



कार्यालय: प्रधान आयुक्त, सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.
PHONE: 02838-271426/271163 FAX :02838-271425
E-mail id- group4-mundra@gov.in

A	File No.	CUS/APR/BE/MISC/1272/2024-Gr 4-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/53/2024-25
C	Passed by	Arun Kumar, Additional Commissioner, Custom House, Mundra
D	Noticee / Party / Importer	M/s Mahaveera Enterprises (IEC: AWUPJ5772C), A-114/2, Ground Floor, Wazirpur Industrial Area, Delhi -110052
E	DIN	20240671MO00008461E2

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to

The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road Ahmedabad-380009
3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

Brief Facts of the case

M/s Mahaveera Enterprises (IEC: AWUPJ5772C) (hereinafter referred to as "the Importer" for sake of brevity) having address at A-114/2, Ground Floor, Wazirpur Industrial Area, Delhi -110052, filed the following Bill of Entry for import of declared goods viz. "Cold Rolled Stainless Steel Coils Grade J3 Ex Stock" from their supplier M/s Foshan Lixin Stainless Steel Co. Ltd. at Mundra Port through their CB M/s Cargo Care:

TABLE - A

Exchange Rate: 1 USD = INR 84.10

Bill of Entry No. & Date	Description of Goods	CTH	Qty. (Net wt.) Kgs.	Declared Value in (INR)	Declared Duty Payable (INR)
8700207 dated 09.11.2023	Cold Rolled Stainless Steel Coils Grade J3 Ex Stock	72199090	52783	4885858	1355093
	Total			4885858/-	1355093/-

2. However, during physical examination of the imported goods, the goods were found to be of Grades J1 and J3 as per PMI (Positive Material Identification) Testing.
3. Further, as per Circular dated 20.10.2023 issued by Ministry of Steel, it is mandatory for all the steel importers to apply and seek clarification for each and every consignment which is imported in the country without BIS license/certification. Further, vide CBIC letter F.No.401/88/2023-Cus.III dated 09.11.2023, it is further clarified that mandatory clarification is required only for steel products of those ITCHS codes which have been mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel.
4. Accordingly, as declared CTH 72199090 is mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel, therefore, mandatory clarification/NOC from Ministry of Steel was required in the instant case before clearance of the said goods.
5. The Importer submitted BIS NOC dated 15.01.2024 in Customs for clearance of the said goods, however, the same was submitted for Grade J2 and quantity of 58337 kgs. The Grade of the Steel Coils and Quantity were different in the said NOC/clarification, therefore, the same appeared as fake BIS NOC/clarification.
6. RMS Cell, Dock Examination Section vide e-mail dated 19.01.2024 forwarded the said NOC for verification of genuineness. In reply, Ministry of Steel vide e-mail dated 19.01.2024 stated that 'the attached letter has not been issued by Ministry of Steel'.
7. The Importer vide letter dated 02.03.2024 submitted that no such NOC letter from Ministry of Steel was submitted by them to Customs either directly or through their authorised CHA. Further, they destuffed the goods into warehouse due to non-availability of BIS Certificate when they received license from DGFT, they found that no data against BE No. 8700207 dated 09.11.2023 had existed in EDI System, hence, they had to file new BE No. 2311093 dated 26.02.2024. The Importer further requested to release the goods
8. From EDI System, it is observed that details in respect of BE No. 8700207 dated 09.11.2023 are not available in EDI System as it is purged due to non-regularization of

Advance BE. Further, BE No. 2311093 dated 26.02.2024 is filed under Advance Authorization No. 0511023959 dated 14.02.2024 with following details:

TABLE – B

Exchange Rate: 1 USD = INR 83.90

Bill of Entry No. & Date	Description of Goods	CTH	Qty. (Net wt.) Kgs.	Declared Value in (INR)	Declared Duty Payable (INR)	Total Duty foregone (INR)
2311093 dated 26.02.2024	Cold Rolled Stainless Steel Coils Grade J3 Ex Stock	72199090	52783	4871343.07	NIL (filed under Advance Authorization No. 0511023959 dated 14.02.2024)	1351067/-
	Total			4871343/-		1351067/-

9. The Importer M/s Mahaveera Enterprises vide letter dated 07.03.2024 submitted that no such BIS NOC was ever submitted either by them directly or through their CHA Cargo Care to Customs. The Importer further submitted that they did not agree with the PMI Test result and requested to allow Chemical Testing of sample by competent laboratory to ascertain exact grade/composition of the goods imported by them against the said B/E.

10. Further, the Competent Authority approved the request of the Importer to send Representative Sealed Sample to CRCL Kandla for chemical testing thereof. Vide Test Report No. 133/05-04-24, it was reported that:

The sample as received is in the form of a irregular cut piece of metallic sheet having shiny, smooth surface on both side.

It is made of Stainless Steel having following composition.

Average Thickness of the Metallic Sheet (in mm) = 0.60

Percentage of Chromium Content (% by weight) = 14.39

Percentage of Nickel Content (% by weight) = 1.02

Percentage of Manganese Content (% by weight) = 10.60.

The above tested parameters agrees with Stainless Steel Grade ISS N1 as mentioned in IS 6911.

Sealed remnant sample returned herewith.

As per Test Report No. 133/05-04-24, the imported goods were found to be of Stainless Steel Grade N1 which attract BIS as per Quality Control Order (QCO) issued by Ministry of Steel.

11. Valuation of imported goods for the purposes of calculation of Customs duties is governed by the provisions of Section 14 of the Customs Act, 1962, which provides that:

"For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller or the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf: "

12. Further, the Customs Valuation (Determination of Price of imported goods) Rules,

2007 (here-in-after referred to as the 'CVR, 2007'), having been framed under the provisions of Section 14, provide for determination of value in a variety of situations. More specifically, Rule 12 of Customs Valuation (Determination of Value of Imported goods) Rules, 2007 provides for rejection of the declared value when there is a doubt that the declared value does not represent the true transaction value. The declared value can also be rejected in case the parameters such as description, quantity, country of origin, brand, grade, specification etc., that have relevance to the value, are mis-declared. Further, Rule 3 of the CVR, 2007 provides that subject to Rule 12, value of the goods shall be the Transaction Value adjusted in accordance with Rule 10.....". Rule 12 of the CVR, 2007, in turn, provides that when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of the importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3. Further, as per Rule 3 (4), "If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9".

13. Thus, in terms of Rule 12 of the said CVR, 2007, value declared by an importer can be rejected in certain circumstances. Explanation (1) to the said Rule 12 ibid lists out certain reasons based upon which the proper officer has the powers to raise doubts on the accuracy of the declared value. Mis-declaration of the description of the goods is one such reason. In the impugned imports, the description of the goods has been mis-declared inasmuch as that the "Cold Rolled Stainless Steel Coils Grade N1 Ex Stock" has been mis-declared as "Cold Rolled Stainless Steel Coils Grade J3 Ex Stock" as evident from the above mentioned Test Report of CRCL Kandla. It, therefore, appears that the declared value of Rs. 4871343/- is liable to be rejected under the provisions of Rule 12 of the CVR, 2007 and liable to be re-determined by proceeding sequentially through Rules 4 to 9.

14. As per Rule 4 of the CVR, 2007, subject to the provisions of Rule 3, the value of imported goods shall be the Transaction Value of identical goods sold for export to India and imported at or about the same time as the goods being valued, subject to certain conditions and parameters. 'Identical goods' are defined as those imported goods which are same in all respects including physical characteristics, quality, reputation as the goods being valued except for minor differences in appearance that do not affect value of the goods. Scrutiny of import data available in the Customs database reveals following contemporaneous imports of consignments of "Cold Rolled Stainless Steel Coils Grade N1 Ex Stock" from same supplier, same country of origin, same country of export, same port of shipment, having substantially same quantity and assessed on final basis & out of charged:

TABLE - C

Sr. No.	BE Number	BE Date	Name of Supplier	Description of Goods	Net Weight	Unit Price (CIF)
1	8871730	21.11.2023	M/s Foshan Lixin Stainless Steel Co. Ltd.	Stainless Steel Cold Rolled Coils Grade N1 Ex Stock	55332 kgs	1.32 USD per kg
2	9495485	01.01.2024	M/s Foshan Lixin Stainless Steel Co. Ltd.	Stainless Steel Cold Rolled Coils Grade N1 Ex Stock	47582 kgs	1.32 USD per kg

It therefore appears that unit price of 1.32 USD per kg can be considered to be the fair value. This appears to be consistent with the provisions of Rule 4 of the CVR, 2007. Unit price of 1.32 USD per kg is accordingly proposed to be adopted for the purpose of assessment to duty.

15. Further, the applicable Customs duty on the impugned goods is calculated as detailed below:

TABLE – D

Exchange Rate: 1 USD = INR

83.90

Bill of Entry No. and Date	Description of Goods	Weight (KGS)	Price per KG in USD (CIF)	Price per KG (INR)	Total Ass. Value (INR)	Total Duty Payable (INR)	Total Duty foregone (INR)
2311093 dated 26.02.2024	Cold Rolled Stainless Steel Coils Grade N1 Ex Stock	52783	1.32	110.748	58,45,611.684	NIL (filed under Advance Authorization No. 0511023959 dated 14.02.2024)	16,21,280
Total Duty foregone						Rs. 1621280	
Duty Declared as foregone						Rs. 1351067	
Differential Duty foregone						Rs. 2,70,213	

16. In view of the above, it appears that the Importer mis-declared the description of goods imported vide Bill of Entry as Cold Rolled Stainless Steel Coils Grade J3 Ex Stock instead of Cold Rolled Stainless Steel Coils Grade N1 Ex Stock for evasion of duty foregone amounting to Rs. 2,70,213/-. Therefore, the imported goods having re-determined assessable value of Rs. 58,45,611.68 appear liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.1 Further, the impugned goods viz. Cold Rolled Stainless Steel Coils Grade N1 Ex Stock require mandatory BIS Registration for clearance as per provisions contained in the Steel and Steel Products (Quality Control) Order, 2024 dated 05.02.2024 issued by the Ministry of Steel, Government of India. With effect from 12.10.2017, Section 17 of the BIS Act, 2016 specifically prohibits the import of goods or articles notified vide an order under Section 16(1) of BIS Act, 2016 without a Standard Mark, except under a valid licence. It appears that the Importer has imported the impugned goods without valid mandatory BIS license required as per the provisions of Steel and Steel Products (Quality Control) Order, 2024. In absence of valid BIS license, the above said goods appear to become prohibited for import in India and appear liable for confiscation under Section 111(d) of the Customs Act, 1962.

16.2 In addition, it also appears that the Importer submitted fake/forged Ministry of Steel NOC for clearance of the imported goods. Therefore, the imported goods appear liable for confiscation under Section 111(m) of the Customs Act, 1962.

17. For the reasons stated hereinabove, it appears that the imported goods have become liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962, which are reproduced below for ease of reference:

Section 111. Confiscation of improperly imported goods, etc. -

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

.....

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....

(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 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

18. As the imported goods appear liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962, the Importer appears liable for penal action under Section 112(a)(i) & 112(a)(ii) of the Customs Act, 1962, which are reproduced below for ease of reference:

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

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:

19. Further, as the Importer submitted fake/forged Ministry of Steel NOC for clearance of the imported goods, therefore, the Importer also appears to be liable for penalty under Section 114AA of the Customs Act, 1962, which is reproduced below for ease of reference:

Section 114AA. Penalty for use of false and incorrect material. -

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

20. Being Custom Broker (CB), M/s Cargo Care is bound to comply with Customs Brokers Licensing Regulations (CBLR), 2018. The relevant Regulations of the CBLR, 2018

is reproduced below for ease of reference:

10. Obligations of Customs Broker — A Customs Broker shall —

.....

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

.....

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

21. As per CBLR, 2018, it is the duty of a Customs Broker (CB) to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. However, M/s Cargo Care failed to advise their client M/s Mahaveera Enterprises regarding submission of genuine BIS NOC from Ministry of Steel. Further, M/s Cargo Care failed to discharge their duties properly as they did not bring the fact of submission of forged/counterfeit BIS NOC to the notice of the Customs. Therefore, it appears that M/s Cargo Care has contravened Customs Brokers Licensing Regulations (CBLR), 2018 made under Section 146(2) of the Customs Act, 1962. From above, it appears that M/s Cargo Care is liable for penal action under Section 117 of the Customs Act, 1962 which is reproduced below for ready reference:

SECTION 117. 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 one lakh rupees.

RECORD OF WRITTEN SUBMISSIONS & PERSONAL HEARING

22. Submissions of the Importer: -

22.1. The Importer vide letter dated 02.03.2024 submitted that no such NOC letter from Ministry of Steel was submitted by them to Customs either directly or through their authorised CHA. Further, they destuffed the goods into warehouse due to non-availability of BIS Certificate when they received license from DGFT, they found that no data against BE No. 8700207 dated 09.11.2023 had existed in EDI System, hence, they had to file new BE No. 2311093 dated 26.02.2024. The Importer further requested to release the goods.

22.2. The Importer vide letter dated 07.03.2024 reiterated that no such BIS NOC was ever submitted either by them directly or through their CHA Cargo Care to Customs.

22.3 The Importer vide letter dated 24.04.2024 has submitted that they have obtained Advance License No. 0511024888 dated 05.04.2024 from DGFT and that they do not want any show cause notice and personal hearing and further requested to decide the case taking

a lenient view.

23. Submissions of the CB: -

23.1 The CB vide letter dated 07.03.2024 submitted that no such NOC/document was ever submitted by them to Customs and that the Importer never handed over to them any such document.

23.2 The CB vide letter dated 24.04.2024 reiterated that no such NOC/document was ever submitted by them to Customs and further submitted that the said document was given to them by Supdt. Shri Rajesh Kumar Meena on 20.01.2024 stating that someone from Sadguru Logistics handed over it to him (Shri Rajesh Kumar Meena). The CB further submitted that since they could not verify the authenticity of the said document, hence, they did not upload it in e-Sanchit. The CB further requested to grant Personal Hearing to them and submitted that they did not want any show cause notice.

23.3 The CB vide letter dated 29.04.2024 reiterated the submissions made vide their letter dated 24.04.2024 and authorised G card Holder Shri Rakesh Sharma to attend the personal hearing on behalf of the CB.

23.4 During Personal Hearing on 29.04.2024, Shri Rakesh Sharma, G card Holder and authorised representative of the CB M/s Cargo Care, submitted that they never submitted any NOC to Customs department. He further submitted that they never received any NOC from the Importer to submit to the Customs department. He pleaded that since they did not submit the said NOC, they are not liable for any penalty. He had nothing more to add.

DISCUSSION & FINDING

24. I have carefully gone through the case records and applicable provisions of Law. I find that the Importer vide their letter 24.04.2024 has submitted that they do not want Show Cause Notice and Personal Hearing and the CB attended the Personal Hearing on 29.04.2024, thus, the condition of Principles of Natural Justice *under Section 122A of the Customs Act, 1962* has been complied with. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

25. The main issues before me to decide are whether-

- i. the declared value is liable for rejection and is required to be redetermined as per the provisions of the Customs Valuation (Determination of Price of imported goods) Rules, 2007 or otherwise
- ii. the imported goods are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 or otherwise
- iii. the Importer is liable for penal action under Section 112(a)(i) & 112(a)(ii) of the Customs Act, 1962 or otherwise
- iv. the Importer is liable for penalty under Section 114AA of the Customs Act, 1962 or otherwise
- v. the CB is liable for penalty under Section 117 of the Customs Act, 1962 or otherwise.

26. I find that the Importer M/s Mahaveera Enterprises filed Bill of Entry No. 8700207 dated 09.11.2023 for import of "Cold Rolled Stainless Steel Coils Grade J3 Ex Stock" under CTH 72199090 having declared assessable value of Rs. 4885858/- at Mundra Port through their CB M/s Cargo Care, however, during physical examination of the imported goods, the goods were found to be of Grades J1 and J3 as per PMI (Positive Material

Identification) Testing.

27. I find that as per Circular dated 20.10.2023 issued by Ministry of Steel read with CBIC letter F.No.401/88/2023-Cus.III dated 09.11.2023, it is mandatory for all the steel importers to apply and seek clarification for each and every consignment which is imported in the country without BIS license/certification for steel products of those ITCHS codes which have been mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel. Further, I find that as declared CTH 72199090 is mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel, therefore, mandatory clarification from Ministry of Steel was required in the instant case before clearance of the said goods.

28. I find that the Importer submitted BIS NOC dated 15.01.2024 in Customs for clearance of the said goods, however, the same was submitted for Grade J2 and quantity of 58337 kgs. The Grade of the Steel Coils and Quantity were different in the said NOC/clarification. Further, when RMS Cell, Dock Examination Section vide e-mail dated 19.01.2024 forwarded NOC purported to be issued by Ministry of Steel, to Ministry of Steel for verification of genuineness, Ministry of Steel vide e-mail dated 19.01.2024 replied that 'the attached letter has not been issued by Ministry of Steel'. Therefore, it is evident that the Importer has submitted fake/forged NOC.

29. I find that the Importer vide letter dated 02.03.2024 submitted that no such NOC letter from Ministry of Steel was submitted by them to Customs either directly or through their authorised CHA and that they destuffed the goods into warehouse due to non-availability of BIS Certificate when they received license from DGFT, they found that no data against BE No. 8700207 dated 09.11.2023 had existed in EDI System, hence, they had to file new BE No. 2311093 dated 26.02.2024. From EDI System, I find that that details in respect of BE No. 8700207 dated 09.11.2023 are not available in EDI System as it is purged due to non-regularization of Advance BE and BE No. 2311093 dated 26.02.2024 is filed under Advance Authorization No. 0511023959 dated 14.02.2024.

30. I find that on request of the Importer as per their letter dated 07.03.2024, Representative Sealed Sample was forwarded to CRCL Kandla for chemical testing thereof and as per Test Report No. 133/05-04-24, the imported goods were found to be of Stainless Steel Grade N1.

31. I find that in the impugned imports, the description of the goods has been mis-declared inasmuch as that the "Cold Rolled Stainless Steel Coils Grade N1 Ex Stock" has been mis-declared as "Cold Rolled Stainless Steel Coils Grade J3 Ex Stock", therefore, the declared value of the said goods is liable to be rejected under the provisions of Rule 12 of the CVR, 2007 and liable to be re-determined by proceeding sequentially through Rules 4 to 9. I hold accordingly. Further, I find that contemporaneous imports of consignments of "Cold Rolled Stainless Steel Coils Grade N1 Ex Stock" from same supplier, same country of origin, same country of export, same port of shipment, having substantially same quantity and assessed on final basis & out of charged, are available in respect of two shipments of Bills of Entry Nos. 8871730 dated 21.11.2023 and 9495485 dated 01.01.2024 wherein unit price is 1.32 USD per kg in both the said shipments. I find that unit price of 1.32 USD per kg can be considered to be the fair value which is consistent with the provisions of Rule 4 of the CVR, 2007. Accordingly, I hold that the said Bill of Entry is to be re-assessed as per these re-determined values for the purpose of assessment to duty under Section 17(4) of the Customs Act, 1962. Accordingly, the re-determined assessable value and re-determined duty foregone are worked out to be Rs. 58,45,611.68 and Rs.

1621280 respectively. Further, the differential duty foregone is worked out to be Rs. 2,70,213/-.

32. I find that with effect from 12.10.2017, Section 17 of the BIS Act, 2016 specifically prohibits the import of goods or articles notified vide an order under Section 16(1) of BIS Act, 2016 without a Standard Mark, except under a valid licence. Thus, the prohibited goods become liable for confiscation under Section 111(d) of the Customs Act, 1962 as it is a violation of BIS Act, 2016. Further, I find that the Importer mis-declared the description of goods imported vide Bill of Entry as Cold Rolled Stainless Steel Coils Grade J3 Ex Stock instead of Cold Rolled Stainless Steel Coils Grade N1 Ex Stock for evasion of duty foregone amounting to Rs. 2,70,213/-. I further find that the Importer submitted fake/forged Ministry of Steel NOC for clearance of the imported goods.

33. I find that the Importer vide letters dated 02.03.2024 & 07.03.2024 submitted that no such NOC letter from Ministry of Steel was submitted by them to Customs either directly or through their authorised CHA. I find that the submissions of the Importer do not stand ground as it is the Importer who is the owner of the impugned goods and is liable for payment of duty and other charges and only the Importer would have benefited, had the said consignment been released without verification of NOC/Clarification from Ministry of Steel. I further find that the Importer did not follow the due procedure by applying to Ministry of Steel for BIS NOC and rather followed unscrupulous route for procuring NOC.

34. In view of the above, the imported goods become liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962. However, the Importer vide letter dated 24.04.2024 submitted Advance License 0511024888 dated 05.04.2024 with due amendment for BIS exemption in terms of DGFT Notification No. 71/2023 dated 11.03.2024. The relevant portion of Advance License 0511024888 dated 05.04.2024 is attached below for ease of reference:

Authorisation Number 0511024888 Authorisation Date 05/04/2024
Import Validity 05/04/2025 | Export Validity 05/10/2025

UDINADV00050680AM25



Government of India / भारत सरकार
Ministry of Commerce and Industry / वाणिज्य और उद्योग मंत्रालय
Department of Commerce / वाणिज्य विभाग
Directorate General of Foreign Trade / विदेश व्यापार प्राधिकरण
Office of the Additional Director General of Foreign Trade, CLA Delhi / अवर महानिदेशक, विदेश व्यापार का कार्यालय, सीएलए दिल्ली
Central Licensing Area (CLA), A Wing I.P. Bhawan, I.P. Estate, CENTRAL DELHI, DELHI 110002 केन्द्रीय लाइसेंसिंग क्षेत्र (सीएलए), ए विंग, आई.पी. भवन, आई.पी. एस्टेट, नई दिल्ली, मध्य दिल्ली, दिल्ली, 110002
Email Office / ई-मेल : cladelhi.dgt@nic.in Phone Office / दूरभाष कार्यालय : 011 23379115

Advance Authorisation / अग्रिम प्राधिकार-पत्र

Note / नोट : Refer Annexure for Amendment Sheet / संशोधन शीट के लिए अनुलग्नक देखें।

Amendment Number / संशोधन सं.	1
Name of Office issuing Authorisation / प्राधिकार-पत्र जारी करने वाले कार्यालय का नाम	Office of the Additional Director General of Foreign Trade, CLA Delhi
Name / नाम	MAHAVEERA ENTERPRISES
Address of Applicant / आवेदक का पता	A 114/2, GROUND FLOOR, WAZIRPUR INDUSTRIAL AREA, NORTH WEST DELHI 110052
IEC / आईईसी	AWUPJ5774C
Exporter Type / निर्यातक का प्रकार	Manufacturer Exporter
Exporter Status / निर्यातक की स्थिति	Valid
Transferable/Actual User / हस्तांतरणीय / वास्तविक प्रयोक्ता	Actual
File Number / फाइल संख्या	05AB04000497AM25
Type of Norm / मानक का प्रकार	SION

This document has been digitally signed by JAGDISH CHANDER Assistant DG, FRA DELHI on 23 Apr 2024

Authorisation Number 0511024888 Authorisation Date 05/04/2024
Import Validity 05/04/2025 | Export Validity 05/10/2025

UDINADV00050680AM25

रीतिशुल्क अधिग्राहता सं. एवं तिथि	for physical exports
Currency Area / मुद्रा क्षेत्र	GCA
Licence/Authorisation/Scrip No. and Date of Issue / लाइसेंस / प्राधिकार-पत्र / विद्युत संख्या एवं जारी करने की तिथि	0511024888 Dated 05/04/2024
Period of Shipment (Export Obligation Period) (In Months - from the date of issuance) / पोतकाल अवधि (निर्यात दायित्व अवधि) (माह में जारी करने की तिथि से)	18
Validity of Authorisation / Scrip for Import (In Months - from the date of issuance) / आयात हेतु प्राधिकार-पत्र / विद्युत की वैधता (माह में जारी करने की तिथि से)	12

1.Details of Quality Control Order / गुणवत्ता नियंत्रण आदेश का विवरण

Exemption from Quality Control Order / गुणवत्ता नियंत्रण आदेश से छूट		
Sl.No. / क्र.सं.	Order / आदेश	Ministry / मंत्रालय
1	Steel and Steel Products (Quality Control) Order, 2024	Ministry of Steel

2.Details of Item to be exported/supplied under the Authorisation / प्राधिकार पत्र के तहत निर्यात की जाने वाली / आपूर्ति की जाने वाली वस्तु का विवरण

Export Serial Number / निर्यात क्रम संख्या	Item(s) to be exported / supplied / निर्यात किए जाने वाले / आपूर्ति किए जाने वाले मद(वर्ग)					
	Item Characteristics / मद विशेषताएं					
	SION Serial No. / सिओन क्र.सं.	ITC (HS) Code / आईटीसी कोड	Qty / मात्रा	UOM / यूओएम	FOB/FOB(INR) / एफओबी / एफओबीआर (भारतीय रु. में)	REB/REB(INR) (In Foreign Currency) / एफओबी / एफओबीआर (विदेशी मुद्रा में)
1						

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Authorisation Number 0511034888 Authorisation Date 05/04/2024
Import Validity 05/04/2025 | Export Validity 05/10/2025

UDINADV00000598AM25

(other than those covered under the SIGN C-833)				
TABLE, KITCHEN & OTHER HOUSEHOLD ARTICLES MADE FROM STAINLESS STEEL GRADE: J3, HAVING NET CONTENT OF 20000.00 KG OF STAINLESS STEEL				
CH32	73239300	22000.000	KILOGRAMS (KGS)	3010000.00
				43000.00
(other than those covered under the SIGN C-833)				
TABLE, KITCHEN & OTHER HOUSEHOLD ARTICLES MADE FROM STAINLESS STEEL GRADE: N1, HAVING NET CONTENT OF 43000.00 KG OF STAINLESS STEEL				
CH32	73239300	43000.000	KILOGRAMS (KGS)	7073500.00
				80000.00
Total / कुल				10092500.00
				130000.00

3. Details of items sought to be imported duty free under the Authorisation / यदि वह कोई वस्तु है जो आधिकारिक रूप से निर्यात के लिए आयात किया जाये की बात की गई है।

Input Serial Number / विविधि क्रम संख्या	Input Description / विविधि विवरण									
	Input No. / विविधि क्र. संख्या	Input Description / विविधि विवरण	ITC Code / आईटीसी कोड	Quantity to be Imported / निर्यात करने की मात्रा	Unit / इकाई	CIP (INR) / सीआईपी (रु.)	CIP (INR) / सीआईपी (रु.)	Duty Saved (INR) / बचत (रु.)	Duty Saved (%) / बचत (%)	Duty Saved (INR) / बचत (रु.)
1		Magnetic/Non-magnetic Stainless Steel Sheet/Cold Rolled Stainless Steel Coil Grade: J3 16x1000								
	CH32	SIGN 1	72100000	29600.000	KILOGRAMS (KGS)	3123120.00	37180.00	8.06,107.33	27.74	
2		Magnetic/Non-magnetic Stainless Steel Sheet/Cold Rolled Stainless Steel Coil Grade: N1								
	CH32	SIGN 2	72100000	55000.000	KILOGRAMS (KGS)	5300040.00	64285.00	14,97,071.35	27.74	
Total / कुल						8423060.00	101465.00	24,03,178.68		

4. Details of items on which drawback duty is claimed.

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As the condition of mandatory BIS Registration has been fulfilled by the Importer by way of Advance License under which BIS Registration is exempted as the final goods are exported afterwards, therefore, the import stands regularized and Section 111(d) of Customs Act, 1962 becomes inapplicable. I hold accordingly.

35. As I have held that Section 111(d) of Customs Act, 1962 is inapplicable in the instant case, therefore, I hold that the imposition of penalty on the Importer under Section 112(a)(i) of Customs Act, 1962 is not sustainable.

36. However, it is undisputed that the imported goods were mis-declared by the Importer in terms of Grade inasmuch as in Bill of Entry, the Grade is declared as J3, however, from Test Report, the Grade was found to be N1, therefore, I hold the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, I find that as the goods have been held liable for confiscation under Section 111(m) of Customs Act, 1962, I deem it fit to allow clearance of impugned goods on payment of Redemption Fine in terms of Section 125 of the Customs Act, 1962 which is reproduced below for ease of reference:

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:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

37. Further, for the said act of mis-declaration of the Grade of Stainless Steel to evade mandatory BIS Registration and to evade applicable duty foregone, I hold the Importer liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

38. Further, I find that the Importer submitted fake/forged NOC purported to be issued by Ministry of Steel for clearance of the impugned goods and did not follow the due procedure by applying to Ministry of Steel for BIS NOC, therefore, I hold that the Importer is liable for penal action under Section 114AA of Customs Act, 1962

39. Further, I find that as per CBLR, 2018 read with Section 146(2) of the Customs Act, 1962, it is the duty of a Customs Broker (CB) to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. I find that the CB M/s Cargo Care vide letters dated 07.03.2024, 24.04.2024 & 29.04.2024 and during personal hearing, has submitted that they never submitted any NOC to Customs department and that they never received any NOC from the Importer to submit to the Customs department. I find that the arguments submitted by the CB are not sufficient in discharging their obligations as a Customs Broker as it is their duty to advise their client (the Importer) to follow the provisions of the Act, other allied Acts and the rules and regulations thereof. Further, I find that the CB M/s Cargo Care has also failed to bring the matter of the said non-compliance to the notice of the proper officer. Therefore, I hold that M/s Cargo Care has contravened Customs Brokers Licensing Regulations (CBLR), 2018 and therefore, the CB M/s Cargo Care is liable to penalty under Section 117 of the Customs Act, 1962.

40. In view of the foregoing discussion and findings, I pass the following order:

ORDER

- i. I reject the declared transaction value of Rs. 4871343/- of the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 (originally imported vide purged Bill of Entry No. 8700207 dated 09.11.2023) under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 read with Section 14 of the Customs Act, 1962. I order to re-determine the same Rs. 58,45,612/- under Rule 9 of the CVR, 2007 read with Section 14 of the Customs Act, 1962. I order re-assessment of the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 accordingly including amendment of description and value of the goods.
- ii. I order confiscation of the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 (originally imported vide purged Bill of Entry No. 8700207 dated 09.11.2023) having re-determined assessable value of Rs. 58,45,612/- under Section 111(m) of Customs Act, 1962. However, I give an option to the Importer M/s. Mahaveera Enterprises to re-deem the goods under provisions of Section 125 of Customs Act, 1962 on payment of Redemption Fine of Rs.8,00,000/- (Rs. Eight lakh

Only)

- iii. I order to impose a penalty of Rs. 15,000/- (Rs. Fifteen Thousand only) on the Importer M/s Mahaveera Enterprises under Section 112(a)(ii) of Customs Act, 1962;
- iv. I refrain from holding the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 having re-determined assessable value of Rs. 58,45,612/-, liable to confiscation under Section 111(d) of Customs Act, 1962.
- v. I refrain from imposition of penalty under Section 112(a)(i) of Customs Act, 1962 on the Importer M/s Mahaveera Enterprises.
- vi. I order to impose a penalty of Rs. 8,00,000/- (Rs. Eight Lakh only) on the Importer M/s Mahaveera Enterprises under Section 114AA of Customs Act, 1962.
- vii. I order to impose a penalty of Rs. 1,00,000/- (Rs. One Lakh Only) under Section 117 of Customs Act, 1962 on the CB M/s Cargo Care.
- viii. The goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 (originally imported vide purged Bill of Entry No. 8700207 dated 09.11.2023) are to be released only after payment of applicable duties, fine and Penalties as above.

41. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by

Arun Kumar

(Arun Kumar)

Additional Commissioner,
Date: 05-06-2024 15:42:31
Custom House, Mundra

To,

Date: 05-06-2024

i. M/s Mahaveera Enterprises (IEC: AWUPJ5772C),
A-114/2, Ground Floor, Wazirpur Industrial Area,
Delhi -110052.

ii. M/s Cargo Care
B-109, DDA Shed, Okhla Industrial Area Phase-1,
New Delhi - 110020.

Copy to:

- ✓ 1. The Dy. Commissioner of Customs, Review Section, CH, Mundra
2. The Dy. Commissioner of Customs, TRC Section, CH, Mundra
3. The Dy. Commissioner of Customs, EDI Section, CH, Mundra
4. Guard file