	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68</b> <b>FAX.No.02838-271169/62</b>	
<b>A. File No.</b>	:	GEN/ADJ/COMM/49/2023-Adjn-O/o Pr. Commr-Cus-Mundra
<b>B. Order-in-Original No.</b>	:	MUN-CUSTM-000-COM-022-23-24
<b>C. Passed by</b>	:	<b>K. Engineer, Commissioner of Customs, Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and Date of passing of Order</b>	:	15.02.2024. 15.02.2024.
<b>E. SCN No. &amp; Date</b>	:	SCN F.No. GEN/ADJ/ADC/49/2023-Adjn, dated 03.05.2023.
<b>F. Noticee(s) / Party / Importer</b>	:	<b>M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815), having office at A-26, 27A, Adarsh Society, Gate No-4, ITI Circle, Jodhpur, Rajasthan; and others.</b>
<b>G. DIN</b>	:	20240271MO0000917223

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, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

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

4. उक्त अपील के साथ - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ

शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

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, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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.

**FACTS OF THE CASE IN BRIEF:**

**M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815)** having office at A-26, 27A, Adarsh Society, Gate No-4, ITI Circle, Jodhpur, Rajasthan (*hereinafter referred to as 'the importer' or also as 'M/s Suncity' for the sake of brevity*) is engaged in manufacturing and import-Export of Cold Rolled Stainless Steel Coils, Hot Rolled Stainless Steel Coils, Stainless Steel Circles and Pipes. "M/s Suncity" is having manufacturing /Stainless Steel Rolling Plant at SP-862-867, 4th phase, Boranada industrial estate, Jodhpur and another plant situated at Gundala, Mundra, Kutch, Gujarat. They imported Cold Rolled Stainless Steel Coils/Hot Rolled Stainless Steel Coils of having grade 201, 304 & 316 and Stainless Steel Circles used in manufacturing of the finished goods from overseas suppliers based in China, Indonesia, Korea and Vietnam.

**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 Suncity' 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 Suncity' 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 Suncity' 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 Suncity'. Summons were issued to Shri Mukesh Agarwal, Director of 'M/s Suncity' 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 Suncity' vide letter dated 15.04.2021, produced copies of import documents viz. Bills of Entry, Commercial invoices, packing list, Test certificate-Inspection Certificate, Country of origin certificates, Bills of Landing, sales contract, Marine cargo Insurance Policy and GST Returns etc.

## **2. SCRUTINY OF RECORDS/DOCUMENTS**

**2.1.** During preliminary scrutiny of the documents produced by 'M/s Suncity', i.e. Test certificate-Inspection Certificates issued by the overseas suppliers, it appears that 'M/s Suncity' 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 the impugned imported goods does not meet the standards of Nickel Chromium Austenitic type coils, to falls under the CTH 72209022 in the category of Nickel Chromium Austenitic Type. Thus, it appears that 'M/s Suncity' had wrongly classified the goods under CTH 72209022 to avail benefit of Notification no. 50/2018-Customs dated 30.06.2018. Accordingly, investigation was also extended to the clearing agent/Customs Broker, who had arranged the clearance of imported goods. The import documents related to goods cleared under CTH 72209022 were called from the CHA/Customs Broker and his statement was recorded.

**2.2.** Statement of **Shri Yogesh Dhirajlal Thakkar, G-card holder and authorized person of M/s. Shri Maruti Shipping Services (Customs broker)** was recorded under Section 108 of the Customs Act, 1962 on 18.11.2021, wherein he inter-alia stated:

**2.3.** That they filed Bill of Entry on behalf of the Importer after the receipt of checklist, finalized by the importer. He stated that on the basis of documents received from the importers, they mention the classification of goods and value of the goods in the bill of entry, and advice 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).

**2.4.** He perused the Bill of Entry No. 2003287 dated 17/12/2020 filed on behalf of M/s. Suncity, for the clearance of goods declared as Stainless Steel CR Coils Grade- J3 under CTH 72209022 and stated that they filed the BE under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' as per direction and instruction of importer. He further perused the Test certificate-Inspection Certificate no. 20415-TC dated 12.11.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co., Ltd., China for the goods imported under BE No. 2003287 dated 17.12.2020 which has description of goods i.e. Stainless Steel CR Coils Grade- J3 and stated that as per the Test certificate-Inspection Certificate the coils contain **less than 1.3 % of Nickel and less than 14% chromium**.

**2.5.** He perused the Bill of Entry No. 9845990 dated 06.12.2020 filed on behalf of M/s. Suncity, for the clearance of goods declared as Stainless Steel Cold Rolled Coils, Grade- J3 under CTH 72209090 and stated that the documents received from the importer was upto six digits 722090 for the import of Stainless Steel CR Coils Grade- J3 but as per the instructions of importer, they filed the BE under CTH 72209090. He further perused the Test certificate-Inspection Certificate no. 20375-TC dated 03.11.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co., Ltd., China for the goods imported under BE No. 9845990 dated 06.12.2020 which has description of goods i.e. Stainless Steel Cold Rolled Coils, Grade- J3 and stated that as per the Test certificate-Inspection Certificate the coils contain **less than 1.3 % of Nickel and less than 14% chromium**.

**2.6.** He admitted that as per the Test certificate-Inspection Certificate and print out of Wikipedia of Austenitic stainless steel, goods imported by M/s. Suncity contains more percentage of chromium and magnesium instead of Chromium & nickel and goods does not meet the standards of Nickel Chromium Austenitic type coils and the said goods do not falls under the CTH 72209022 in the category of Nickel Chromium Austenitic Type; that they have wrongly classified the goods imported by M/s. Suncity under CTH 72209022 and availed benefit of Notification no. 50/2018-Customs dated 30.06.2018.

**2.7.** He perused the printout taken from [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](https://en.wikipedia.org/wiki/Austenitic_stainless_steel) titled as Austenitic stainless steel and understood that Flat Rolled products of stainless steel, of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022.

**2.8.** He perused the Country of Origin certificate bearing Sr. No. CCPIT700012001122934 dated 13.11.2020 for the BE No. 9845990 dated 06.12.2020 and stated that the name of supplier i.e. M/s Comet International Ltd., 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.

### **3. STATEMENTS AND INQUIRY WITH DIRECTOR OF IMPORTING COMPANY**

**3.1.** Statement of **Shri Mukesh Agarwal, Director of M/s Suncity** was recorded under Section 108 of the Customs Act, 1962 on 15.11.2021, wherein he inter-alia stated that:

**(i).** He was one of the Director of 'M/s Suncity' and looked after day to day work related to all the activities like sales, purchase, import and export documentation etc.; that 'M/s Suncity' was engaged in manufacturing and Import-Export of Stainless Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil/Stainless Steel Circle;

**(ii).** That they manufacture Cold/Hot Rolled Stainless Steel coils, Circle and Pipes; that finished goods were further sold in domestic market and exported to Brazil, Sri Lanka.

**(iii).** They had appointed Shri Maruti Shipping Services as Customs House Agent for import of goods at Mundra port; that he coordinate with the Customs House Agent for the clearance of the Imported goods; that on the basis of documents 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.

**(iv).** He stated that Cold Rolled Stainless Steel Coils/Hot Rolled Stainless Steel Coils imported by them were used in manufacturing of pipes which were used for industrial and decorative purpose and Circles were used for manufacturing of utensils;

**(v).** He stated 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;

**(vi).** That they had filed most of the Bills of Entry for the goods with description, Hot Rolled Stainless Steel Coils under CTH 7219/72201400, 7219/72201300,

7219/72201200 and Stainless Steel Cold Rolled Coils under CTH 72209090 /72209022.

(vii). He stated that there 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 as much as grade 201 only.

(viii). He perused Bill of Entry No. 2003287 dated 17.12.2020 filed by importer for the clearance of goods declared as Stainless Steel CR Coils Grade- J3 under CTH 72209022 and stated that CTH upto six digits 722090 was mentioned in import documents received from the overseas supplier for the import of Stainless Steel CR Coils Grade- J3 but **as per the guidance of CHA** they filed the BE under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'.

(ix). He perused Bill of Entry No. 9845990 dated 06.12.2020 filed by the importer for the clearance of goods declared as Stainless Steel Cold Rolled Coils, Grade- J3 under CTH 72209090 and stated that documents received from the overseas supplier were having CTH upto six digits and their goods were of other category i.e. 72209090 therefore, they filed the BE under CTH 72209090.

(x). He perused the Test certificate-Inspection Certificate no. 20415-TC dated 12.11.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 2003287 dated 17.12.2020 which have description of goods i.e. Stainless Steel CR Coils Grade- J3 and Test certificate-Inspection Certificate no 20375-TC dated 03.11.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 9845990 dated 06.12.2020 which have description of goods i.e. Stainless Steel Cold Rolled Coils, Grade- J3 and stated that as per the Test certificate-Inspection Certificate the coils contain less than **1.3 % of Nickel and less than 14% chromium**.

(xi). He perused the printout taken from [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](https://en.wikipedia.org/wiki/Austenitic_stainless_steel) titled as Austenitic stainless steel and stated that as per 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 in the same 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 Manganese in 200 series SS coils. He stated that the goods, Stainless Steel Cold Rolled Coils Grade- J3 should be classified under CTH 72209090. He stated that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the goods under same CTH.

(xii). He stated 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.

**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 Suncity' 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 Mukesh Agarwal, Director of 'M/s Suncity', 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 Mukesh Agarwal, Director of 'M/s Suncity', 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 1<sup>st</sup> 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:**

**6.1.** On scrutiny of documents submitted by 'M/s Suncity' vide letter dated 15.04.2021, and in light of statement of Shri Mukesh Agarwal, following points have been unearthed:

(i) **Test certificate-Inspection Certificate No. 20415-TC dated 12.11.2020** issued by M/s. Shenzhen Jinninghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-20415 dated 12.11.2020 by Comet International Ltd., Hong Kong to 'M/s Suncity'; indicated that the coils contain less than **1.3 % of Nickel and less than 14% of chromium**. The above goods were cleared by 'M/s Suncity' under **Bill of entry No. 2003287 dated 17.12.2020** by declaring description of goods as 'Stainless Steel CR Coils J3 Grade' under CTH 72209022.

(ii) **Test certificate-Inspection Certificate** No. 20375-TC dated 03.11.2020 issued by M/s. Shenzhen Jinninghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-20375 dated 03.11.2020 by M/s. Comet International Ltd., Hong Kong to 'M/s Suncity'; indicated that the coils contain less than **1.3 % of Nickel and less than 14% of chromium**. The above goods were cleared by "M/s Suncity" under **Bill of entry No. 9845990 dated 06.12.2020** by declaring description of goods as 'Stainless Steel Cold Rolled Coils J3 Grade' under CTH 72209022.

(iii) Prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, 'M/s Suncity' were classifying the goods under CTH 72209090 and same has also been admitted by Shri Mukesh Agarwal, Director of 'M/s Suncity' in his statement recorded on 15.11.2021. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by 'M/s Suncity' is in fact Stainless Steel of other Grades and be correctly classified under CTH 72209090.

(iv) Shri Mukesh Agarwal, Director of 'M/s Suncity' in his statement recorded on 15.11.2021 has stated that the J3 grade (200 series) of Cold Rolled Stainless Steel Coils was a customized grade similar to the grade 201 i.e. international grade. Later, Chinese manufacturers also started manufacturing J3 grade which was equal to grade 201. Shri Mukesh Agarwal, Director of 'M/s Suncity' further in his statement himself admitted that the goods, Stainless Steel Cold Rolled Coils Grade- J3 should be classified under CTH 72209090. He stated that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the said coils under CTH 72209090. Also on verification of import data of 'M/s Suncity', prior to the issuance of the said notification, 'M/s Suncity' had classified correctly said coils under CTH 72209090.

## **200 SERIES STAINLESS STEEL**

**6.2. 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	EN	Chemical composition % by mass max unless stated									
		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)**

**6.3.** 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.

**6.4.** A multilingual, web-based, free-content encyclopedia **Wikipedia** [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](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×C ≤ 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×C ≤ 0.70

**6.5. 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	0.01	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	0.01	18.3	9.1	0.3	1.8	0.45	0.001 S	0.030 P	0.4 Cu
304L tubing	S30403	0.02	0.01	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

**6.6.** 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 Suncity' is in fact Stainless Steel of other Grades and be correctly classifiable under CTH 72209090.

**6.7.** In view of the above, it is further evident that 'M/s Suncity' 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 month of December'2020. 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.

**6.8.** It is also forthcoming from the evidences on records that 'M/s Suncity', had 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). 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 Suncity' 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 under:

**Table-1:**

Sr. No.	BE No. & Date	COO Certificate No & Date	Name of Exporter (Invoice issuing exporter)	COO certificate issued in the name of manufacturer	Total Assessable value (In Rs.)	Duty Difference (In Rs.)
1	9925884 dtd 11.12.2020	0120111700140 895 dtd 20.11.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	11024292	566145
2	2003287 dtd 17.12.2020	0120111700139 885 dtd 16.11.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	10603765	544549
3	2064217 dtd 22.12.2020	0120111700149 428 dtd 03.12.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	9102990	467478
4	2064291 dtd 22.12.2020	0120111700149 411 dtd 03.12.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	9063263	465438
5	2065532 dtd 22.12.2020	0120111700149 403 dtd 03.12.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	14603058	749930
6	2110122 dtd 25.12.2020	0120111700147 354 dtd 04.12.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	13990975	718497

7	2110469 dtd 25.12.2020	0120111700147 362 dtd 04.12.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	10910409	560297
8	2118490 dtd 26.12.2020	0120111700147 401 dtd 26.11.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	14476892	743451
9	2120056 dtd 26.12.2020	0120111700147 395 dtd 28.11.2020	Comet International Ltd, Hong Kong	Shenzhen Jinminghui Industry & Trading Co. Ltd., China	14491824	744218
<b>Total</b>					<b>108267467</b>	<b>5560004</b>

From the above, 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 Suncity'.

### **7. PAYMENT OF CUSTOMS DUTY:**

**7.1.** During the course of investigation, 'M/s Suncity' have voluntarily made payment of differential duty arising due to mis-classification of goods imported by them, under TR-6 Challans/IGST Challans, as detailed below:

**Table-2:**

S. No.	TR-6 Challan No	Date.	Amount (Rs.)
1	SSPL/01/2021	04.01.2022	4711870
2	21120800063876	16.12.2021	83067
3	21120800063928	16.12.2021	85470
4	21120800063988	16.12.2021	86362
5	21120800064046	16.12.2021	109602
6	21120800064104	16.12.2021	113525
7	21120800064187	16.12.2021	113408
8	21120800064258	16.12.2021	71311
9	21120800064305	16.12.2021	70999
10	21120800064359	16.12.2021	114397
<b>Total</b>			<b>5560011</b>

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

**7.2.** 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)'

**7.3.** Whereas, 'M/s Suncity' had imported 'Cold Rolled Stainless Steel Coils' by wrongly claiming classification under Customs Tariff Heading 72209022 during the month of December'2020. Further, from the evidences available in the form of **Test certificate-Inspection Certificate** 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](https://en.wikipedia.org/wiki/Austenitic_stainless_steel), the Austenitic Stainless-Steel grades have major % of Nickle.

**7.4.** Whereas, on scrutiny of documents submitted by 'M/s Suncity' vide letter dated 15.04.2021, it appears that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, "M/s Suncity" were classifying the goods under CTH 72209090 and same has also been admitted by **Shri Mukesh Agarwal**, Director of 'M/s Suncity' in his statement recorded on 15.11.2021. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by 'M/s Suncity' is in fact Stainless Steel of other Grades and be correctly classified under CTH 72209090.

**7.5.** From the investigations carried out in the case it appears that 'M/s Suncity' 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 and mis-statement of the material facts.

**7.6.** From the facts and evidences discussed in the foregoing, it is established that the goods Cold Rolled Stainless steel Coils imported by 'M/s Suncity' 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.

## **8. VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962**

**8.1.** 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 Suncity' 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 and Hot Rolled Stainless steel Coils as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. It appears that 'M/s Suncity' had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as 'M/s

'Suncity' 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.

## **9. CULPABILITY AND LIABILITY OF NOTICEES**

**9.1.** 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. 55,60,004/-** in respect of the imports at Mundra port (INMUN1) as detailed in **Annexure-A** to the SCN, is liable to be recovered from 'M/s Suncity', under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

**9.2.** 'M/s Suncity' have imported Cold Rolled Stainless steel Coils valued at **Rs. 10,82,67,467/-**, 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 Suncity' 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.

**9.3.** The aforesaid acts of suppression of facts and willful mis-statement by 'M/s Suncity' had led to evasion of Customs duty of **Rs. 55,60,004/-** thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Customs duty amounting to **Rs. 55,60,004/-** 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 Suncity' have rendered the subject imported goods totally valued at **Rs. 10,82,67,467/-** liable for confiscation under Section 111(m) of the Customs Act, 1962. 'M/s Suncity' 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 Suncity' 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 Suncity' 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.

**9.4.** 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 Mukesh Agarwal Director** of M/s Suncity to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Mukesh Agarwal had full knowledge about the mis-classification of the said imported goods in as much as Shri Mukesh Agarwal 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 Suncity' received the Test certificate-Inspection Certificate, wherein the chemical compositions of goods and country of origin certificate received was given, as per that goods were rightly classified under CTH but Shri Mukesh Agarwal instructed Customs broker to file the Bills of entry under CTH 72209022 to evade duty. Shri Mukesh Agarwal was aware that the consignments imported by 'M/s Suncity' was actually Cold Rolled Stainless Steel Coils falling under CTH 72209090, as it was evident from the past consignments imported by 'M/s Suncity' before issuance of Notification No 50/2018-Customs dated 30.06.2018, 'M/s Suncity' were classifying the said goods under CTH 72209090. All the aforesaid acts of omission and commission on the part of Shri Mukesh Agarwal 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 Mukesh Agarwal 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 Mukesh Agarwal, Director of 'M/s Suncity' 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.

**9.5.** It also appears that **M/s. Shri Maruti Shipping Services**, a Customs Broker firm acted on behalf of 'M/s Suncity' for clearance of consignments of Cold Rolled Stainless steel Coils from customs. 'M/s Suncity' handed over the documents to the Customs Broker for filing of Bills of Entry and to arrange clearance of the goods. M/s. Shri Maruti Shipping Services who handles clearance activities in the capacity as the Custom Broker is responsible for having indulged in the conspiracy of mis-declaration of description and mis-classification of goods. M/s. Shri Maruti Shipping Services had hatched a conspiracy with Shri Mukesh Agarwal Director of 'M/s Suncity' with sole intention to clear the Cold Rolled Stainless steel Coils without payment of applicable Customs duty by willfully mis-declaring its description and correct CTH. M/s. Shri Maruti Shipping Services was very much aware that the consignments imported by 'M/s Suncity' 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 Mukesh Agarwal Director of 'M/s Suncity'. The commissions and omissions on the part of M/s. Shri Maruti Shipping Services who is Licensed Customs Broker Firm are 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 Suncity' 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 Maruti Shipping Services connived with "M/s Suncity" and facilitated them to 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 Maruti Shipping Services 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 Maruti Shipping Services 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.

**9.6.** 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 Maruti Shipping Services on behalf of 'M/s Suncity' before the Customs authorities, was done on the direction of Shri Yogesh Dhirajlal Thakkar, Authorized signatory and G-card holder of M/s. Shri Maruti Shipping Services. Shri Mukesh Agarwal Director of 'M/s Suncity' handed over the documents to Shri Yogesh Dhirajlal Thakkar for filing of Bills of Entry and to arrange clearance of the goods. Shri Yogesh Dhirajlal Thakkar was aware of the correct classification of the goods but as per the directions of Shri Mukesh Agarwal, Director of 'M/s Suncity' he willfully & knowingly suppressed the true, correct and actual description and classification of the goods with an intent to facilitate 'M/s Suncity' for evasion of applicable Customs Duty. Shri Yogesh Dhirajlal Thakkar had hatched conspiracy with Shri Mukesh Agarwal Director of 'M/s Suncity' 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. The commissions and omissions on the part of Shri Yogesh Dhirajlal Thakkar who was Authorized signatory and G-card holder of the Licensed Customs Broker Firm was in violation of the obligations casted on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018. All the aforesaid acts of omissions and commissions on the part of Shri Yogesh Dhirajlal Thakkar have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, Shri Yogesh Dhirajlal Thakkar, Authorized signatory and G-card holder of M/s. Shri Maruti Shipping Services has rendered himself 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 himself liable for penalty under Section 114AA of Customs Act, 1962.

**SHOW CAUSE NOTICE:**

**10.1.** In view of above, **M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815)** were issued a show cause notice bearing F. No. GEN/ADJ.COMM/49/2023-Adjn dated 03.05.2023 by **the Commissioner of Customs**, Custom House, Mundra, wherein it was proposed as under:-

- (i) To reject the classification of the subject goods and be re-classified under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and to reassess the subject Bills of Entry;
- (ii) To confiscate the goods valued at **Rs.10,82,67,467/-** as detailed in Annexure-A to subject 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) To demand and recovered the differential Customs duty amounting to **Rs.55,60,004/- (Fifty Five Lacs Sixty Thousand Four Only)** as detailed in Annexure-A attached to subject show cause notice under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AAibid;
- (iv) To appropriate the Customs Duty amounting of **Rs.55,60,004/- (Fifty Five Lacs Sixty Thousand Four Only)** already paid by M/s Suncity Sheets Pvt. Ltd., towards their Duty Liabilities at (iii) above.
- (v) To impose the Penalty 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 them under the provisions of Section 114A, 114AA and 117 of the Customs Act, 1962 for duty mentioned at (iii) above.

**10.2. Vide the impugned show cause notice Penalty** under Section 112 (a), 112(b), 114AA and 117 of the Customs Act, 1962 separately **was also imposed upon following persons/ firms:**

- (i) Shri Mukesh Agarwal, Director of M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815);
- (ii) M/s. Shri Maruti Shipping Services;
- (iii) Shri Yogesh Dhirajlal Thakkar, Authorised signatory and G-card holder of M/s. Shri Maruti Shipping Services,

**DEFENSE SUBMISSION:**

**11.1. M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815) (Noticee-1)**, vide their emails dated 09.05.2023, 24.11.2023, 01.12.2023, 16.01.2024; and **Shri Mukesh Agarwal (Noticee-2)** vide his emails dated 24.11.2023, 01.12.2023, 16.01.2024 have submitted their reply in respect Show Cause Notice i.e. **SCN F.No. GEN/ADJ/ADC/49/2023-Adjn, dated 03.05.2024**; issued by the Commissioner of Customs, Custom House, Mundra, interalia submitted as under:

- (i) That cross examination of investigating officers may first be allowed before conducting any personal hearing in the matter.

- (ii) That the copies of bills of entries are essentially required to prove the facts that all the facts were before the customs officer who examined the goods, and nothing were suppressed from Customs.
- (iii) That after receiving copies of processed bills of entries, the investigation report and investigation regarding manipulation of the content of Wikipedia for issuing the impugned SCN; they would submit the final reply.
- (iv) That they deny the charges leveled in the impugned SCN. That as per actual technical literature of Wikipedia the imported goods in question i.e. 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small nickel content, making 200 series a cost-effective nickel-chromium austenitic type stainless steel. So even if the Nickel is of very small percentage, in 200 series of imported goods in question, it is a cost-effective: nickel-chromium austenitic type stainless steel" and the imported goods in question of 200 series will qualify as nickel-chromium austenitic type stainless steel" and will classify under CTH 7220 90 22 which is most appropriate heading and as such the noticee has correctly classified the goods under TH 7220 90 22 and no case is made out against the noticee. There is no mention of requirement of any percentage of Nickel in the TH 7220 90 22, It is worthwhile to point out that in schedule to the Customs tariff, /HSN, where ever there is requirement of any minimum percentage of some goods for classification in particular heading there is a mention in that heading. For example as per HSN heading No. 40.05 – for compounded rubber, unvulcanised, in primary forms or in plates sheets or strips there is a mention as below:

(B) Compounded rubber not containing carbon black or silica.

(1)....

(2)....

(3) Plates, sheets and strip consisting of textile fabrics combined with compounded rubber, weighing more than 1,500/gm<sup>2</sup> and containing not more than 50% by weight of textile material...

(v) **That** In austenitic type stainless steel, the Nickel plays the principle role of stabilizing the alloying in austenitic stainless steel. In view of the above , when the TH 7220 90 22 for Nickel chromium austenitic type steel is available in tariff, that heading will be preferred than the category of residuary heading - TH 7220 90 90 which is applicable to "others" type of SS coils having characteristics of "ferritic", "martensitic", "duplex" and "precipitation hardening"

(vi) In view of the above facts the goods of 200 series in question in which Nickel is of very small percentage, will qualify as nickel-chromium austenitic type stainless steel as per actual literature Wikipedia of and will classify under TH 7220 90 22 which is most appropriate heading and as such the Noticee has correctly classified the above heading in the Bill of entries and no case is made out against them on MERIT.

As per schedule to the customs tariff the relevant heading are as below:

7220 90 22 ---- Nickel chromium austenitic type

- 7220 90 29 ---- Other

7220 90 90 --- Other

- (vii) That as per Rules 2(b), 3 and 4 of Interpretation, it would be clear that the imported goods in question are nickel-chromium austenitic type stainless steel" and will correctly classify under TH 7220 90 22 as per Rule 3(a), inter alia, provides that the heading which provides the most specific description shall be preferred to headings providing a more general description.
- (viii) That the DRI investigating authorities had breached the conduct of public servant by twisting the facts from the technical literature of Wikipedia as RUD-7 by removing the wording "making 200 series a cost-effective nickel-chromium austenitic type stainless steel" while recording the statement of Director Sh. Mukesh Agarwal as per RUD-3 and statement of Sh. Yogesh Dhirajlal Thakkar, G- Card holder and authorized persons of customs broker- as per RUD-2.
- (ix) The reliance of report of **Aalco metals Limited** as per RUD-6 to the impugned SCN is not authentic literature and the same pertains to a stockholder as per Para 8.5 of the impugned SCN. That they would like to cross – examine the concerned author who has given the said report.
- (x) As per Para-8.8 of the impugned SCN the technical literature of **ASM International** has been relied, and as per Table 1 of said literature the chemical composition of "most commonly used lean austenitic alloys" have been mentioned and that does not mean that it pertains to identical goods as imported by us. There is a difference between "most commonly used goods" and "identical goods" and as such the above literature of "most commonly used goods" cannot be used against the noticee as there is no finding that chemical composition of the goods as per the literature and that of the goods imported by the importer are identical. That in this regard they would like to cross-examine the author of the said report, if the same is to be relied against them.
- (xi) That the demand is Time Bared in this case as there is no "suppression" in this case by the noticee and the extended period as per sec 28(4) of the Customs Act, 1962 is not applicable in this case.
- (xii) That they had acted in bona fide belief to classify the goods under CTH 7220 90 22 and the Mill test certificates (issued by the overseas manufacturer) for each bill of entry was attached with the bill of entry while lodging the same for assessment at the port of import for assessment of duty and composition of Nickel and other constituents were before the customs authorities.
- (xiii) That the allegation of "suppression" cannot be alleged in spite of the fact that they had filed the Bill of entries under self-assessment scheme as per sec 17 of the Customs Act,1962. That there is no case of deliberate and knowing suppression of facts or will full representation attracting provisions of sec. 28(4)of the Customs Act,1962 and there is no case of any penalty under sec 112(a)/and or 112(b), 114A, 114AA and 117 of the Customs Act,1962.
- (xiv) That the COO(Country of origin) and relevant invoices pertaining to each Bill of Entries were submitted at the time of filing the Bill of entries by the noticee and the Customs officer had allowed the benefit thereafter by processing the bill of entries in their computer system.

**(xv)** That the impugned SCN requires to be quashed being TIME BARRED on limitation without going into the merit with consequential relief of refund of **Rs.55,60,004/-** (deposited during the investigation at the instance of DRI- the investigating agency).

**11.2.** The importer M/s. Suncity Sheets Pvt. Ltd., and co-noticee Shri Mukesh Agarwal vide their reply letter dated 18.01.2024 having reiterating earlier replies also stated that if the classification adopted by them under CTH 72209022 is to be disregarded, 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.

**11.3. M/s Maruti Shipping Services and Shri Yogesh Dhirajlal Thakkar, authorized Signatory of Shri M/s Maruti Shipping Services, vide letter dated 12.12.2023 have submitted their written submission, wherein they interalia submitted:**

- (i) that Goods have been correctly classified under CTH 7220 90 22.
- (ii) that the Custom Broker who has filed the bills of entry on the basis of documents placed in his hands by the importer.
- (iii) that there is no allegation regarding any undue gain by the Custom Broker for filing bills of entry with classification disputed by department.
- (iv) they requested to drop the proceedings initiated against the above both noticees.

#### **RECORDS OF PERSONAL HEARING:**

**12.** After following principle of natural justice '*audi alteram partem*', since the other side be heard as well before passing any order; Personal hearing in the matter was granted to all the noticees on 29.11.2023, on 16.01.2024 and 16.01.2024. Details of the PH are as under:

- (i) **1<sup>st</sup> PH conducted on 29.11.2023:** M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815) (*Noticee-1*); and Shri Mukesh Agarwal (*Noticee-2*) submitted their written submission vide letter dated 24.11.2023 which has been mentioned vide Para 24 hereinabove. Whereas, Shri Yogesh Dhirajlal Thakkar (*Noticee-3*), Authorised signatory and G-card holder of M/s. Shri Maruti Shipping Services vide his letter dated 29.11.2023 requested for adjournment of Hearing and re-fix the same at later date.
- (ii) **2<sup>nd</sup> PH conducted on 16.01.2024:** Shri ShyamLal Bansal, Consultant of M/s Suncity Sheets Pvt. Ltd. and Shri Mukesh Agarwal, Director of M/s Suncity Sheets Pvt. Ltd. appeared for personal hearing and he reiterated his written submission dated 16.01.2024.
- (iii) **3<sup>rd</sup> PH conducted on 25.01.2024:** Shri Vikas Mehta, Consultant of M/s. Shri Maruti Shipping Services & Shri Yogesh Dhirajlal Thakkar, Authorised signatory and G-card holder of M/s. Shri Maruti Shipping Services, appeared for personal hearing and he reiterated their written submission dated 12.12.2023 and relied on O-I-O No. MUN-CUSTOM-000-COM-12-23-24 dated

04.09.2023 issued by Commissioner of Customs, Mundra and requested to drop the proceedings on above both noticees.

### **DISCUSSION AND FINDINGS:**

**13.1.** I have carefully gone through the **SCN bearing F.No. GEN/ADJ/ADC/49/2023-Adjn, dated 03.05.2024**; issued by the Commissioner of Customs, Custom House, Mundra; the relied upon documents; submissions made by the Noticees, 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.10,82,67,467/-** 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.55,60,004/- (Fifty Five Lacs Sixty Thousand Four Only)** as detailed in Annexure-A attached to subject show cause notice, 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.

**13.2.** I find that the instant case arose out of investigation carried out by the DRI that M/s. Suncity 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 December 2020 as detailed vide **Para 11 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. Suncity 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. Suncity 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 prerequisite 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. Suncity evaded Customs duty of **Rs.55,60,004/- (Rupees Fifty Five Lakhs Sixty Thousand Four Only)** (as detailed in Annexure-A attached to subject Show Cause Notice).

**13.3.** I find that Shri Mukesh Agarwal, Director of M/s Suncity during his statement dated 15.11.2021 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. 20415-TC dated 12.11.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 2003287 dated 17.12.2020 which have description of goods i.e. Stainless Steel CR Coils Grade- J3; whereas, Test certificate-Inspection Certificate no 20375-TC dated 03.11.2020 issued by aforementioned Companies/ firms for the goods imported under BE No. 9845990 dated 06.12.2020 which have description of goods i.e. Stainless Steel Cold Rolled Coils, Grade- J3 and stated that as per the Test certificate-Inspection Certificate the coils contain less than 1.3 % of Nickel and less than 14% chromium;
- (iii) that from content available on Wikipedia 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 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.**

**13.4. I find that Shri Yogesh Dhirajlal Thakkar, G-card holder and authorized person of M/s. Shri Maruti Shipping Services (Customs broker) during his statement dated 18.11.2021 inter-alia stated:**

- (i) that on the basis of documents received from the importers, they mention the classification of goods and value of the goods in the bill of entry, and advice 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).
- (ii) that as per the Test certificate-Inspection Certificate and print out of Wikipedia of Austenitic stainless steel, goods imported by M/s. Suncity contains more percentage of chromium and magnesium instead of Chromium & nickel and goods does not meet the standards of Nickel Chromium Austenitic type coils and the said goods do not falls under the CTH 72209022 in the category of Nickel Chromium Austenitic Type;
- (iii) that they have wrongly classified the goods imported by M/s. Suncity under CTH 72209022 and availed benefit of Notification no. 50/2018-Customs dated 30.06.2018.
- (iv) He perused the Country of Origin certificate bearing Sr. No. CCPIT700012001122934 dated 13.11.2020 for the BE No. 9845990 dated 06.12.2020 and stated that 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.

**13.5. I find that the Test certificate-Inspection Certificate No. 20415-TC dated 12.11.2020** issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-20415 dated 12.11.2020 by Comet International Ltd., Hong Kong to 'M/s Suncity'; indicated that the coils contain less than **1.3 % of Nickel and less than 14% chromium**. The said goods were cleared by 'M/s Suncity' under **Bill of entry No. 2003287 dated 17.12.2020** by declaring description of goods as 'Stainless Steel CR Coils J3 Grade' under CTH 72209022.

**13.6. I find that the Test certificate-Inspection Certificate No. 20375-TC dated 03.11.2020** issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-20375 dated 03.11.2020 by M/s. Comet International Ltd., Hong Kong to 'M/s Suncity'; indicated that the coils contain less than **1.3 % of Nickel and less than 14% chromium**. The said goods were cleared by 'M/s Suncity' under **Bill of entry No. 9845990 dated 06.12.2020** by declaring description of goods as 'Stainless Steel Cold Rolled Coils J3 Grade' under CTH 72209022.

**13.7. I find** that Prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, 'M/s Suncity' were classifying 'Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type' under CTH 72209090 and same has also been admitted by Shri Mukesh Agarwal, Director of 'M/s Suncity' in his statement recorded on 15.11.2021. However, to wrongly avail the benefit of Notification No 50/2018-Customs dated 30.06.2018 they started classifying the said imported goods under CTH 72209022.

**13.8. I find** that 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. As per the Notification no. 50/2018-Customs dated 30.06.2018, there is a tariff concession of 45% of the BCD only on the goods of Nickel Chromium Austenitic Type falling under CTH 72209021 & 72209022. Relevant portion of the Notification 50/2018-Customs dated 30.06.2018 is reproduced hereunder:

**CUSTOMS NOTIFICATION NO. 50/2018-CUSTOMS, DATED 30<sup>TH</sup> JUNE 2018**

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 72/2005-Customs, dated the 22<sup>nd</sup> July, 2005, published in the Gazette of India, Extraordinary, vide number G.S.R.497(E), dated the 22<sup>nd</sup> July, 2005, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table hereto annexed and falling under the Chapter, Heading No., Sub-heading No. or tariff item of the First*

Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in the corresponding entry in column (2) of the said Table, -

(a) in the case of goods specified in Part A of the said Table, when imported into India from a country listed in APPENDIX I hereto annexed; or

(b) in the case of goods specified in Part B of the said Table, when imported into India from a country listed in APPENDIX II hereto annexed, from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in column (4) of the said Table:

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the country listed in the said 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 1<sup>st</sup> November, 1976.

**Explanation.** - For the purposes of this notification, "applied rate of duty" means the standard rate of duty specified in the First Schedule to the said Customs Tariff Act, 1975 in respect of the goods specified in the said Table, read with any other notification for the time being in force, issued in respect of such goods under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), but not including the notifications of the Government of India in the Ministry of Finance (Department of Revenue), Nos. 236/89-Customs, dated the 1<sup>st</sup> September, 1989 [G.S.R. 805 (E), dated the 1<sup>st</sup> September, 1989], 105/99-Customs dated the 10<sup>th</sup> August, 1999 [G.S.R. 582 (E), dated the 10<sup>th</sup> August, 1999], and 26/2000-Customs dated the 1<sup>st</sup> March 2000 [G.S.R. 178 (E), dated the 1<sup>st</sup> March, 2000].

**Table**

SNo.	Chapter, Heading No., Sub-Heading No., or tariff item	Description of goods	Extent of tariff concession (percentage of applied rate of duty; %)
<b>Part A</b>			
(1)	(2)	(3)	(4)
729.	7220 12 10, 7220 12 21	All goods	45
730.	7220 12 22	All goods	40
731.	7220 12 29	All goods	15
732.	7220 20 10 to 7220 20 29	All goods	15
733.	7220 90 10	All goods	15
<b>734.</b>	<b>7220 90 21, 7220 90 22</b>	<b>All goods</b>	<b>45</b>
735.	7220 90 29	All goods	15

**APPENDIX I**

S. No.	Country
(1)	(2)
1.	Bangladesh
2.	People's Republic of China
3.	Republic of Korea
4.	Sri Lanka

**APPENDIX II**

S. No.	Country
(1)	(2)
1.	Bangladesh
2.	Lao People's Democratic Republic

2. This notification shall come into force with effect from the 1st day of July, 2018.  
[F.No.354/146/1997-TRU]

**EXEMPTION CONDITIONS OF NOTIFICATION NO. 50/2018-CUSTOMS**  
**DATED 30.06.2018**

As per the said Notification no. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on certain goods of tariff heading mentioned in the notification if imported from the country listed in APPENDIX I & APPENDIX II of the said notification from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in the Notification. 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 1<sup>st</sup> November, 1976.

(ii) 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.

**14. 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:**

**14.1. I find** that 'M/s Suncity', 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).

**14.2.** 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.

**14.3.** 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;

*"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."*

**14.4.** 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 Suncity' 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.

**15. Wrong availment of benefit of Notification No. 50/2018-Customs dated 30.06.2018, by the importer on account of misclassification of Imported Goods:**

**15.1.** 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. Suncity 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.

**15.2.** 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.

**15.3.** 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."

**15.4.** 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.

**15.5.** 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 case is akin in that there are 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. Suncity also. That being the case, relying on trade parlance and available technical literature of Users in the Trade is an acceptable course of action.

**15.6.** 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.

#### **16. REJECTION OF CLASSIFICATION OF COLD ROLLED STAINLESS STEEL COILS UNDER CUSTOMS TARIFF HEADING 72209022.**

**16.1.** I find that the importer earlier filed Bill of Entry No. 9845990 dated 06.12.2020 for the clearance of goods declared as Stainless Steel Cold Rolled Coils, Grade-J3 under **CTH 7220 9090**. Also **Shri Mukesh Agarwal, Director of M/s Suncity** in his statement dated 15.11.2021, 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 Yogesh Dhirajlal Thakkar, G-card holder and authorized person of M/s. Shri Maruti Shipping Services (Customs broker)** in his statement dated 18.11.2021 interalia stated that they have wrongly classified the goods imported by M/s. Suncity under CTH 72209022 and availed benefit of Notification no. 50/2018-Customs dated 30.06.2018.

**16.2.** I also have gone through the reply letter **dated 16.01.2024 and 18.01.2024** of the importer **M/s. Suncity Sheets Pvt. Ltd.**, and co-noticee Shri Mukesh Agarwal 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, N7. Therefore, they claimed to be entitled to an concessional tariff of 15% on the BCD rate under serial number 735 of Notification No. 50/2018-Cus dated 30.06.2018.

**16.3.** 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**

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

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

**16.4.** 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. Shri Mukesh Agarwal, Director of Importer has admitted in his statement dated 15.11.2021 that they are engaged in manufacturing Pipes which are used for industrial and decorative purposes.

**16.5.** In this connection, I find that 'M/s Suncity' 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. Shri Mukesh Agarwal, Director of M/s Suncity in his statement dated 15.11.2021 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. I 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.

#### **RE-CLASSIFICATION OF IMPUGNED GOODS UNDER CTH 72209029:**

**16.6.** 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.

**16.7.** 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 9029 which is another 'Quadruple-Dash-Entry' for 'Other'. Thus, the Importer are eligible for concessional tariff of 15% under CTH 7022 9029. In view of above, it is evident that the importer conspired to avail excess concessional tariff of 30%.

**16.8.** I find that the importer vide their written submission dated 24.11.2023 requested for copies of processed bills of entries before submitting final reply to the impugned SCN. In this connection, I find that the instant case is based on strong foundations of irrefutable evidence which clearly prove that the import 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.

**16.9.** Further, I find that vide Para 3 of reply dated 18.01.2024 submitted by the Importer, they have relied upon the OIO No. MUN-CUSTM-000-18-23-24 dated 11.12.2023 in case of M/s. Gulshan Exim Pvt. Ltd. and others. In this connection, I find that the importer M/s. Suncity have seemingly failed in interpreting the said OIO wherein it is explicitly held that the impugned goods are re-classifiable under CTH 7220 9090 and not under CTH 7220 9022. It clearly shows that the importer does not have material facts to defend their case,

**16.10.** 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.

**16.11.** I find that the statements of **Shri Mukesh Agarwal**, Director of M/s Suncity; and **Shri Yogesh Dhirajlal Thakkar**, G-card holder and authorized person of M/s. Shri Maruti Shipping Services (Customs broker) 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 inculpating 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.

**16.12.** In view of above, I find that '**M/s Suncity**' 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 Suncity 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.

## **17. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962**

**17.1.** 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.**

**17.2.** It is evident from the investigation carried out by the DRI that the mis-classification of imported goods has been done by M/s. Suncity willfully 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.

**17.3.** The act of mis-classification of impugned imported goods has been committed by M/s. Suncity 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.**

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

**(ii).** 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 transhipment, with the declaration for transhipment 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 malafide 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 Kripalspat 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.

**19.** I have gone through the written submission dated 24.11.2023 of **Shri Mukesh Agarwal Director** of 'M/s Suncity' wherein he has demanded proceedings against the concerned DRI officers and other officers under Sec. 182 of the Indian penal code. In this regard I find that the foundations of the instant case are based on undeniable corroborative evidences, sincerely collected and proved beyond doubt by the DRI during the course of investigation of present case. Further, Section 155 of the Customs Act, 1962 provides immunity to any officer, from any suit, prosecution or other legal proceedings, for discharging duties in good faith.

*Section 155. Protection of action taken under the Act.—(1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.*

*(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.*

Therefore, the allegations made by Shri Mukesh Agarwal vide his said written submission are devoid of any merit, rather it is a blatant attempt to malign the reputation of the officers of a premier investigating agency like DRI.

**20.** I find that M/s. Suncity (Noticee No.1) and Shri Mukesh Agarwal (Noticee No.2) vide their written submissions sought cross examination of the offices of investigating agency and other officers.

**20.1.** In this connection, from the records available I find that 'M/s Suncity' 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 and Hot Rolled Stainless steel Coils as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. I find that M/s Suncity 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 Mukesh Agarwal, Director of M/s Suncity; and **Shri Yogesh Dhirajlal Thakkar, G-card holder and authorized person of M/s. Shri Maruti Shipping Services (Customs broker)** 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.**

**20.2.** I find that the investigating agency DRI have sincerely carried out whole investigation and based their case on the strong foundations of various undeniable corroborative evidences. When there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination. Reliance is placed on Judgement of **Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273]**, as follows:

*"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."*

Therefore, I find that cross examination in the instant case is not necessary.

**20.3.** I observe that the principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established. The cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per 138B(2) the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

**20.4.** I find that the investigating agency DRI have diligently carried out their investigation which is corroborated by irrefutable evidences gathered and scrutinized during the investigation process. In the present case, the act of mis-classification of impugned imported goods, and mis-statement of facts by way of submitting invalid Country of Origin certificates issued by non-party operator i.e. M/s. Comet International Ltd., Hong Kong; has been committed by M/s. Suncity wilfully with intent to avail undue benefit of Notification No. 50/2018- Customs dated 30.06.2018. In view of above, there remains no scope of ambiguity for a man of prudence. Therefore, I observe that no purpose would be served to allow cross examination of such person as same would only unnecessarily protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737:-** wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.

- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):-** wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):-** wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that : .....denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; "....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

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

**21.1. ROLE PLAYED BY M/S SUNCITY:**

(i) I find that M/s. Suncity had imported the goods namely 'Cold Rolled Stainless Steel Coils' valued at **Rs.10,64,16,180/-** (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. However, the impugned goods are correctly classifiable under CTH 7022 9029

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 Suncity 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. Moreover, the impugned goods are correctly classifiable under 7220 9029.

(iv) Therefore, I find that the aforesaid acts of suppression of facts and willful mis-statement by M/s Suncity had led to evasion of Customs duty of **Rs.55,60,004/- (Rupees Fifty Five Lacs Sixty Thousand Four 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 Suncity have rendered the subject imported goods valued at **Rs.10,82,67,467/- (as detailed vide Para 11 to impugned SCN)** liable for confiscation under Section 111(m) of the Customs Act, 1962. M/s Suncity 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. Suncity 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. Suncity, 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 find 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.

(vii) I find that there is a mandatory provision of penalty under Section 114A of customs act, 1962 where duty is determined under section 28 of customs

act, 1962. Therefore, I refrain from imposing penalty under Section 112(a) and Section 112(b) of Customs Act, 1962.

**21.2. ROLE PLAYED BY SHRI MUKESH AGARWAL, DIRECTOR OF M/S SUNCITY:**

(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 Mukesh Agarwal Director** of 'M/s Suncity' to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. 'M/s Suncity' 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 72209029**. However, Shri Mukesh Agarwal 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 Mukesh Agarwal 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 abetment 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. Suncity 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 Mukesh Agarwal was aware that the consignments imported by them were actually Cold Rolled Stainless Steel Coils classifiable under **CTH 72209029**. 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 him liable for penalty under Section 112(a)(ii) of the Customs Act, 1962; **I hold so.**

(iv) Considering all the evidences on records, **I do not** find any role of Shri Mukesh Agarwal Director of M/s. Suncity 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 Mukesh Agarwal Director of M/s. Suncity under Section 117 of the Customs Act, 1962 since penalty under Section 112(a)(ii) is expressly mentioned.

**21.3. Role played by M/s. Shri Maruti Shipping Services; and Shri Yogesh DhiraJlal Thakkar, Authorised signatory and G-card holder of M/s. Shri Maruti Shipping Services:**

(i) 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 **M/s. Shri Maruti Shipping Services** on behalf of M/s Suncity before the Customs authorities, was done on the direction

of Shri Mukesh Agarwal Director of M/s. Suncity. Shri Mukesh Agarwal -Director of M/s Suncity 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 Mukesh Agarwal Director of M/s. Suncity.

(ii) I have also gone through the submission made by the Custom Brokers in their defence 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 Suncity 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 Mukesh Agarwal Director of M/s. Suncity. The impugned SCN alleged that M/s Suncity 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. **M/s. Shri Maruti Shipping Services; and Shri Yogesh Dhirajlal Thakkar, Authorised signatory and G-card holder of M/s. Shri Maruti Shipping Services** are not liable to penalty under Section 112(a), Section 112(b), Section 114 AA, or Section 117 of the Act ibid.

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

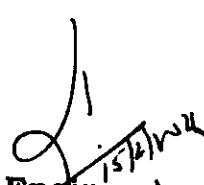
**ORDER**

- (i) I reject the declared classification of the impugned goods imported by **M/s Suncity Sheets Pvt. Ltd.** (IEC-1304009815) covered under Bills of Entry as detailed vide Para 11 to impugned show cause notice; and order to re-classify under Customs Tariff Heading No. **72209029** of the First Schedule to the Customs Tariff Act, 1975 and re-assess the Subject Bills of Entry;
- (ii) I reject the benefit of Notification no. 50/2018-Customs dated 30.06.2018 availed by the Importer 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. 10,82,67,467/- (Rupees Ten Crores Eighty Two Lakhs Sixty Seven Thousand Four Hundred Sixty Seven 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. 55,60,004/- (Rupees Fifty Five Lacs Sixty Thousand Four Only)** (as detailed vide Para 11 to impugned Notice), and order to recover the same from

M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815) 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 Suncity Sheets Pvt. Ltd.** (IEC-1304009815) at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty;
- (vi) I order to appropriate the Customs Duty amounting of **Rs. 55,60,004/- (Rupees Fifty Five Lacs Sixty Thousand Four Only)** already paid voluntarily by M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815) during the course of investigation towards their duty liability raised vide impugned show cause notice;
- (vii) I impose penalty of **Rs. 55,60,004/- (Rupees Fifty Five Lacs Sixty Thousand Four Only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (vi) above upon **M/s Suncity Sheets Pvt. Ltd.** (IEC-1304009815) in terms of Section 114A of the Customs Act, 1962;
- (viii) I refrain from imposing penalty under Section 112(a) and 112(b) of the Customs Act, 1962 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.
- (ix) I refrain from imposing penalty in terms of Section 114AA and Section 117 of the Customs Act, 1962 upon **M/s. Suncity Sheets Pvt. Ltd.**, for the reasons discussed hereinabove.
- (x) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakh only)** upon **Shri Mukesh Agarwal**, Director of M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815) in terms of Section 112(a)(ii) of the Customs Act, 1962.
- (xi) I refrain from imposing penalty upon **Shri Mukesh Agarwal**, Director of M/s Suncity Sheets Pvt. Ltd. (IEC-1304009815) in terms of Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962, for reasons discussed vide Para 21.2 hereinabove.
- (xii) I refrain from imposing penalty upon **M/s. Shri Maruti Shipping Services; and upon Shri Yogesh Dhirajlal Thakkar, Authorised signatory and G-card holder of M/s. Shri Maruti Shipping Services;** in terms of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed hereinabove.

**23.** 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)  
Commissioner of Customs,  
Custom House Mundra.

**Date: 15.02.2024.**

**F.No.CUS/ADJ/COMM/49/2023-Adjn.**

**BY SPEED POST/BY EMAIL/ NOTICE BOARD:**

**To (Noticees)**

- (1) **M/s Suncity Sheets Pvt. Ltd.**  
having office at A-26, 27A,  
Adarsh Society, Gate No-4, ITI Circle,  
Jodhpur, Rajasthan.
- (2) **Shri Mukesh Agarwal,**  
Director of M/s Suncity Sheets Pvt. Ltd.  
having office at A-26, 27A,  
Adarsh Society, Gate No-4, ITI Circle,  
Jodhpur, Rajasthan.
- (3) **M/s. Shri Maruti Shipping Services,**  
Plot No 8/9, Mundra GIDC,  
Baroi Road, Mundra, Kutch.
- (4) **Shri Yogesh Dhirajal Thakkar,**  
Authorised signatory and G-card holder of  
M/s. Shri Maruti Shipping Services,  
Plot No 8/9, Mundra GIDC,  
Baroi Road, Mundra, Kutch

**COPY TO:-**

- 1) 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.
- 2) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 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.