

DIN :- 20240571MO000000B8A1

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</p> <p>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</p> <p>PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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Show Cause Notice

On the basis of reference received from DRI HQ New Delhi, an investigation was initiated by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, against M/S. Metro Import-Export, Plot No. 176 Ward 4A, Adipur Kutch, Gujarat, 370205 (hereinafter referred to as 'the importer'), having IEC 3702000518, who imported "Stainless Steel Cold Rolled Coil Grade J3 (200) Size" falling under tariff heading 72209090 of first Schedule to the Customs Tariff Act, 1975. Investigation indicated that various importers including M/S. Metro Import-Export were engaged in import of "Stainless Steel Cold Rolled Coils" from Malaysia and wrongly availed benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011, as amended, though COOs issued in Malaysia in respect of suppliers/manufacturers/third party/ seller were found un-authentic by Ministry of International Trade and Industry of Malaysia.

"Stainless Steel Cold Rolled Coils" is classified under CTH 72 of first Schedule to the Customs Tariff Act, 1975 and effective rate of duty on this product was 7.5% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017, as amended (Sr. No. 376E).

2. Investigation was initiated by DRI, Ahmedabad Zonal Unit against the importer for duty evasion on import of 'Stainless Steel Cold Rolled Coil Grade J3 (200) Size' from Malaysia in respect of the 5 Bills of Entry (**RUD - 1**). In response to summons dated 11.01.2024, the authorized representative Shri Deepak Thakurdas Sawlani presented himself on 16.02.2024 on behalf of the importer M/S. Metro Import-Export along with an authorization letter dated 13.03.2023 (**RUD 2**) issued by Shri Haresh Dadlani, Proprietor of the importer firm M/S. Metro Import-Export. Accordingly statement of Shree Deepak Thakurdas Sawlani was recorded under Section 108 of the Customs Act 1962 on 16.02.2024 (**RUD-3**), wherein he inter alia stated that -

- He has done Diploma in Computer Science in 1998 from Datapro, Ulhasnagar, District Thane.
- After completion of studies, He started doing job at M/s. Denmark Logistics, Thane, which is a company involved in Clearing and Forwarding work. Then, he worked at M/s. Denmark Logistics in the year 2010 and joined another company at M/s. Able Shipping, Gandhidham as Manager- Forwarding & Booking. Then, he worked at M/s. Able Shipping, Gandhidham in the year 2014. Then onwards, he

started trading work of miscellaneous imported items like sulphur, industrial grade urea etc. and also customs clearance work. Then, he applied for CHA 'G' card and was awarded 'G' card as employee of Customs Broker Company, M/s. R.R.Logistics, Chennai on 21/06/2019. Then in the year 2019, he started doing business of the import and trading of stainless steel coils.

- The proprietor of the firm M/S. Metro Import-Export had no knowledge of the business. Further, he stated that the proprietor has appointed him as the authorized person and the entire business of the firms is handled by him only. On being asked as to why he did not register any company in his own name and did business from his own company, He stated that he did that due to horoscopic reasons.
- The said firm was only engaged in the import of stainless steel coils. The firm imported the stainless steel coils under CTH 72209090 from Apr to July 2019. They had not imported goods any other goods than under CTH 72209090, since the beginning of the businesses. They have 100% imports through Mundra port.
- That his firm do not have sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in Section 28DA(ii) of the Customs Act, 1962. They had received Country of Origin Certificate issued by respective supplier/manufacturer and the same had been submitted at the time of clearance of the consignments.
- He perused copy of e-mail 14.04.2021 received from Zurina Abd Rahim (Ms), Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, Ministry of International Trade and Industry (MITI), Malaysia regarding verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless Steel Cold Rolled Coil and Circles (HS Code 7219 & 7220) under AIFTA, under which list of 87 Country of Origin Certificates was attached mentioning that "List of unauthentic certificates of origin which were not issued by the Ministry of International Trade and Industry Malaysia (MITI)".
- Further he perused list of unauthentic certificates mentioning Certificate of origin reference no. and name of Supplier/ Exporter wherein the name of the Exporter at Sl No 1 of the said list has been mentioned as M/s MH Megah Maju Enterprise as below:

No.	Reference No.	Company Name	Approved Date
1	KL-2019-AI-21-085278	MH Megah Maju Enterprise	30.09.2019

- Further, he also perused the e-mail received from MITI, wherein, it has been mentioned that ...“COO are not authentic and they were not issued by the Ministry of International Trade and Industry of

Malaysia (MITI). For your information, MITI has never received any COO applications from the respective companies via our system”... and in token of having read, understood and explained, he had put his dated signature on e-mail copy and list of not authentic COO received with the above mail.

- Further, he perused Rule 7 of CAROTAR Rules, 2020 and Section 28DA of the Customs Act, 1962.
- He further accepted that the said verification report is also applicable in case of identical goods i.e. Cold Rolled Stainless Steel Coil/Strips imported by them, in terms of CAROTAR Rules prescribed under Section 28DA of the Customs Act, 1962 from the Malaysian supplier M/s MH Megah Maju Enterprise.
- He agreed that his firm M/s. Metro Import-Export was not eligible to avail the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, on the import of Cold Rolled Stainless Steel Coil/Strips of Malaysian Origin from supplier M/s. MH Megah Maju Enterprise.
- He had submitted COOs which were supplied by their supplier to them. They did not know whether COO provided by their supplier were genuine or not. Hence, they had no intention to avail wrongful benefit of duty on the basis of COO provided by overseas supplier. He agreed that they have wrongly availed benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, however, as their business has been closed since January-2021 and there is no further import by their firm and also incurred loss in the above business, he was having financial crisis. He therefore stated to grant some time so that He could manage for payment of the differential duty.

3. Investigation in respect of consignments imported by the importer:

3.1 On scrutiny of documents submitted by the importer, it appears that the importer imported ‘Stainless Steel Cold Rolled Coils from Malaysia based Suppliers/ Manufacturers/ Seller/ Third Party, M/s MH Megah Maju Enterprise, Malaysia, vide Bills of Entry as detailed in **Annexure I** and cleared the same through Mundra availing the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended which appears not to be available to them as M/s MH Megah Maju Enterprise had never made application to MITI for Country of Origin Certificate. The importer had imported these consignment of ‘Stainless Steel Cold Rolled Coils’ from Malaysia, the details of which are annexed in **Annexure I**.

3.2 Further, from the documents forwarded by the DRI HQ, New Delhi, it is observed that a number of certificate of origin (COO) certificates issued by the above named Malaysia based Manufacturer /suppliers, M/s MH Megah Maju Enterprise, Malaysia, for identical goods have been found unauthentic. The details of M/s MH Megah Maju enterprise, Malaysia as mentioned in the copy of e-mail 14.04.2021 received from Zurina Abd Rahim (Ms), Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, Ministry of International Trade and Industry (MITI), Malaysia regarding verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless

Steel Cold Rolled Coil and Circles (HS Code 7219 & 7220) under AIFTA, under which list of 87 Country of Origin Certificates was attached mentioning that “List of unauthentic certificates of origin which were not issued by the Ministry of International Trade and Industry Malaysia (MITI)” is mentioned in table 1 below:

Table-1

No.	Reference No.	Company Name	Approved Date
1	KL-2019-AI-21-085278	MH Megah Maju Enterprise	30.09.2019

3.3 The scanned image of verification report in r/o above mentioned certificates of origin received from Ministry of Trade and Industry of Malaysia (MITI) are as under-

Email

<https://email.gov.in/h/printmessage?id=20861&tz=Asia/Kolkata...>

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456

Sent: Wednesday, 14 April, 2021 11:08 AM**To:** com.kl@mea.gov.in**Cc:** Jamilah Haji Hassan <jamilah.hassan@miti.gov.my>; fscom.kl@mea.gov.in; ftaroo-cbic@gov.in; Muhammad Arif Wahab Udin <arif.wahab@miti.gov.my>; Mohd Hatta Bin Yousof <hatta@miti.gov.my>**Subject:** Fw: Re: FW: Verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless steel Cold Rolled Coils and Circles (HS Code 7219 & 7220) under AIFTA-Reg

Dear Mr. Kipgen,

Greetings from the Ministry of International Trade and Industry Malaysia (MITI).

Your previous email below dated 31 December 2020 is referred to.

With reference to your verification request pertaining to the authenticity of 143 copies of Preferential Certificates of Origin (COO) as can be viewed from the following link, we wish to inform you that a retroactive check has been conducted on part of the COOs submitted to MITI.

<https://drive.google.com/file/d/1Od6f4UHHUgyplHLztY2LSdsmBI90Fgpv/view?usp=sharing>

Based on our assessment, **87** out of 143 copies of the COO are **not authentic** and they were **not issued by the Ministry of International Trade and Industry of Malaysia (MITI)**. For your information, **MITI has never received any COO applications from the respective companies via our system**. Please find the list of 87 COOs attached to this email.

On a separate note, MITI would like to request for an extension of time from the Government of India in confirming whether the balance of 53 COOs and 3 Non-Preferential COOs are authentic as we have to provide the additional documents/ information as requested in the previous email. We wish to provide our response on the balance of 53 COOs and 3 Non-Preferential COOs latest by 14 May 2021.

Your attention and consideration with regard to above matter are greatly appreciated.

Thank you.

Warm regards,

Zurina Abd Rahim (Ms) | Principal Assistant Director
Trade and Industry Cooperation Section
Trade and Industry Support Division
Ministry of International Trade and Industry
Tel: +603.6208.4751 | Fax: +603.6206.3074
Email: zurina@miti.gov.my

----- Forwarded Message -----

Email

<https://email.gov.in/h/printmessage?id=20861&tz=Asia/Kolkata>

(23) 455

From: Zurina (ninarahim48@gmail.com)

Date: 04/14/21 09:26

To: zurina (zurina@miti.gov.my)

Subject: Re: FW: Verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless steel Cold Rolled Coils and Circles (HS Code 7219 & 7220) under AIFTA-Reg

On Thu, Dec 31, 2020 at 11:35 AM k.kipgen <com.kl@mea.gov.in> wrote:

Dear Ms Zurina,

Greetings from the High Commission of India, Kuala Lumpur!

Kindly find attached herewith 143 copies of Certificate of Origin (COO) said be issued in Malaysia for export of Cold Rolled Stainless Steel Coils & Circles (HS Code 72209090 & 72199090) from Malaysia to India under AIFTA.

It is requested to cause a retroactive check in respect of the genuineness and authenticity of the said certificate as per Article 16 (a) (ii) of Operational Certification Procedures for the Rules of Origin under AIFTA. MITI may kindly inform whether the regional value content has been arrived at in terms of the **Direct Method** or the **Indirect Method** along with details of the originating contents and break-up of the production cost, other costs and Regional Value Content (RVC). It may also be seen that the COO has been issued under Third Country Invoice, as such, a copy of the original invoice based on which the subject COO has been issued may kindly be provided. The Issuing Authority is also requested to provide a report on the manufacturing process undertaken by the exporter/manufacturer of the finished goods along with details of the source of originating material used, if any, in the production of the subject commodity. In addition, a copy of the application submitted by the exporter/manufacturer along with appropriate supporting documents may kindly be provided.

Best Regards,

—

K. Kipgen,
Attache' (Commerce),
High Commission of India,
Kuala Lumpur,
Malaysia.
Tel: +60340252323

3 of 4

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Email

<https://email.gov.in/h/printmessage?id=20861&tz=Asia/Kolkata...>



INDIA @ UN SC
2021-2022

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LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN.pdf
132 KB

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LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY
THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)

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NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
1	KL-2019-AI-21-085278	MH MEGAH MAJU ENTERPRISE	30.09.2019
2	KL-2019-AI-21-072695	MZH MAJU INDUSTRY	01.08.2019
3	KL-2019-AI-21-077386	MH MEGAH MAJU ENTERPRISE	19.08.2019
4	KL-2019-AI-21-085859	MH MEGAH MAJU ENTERPRISE	01.10.2019
5	KL-2019-AI-21-086871	MH MEGAH MAJU ENTERPRISE	09.10.2019
6	KL-2019-AI-21-088746	MH MEGAH MAJU ENTERPRISE	25.10.2019
7	KL-2019-AI-21-091327	MH MEGAH MAJU ENTERPRISE	12.11.2019
8	KL-2019-AI-21-091319	MH MEGAH MAJU ENTERPRISE	12.11.2019
9	KL-2019-AI-21-095563	MH MEGAH MAJU ENTERPRISE	26.11.2019
10	KL-2019-AI-21-095873	MH MEGAH MAJU ENTERPRISE	27.11.2019
11	KL-2019-AI-21-075801	MH MEGAH MAJU ENTERPRISE	15.08.2019
12	KL-2019-AI-21-077378	MH MEGAH MAJU ENTERPRISE	19.08.2019
13	KL-2019-AI-21-077411	MH MEGAH MAJU ENTERPRISE	19.08.2019
14	KL-2019-AI-21-080137	MH MEGAH MAJU ENTERPRISE	28.08.2019
15	KL-2019-AI-21-080172	MH MEGAH MAJU ENTERPRISE	28.08.2019
16	KL-2019-AI-21-085898	MH MEGAH MAJU ENTERPRISE	02.10.2019
17	KL-2019-AI-21-086855	MH MEGAH MAJU ENTERPRISE	09.10.2019
18	KL-2019-AI-21-086834	MH MEGAH MAJU ENTERPRISE	09.10.2019
19	KL-2019-AI-21-086829	MH MEGAH MAJU ENTERPRISE	09.10.2019
20	KL-2019-AI-21-06958	SETICA INDUSTRIES (M) SDN BHD	22.01.2019
21	KL-2019-AI-21-06591	SETICA INDUSTRIES (M) SDN BHD	07.02.2019
22	KL-2018-AI-21-139316	JENTAYU INDUSTRY	28.12.2018
23	KL-2019-AI-21-03293	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
24	KL-2019-AI-21-05483	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
25	KL-2019-AI-21-07132	SETICA INDUSTRIES (M) SDN BHD	15.02.2019
26	KL-2019-AI-21-099652	MH MEGAH MAJU ENTERPRISE	31.12.2019
27	KL-2020-AI-21-001958	MH MEGAH MAJU ENTERPRISE	22.01.2020
28	KL-2019-AI-21-02866	SETICA INDUSTRIES (M) SDN BHD	25.01.2019
29	KL-2020-AI-21-003235	MH MEGAH MAJU ENTERPRISE	04.02.2020
30	KL-2019-AI-21-091247	MH MEGAH MAJU ENTERPRISE	12.11.2019
31	KL-2020-AI-21-005078	CEKAP PRIMA SDN BHD	29.01.2020
32	KL-2019-AI-21-010992	ARTFRANSI INTERNATIONAL SDN BHD	24.09.2019
33	KL-2019-AI-21-010967	ARTFRANSI INTERNATIONAL SDN BHD	11.10.2019
34	KL-2019-AI-21-010979	ARTFRANSI INTERNATIONAL SDN BHD	31.10.2019
35	KL-2019-AI-21-010989	ARTFRANSI INTERNATIONAL SDN BHD	19.11.2019
36	KL-2019-AI-21-088361	MH MEGAH MAJU ENTERPRISE	21.10.2019
37	KL-2020-AI-21-000862	MH MEGAH MAJU ENTERPRISE	20.01.2020
38	KL-2019-AI-21-018819	HARD METAL TRADE SDN BHD	16.12.2019
39	KL-2019-AI-21-014873	SETICA INDUSTRIES (M) SDN BHD	09.04.2019
40	KL-2019-AI-21-015487	SETICA INDUSTRIES (M) SDN BHD	12.04.2019
41	KL-2019-AI-21-039871	MH MEGAH MAJU ENTERPRISE	23.04.2019
42	KL-2019-AI-21-043235	CEKAP PRIMA SDN BHD	12.12.2019
43	KL-2019-AI-21-038903	SETICA INDUSTRIES (M) SDN BHD	N/A
44	KL-2019-AI-21-072613	MZH MAJU INDUSTRY	01.08.2019

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**LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY
THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)**

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
45	KL-2019-AI-21-093214	EZY METAL ENTERPRISE	15.11.2019
46	KL-2019-AI-21-095525	MH MEGAH MAJU ENTERPRISE	26.11.2019
47	KL-2019-AI-21-095473	MH MEGAH MAJU ENTERPRISE	26.11.2019
48	KL-2019-AI-21-027975	MALY METAL INDUSTRY SDN BHD	30.09.2019
49	KL-2019-AI-21-033688	MALY METAL INDUSTRY SDN BHD	13.11.2019
50	KL-2019-AI-21-039022	MALY METAL INDUSTRY SDN BHD	25.11.2019
51	KL-2019-AI-21-043662	MALY METAL INDUSTRY SDN BHD	16.12.2019
52	KL-2019-AI-21-088477	MH MEGAH MAJU ENTERPRISE	22.10.2019
53	KL-2019-AI-21-088408	CEKAP PRIMA SDN BHD	12.11.2019
54	KL-2019-AI-21-033027	MH MEGAH MAJU ENTERPRISE	22.10.2019
55	KL-2019-AI-21-038395	CEKAP PRIMA SDN BHD	27.11.2019
56	KL-2019-AI-21-0101023	ARTFRANSI INTERNATIONAL SDN BHD	02.12.2019
57	KL-2019-AI-21-043670	MALY METAL INDUSTRY SDN BHD	16.12.2019
58	KL-2019-AI-21-099382	EZY METAL ENTERPRISE	27.12.2019
59	KL-2019-AI-21-044172	MALY METAL INDUSTRY SDN BHD	31.12.2019
60	KL-2019-AI-21-091339	JENTAYU INDUSTRY	30.11.2019
61	KL-2019-AI-21-090139	JENTAYU INDUSTRY	11.11.2019
62	KL-2019-AI-21-093873	JENTAYU INDUSTRY	29.11.2019
63	KL-2019-AI-21-085293	MH MEGAH MAJU ENTERPRISE	30.09.2019
64	KL-2019-AI-21-086925	MH MEGAH MAJU ENTERPRISE	09.10.2019
65	KL-2019-AI-21-017946	PIONEER ULT ENTERPRISE	24.10.2019
66	KL-2019-AI-21-017945	PIONEER ULT ENTERPRISE	24.10.2019
67	KL-2019-AI-21-017896	PIONEER ULT ENTERPRISE	04.11.2019
68	KL-2019-AI-21-017895	PIONEER ULT ENTERPRISE	04.11.2019
69	KL-2019-AI-21-017912	PIONEER ULT ENTERPRISE	15.11.2019
70	KL-2019-AI-21-018082	PIONEER ULT ENTERPRISE	20.11.2019
71	KL-2019-AI-21-018251	PIONEER ULT ENTERPRISE	29.11.2019
72	KL-2019-AI-21-018250	PIONEER ULT ENTERPRISE	29.11.2019
73	KL-2019-AI-21-018252	PIONEER ULT ENTERPRISE	29.11.2019
74	KL-2019-AI-21-018796	PIONEER ULT ENTERPRISE	16.12.2019
75	KL-2019-AI-21-018809	PIONEER ULT ENTERPRISE	16.12.2019
76	KL-2019-AI-21-018800	PIONEER ULT ENTERPRISE	16.12.2019
77	KL-2019-AI-21-018848	PIONEER ULT ENTERPRISE	24.12.2019
78	KL-2019-AI-21-018845	PIONEER ULT ENTERPRISE	24.12.2019
79	KL-2019-AI-21-018843	PIONEER ULT ENTERPRISE	24.12.2019
80	KL-2019-AI-21-018898	PIONEER ULT ENTERPRISE	31.12.2019
81	KL-2020-AI-21-019358	PIONEER ULT ENTERPRISE	15.01.2020
82	KL-2020-AI-21-019428	PIONEER ULT ENTERPRISE	28.01.2020
83	KL-2020-AI-21-019484	PIONEER ULT ENTERPRISE	28.01.2020
84	KL-2020-AI-21-019482	PIONEER ULT ENTERPRISE	28.01.2020
85	KL-2020-AI-21-019480	PIONEER ULT ENTERPRISE	28.01.2020
86	KL-2020-AI-21-019511	PIONEER ULT ENTERPRISE	04.02.2020
87	KL-2019-AI-21-01095	SETICA INDUSTRIES (M) SDN BHD	07.01.2019

From: Zurina Binti Abd Rahim [mailto:zurina@miti.gov.my]

Sent: Tuesday, 18 May, 2021 4:26 PM

To: com.kl@mea.gov.in

CC: Jamilah Haji Hassan <jamilah.hassan@miti.gov.my>; fscom.kl@mea.gov.in; Muhammad Arif Wahab Udin <arif.wahab@miti.gov.my>; ftaroo-cbic@gov.in; Mohd Hatta Bin Yousof <hatta@miti.gov.my>; Nur Emilia Binti Masan (PLI) <emilia.pli@miti.gov.my>

Subject: Fw[2]: Verification of Certificate of Origin said to be issued in Malaysia , under AIFTA for the export of Cold Rolled Stainless Steel Coils (HS Code 722090)-reg.

Dear Mr. Kipgen,

Greetings from the Ministry of International Trade and Industry Malaysia (MITI).

With reference to your email dated 19 February 2021 pertaining to verification on the following eight (8) Preferential Certificates of Origin (COO), we are pleased to inform that a retroactive check has been conducted on the COOs.

No	Reference No.	Company Name
1	KL-2020-AI-21-003267	MH MEGAH MAJU ENTERPRISE
2	KL-2020-AI-21-003328	MH MEGAH MAJU ENTERPRISE
3	KL-2020-AI-21-003432	MH MEGAH MAJU ENTERPRISE
4	KL-2019-AI-21-030235	MALY MATEL INDUSTRY SDN BHD
5	KL-2019-AI-21-0101016	ARTFRANSI INTERNATIONAL SDN BHD
6	KL-2019-AI-21-098742	JENTAYU INDUSTRY
7	KL-2020-AI-21-099916	EZY METAL ENTERPRISE
8	KL-2019-AI-21-052024	CEKAP PRIMA SDN BHD

We wish to confirm that the COOs are **not authentic** and they were **not issued by the Ministry of International Trade and Industry of Malaysia (MITI)**. For your information, **MITI has never received any COO applications from the abovementioned companies via our ePCO system.**

Your attention with regard to above matter is highly appreciated.

Thank you.

Warm regards,

Zurina Abd Rahim (Ms) | Principal Assistant Director
Trade and Industry Cooperation Section
Trade and Industry Support Division
Ministry of International Trade and Industry
Tel: +603.6208.4751 | Fax: +603.6206.3074
Email: zurina@miti.gov.my

----- Forwarded Message -----

From: k.kipgen (com.kl@mea.gov.in)

Date: 02/19/21 10:45

3.4 It clearly appears from the email dated 18.05.2021 received from Ministry of International Trade and Industry (MITI), that **“MITI has never received any COO application from the above mentioned companies via our ePCO”**. Thus, it transpires that any COO, which is dated prior to 18.05.2021, in respect of M/S. MH Megah Maju Industry, Malaysia is non-authentic, as M/s. MH Megah Maju Industry, Malaysia has never applied for COO before 18.05.2021. Thus, the COO certificate No. KL-2019-AI-21-043274 dated 14.05.2019, certificate No. KL-2019-AI-21-045348 dated 29.05.2019, certificate No. KL-2019-AI-21-058172 dated 28.06.2019, certificate No. KL-2019-AI-21-054672 dated 13.06.2019, certificate No.

KL-2019-AI-21-068463 dated 23.07.2019, produced by the importer before the Customs for clearance of the imported goods claiming the exemption from duty under Notification No. 46/2011-Cus dated 01.06.2011, appears to be non- authentic.

3.5 It also appears from the proviso to Notification No. 46/2011-Cus dated 01.06.2011 that the importer is required to prove to the satisfaction of the Customs Authority 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 to the Notification No. 046/2011-Cus dated 01.06.2011, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 (hereinafter referred to as **"the said Rules of Origin, 2009"**), notified vide Notification No. 189/2009-Customs(N.T.) dated the 31st December, 2009. Text of the proviso reads as follows:-

"Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix-1, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the Notification No. 189/2009-Customs(N.T.) dated the 31st December, 2009".

3.6 It further appears from Rule 13 of Notification No. 189/2009-Customs (NT) dated 31.12.2009 that any claim that a product shall be accepted as eligible for preferential tariff treatment if it is supported by Certificate of Origin issued by a Government authority of exporting party and the same is issued in accordance with the Operational Certification Procedures as set out in Annexure-III annexed to the rules notified vide Notification No. 189/2009-Customs (NT) dated 31.12.2009.

"13. Certificate of Origin: Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures' as set out in Annexure-III annexed to these rules."

Further, Para-1 of the above referred Annexure-III (Operational Certification Procedures) stipulates that the AIFTA Certificate of Origin shall be issued by the Government authorities (issuing authority) of the exporting party. The text of the Para-1 of the Annexure-III, reads as follows:

1. The AIFTA Certificate of Origin shall be issued by the Government authorities (issuing authority) of the exporting party.

3.7 As mentioned in forgoing para, the retroactive verification of Country of Origin Certificate with respect to the product viz. Cold Rolled Stainless Steel Coils, by the issuing authority (Ministry of International Trade and Industry, Malaysia), has clearly revealed that the COO issuing authority has never received any COO application from M/s. CEKAP PRIMA SDN BHD. Thus, the COO certificate No. KL-2019-AI-21-026035 dated 28.08.2019, produced by the importer for claiming the exemption from duty under Notification No. 46/2011-Cus dated 01.06.2011 appears to be not acceptable for preferential tariff treatment, as the same being not issued by the issuing authority, in terms of Rule -13 of *Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.*

3.8 The government has inserted Section 28DA of the Customs Act, 1962 vide clause 110 of Finance Act, 2020 and has notified Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (hereafter referred to as the CAROTAR, 2020) issued vide Notification No. 81/2020-Customs (N.T.) dated 21st August, 2020, with aim to supplement the operational procedures related to implementation of Rules of Origin, as prescribed under the respective trade agreements FTA/PTA/CECA/CEPA) and notified under the customs notifications issued in terms of section 5 of the Customs Tariff Act, 1975 for each agreement.

It appears that Rule-7 of CAROTAR, 2020 stipulates that if it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer. The said Rule 7 is reproduced as under:

“7. Identical goods.– (1) Where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.”

The terms “Identical goods” have been defined under the explanation provided under Section 28DA of Customs Act, 1962 as under:

“identical goods” means goods that are same in all respect with reference to the country of origin criteria under the trade agreement”

3.9 In the instant case, the goods viz. Cold Rolled Stainless Steel Coil originating from an exporter M/s. MH Megah Maju Enterprise, do not meet the origin criteria as revealed from verification (vide MITI’s mail dated

18.05.2021), thus the outcome of the verification (vide MITI's mail dated 18.05.2021) is also applicable to the goods viz. Cold Rolled Stainless Steel Coil imported by the importer from Malaysia as per Annexure I, as the imported goods being the identical goods in terms of Rule-7 of CAROTAR, 2020. Therefore, the claim of preferential rate of duty by the importer under Notification No. 46/2011-Cus dated 01.06.2011 appears liable to be rejected in terms of Rule 7 of CAROTAR, 2020 read with Rule 13 of the said Rules of Origin, 2009, as the COO produced by them is not authentic.

3.10 Further, as per Sub-Section 11 of Section 28DA of Customs Act, 1962, the non-compliance of the imported goods with the country of origin criteria appears to be applicable to all imports of identical goods from the same producer or exporter. Therefore, the claim of preferential rate of duty by the importer under Notification No. 46/2011-Cus dated 01.06.2011 appears liable to be rejected in terms of Sub-Section 11 of Section 28DA of Customs Act, 1962 read with Rule 7 of CAROTAR, 2020 and Rule 13 of the said Rules of Origin, 2009, as the COO produced by them is not authentic

3.11 Shri Deepak Thakurdas Sawlani, Authorised representative of M/s Metro Import-Export, in his statement recorded on 16.02.2024 under section 108 of Customs Act, 1962 has agreed that their firm was not eligible to avail the duty exemption under Notification No. 46/2011-Cus dated 01.06.2011 on import of 'Stainless Steel Cold Rolled Coil' from M/s. MH Megah Maju Enterprise. He has also stated that he does not possess information regarding country of origin criteria in terms of Section 28DA of Finance Act, 1962. . He had further submitted COOs which were supplied by their supplier to them. They did not know whether COO provided by their supplier were genuine or not. **He agreed that they have wrongly availed benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended.**

4. Summary of the Investigation:

From the investigation conducted and from the foregoing discussions, it appears that:

- a. The importer has imported 5 consignments of Malaysia origin 'Stainless Steel Cold Rolled Coils' from Suppliers/ Manufacturers/ Seller/ Third Party M/s. MH Megah Maju Enterprise vide Bills of Entry as detailed in Annexure I, availing the benefit of Notification No. 46/2011-Customs dated 01.06.2011.
- b. The importer has classified their imported goods i.e. 'Stainless Steel Cold Rolled Coils' under tariff heading 72209090 of the first schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended.
- c. During verification of Certificates of origin, Ministry of Trade and Industry, Malaysia informed that 105 COOS issued in Malaysia under ASEAN-Free Trade Area for the export of Cold Rolled Stainless Steel coil grade are not authentic and not issued by their office. Further Ministry of Trade and Industry, Malaysia vide their mail dated 18.05.2021, has informed that 08 COOs issued in Malaysia under ASEAN-Free Trade Area for the export of Cold Rolled Stainless Steel

- coil grade are not authentic and not issued by their office to Exporters including M/s MH Megah Maju Enterprise.
- d. One such COO reference No. KL-2019-AI-21-085278 dated 30.09.2019 in respect of supplier/exporter M/s. MH Megah Maju Enterprise for export of identical goods i.e. COLD ROLLED STAINLESS STEEL COILS' have been found unauthentic during the retroactive check carried out by Ministry of Trade and Industry (MITI), Malaysia, as has been communicated vide their mail dated 14.04.2021. said COO No. KL-2019-AI-21-085278 dated 30.09.2019 is figuring at Sr. No. 1 of the enclosed list of 87 unauthentic COOs. Further vide mail dated 18.05.2021 by MITI, other such un-authentic COOs were informed, w.r.t various suppliers including M/s. MH Megah Maju Enterprise. Further, MITI has also informed that they have never received any COO application from the companies appearing in the list of COOs, which also includes M/s. MH Megah Maju Enterprise. This means any COO issued in respect of M/s. MH Megah Maju Enterprise is non authentic. Hence, COO certificate No. KL-2019-AI-21-043274 dated 14.05.19, certificate No. KL-2019-AI-21-045348 dated 29.05.19, certificate No. KL-2019-AI-21-058172 dated 28.06.19, certificate No. KL-2019-AI-21-054672 dated 13.06.19, certificate No. KL-2019-AI-21-068463 dated 23.07.2019 produced by the importer for claiming the duty exemption on import of COLD ROLLED STAINLESS STEEL COILS from M/s. MH Megah Maju Enterprise under Notification No. 46/2011-Cus, is also not issued by the COO issuing authority.
- e. In view of the above, COLD ROLLED STAINLESS STEEL COILS imported by the importer from M/s. MH Megah Maju Enterprise, Malaysia, under the cover of Bills of entry as mentioned at Annexure I are identical goods supplied by the same supplier M/s. MH Megah Maju Enterprise, Malaysia, thus outcome of retroactive verification of Country Of Origins Certificate, by the issuing authority (Ministry of International Trade and Industry, Malaysia), in respect of Malaysia based Manufacturer /suppliers, M/S. MH Megah Maju Enterprise for the **identical goods** (Cold Rolled Stainless Steel Coils) is also applicable in the instant case, in terms of Rule-7 of CAROTAR, 2020 and Sub-Section 11 of Section 28DA of the Finance Act, 1962. Therefore, the COO certificate No. KL-2019-AI-21-043274 dated 14.05.2019, certificate No. KL-2019-AI-21-045348 dated 29.05.2019, certificate No. KL-2019-AI-21-058172 dated 28.06.2019, certificate No. KL-2019-AI-21-054672 dated 13.06.2019, certificate No. KL-2019-AI-21-068463 dated 23.07.2019 produced by the importer for claiming the duty exemption on import of COLD ROLLED STAINLESS STEEL COILS from M/s. MH Megah Maju Enterprise under Notification No. 46/2011-Cus is not acceptable as eligible for preferential tariff treatment in terms of Rule 13 of the said Rules of Origin read with Rule-7 of CAROTAR, 2020 and Sub-Section 11 of Section 28DA of the Finance Act, 1962, as the COOs produced by the importer is not issued by the issuing authority.
- f. Shri Deepak Thakurdas Sawlani, Authorised representative of M/s

Metro Import-Export, in his statement recorded on 16.02.2024 under section 108 of Customs Act, 1962 has agreed that their firm was not eligible to avail the duty exemption under Notification No, 46/2011-Cus dated 01.06.2011 on import of 'Stainless Steel Cold Rolled Coil' from M/s. MH Megah Maju Enterprise. He has also stated that he does not possess information regarding country of origin criteria in terms of Section 28DA of Finance Act, 1962.. He had further submitted COOs which were supplied by their supplier to them. **He agreed that they have wrongly availed benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended.**

- g. Thus, the importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.

5. Main Legal Provisions relating to the case:

5.1 Sub-section (4) of Section 46 of the Customs Act, 1962, specifies that, *the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods.*

5.2 Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided *that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.*

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

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

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall

pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - *For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]*

5.3 Section 28DA Procedure regarding claim of preferential rate of duty.

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -

- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*
- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
- (iii) furnish such information in such manner as may be provided by rules;*
- (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.*

(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may,-

- (i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;*
- (ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:*

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

- (i) the tariff item is not eligible for preferential tariff treatment;
- (ii) complete description of goods is not contained in the certificate of origin;
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to

show that identical goods meet the country of origin criteria.

Explanation-For the purposes of this Chapter,-

(a)"certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;

(b)"identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;

(c)"Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;

(d)"trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.

5.4 SECTION 111. Confiscation of improperly imported goods, etc.

- The following goods brought from a place outside India shall be liable to confiscation: -

(a) ...

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

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p)...

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

5.5 SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,

-
(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

5.6 Section 28 (4) of the Customs Act, 1962- Recovery of duties not levied or short-levied 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.

5.7 SECTION 28AA. Interest on delayed payment of duty. —

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section 2, whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten percent and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

5.8 Section 114A of the Customs Act, 1962 read as Penalty for short-levy or non-levy of duty in certain cases. —

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

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28], and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal

or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

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

Explanation - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

5.9 Section 114 AA of the Customs Act, 1962 read as –

Penalty for use of false and incorrect material. -

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

5.10 SECTION 117 OF CUSTOMS ACT, 1962:

Penalties for contravention, etc., not expressly mentioned: - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

6. Obligations under self-assessment and demand invoking extended period:

6 . 1 The subject Bills of Entry as mentioned in Annexure I of this investigation report, filed by the importer, wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per the verification report of Certificate of

Origin conducted, established that the Certificates of Origin were found un-authentic in r/o supplies in aforesaid bills of entries. The importer has agreed to the fact and has agreed to pay the short paid duty along with interest and penalty of this Investigation Report in due time.

6 . 2 Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by submitting un-authentic Certificate of Origin, it appears that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed the benefit of exemption Notification on the basis of unauthentic COO. The importer has failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

6 . 3 Therefore, it appears that the importer knowingly and deliberately availed the exemption Notification on the goods of Malaysia based origin. It appears to be indicative of their mens rea. Moreover, the importer appears to have suppressed and mis stated the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra port and thereby caused evasion of Customs duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case. For the same reasons, the importer also appears liable to penalty under **Section 114A** of the Customs Act, 1962.

0 7 . WILFUL MISSTATEMENT AND SUPPRESSION OF FACTS BY IMPORTER:- liability of goods to confiscation, demand of differential Duty and liability to Penalties:-

7 . 1 Section 17 of the Customs Act, 1962 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 of the Customs Act, 1962, 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, benefits of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill.

7.2 From the discussion hereinabove, it has been established that M/s. Metro Import Export was being managed by Shri Deepak Thakurdas Sawlani the Authorised representative of the company who used to place order to the overseas suppliers and also was filing the Bills of Entry for the

import under his Cha License M/s. R.R.Logistics, Chennai. Accordingly, M/s. Metro Import- Export was being managed and controlled by Shri Deepak Thakurdas Sawlani and all the communication regarding the purchase and supply of the Steel Coils were being managed by him alone.

7.3 Sub-section (4) of section 46 of the Customs Act, 1962, specifies that, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content of such Bill of Entry and shall, in support of such declaration, produced to the proper officer the invoice, if any, and such other documents relating to the imported goods. From the verification report discussed above, it appears that the importer has suppressed the relevant facts and intentionally evaded Customs duty on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962.

7.4 As mentioned in the foregoing paras, the imported goods under the said Bill of Entry, as mentioned in **Annexure I** to this investigation report, have been found to be not corresponding the condition for claiming the exemption against Country of Origin (COO) Certificate in terms of Notification No. 46/2011-Cus dated 01.06.2011, as amended. Thus, the duty appears to have been short levied and short paid by wilfully mis-declaring the Country of Origin of the imported goods in order to avail the benefit of the Exemption notification. Hence it appears that the duty short levied and short paid amounting to **Rs. 18,12,068/- (Rupees Eighteen Lakhs Twelve Thousand Sixty Eight only)** is liable to be recovered in terms of Section 28 (4) of the Customs Act 1962 w.r.t M/s. Metro Import-Export by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the duty is short paid on account of wilful mis-statement and suppression as narrated above. Further the interest at the prescribed rate is also liable to be recovered from them in terms of Section 28 AA of Customs Act, 1962. Also, the importer M/s Metro import Export has rendered itself liable to penalty under Section 114A of the Customs Act, 1962.

7.5 It further appears that the goods imported having assessable value of **Rs. 1,86,13,946/- (Rupees One Crore eighty Six Lakhs Thirteen Thousand Nine Hundred Forty Six only)** are liable for confiscation under Section 111(m), 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appears that the importer is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

7 . 6 As discussed above, it appears that the importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and also failed to possess sufficient information as regards to authenticity of Certificate of Origin and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. The importer was not eligible for exemption benefit as provided under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Therefore, it appears that they are also liable for imposition of penalty under **Section 114AA** of the Customs Act, 1962.

8.1 Shri Deepak Thakurdas Sawlani the Authorised representative of the company: It appears that Shri Deepak Thakurdas Sawlani the Authorised representative of the company is the person in the company who was designated to communicate with the overseas suppliers. Shri Deepak Thakurdas Sawlani himself accepted that the proprietor of the company M/s Metro import Export had no knowledge of the business. Further, he stated that the proprietor has appointed him as the authorized person and the entire business of the firms is handled by him only. He further accepted that he did not register any company in his own name and did business from his own company because of the horoscopic reasons. So it is clear that the main person behind the operation of the firm is Shri Deepak Sawlani.

8.2 Shri Deepak Thakurdas Sawlani, Authorised representative of M/s Metro Import-Export, in his statement recorded on 16.02.2024 under section 108 of Customs Act, 1962 has agreed that their firm was not eligible to avail the duty exemption under Notification No, 46/2011-Cus dated 01.06.2011 on import of 'Stainless Steel Cold Rolled Coil' from M/s. MH Megah Maju Enterprise. He has also stated that he does not possess information regarding country of origin criteria in terms of Section 28DA of Finance Act, 1962. . He had further submitted COOs which were supplied by their supplier to them. They did not know whether COO provided by their supplier were genuine or not. Hence, they had no intention to avail wrongful benefit of duty on the basis of COO provided by overseas supplier. **He agreed that they have wrongly availed benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended.**

8.3 It appears that Shri Deepak thakurdas Sawlani was aware of the provisions of the Customs Act, 1962 as well and fully aware of the goods being imported. However, he chose to mis-declare and submitted non-authentic Country of Origin Certificate before Customs to clear the goods availing duty exemption under Notification No, 46/2011-Cus dated 01.06.2011, so that the importer firm could enjoy the benefits by paying NIL rate of Customs duties, thereby resulting in evasion of Customs Duties. It therefore appears that by his acts of omission and commission, he has rendered the goods imported under Bills of Entry mentioned in Anenexure-I liable for confiscation under Section 111 (m), 111(o) and 111(q) of the Customs Act, 1962 and consequently, he appears to have rendered himself liable for penalty under Section 112(a) and 112 (b) of the Customs Act, 1962 and Section 114AA and 117 of the Customs Act, 1962.

9. This Show Cause Notice pertains to demand of duty involved in the goods imported through Mundra port falling under the jurisdiction of Pr. Commissioner or Commissioner of Customs, Mundra Commissionerate, Mundra. Therefore in terms of Section 110AA issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi, the proper officer in the instant case is the **Additional Commissioner / Joint Commissioner of Customs, Mundra**, Commissionerate, Mundra (As per Annexure I).

10.1 Now, therefore M/s. Metro Import-Export (IEC 3702000518) having address Plot No.176 Ward 4A, Adipur Kutch, Gujarat, 370205, is hereby being called upon to show cause to the Additional Commissioner of Customs, Mundra Commissionerate, Mundra having his office at Port User Building, Mundra Port, Mundra, Kutch Gujarat, within thirty days from the receipt of this notice as to why:-

- i. the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the import of goods under various Bill of Entry filed at Mundra Port, as mentioned in Annexure I, should not be disallowed and the Bills of Entry should not be reassessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011.
- ii. the impugned goods having total assessable value of **Rs. 1,86,13,946/- (Rupees One Crore eighty Six Lakhs Thirteen Thousand Nine Hundred Forty Six only)** as mentioned in Annexure I should not be held liable for confiscation as per the provisions of Section 111(m), 111(o) and 111 (q) of the Customs Act, 1962.
- iii. The differential Customs duty amounting to **Rs. 18,12,068/- (Rupees Eighteen Lakhs Twelve Thousand Sixty Eight only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, as calculated in "Annexure I".
- iv. The Interest at the applicable rate may be recovered from them on the said differential Customs Duty under Section 28AA of the Customs Act, 1962.
- v. Further, Penalty may be imposed on the importer under Section 112(a) & 112(b)/ 114A & 114 AA of the Customs Act, 1962.

10.2 Shri Deepak Thakurdas Sawlani, Authorised representative of the company is hereby being called upon to show cause to the Additional Commissioner of Customs, Mundra Commissionerate, Mundra having his office at Port User Building, Mundra Port, Mundra, Kutch Gujarat, within thirty days from the receipt of this notice as to why:-

- (i) penalty should not be imposed on him under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for the violation as discussed in para 8;
- (ii) penalty should not be imposed on him under the provisions of Section 114AA of the Customs Act, 1962 for the violation as discussed in para 8;
- (iii) penalty should not be imposed on him under the provisions of Section 117 of the Customs Act, 1962

11. The documents relied upon in the notice are listed in the **Annexure 'R'** of this notice.

12. The Noticee are further required to produce at the time of showing

cause all evidences upon which they intend to rely in support of their defence. They are further advised to indicate in their written submission as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written submissions, it would be presumed that they do not desire to be heard in person. If no cause is shown by them against the action proposed to be taken within 30 days from the date of receipt of this Notice or if they do not appear before the adjudicating authority, when the case is posted for hearing, the case is liable to be decided Ex-Parte on the basis of material evidence available on record.

13. The documents/articles as listed at Annexure-R are relied upon and are enclosed with this show cause notice, and where not enclosed with this Notice will be made available for inspection on demand made in writing.

14. The department reserves its right to issue addendum/ corrigendum to show cause notice or to make any additions, deletions amendments or supplements to this notice, if any, at a later stage. The department/DRI also reserves its right to issue separate Notice/s for other Noticees, offences etc related to the above case, if warranted.

15. If the said Noticees pay the duty with interest and penalty as specified under Section 28(5) of Custom Act, 1962 within 30 days from the receipt of this notice the proceedings may be deemed to be conclusive as to the matters stated therein, without prejudice to the provisions of section 135, 135A and 140 of the Custom Act, 1962, if applicable.

Arun Kumar
ADDITIONAL COMMISSIONER
20-05-2024

Enclosed: Annexure I and R

BY REGISTERED/SPEED POST

1 . M/s. Metro Import-Export, Plot No.176 Ward 4A, Adipur Kutch, Gujarat, 370205.

2. Shri Deepak Thakurdas Sawlani, Plot No.-176, House-302, Mangal Darshan Complex, Ward 10/A, Gandhidham, Kachchh, Gujarat-370201.

Copy to :-

1. ADG, DRI Ahmedabad, Magnate Corporate Park, Sola Ahmedabad, Gujarat-380059.
2. Gaurd File