of this fact that the benefit was not available to CTH 7220 9090. The SCN has used the words such as malafide intention, intent to evade payment of Customs duty, intentional misdeclaration, suppression of facts etc., the standard phrases used in Section 28(4) but without substantiating any of these allegations. The only basis which is mentioned in this para is the 'from the investigations carried out in the case'.

- (xxxii) During the course of investigation, they had submitted all the data to the department. From none of the statement or any other evidence, it is

forthcoming that they had deliberately resorted to any suppression of facts or misstatement. The department, based on the material available on the websites mentioned in the SCN, has arrived at certain conclusion that the classification claimed by them was wrong. But a mere difference of opinion between department and the importer regarding classification cannot be equated with suppression of facts or misstatement. Something more positive is required to be proved against them. This principal has been well laid down in a catena of judgements, wherein the Courts have held that where the issue is relating to interpretation, suppression of facts cannot be alleged and extended period of limitation cannot be invoked. they rely on the following judgements in this regard:

- a. *International Merchandising Company, LLC vs. Commissioner of Service Tax, New Delhi* [2022 (67) G.S.T.L. 129 (S.C.)];
- b. *Sundaram Finance Ltd. vs. Commissioner* [2019 (25) G.S.T.L. J30 (S.C.)];
- c. *Commissioner vs. Singh Transporters* [2018 (13) G.S.T.L. J40 (S.C.)];
- d. *Commissioner vs. N.C. Paul & Company* [2020 (43) G.S.T.L. J93 (S.C.)].

REG.: NO PENALTY IMPOSABLE UNDER SECTION 112(a) OR 112(b)

- (xxxiii) that the SCN proposes to impose penalty under Section 112(a) or 112(b) of the Customs Act. Penalty under this Section is imposed for improper importation of goods. In the present case, there is no act committed by the Noticee which would render the goods liable to confiscation under Section 111 of the Customs Act. As already submitted above, all the relevant information and documents were filed with the Customs authorities at the time of import and there was no suppression of facts on the part of the Noticee. Therefore, there is no penalty which can be imposed under Section 112 of the Customs Act on the Noticee.

REG.: NO PENALTY IMPOSABLE UNDER SECTION 114A

- (xxxiv) that the SCN has proposed to impose penalty under Section 114A of the Customs Act. As per this Section, where duty has not been levied or short-levied on account of collusion or any willful mis-statement or suppression of facts, penalty equal to the duty amount will be imposed on the defaulter. In the present case, as already discussed above, there is no suppression of facts, collusion, or any willful mis-statement on the part of the Noticee and therefore penalty under Section 114A is not imposable.
- (xxxv) It is relevant to note here that penalty under Section 112 cannot be imposed in cases where penalty is imposed under Section 114A of the Customs Act.

REG.: NO PENALTY IMPOSABLE UNDER SECTION 114AA

- (xxxvi) The SCN has proposed to impose penalty under Section 114AA of the Customs Act. As per Section 114AA of the Customs Act, 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 the Customs Act, he shall be liable to a penalty not exceeding five times the value of goods. In the present case,

there is no false declaration, statement or document made, signed or used by them and as submitted earlier, this is a mere difference of opinion and interpretation of the classification of the product imported. Therefore, no penalty can be imposed under Section 114AA of the Customs Act.

REG: NO PENALTY CAN BE IMPOSED UNDER SECTION 117

(xxxvii) The SCN has proposed to impose penalty under Section 117 of the Customs Act even though the ingredients necessary for imposition of such penalty are absent in the present case. In the present case, as already submitted above, there was no contravention of any provisions of the Customs Act or abetment of any such contravention, on the part of the Noticee. Accordingly, no penalty can be imposed under Section 117.

(xxxviii) In view of the above, they prayed that all the proposals in the Show Cause Notice may be withdrawn by discharging the Notice in its entirety.

23.2. DEFENSE SUBMISSION BY THE NOTICEES i.e. SHRI DEEPAK SAWLANI, AUTHORISED SIGNATORY AND G-CARD HOLDER OF M/S. R R LOGISTICS & M/S. SHIVAM CLEARING AGENCY (MUMBAI) PVT. LTD (CUSTOMS BROKERS):

Written reply against impugned SCN was submitted by Shri Deepak Sawlani, Authorised Signatory and G-Card Holder Of M/S. R R Logistics & M/S. Shivam Clearing Agency (Mumbai) Pvt. Ltd (Customs Brokers) vide their letter dated 03.07.2023, wherein they interalia stated as under:

- (i). *that they being CHAs were responsible for filing the bills of entry along with the documents like invoices, packing list, authority letters etc. It is an admitted fact that the description as well as quantities of goods covered under the bills of entry were in accordance with the invoices, packing list and other documents accompanying the goods. Once the goods arrived at the customs area a CHAs like them have no means nor are allowed to check the actual contents of the imported goods and the CHA is merely a person who submits documents like invoices, packing list etc. after ensuring that the description, quantity, certificate of origin and other details as shown in the bill of entry are in accordance with the documents accompanying the imported goods. In the present case also the bills of entry submitted by them for the imports of M/s. Bhagvan shri Strips Private Ltd contained the details of the imported goods which were admittedly in accordance with the details appearing in the other documents. Therefore, there is no illegality or irregularity committed by them as CHA.*
- (ii). *that as per the allegations in the show cause notice, they do not understand as to how they have contravened Regulation 10(d) and 10(e) of the CBLR, 2018. They have in capacity of CHA advised their client correctly to provide correct information and documents for the purpose of customs clearance of the imported goods. The show cause notice also does not allege or rely upon any evidence to show that they have wrongfully advised their client so as not to comply with the customs act and rules framed there under. It is also pertinent to note that if they were actually aware that M/s. Bhagvan shri Strips Private Ltd. were importing cold rolled stainless steel coils, they would have informed the Deputy Commissioner of Customs, however, the show cause notice nowhere provides any evidence about their having knowledge*

that the goods which were being imported were cold rolled stainless steel coils. As mentioned in the above paragraph a customs house agent is supposed to verify the documents like the bills of entry and accompanying documents and to see that all the descriptions match. As mentioned above a CHA is not allowed to check the cargo and the job of the CHA is only doing proper documentation. Therefore, the proposals in the show cause notice are unclear as to how they have not exercised due diligence to ascertain the correctness of the information. It is virtually impossible to know whether the imported cargo is cold rolled stainless steel coils or nickel chromium austenitic type coils, in as much as both the commodities fall under Chapter 72 and are products of the same nature. Therefore, even if a CHA is able to check the cargo, a bare perusal by seeing the cargo would never reveal the actual nature of the goods in as much as the goods are of the same chapter i.e. Chapter 72 and are similar in nature. In view of these peculiar facts the allegations made in the show cause notice that they have contravened Regulation 10(d) and 10(e), are allegations which are not supported by any cogent evidence and hence the proposals to invoke the provisions of Regulation 17 and 18 do not warrant any consideration. The proposals in the show cause notice are hence liable to be vacated in the interest of justice.

- (iii). that the issue of mis-declaration made by an importer and its implication on the CHA came for consideration before the Hon'ble Delhi High Court in the case of M/s. Kunal Travels (Cargo) reported at 2017 (354) ELT 447 whereby the Hon'ble Delhi High Court observed that if the goods do not corroborate with description, it cannot be deemed to be a mis-declaration by the CHA and hence there could be no guilt, fault or penalty on the CHA in absence of any specific evidence suggesting active involvement. The Hon'ble Delhi High Court also held that the license of a CHA cannot be cancelled because of such mis-declaration made by the importer. That in another case of M/s. Exim Cargo Services reported at 2019 (368) ELT 1024 the Hon'ble Delhi High Court considered the violation of the CBLR Regulations, 2013 in the event of under valuation of imported goods. The Hon'ble Delhi High Court held that when there is no evidence attributable to the CHA or any of its employee of any conscious or deliberate misstatement on behalf of the importer, when there is no corroborative evidence to show that the CHA having information and knowledge has committed contravention, mis-declaration and under valuation, then in such a case, the license of the CHA cannot be cancelled under the CBLR, 2013. These decisions of the Hon'ble Delhi High Court have been followed by the Hon'ble CESTAT, Bangalore in the case of M/s. United Safe Way India Pvt. Ltd. reported at 2019 (369) ELT 1563 in the context of violation of Regulation 14 and 17 of the CBLR, 2018. The Hon'ble Tribunal has in this case held that the courts have consistently held that extreme penalty of revocation of license should be invoked only when there is clear involvement of the CHA in mis-declaring the value of the goods in order to avail some monetary benefits in absence of there being any such clear evidence, the revocation/suspension of license under CBLR, 2018 would not be sustainable. Therefore, it is a settled legal position that in absence of there being evidence of active involvement in mis-declaration of goods with the intent to avail some benefit, the license of a CHA cannot be revoked or suspended. In view of these decisions of the Hon'ble Delhi High Court and the Hon'ble Tribunal, the proposal to debar them from carrying out the business of customs clearance for a period of 6 months in view of Regulation

17 of the CBLR, 2018, is a proposal which is not sustainable in law and hence liable to be dropped in the interest of justice.

- (iv). that in the present case, the department has not produced any cogent evidence to show that they have willingly participated in mis-declaring the imported goods and that they have got some monetary or other benefits by voluntarily mis-declaring the description of the goods. Therefore, in view of the decisions mentioned above, when the 'G' Card cannot be suspended or revoked without there being clear evidence, penalty can also not be imposed under Regulation 18 of the CBLR, 2018. Hence the proposal to impose penalty also deserves to be vacated in the interest of justice.
- (v). that in the present case there are no proceedings of penalty initiated against them under the provisions of the Customs Act, 1962 and this also proves the fact that they have not made any mis-declaration with the intent to help M/s. Bhagvan Shri Strips Pvt. Ltd. get undue advantage of concessional rate of duty. In other words, if there was any fault on their part, proceedings ought to have been initiated under the Customs Act, 1962, however in the present facts, there are no such proceedings.
- (vi). that the issue of when a CHA is liable under the Customs Act, 1962 has also come up for consideration on various occasions. The Hon'ble Tribunal, Mumbai in the case of M/s. Savithri Jewellers Pvt. Ltd. reported at 2020 (374) ELT 754 has held that when the department has not produced any evidence to establish that the CHA had any knowledge about mis-declaration, and when the CHA has prepared documents in a bona-fide manner based upon the declaration made by the exporter, the CHA cannot be penalized under Sections 114(iii) and 114AA of the Customs Act, 1962. In another case of M/s. Apson Enterprises reported at 2017 (358) ELT 817, the Hon'ble Tribunal, Mumbai has again held that when the department has nothing to show that the CHA was concerned with or aware about the valuation of goods, the CHA cannot be penalized under Section 114(iii) of the Customs, Act, 1962. In the case of Nirmal Kumar Agarwal reported at 2013 (298) ELT 133 the Hon'ble Tribunal has again held that until and unless it is proven that the CHA was aware of the mis-declaration and the ingredients of Section 114(iii) are complete, no penalty can be imposed on the CHA. The Hon'ble Tribunal, Chennai in the case of M/s. Moriks Shipping and Trading Pvt. Ltd. reported at 2008 (227) ELT 577 has categorically held that the customs house agent is not required to go into the authenticity of the declaration made by the exporter in the export documents and in absence of any evidence to show that the CHA not only participated in mis-declaration, penalty under Section 114(iii) cannot be imposed. The department went in appeal against the decision of the Hon'ble CESTAT and the Madras High Court in its decision reported at 2015 (317) ELT 3 has vide a detailed order confirmed the findings given by the Hon'ble Tribunal and has held that in absence of any positive evidence that the CHA was actually involved in mis-declaration, penalty under Section 114 of the Customs Act, 1962 cannot be imposed. Thus the law about imposition of penalty on the CHA is very clear that only when the CHA was well aware and actually participated in facilitating the mis-declaration of goods or value, can the CHA be held accountable. Furthermore, it is also clear that the CHA is not supposed to go into and verify each and every detail provided by the exporter about description and value of goods.

(vii). that the CBLR, 2018 are issued under sub-section (2) of section 146 of the Customs Act 1962 and hence, the decisions which are concerning the issue of penalty under the Customs Act, 1962 are also applicable to the cases like the present one. Therefore imposition of penalty under the CBLR, 2018 would also be possible only when the CHA has participated in mis-declaring the goods willingly and has derived some benefit by doing that. The burden of proof for imposition of penalty under the CBLR, 2018 is akin to the burden of proof for imposition of penalty on the CHA under the Customs Act, 1962 and hence the department has to consider the same circumstances and standards for both the provisions. In view of the abovementioned decisions, the proposals in the Show Cause Notice are devoid of any merits and hence liable to be vacated in the interest of justice.

23.3. DEFENSE SUBMISSION BY SHRI JITENDRA KUMAR, PROPRIETOR OF SHRI BALAJI LOGISTICS:

Shri Jitendra Kumar, Proprietor of Shri Balaji Logistics, submitted their reply vide letter dated 15.04.2023, interalia submitted as under:

REG.: NO PENALTY IMPOSABLE UNDER SECTION 112(a) OR 112(b)

(i) that in the present case, there is no act committed by the Noticee which would render the goods liable to confiscation under Section 111 of the Customs Act. As already submitted in the reply filed for 'M/s BSSL', all the relevant information and documents were filed with the Customs authorities at the time of import and there was no suppression of facts on the part of the Noticee. The issue is one of interpretation of the classification entries and not of suppression, wilful mis-statement or collusion. Even the statement recorded of Mr. Jitendra Kumar does not mention about any act done by the Noticee leading to suppression of facts or wilful mis-statement or connivance and collusion on the part of the Noticee. Therefore, there is no penalty which can be imposed under Section 112 of the Customs Act on the Noticee.

REG.: NO PENALTY IMPOSABLE UNDER SECTION 114AA

(ii) that the subject SCNs has proposed to impose penalty under Section 114AA of the Customs Act. As per Section 114AA of the Customs Act. In the present case, there is no false declaration, statement or document made, signed or used by me and as submitted earlier, this is a mere difference of opinion and interpretation of the classification of the product imported. Therefore, no penalty can be imposed under Section 114AA of the Customs Act.

REG: NO PENALTY CAN BE IMPOSED UNDER SECTION 117

(iii) that the SCNs has proposed to impose penalty under Section 117 of the Customs Act even though the ingredients necessary for imposition of such penalty are absent in the present case. In the present case, there was no contravention of any provisions of the Customs Act or abetment of any such contravention, on the part of the Noticee. Accordingly, no penalty can be imposed under Section 117.

(iv) In view of the above, they prayed that all the proposals in the Show Cause Notice may be withdrawn by discharging the Notice in its entirety.

23.4. DEFENSE SUBMISSION DATED 08.07.2023 MADE BY THE NOTICEES I.E. M/S.MAFFICK LOGISTICS AND SHRI DEVENDRA N THAKKER, PROPRIETOR AND F-CARD HOLDER OF M/S.MAFFICK LOGISTICS, AS FOLLOWS:

- (i) that they specifically deny any liability to penalty for attending to the above imports and would submit to deny liability to any provision under the Customs Act and the Rules, Regulations made there under and seek Personal Hearing.
- (ii) that they refer to their reply dated 12.01.2022 submitted before the DRI Officers.
- (iii) All declarations were entered by the CB Office and were based on approved 'Check List' provided and certified by the importers of the said entities. These 'Check Lists' were "entry declarations" as required under Section 46(4) of the Customs Act which reads as follows:

"46(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed." (Highlighting Supplied)

A perusal of the above highlighted portion would place the burden to the truth of the declarations on the importer only.

- (iv) that No Query Memos were issued by the Proper Officer of the Group or the Examination Officer including the Section 47 Officer and goods were cleared after the final appraisement arrived in this case by the Proper Officer. They have not been questioned on the assessment arrived by them to call for a short levy demand of duty made in the present SCN. In any case the CB or its proprietor and employees are not duty bound to arrive at any assessment under Section 17 of the Customs Act. The liability of an assessment is on the importer and the Proper Officer.
- (v) that as Customs Broker they have been operating from Ahmedabad and have conducted Custom clearance for imported goods imported by M/s BSSL, and submitted the Checklists, as signed and declared as received from the importer, along with other import and shipping documents along with the CTH declaration claiming the classification of imported entity under CTH declaration 72209022 for the declared description Non-magnetic Stainless Steel, Cold Rolled Coil, Stock Lot, Grade J3 0 and claiming benefit of Notification No. 50/2017 Sr No. 376.
- (viii) that they are Licensed Customs Brokers, conducting their business mainly at Ahmedabad. In the normal course of their business, they handled clearance of imported consignments of Stainless Steel Cold Rolled and entered the declaration in the Customs ICEGATE seeking clearance as envisaged u/s 2(16) read with Section 46(4) for the said consignments. All declarations were entered by the CB Office and were based on approved 'Check List' provided and certified by the importers of the said entities. These 'Check Lists' were "entry declarations" as required under Section 46(4) of the Customs Act which place the burden to the truth of the declarations on the importer only. It is nobody's case i.e., CB, its proprietor or any other employee of CB are the persons who are the importers and are thus required to made declarations. It is also nobody's case that the above

said persons are in any manner, privy to any alleged mis-declarations or benefited in any manner by the said imports to bring them under the mischief of the person being a 'beneficial importer' under Section 3(a) or read with 2(26) and Section 112(a) of the Customs Act. They have not knowingly dealt with or acquired the possession of any goods, as provided under Section 112(b) of the Customs Act which may be liable to confiscation u/s 111 of the Act or abetted. There is no reason therefore to bring a penalty provisions, as alleged in the SCN for conducting Ministerial Acts performed by them, in the normal course of business as Customs Broker to upload the declarations made by the importer and received by them and thereafter clear the goods as assessed by the proper officers under Section 17 and 47 of the Customs Act. They have complied with the provisions of Customs Act in performance of their duty as Customs Broker and are not liable to any penalty under Section 117 of the Customs Act read with CBLR.

(ix) that there is no material to bring in any Act on part of the Customs Broker or their Proprietor or employees to have not guided the importer or to have *men's-rea* with profit motivation of some kind. No such material exists in the entire SCN. As regards penalty u/s 114AA there is no mis-declarations or any false statements made by the Customs Broker, its proprietor or their employees. They have also not induced any other person to make any false statement and produce such material in any proceeding under the Customs Act at any time. Therefore, the invocation by the SCN of Section 114AA, in this case was contrary to the CBIC and Finance Ministry views and penalty liability under this provision is not invocable and one has to refrain from arriving at penalty under this provision.

(x) In this regard they have placed reliance on various case laws and on the 27th report of the Parliamentary Committee on the comments of the Finance Ministry on the proposed introduction of Section 114AA of the Customs Act, 1962:

- *Sri Krishna Sounds and Lightings 2019 (370) ELT 594 (Tri-Chennai).*
- *Access World Wide Cargo v CC - 2022 (379) ELT 120.*
- *R & B Falcon (A) Pty Ltd., V/s Commissioner of Income Tax - (2008) 12 SCC 466*
- *Deshbandhu Gupta & Co & others V/s Delhi Stock Exchange Association Ltd - (1979) 3 SCR 373.*
- *Customs / Central Excise Rebate in Spentex Industries Ltd - 2015 (324) ELT 686.*

(xi) that as regards 112(a) and 112(b) the liability of the goods to confiscation u/s 111(m) cannot be arrived since no goods are under seizure and in a case of classification dispute the goods cannot be seized and confiscation arrived is the settled Law. They have placed reliance upon following case laws:

- *NORTHERN PLASTIC LTD 1998 (101) E.L.T. 549 (S.C.).*
- *BOSTON SCIENTIFIC INTERNATIONAL BV Vs Commissioner of Customs ACC, MUMBAI 2000 (122) E.L.T. 250 (Tribunal)*
- *SAB NIFE POWER SYSTEMS LTD. Vs Commissioner of Customs 2000 (124) E.L.T. 1080 (Tribunal) Affirmed in Supreme Court 2002(141) ELT A95*
- *PUSHPIT STEELS PVT. LTD. Vs Commissioner of Customs 2001 (130) E.L.T. 520 (Tri. - Chennai)*

- *RELAXO RUBBER LTD. Vs Commissioner of Customs 2001 (132) E.L.T. 56 (Tri. - Del.)*
 - *NISHILAND PARK LTD. Versus COMMISSIONER OF C. EX. & CUS., MUMBAI 2004 (168) E.L.T. 389 (Tri. - Mumbai)*
 - *PIONEER BUSINESS ENTERPRISES Versus COMMISSIONER OF CUSTOMS, BANGALORE 2005 (191) E.L.T. 166 (Tri. - Bang.)*
 - *PEARL ENTERPRISES Versus COMMISSIONER OF CUSTOMS (PORT), KOLKATA 2006 (203) E.L.T. 71 (Tri. - Kolkata)*
 - *CONTESSA COMMERCIAL CO. PVT. LTD. Versus COMMR. OF CUS., FARIDABAD 2007 (208) E.L.T. 299 (Tri. - Kolkata) Affirmed in Supreme Court 2015 (324) ELT 638.*
 - *SUTURES INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS, BANGALORE 2009 (245) E.L.T. 596 (Tri. - Bang.) Maintained in Supreme Court 2010 (255) ELT A85.*
 - *RELIANCE COMMUNICATIONS LTD. Versus C.C. (ACC & IMPORT), MUMBAI 2012 (285) E.L.T. 270 (Tri. - Mumbai)*
 - *S. RAJIV & CO. Versus COMMISSIONER OF CUSTOMS (CSI AIRPORT), MUMBAI 2014 (302) E.L.T. 412 (Tri. - Mumbai)*
 - *STAR INDUSTRIES Versus COMMISSIONER OF CUS. (IMPORTS), NHAVA SHEVA 2014 (312) E.L.T. 209 (Tri. - Mumbai) Affirmed in Supreme Court 2015 (324) ELT 656.*
 - *DEVRAJ M. SALIAN Versus COMMISSIONER OF CUSTOMS (I), MUMBAI 2015 (316) E.L.T. 139 (Tri. - Mumbai) Notice issued in Supreme Court 2016 (331) ELT A194.*
 - *ISGEC HEAVY ENGINEERING LTD. Versus COMMR. OF CUS. (EXPORT), MUMBAI-II 2015 (318) E.L.T. 284 (Tri. - Mumbai)*
 - *SHREE EXPORT Versus COMMR. OF CUS. (EXPORT), NHAVA SHEVA 2015 (318) E.L.T. 695 (Tri. - Mumbai)*
 - *RELIANCE COMMUNICATIONS INFRASTRUCTURE LTD. Versus C.C. (I), NHAVA SHEVA 2015 (320) E.L.T. 306 (Tri. - Mumbai) Appealed to High Court - Admitted in (Bombay High Court) 2017 (349) ELT A222.*
 - *SANCTUM WORKWEAR PVT. LTD. Versus COMMR. OF CUS. (EXPORT), NHAVA SHEVA 2016 (334) E.L.T. 698 (Tri. - Mumbai)*
 - *SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III 2020 (371) E.L.T. 324 (Tri. - Mumbai)*
- (xii) Therefore, there is no material to arrive at any pre-concert with the importers the Customs Brokers and its proprietor and employees have acted in a bona-fide and clearing the imported consignments in the impugned BE. Therefore, they have not aided abetted or knowingly acquired or dealt with any goods on which they could have reasons to believe that the said goods were liable to confiscation.
- (xiii) that no penalty can be called for under the provisions of the said Section 117 as there is no specific charge brought out as to which act has not been complied which was duty of the CB, its proprietor and their employees to comply.

- (xiii) that the CB have cleared imported goods which were assessed by the Proper Officer as declared and under Sections 47 the Proper Officer has made an order for home consumption. As per settled position of law, an assessed Bill of Entry is a Quasi-Judicial Order and unless such assessment is set aside in Appeal, no further action is permissible. Reliance is placed on ITC LTD reported in 2019 (368) E.L.T. 216 (S.C.),
- (xiv) They have sought a personal hearing in the matter and craved leave to add alter amend the submissions and submit a final reply thereafter.

24. RECORDS OF PERSONAL HEARING:

24.1. Personal hearing in the matter was granted to all the noticees on 28.03.2024, and on 10.04.2024. Details of the PH are as under:

(i) **1st PH conducted on 28.03.2024:** Shri Devendra N Thakkar (*Noticee-xi*), Proprietor of M/s. Maffick Logistics (*noticee-vi*) vide his letter dated 08.07.2023 submitted written submission and request to waive reappearing from further hearings. Shri Rajesh Balan Nair (*Noticee-xi*), Authorized representative of M/s. Kashish Impex (*Noticee-vi*) vide his letter dated 06.09.2023 and submitted written submission and request to waive reappearing from further hearings.

(ii) **2nd PH conducted on 10.04.2024:** Shri Kartik Dedhia, Advocate of M/s Bhagvan Shri Strips Private Limited (*Noticee-i*), Shri Mohan Jain(*Noticee-ii*), Director of M/s Bhagvan Shri Strips Private, Shri Jitender Kumar(*Noticee-ix*) proprietor of M/s Balaji Logistics(*Noticee-iii*) appeared for personal hearing and he reiterated his written submission dated 15.04.2024. Shri Bharat Malik (*Noticee-xiii*), Authorized Representative of M/s Image Cargo Movers (*Noticee-viii*) appeared and re-submitted a submission dated 12.10.2023 in their defense.

25. DISCUSSION AND FINDINGS:

25.1. I have carefully gone through the impugned **SCN bearing F.No. GEN/ADJ/COMM/273/2022-Adjn, dated 12.05.2023**, the relied upon documents; submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

- (i) Whether the classification of the impugned imported goods to be rejected and be re-classified under Customs Tariff Heading No. 72209090 or otherwise, of the First Schedule to the Customs Tariff Act, 1975 and to reassess the subject Bills of Entry;
- (ii) Whether the impugned imported goods valued at **Rs.29,35,51,630/-** as detailed in Annexure-A to subject notice, are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962, or otherwise;
- (iii) Whether the differential Customs duty amounting to **Rs.1,56,93,535/- (Rs. One Crore Fifty Six Lacs Ninety Three Thousand Five Hundred Thirty Five Only)** as detailed in Table-I mentioned above, should be demanded and recovered under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962, or otherwise;
- (iv) Whether the Noticees are liable for Penalty as invoked vide the impugned SCN.

25.2. I find that the instant case arose out of investigation carried out by the DRI that M/s. BSSL imported goods namely 'Cold Rolled Stainless Steel Coils' and misclassified the same under CTH 72209022 so as to wrongly avail the

benefit under Notification No. 50/2018-Customs dated 30.06.2018 at the time of filing of Bills of Entry during the month of **January 2019 to January, 2021** as detailed **hereinabove**. As per the said Notification no. 50/2018-Customs dated 30.06.2018, there is **tariff concession to the extent of 45 % of applied rate of duty** on the goods of '**Nickel Chromium Austenitic Type**' falling under CTH 72209022; whereas M/s. BSSL imported the goods viz. '**Cold Rolled Stainless Steel Coils**', which were allegedly not 'Nickel Chromium Austenitic Type', and therefore, not classifiable under CTH 72209022. Whereas the Test certificates-Inspection Certificates issued by the overseas suppliers (as discussed in detailed in the subject show cause notice), revealed that M/s. BSSL imported '**Stainless Steel Cold Rolled Coils**', which contains more percentage of '**Chromium & Magnesium**' instead of '**Chromium & Nickel**'. Therefore, the impugned imported goods did not satisfy the conditions pre-requisite to fall under the CTH 72209022 (Nickel Chromium Austenitic Type); instead the subject imported goods appeared classifiable under CTH 72209090 (Other). In view of above, the investigation revealed that M/s. BSSL evaded Customs duty of **Rs.1,56,93,535/- (Rupees One Crore Fifty Six Lacs Ninety Three Thousand Five Hundred Thirty Five Only)** (as detailed in Annexure-A attached to impugned Show Cause Notice).

25.3. I find that Shri Mohan Jain, Director of M/s BSSL during his statement dated 21.06.2021 and 29.04.2022 interalia stated:

- (i) that Stainless Steel coils which were more than 600 mm of width were classified under CTH 7219 and Stainless Steel coils which were less than 600MM of width were classified under CTH 7220 of Customs Tariff.
- (ii) He perused the Test Certificate-Inspection Certificate no. HXL-SZG2017-010TC dated 21.05.2017 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods supplied under Commercial Invoice No. SZG2017-010 dated 21.05.2017 by M/s Great China Alliance Ltd., Hong Kong and Test Certificate-Inspection certificate no. 20504-TC dated 28.11.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China accompanying the goods supplied under commercial Invoice no. CMTSZ-20504 dated 28.11.2020 by M/s Comet International Ltd., Hong Kong. The goods supplied under commercial invoices, i.e. Cold Rolled Stainless Steel Coils, Grade- J3- Ex Stock and stated that as per the Test Certificate-Inspection Certificate the coils contain less than 1.0 % of Nickel and 10 to 12 % chromium;
- (iii) that from content available on Wikipedia it appears that the coils imported by them would not falls under nickel chromium Austenitic type steels as Nickel was replaced by Manganese in 200 series SS coils. He stated that the goods, Stainless Steel Cold Rolled Coils Grade- J3 should be classified under CTH 72202090 and that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the goods under same CTH.
- (iv) that as per the documents received from overseas supplier they classified the goods under the description of '**Nickel Chromium Austenitic Type**' and filed the Bills of Entry under CTH 72209022 to claim the benefit of Notification no 50/2018 dated 30th June, 2018 but as per the literature available on website it does not fall under category of 'Nickel Chromium Austenitic Type' and the goods imported by them should have been rightly classified under CTH 72209090 for Stainless Steel Cold Rolled Coils, Grade- J3 **as classified by them prior to the issuance of Notification No 50/2018 dated 30.06.2018.**

25.4. WRONGLY AVAILED BENEFIT OF NOTIFICATION NO. 50/2018-CUSTOMS DATED 30.06.2018, BY THE IMPORTER ON THE STRENGTH OF INVOICES ISSUED BY A NON-PARTY:

1. I find that 'M/s BSSL', had wrongly availed the benefit of payment of appropriate 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, in terms of 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 and 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. Therefore, the benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to the Country of Origin certificates issued by the manufacturers other than the actual exporters (Invoice issuing suppliers).

2. I find that "***Ignorantia Juris Non Excusat***" is an important principle in law. This principle places the responsibility on individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law.

3. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer; and that the exemption notification are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

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

Relevant Para the said judgement is reproduced hereunder;

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

4. I observe that under a trade agreement, duty concessions are required to be extended only to such imported goods which are 'made in' the exporting country. Each Trade Agreement contains a set of rules of origin, which prescribe the criteria that must be fulfilled for goods to attain 'originating status' in the exporting country. Such criteria are generally based on factors such as domestic value addition and substantial transformation in the course of manufacturing/ processing. The goods imported under a trade agreement are required to be covered under a 'Certificate of Origin' (COO) issued by the designated authority of the exporting country. The COO contains details of goods covered and originating criterion fulfilled. Misuse of trade agreements not only causes loss to the exchequer but also places the domestic industry at an unfair disadvantage. In the instant case, I find that the importer has violated the basic requirement of a valid 'Certificate of Origin' in order to avail benefit of Notification No. 50/2018-Customs, dated 30.06.2018. In view of above, I hold that 'M/s BSSL' have wrongly availed the benefit under Notification no. 50/2018-Customs dated 30.06.2018 in contravention to the Country of Origin rules since the invoice issuing exporter is M/s. Comet International Ltd, Hong Kong which is non-party country to the Asia Pacific Trade Agreement; therefore, the benefit of concessional rate of duty is not available to them.

25.5. WRONG AVAILMENT OF BENEFIT OF NOTIFICATION NO. 50/2018-CUSTOMS DATED 30.06.2018, BY THE IMPORTER ON ACCOUNT OF MISCLASSIFICATION OF IMPORTED GOODS:

1. I have carefully gone through the various technical literature relied upon in the show cause notices as well as other material cited by M/s. BSSL in their defence. Broadly, what can be made out is 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.

2. I find that when nickel or nitrogen is added to steel, it becomes "**austenite**" by nature. The chemical composition determines the specific grade of stainless steel. Technical literature already discussed which includes the trade parlance

usage of the term Austenitic stainless steel is also categorical that contains at least 10.5 percent of chromium and 8 to 12 percent nickel, as well as nitrogen, carbon, and many other elements in solution. For example, the 300 series is nickel-based and includes standard austenitic stainless steel, which is grade 304 stainless steel — the most commonly used one. It usually contains 18 percent chromium and eight percent nickel, which is the minimum amount of nickel required to turn ferritic stainless steel into austenitic when that much chromium is present. The **200 series** has lower content of nickel and high in nitrogen, or manganese making it a less expensive alternative to the 300 series. In general the literature available are categorical that significant nickel content of 4%-10%, is necessary to ensure the formation of the austenitic structure. The Cr content is usually about 18 wt% or higher which is well above the critical limit for corrosion resistance, about 12 wt% Cr.

3. I have also seen the technical literature available in the **User Guide of Salem Steel which is under the Steel Authority of India Ltd**, which can undoubtedly 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."

4. It is understood that there has always been a considerable interest in developing low-cost austenitic stainless steels with similar or improved properties, for instance, replacing nickel with other cheaper alloying elements. In this search for new high-performance austenitic stainless steels with reduced amounts of nickel, manganese has been generally considered as the obvious replacement element. However, it is not technically feasible to replace nickel by equal amounts of manganese since manganese is not as strong an austenite former. Accordingly, elements such as carbon or nitrogen must be added to assist in stabilizing the austenitic structure. Such innovations in material technology have meant that types of low cost stainless steel which cannot be termed as Nickel Austenitic by virtue of their chemical composition have started being utilized for the same purposes for which the nickel austenitic was being used for. The imported material in the instant case appears to squarely fall under this category and cannot be considered **200 series** of Nickel Austenitic considering the above discussions.

5. In deciding the matter of classification in the instant case, it has to be understood that the same is not based on entries in Wikipedia. In the impugned SCN, it is clearly not the case also that the Wikipedia has been the sole cornerstone based on which allegations have been made. There have been documented technical literature of other entities who are dealing in the commodity in question. It has to be appreciated that in the matters of classification of goods under taxation statutes, several judicial forums, including the Apex Court, have stressed upon the importance of the identity of the goods in common parlance. Further, there is a plethora of judicial pronouncements which hold that for classification of goods under statutes for taxation, the

primary test is their identity in the market, or in other words, their common parlance in the market. Also, it is also a well settled principle of interpretation of statutes that a word not defined in the statute must be construed in its popular sense, meaning essentially 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'. The situation in the instant cases is akin in that there is no entry in the statutes or technical codes laying down the technical definition/parameters for the goods in question. This is a fact that has been accepted by the M/s. BSSL also. That being the case, relying on trade parlance and available technical literature of Users in the Trade is an acceptable course of action.

6. I find that the information/ literature available on website (<https://www.aalco.co.uk>) of **M/s. Aalco Metals Limited**, (a company registered in England & Wales, the UK's largest independent multi-metals stockholder); and on website (<https://www.asminternational.org>) of **M/s. ASM International** (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); clearly indicate that the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%. Whereas, the chemicals compositions shown in the Mill Test certificate/Test certificate/ Inspection Certificate produced by the importer at the time of import shows the content of **Chromium (Cr) as nearly 13% and Nickel as nearly 1%**. Further, as per **Indian Standard for Stainless Steel Plate, Sheet and Strip – Specification, IS 6911: 2017 (Reaffirmed 2022)** the impugned goods do not fall under 200 series of Austenitic steels.

25.6. REJECTION OF CLASSIFICATION OF COLD ROLLED STAINLESS STEEL COILS UNDER CUSTOMS TARIFF HEADING 72209022.

25.6.1. I find that the importer earlier filed Bill of Entry No. 9964561 dated 05.06.2017 for the clearance of goods declared as Stainless Steel Cold Rolled Coils, Grade-J3 under **CTH 7220 92090**. Also **Shri Mohan Jain, Director of M/s BSSL** in his statement dated 21.06.2021 and 29.04.2022, has interalia stated that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the goods under same **CTH 7220 2090**. Further, **Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics & and M/s. Shivam Clearing Agency (Mumbai), Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics (Customs broker), Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics, Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers** in their statements interalia stated that they have wrongly classified the goods imported by M/s. BSSL under CTH 72209022 and availed benefit of Notification no. 50/2018-Customs dated 30.06.2018.

25.6.2. I also have gone through the reply letter dated **16.04.2024** of the importer **M/s. BSSL**, and co-noticee Shri Mohan Jain wherein having reiterated earlier replies they also stated that if the classification adopted by them under CTH 7220 9022 is incorrect in that case, the correct classification will be. 7220 9029 and not 7220 9090 as proposed by the revenue. They also stated that Austenitic Stainless Steels includes series 201, 202, N1, N2, N3, N5, N6, N6, N7. Therefore, they claimed to be entitled to a concessional tariff of 15% on the BCD rate under serial number 735 of Notification No. 50/2018-Cus dated 30.06.2018.

25.6.3. I have carefully gone through the Customs Tariff 1975 wherein entries in heading 7220 90 at six-digit level as under:

SECTION-XV	CHAPTER-72
7220 20	- Not further worked than cold-rolled (cold- reduced)
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
7220 90	- Other
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	---- Nickel chromium austenitic type
7220 90 29	---- Other
7220 90 90	--- Other

25.6.4. I find that under **CTH 7220 90** is a single-dash-entry under which covered two '**Three-Dash-Entries**' under CTH 72209010. Under CTH 72209010 comes three '**Quadruple-Dash-Entries**'. Therefore, **CTH 7220 9022** is a quadruple-dash-entry for '**Nickel chromium austenitic type**' and **CTH 7220 9029** is another '**Quadruple-Dash-Entry**' for '**Other**', items of Skelp for pipes and tubes. From the investigation conducted by DRI, it is evident that the importer is not engaged in manufacturing Pipes and tubes therefore the impugned goods are rightly classifiable under 72209090 i.e. residual entry for the strips not used in manufacturing pipes and tubes.

25.6.5. In this connection, I find that 'M/s BSSL' imported "Cold Rolled Stainless Steel Coils Grade J3" which contained more percentage of Chromium. The J3 grade (200 series) of Stainless Steel Coils was developed by Indian Stainless Steel manufacturers, which is similar to the grade 201 i.e. international grade. J3 Grade is a chromium-manganese austenitic stainless steel with moderate amounts of copper, nickel and nitrogen. I also find that as per **Indian Standard for Stainless Steel Plate, Sheet and Strip - Specification, IS 6911: 2017 (Reaffirmed 2022)**, in 201 series of Austenitic Steels the Nickel content ranges from 3.5% to 6%; however, the Mill Test Certificate/ Test Certificate/ Inspection Certificate produced by the importer at the time of Import reveals in the impugned goods contain Nickel content is nearly 1%. Therefore, the impugned goods cannot be deemed as **200 series** of Stainless Steel Coils. Moreover, as per said **Indian Standard** the impugned goods are not even classifiable under **N1, N2, N3**, since for such classification the **Copper (Cu)** content shall be 1.5% to 2.5%; however, the impugned goods contain **Copper (Cu)** less than 0.5% as mentioned vide Test Certificate/ Inspection Certificate as detailed vide Para 8 of impugned SCN. In view of above, I hold that the impugned

goods are not classifiable under 'Nickel Chromium austenitic type' stainless steel.

25.7. RE-CLASSIFICATION OF IMPUGNED GOODS UNDER CTH 72209029:

25.7.1. I observe that as per the '**General Rules for the Interpretation of the Harmonized System**' which governs the Classification of goods under the HSN.

- **Rule 3 of General Interpretation Rules**, prescribes how to classify products that are, prima facie, classifiable under two or more different HS headings.
- Rule 3(a) Specific heading to be preferred over general headings
- Rule 3(b) Mixtures/composite goods consisting of different materials/components should be classified according to the material/component that gives them their essential character.
- Rule 3(c) If two headings are equally suited to the item, then the heading that appears last in numerical order to be chosen.

25.7.2. In view of above, I hold that the impugned goods do not merit coverage under CTH 7220 9022 which as per Notification No. 50/2018-Customs dated 30.06.2018 was eligible for concessional tariff of 45%; nevertheless, the Test Certificate/ Inspection Certificates suggest that **the impugned goods are rightly classifiable under CTH 7220 9090** which is another '**Quadruple-Dash-Entry**' for '**Other**'. Thus, the Importer are in-eligible for concessional tariff of 45% under CTH 7022 9022.

25.7.3. I find that the instant case is based on strong foundations of irrefutable evidence which clearly prove that the importer has not only mis-classified the impugned goods but also mis-declared the facts in respect of 'Certificate of Origin', which is the soul of the Notification No. 50/2018-Customs dtd. 30.06.2018. In the case in hand, the importer failed to comply with the provisions of the Section 46 of the Customs Act, 1962, which stipulates that it is the duty of the importer to make and subscribe to a declaration as to the truth of the content of bill of entry and to produce documents to the proper officer, relating to the imported goods. Therefore, it is reasonable to presume that the import did not have substantial facts to refute the allegations made against them in impugned SCN, rather they indulged themselves in delaying tactics.

25.7.4. I refer that 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 and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI.

25.7.5. I find that the statements of **Shri Mohan Jain**, Director of M/s BSSL; and **Shri Deepak Sawlani**, Authorized signatory and G-card holder of M/s R R Logistics & and M/s. Shivam Clearing Agency (Mumbai), **Shri Jitender Kumar**, Proprietor of M/s Shri Balaji Logistics (Customs broker), **Shri**

Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics, Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers have sufficient evidentiary value to prove the fact that they have wrongly availed the benefit of the Notification No 50/2018-Customs dated 30.06.2018 by way of mis-classifying the impugned imported goods. I place reliance on the following relevant judgements of various Courts wherein **evidentiary value of statements recorded under Section 108 of the Customs Act, 1962** is emphasized.

- The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculcating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- In the case **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.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement- and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur (2000(117) E.L.t. 515(Tri))**- wherein Hon'ble Tribunal held that- 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

25.7.6. In view of above, I find that '**M/s BSSL**' have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty by resorting to **excess** benefit of concessional tariff under Notification No. 50/2018-customs dated 30.06.2018 on the import of Cold and Hot Rolled Stainless Steel Coils as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. I hold that M/s BSSL had contravened the provisions of Section

46(4A) of the Customs Act, 1962 in as much as they 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 correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs.

25.8. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962:

25.8.1. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) 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,—

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts."*

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

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

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund

(d) in any other case, the date of payment of duty or interest.

25.8.2. It is evident from the investigation carried out by the DRI that the mis-classification of imported goods has been done by M/s. BSSL wilfully with sole intention to execute the modus of availing of ineligible benefit of Notification No. 50/2018-customs dated 30.06.2018 by way of mis-classification of imported goods and evasion of Customs duty. They also indulged in submitting invalid Country of Origin Certificate, issued by the non-party.

25.8.3. The act of mis-classification of impugned imported goods has been committed by M/s. BSSL wilfully and with intent to avail undue benefit of Notification No. 50/2018- Customs dated 30.06.2018, they also resort to submitting inadmissible Country of Origin certificates which are issued by non-party country i.e. M/s. Comet International Ltd., Hong Kong. When they have resorted to availing undue benefit of concessional tariff, that too without any indication that they engaged with the Customs department in any manner while doing so, shows a deliberate intent to misclassify by suppressing the actual classification adopted by them. They cannot, in this factual matrix, claim that all facts were before the Departments and that there was no intent to evade.

Therefore, I find that it is appropriate to invoke section 28(4) of the customs act to demand the duty in the instance case. **I hold so.**

25.9. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:

(i). I find that it is alleged in the subject SCNs that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. 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;"

(ii). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods, imported by way of misclassification, will be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately misclassified the imported goods with a mala fide intention to evade duty. Further they also failed to submit the correct Country of Origin Certificate prerequisite to avail the benefit of Notification No. 50/2018-Customs dated 30.06.2018 In light of these acts of misclassification of goods, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962. I hold so.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 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."

(iv) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

(v). As regards applicability of Section 111(m) of the Customs Act, I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and

then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripa Ispat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any legs to stand.

(vi). In this regard, I find that the impugned goods were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A of the Customs Act covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of subject imported goods.

26. I find that 'M/s BSSL' have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty by 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. I find that M/s BSSL had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as they 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 correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs. I find that the statements of Shri Mohan Jain, Director of M/s BSSL; and **Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics & and M/s. Shivam Clearing Agency (Mumbai), Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics (Customs broker), Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics, Shri Bharat Malik, Authorized Signatory and Senior Manager of M/s. Image Cargo Movers** have sufficient evidentiary value to prove the fact that they have wrongly availed the benefit of the Notification No 50/2018-Customs dated 30.06.2018 by way of mis-declaring the impugned imported goods. **The statements recorded under Section 108 of the Customs Act, 1962, also make for substantive evidences.**

27. NOW I PROCEED TO EXAMINE THE ROLES OF THE VARIOUS NOTICEES IN THIS ELABORATE SCHEME TO WRONGLY AVAIL THE BENEFIT OF SAID NOTIFICATION WITH INTENT TO DEFRAUD THE GOVERNMENT EXCHEQUER.

27.1. ROLE PLAYED BY M/S BSSL:

- (i) I find that M/s. BSSL had imported the goods namely 'Cold Rolled Stainless Steel Coils' valued at **Rs.29,35,51,630/- (Twenty-Nine Crores Thirty-Five Lacs Fifty-one Thousand Six Hundred Thirty Only)** (as detailed vide Para 11 to impugned SCN) by mis-declaring 'Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)'. As discussed in detail hereinabove, the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%. Whereas, the chemicals compositions shown in the Mill Test

certificate/Test certificate/ Inspection Certificate produced by the importer at the time of import shows the content of Chromium (Cr) as **nearly 13% and Nickel as nearly 1%**. As per **Indian Standard for Stainless Steel Plate, Sheet and Strip - Specification, IS 6911: 2017 (Reaffirmed 2022)**, in **201 series of Austenitic Steels the Nickel content ranges from 3.5% to 6%**; however, the Mill Test Certificate/ Test Certificate/ Inspection Certificate produced by the importer at the time of Import reveals in the impugned goods contain Nickel content is nearly 1%. Further, the impugned goods also do not cover under N1, N2 or N3 series of Austenitic Steel since the impugned goods contain Copper (Cu) content less than 0.50% that is way below the standard parameter of 1.5% to 2.5% of Cu content. Therefore, the impugned goods cannot be deemed as 'Nickel Chromium Austenitic Type' Stainless Steel Coils. It is also evident by the investigation carried out by DRI that the importer has not used the goods to manufacture pipes and tubes, therefore the impugned goods are correctly classifiable under CTH 7022 9090 i.e. residual entry as per the subject Test Certificates/ Inspection Certificates produced by the Importer.

- (ii) 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, while in the instant case, M/s BSSL had failed to fulfill the conditions in respect of the imports of 'Cold Rolled Stainless steel Coils through Mundra port (INMUN1). 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.
- (iii) **I find** that the benefit of concessional tariff of 45% under Notification No. 50/2018-Customs dated 30.06.2018 is not available to the importer on account of mis-classification of impugned goods as well as on invalid country of origin certificate issued by the non-party. Such acts of suppression of facts and willful mis-statement by M/s BSSL had led to evasion of Customs duty of **Rs.1,56,93,535/- (One Crore Fifty-Six Lacs Ninety-Three Thousand Five Hundred Thirty-Five Only)**; thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the said Customs duty 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 BSSL have rendered the subject imported goods valued at **Rs.29,35,51,630/- (Twenty-Nine Crores Thirty-Five Lacs Fifty-one Thousand Six Hundred Thirty Only)** (as detailed vide *Para 11 to impugned SCN*) liable for confiscation under Section 111(m) of the Customs Act, 1962. M/s BSSL are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. I observe that the Section 114AA envisages penalty for use of false or incorrect material, however, in the instant case the importer wrongly availed the benefit the aforementioned notification on the strength of inadmissible Certificate of origin issued by non-party operator i.e. M/s. Comet International Ltd., Hong Kong, and misclassification of impugned goods. **I observe that penalty under section 114AA is imposable only if knowingly or intentionally a false declaration, statement or document is made, signed or used.** Therefore, I refrain from imposing penalty upon M/s. BSSL under Section 114AA of the Customs Act, 1962. I observe that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention, etc., not expressly mentioned,

however, penalty under Section 114A is expressly mentioned and imposed upon M/s. BSSL, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable. I hold so.

- (v) I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also be liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.
- (vi) I observe that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, I refrain from imposing penalty under Section 112(a) and Section 112(b) of Customs Act, 1962.

27.2. ROLE PLAYED BY SHRI MOHAN JAIN, DIRECTOR OF M/S BSSL:

(i) I find that It further appears that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry was done on the direction and under the guidance of **Shri Mohan Jain Director** of 'M/s BSSL' to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. 'M/s BSSL' received the Test certificate-Inspection Certificate, wherein the chemical compositions of goods and country of origin certificate received were given, and such documents reveal that the impugned goods are rightly classifiable under **CTH 72209090**. However, Shri Mohan Jain instructed Customs broker to file the Bills of entry under CTH 72209022 to evade duty. All the aforesaid acts of omission and commission on the part of Shri Mohan Jain have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and (b) of the Customs Act, 1962.

(ii) I find that clause (a) of Section 112 of the Customs Act, 1962 prescribes penalty for the act of commission and/or omission in illegal import and/or abatement thereto; whereas clause (b) of Section 112 of the Customs Act, 1962 thereof prescribes penalty for knowingly dealing with the illegally imported goods. I find that penalty under section 114AA is imposable only if knowingly or intentionally a false declaration, statement or document is made, signed or used. I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention, etc., not expressly mentioned.

(iii) I find that in the instant case M/s. BSSL have evaded Customs Duty by way of mis-classifying of imported goods and by way of producing Country of Origin certificate issued by the non-party operator. Shri Mohan Jain was aware that the consignments imported by them were actually Cold Rolled Stainless Steel Coils classifiable under **CTH 72209090**. All such aforesaid acts of omission and commission on his part have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962; and consequently rendered Shri Mohan Jain liable for penalty under Section 112(a)(ii) of the Customs Act, 1962; I hold so.

(iv) In light of all the evidences on records, I do not find any role of Shri Mohan Jain Director of M/s. BSSL in any act of commission or omission mentioned in Section 112(b) and Section 114AA of the Customs Act, 1962; therefore, I refrain from imposing penalty upon him under Section 112(b) and Section 114AA of the

Customs Act, 1962. I also refrain from imposing penalty upon Shri Mohan Jain Director of M/s. BSSL under Section 117 of the Customs Act, 1962 since penalty under Section 112(a)(ii) is expressly mentioned.

27.3. ROLE PLAYED BY CB FIRMS AND THEIR KEY MANAGERIAL PERSONS/ REPRESENTATIVES:

(i) I find that vide impugned SCN penalty is also proposed upon M/s. Shri Balaji Logistics; M/s. R R Logistics; M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.; M/s Maffick Logistics; M/s. Kashish Impex; M/s Image Cargo Movers; and upon their key managerial persons/ representatives i.e. Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics; Shri Deepak Sawlani, Authorized Signatory and G-card holder of M/s. R R Logistics and M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.; Shri Devendra N Thakker Proprietor of M/s Maffick Logistics; Shri Rajesh Balan Nair, Authorised signatory and G-card holder of M/s. Kashish Impex; and Shri Bharat Malik Authorized Representative of M/s Image Cargo Movers.

(ii) I have examined the allegations made in the show cause notice against the Custom Broker that the mis-classification of the impugned goods in the import documents under Bills of Entry filed by aforementioned **CBs** on behalf of M/s BSSL before the Customs authorities, was done on the direction of Shri Mohan Jain Director of M/s. BSSL. Shri Mohan Jain -Director of M/s BSSL handed over the documents to above mentioned Custom Brokers for filing of Bills of Entry and to arrange clearance of the goods. I find that above mentioned Custom Brokers acted as per the directions of Shri Mohan Jain Director of M/s. BSSL.

(iii) I have also gone through the submission made by the Custom Brokers in their defense reply. I find that the Custom Broker has filed Bills of Entry on behalf of importer on the basis of documents submitted by the importer. The consignments imported by M/s BSSL by declaring as Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)' was actually Cold Rolled Stainless Steel Coils falling under heading others of chapter 7220, as it was evident from the documents available in the form of Test certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Mohan Jain Director of M/s. BSSL. The impugned SCN alleged that M/s BSSL imported the goods namely 'Cold Rolled Stainless Steel Coils' and wrongly availed the benefit under Notification no. 50/2018-Customs dated 30.06.2018 on the strength of inadmissible country of origin certificates issued by the non-party country, and on mis-classification of the impugned goods under CTH 72209022. In this regard I find no connivance of CB with importer in evasion of duty by wrongly claiming exemption came out, therefore, the Customs Brokers cannot be penalised. Therefore, I hold that these noticees i.e. **Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Devendra N Thakker Proprietor of M/s Maffick Logistics, Shri Rajesh Balan Nair, Authorised signatory and G-card holder of M/s. Kashish Impex, Shri Bharat Malik Authorized Representative of M/s Image Cargo Movers, Shri Deepak Sawlani Authorized Representative of M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.** are not liable to penalty under Section 112(a), Section 112(b), Section 114 AA, or Section 117 of the Act *ibid*.

28. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

ORDER

- (i) I reject the declared classification of the impugned goods imported by **M/s Bhagvan Shri Strips Private Limited** (IEC-0513066454) covered under Bills of Entry as detailed vide Annexures A to E attached to impugned show cause notice; and order to re-classify under Customs Tariff Heading No. **72209090** of the First Schedule to the Customs Tariff Act, 1975; and Order to re-assess the Subject Bills of Entry;
- (ii) I disallow the benefit of Notification No. 50/2018-Customs dated 30.06.2018 availed by **M/s Bhagvan Shri Strips Private Limited** (IEC-0513066454) on the strength of invalid Country of Origin Certificates issued by the non-party i.e. M/s Comet International Ltd., Hong Kong; contravening 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]
- (iii) I order to confiscate the impugned goods valued at **Rs.29,35,51,630/- (Rupees Twenty-Nine Crores Thirty-Five Lacs Fifty-one Thousand Six Hundred Thirty Only)** under the provisions of Section 111(m) of the Customs Act, 1962; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- (iv) I confirm the demand of differential/Short paid Customs duty amounting to **Rs.1,56,93,535/- (Rupees One Crore Fifty Six Lacs Ninety Three Thousand Five Hundred Thirty Five Only)** (as detailed vide Annexures A to E to impugned Notice), and order to recover the same from **M/s Bhagvan Shri Strips Private Limited** (IEC-0513066454) in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962,
- (v) I order to recover the interest from **M/s Bhagvan Shri Strips Private Limited** (IEC-0513066454) at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty at (iv);
- (vi) I impose penalty of **Rs.1,56,93,535/- (Rupees One Crore Fifty Six Lacs Ninety Three Thousand Five Hundred Thirty Five Only)** upon **M/s Bhagvan Shri Strips Private Limited** (IEC-0513066454) in terms of Section 114A of the Customs Act, 1962, plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (iv) above;
- (vii) I refrain from imposing penalty under **Section 112(a) and 112(b) of the Customs Act, 1962** upon **M/s Bhagvan Shri Strips Private Limited** (IEC-0513066454) since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.
- (viii) I refrain from imposing penalty in terms of Section 114AA and Section 117 of the Customs Act, 1962 upon **M/s. BSSL Sheets Pvt. Ltd.**, for the reasons discussed hereinabove.
- (ix) I impose penalty of **Rs.10,00,000 (Rupees Ten Lacs Only)** upon **Shri Mohan Jain**, Director of **M/s Bhagvan Shri Strips Private Limited** (IEC-0513066454) in terms of Section 112(a)(ii) of the Customs Act, 1962.

- (x) I refrain from imposing penalty upon **Shri Mohan Jain**, Director of M/s Bhagvan Shri Strips Private Limited (IEC-0513066454) in terms of Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962, for reasons discussed vide Para 21.2 hereinabove.
- (xi) I refrain from imposing penalty upon **M/s. Shri Balaji Logistics; M/s. R R Logistics; M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.; M/s Maffick Logistics; M/s. Kashish Impex; M/s Image Cargo Movers**; in terms of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed hereinabove.
- (xii) I refrain from imposing penalty upon **Shri Jitender Kumar**, Proprietor of M/s. Shri Balaji Logistics; **Shri Deepak Sawlani**, Authorized Signatory and G-card holder of M/s. R R Logistics and M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd.; **Shri Devendra N Thakker** Proprietor of M/s Maffick Logistics; **Shri Rajesh Balan Nair**, Authorised signatory and G-card holder of M/s. Kashish Impex; and **Shri Bharat Malik** Authorized Representative of M/s Image Cargo Movers; in terms of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed hereinabove.

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


(K. Engineer)

Principal Commissioner of Customs
Custom House Mundra.

Date:09.05.2024.

F.No. GEN/ADJ/COMM/273/2022-Adjn.

BY SPEED POST/BY EMAIL/ NOTICE BOARD:

To (Noticees),

-  1214 to 1226
- (1) **M/s Bhagvan Shri Strips Private Limited**
having office at A-26, 27A, Adarsh Society, Gate No-4, ITI Circle,
Jodhpur, Rajasthan.
- (2) **Shri Mohan Jain**,
Director of M/s Bhagvan Shri Strips Private Limited
having office at A-26, 27A, Adarsh Society, Gate No-4, ITI Circle,
Jodhpur, Rajasthan.
- (3) **M/s Shri Balaji Logistics**,
S-35/5, DLF, Phase-III, Gurgaon-122002, Haryana.
- (4) **M/s. R R Logistics**,
Plot No-195, Emerald House, S-2, Second Floor,
Gandhidham, Kutch-370201.
- (5) **M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.**,

Sharda Chamber No.1 31, Keshavji Naik Road,
Bhat Bazar, Masjid Bunder Mumbai MH-400009.

(6) **M/s. Maffick Logistics,**

228, Akshar Arcade, Opp- Memnagar Firestation, Navarangpura,
Ahmedabad-380014.

(7) **M/s. Kashish Impex,**

108, Tejabhai Tower, Plot No-8, Sector-9, Near Joshi Patrol Pump,
Gandhidham, Kutch-370201.

(8) **M/s. Image Cargo Movers,**

E-6, L.G. Floor, Kalkaji, New Delhi-110019.

(9) **Shri Jitender Kumar,**

Proprietor of M/s. Shri Balaji Logistics, S-35/5, DLF, Phase-III, Gurgaon-
122002, Haryana.

(10) **Shri Deepak Sawlani,**

Authorized signatory and G-card of M/s. R R Logistics,
Plot No-195, Emerald House, S-2, Second Floor, Gandhidham, Kutch and
M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd., Sharda Chamber No 1,
31, Keshavji Naik Road, Bhat Bazar, Masjid Bunder Mumbai MH 400009.

(11) **Shri Devendra N Thakker,**

Proprietor and F-card of M/s. Maffick Logistics, 228, Akshar Arcade, Opp.
Memnagar Fire station, Navarangpura, Ahmedabad- 380014.

(12) **Shri Rajesh Balan Nair,**

G-card Holder and authorized person of M/s.Kashish Impex,
108, Tejabhai Tower, Plot No-8, Sector-9, Near Joshi Patrol Pump,
Gandhidham, Kutch-370201.

(13) **Shri Bharat Malik,**

Authorized Signatory and Senior Manager of M/s.Image Cargo Movers, E-
6, L.G. Floor, Kalkaji, New Delhi-110019.

COPY TO:-

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 2) The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054, for information.
- 3) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- 4) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 6) Notice Board
- 7) Guard File.