सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000D3A4

क	फ़ाइलसंख्या FILE NO.	S/49-93/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-87-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	16.06.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	CUS/APR/INV/99/2023-Gr 4 dated 16.08.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	16.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Royal Steel Trading, B-62, Wazirpur Industrial Area, North West, Delhi - 110052

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.

2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय,(राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारे गएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनअदाहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंधमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ / **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

M/s Royal Steel Trading, B-62, Wazirpur Industrial Area, North West, Delhi – 110052 (hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-In-Original (OIO) No. CUS/APR/INV/99/2023-Gr 4 dated 16.08.2023 (hereinafter referred to as "the impugned order") issued by the Additional Commissioner, Mundra Port, Mundra (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the Appellant in the course of business imported "Cold Rolled Stainless Steel Coil Grade J3 (Grade 200)" from foreign suppliers namely M/s Artfransi International SDN BHD, Malaysia and M/s Maly Matel Industry SDN BHD, Malaysia vide nine Bills of Entry filed through their custom broker M/s R R Logistics and M/s Rishi Kiran Logistics under CTH 72209090. The Appellant filled all nine Bills of Entry @ NIL BCD instead of effective rate @ 7.5% BCD under Section 17 of the Customs Act, 1962, under Exemption Notification No. 046/2011-Cus dated 01.06.2011 amended by Sr. No. 967(I) of Notification No. 82/2018-Cus dated 31.12.2018 and claimed the exemption from payment of BCD under ASEAN India Free Trade Agreement against Country-of-Origin Certificates issued by the Ministry of International Trade and Industry of Malaysia.

2.1 The certificates as prescribed under Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009 notified vide Notification No. 189/2009-Cus. (N.T.), dated 31.12.2009 were submitted to the department in order to claim prescribed exemption under Notification No. 46/2011-Cus dated 01.06.2011 amended by Sr. No. 967(1) Notification No. 82/2018-Cus dated 31.12.2018. Relevant portions of the notifications are extracted below:

Notification No/ Date	Sr. No.	Chapter, Heading, Sub-Heading and Tariff Item	Description	Rate (in percentage unless otherwise specified)
46/2011-Cus Dated 01.06.2011	955	72	All Goods	5.0

82/2018-Cus Dated 31.12.2018	967	72	All Goods	0.0

The proper officer examined the goods wherein the consignments were found to be as per declaration in value, classification, quantity and description and no discrepancy was found in the consignments and thereafter the goods were cleared for home consumption.

2.2 Intelligence gathered by the Officers of SIIB Section, Custom Mundra indicated that certain importers were importing "Cold Rolled Stainless Steel Coil Grade J3 (Grade 200)" classifying the same under CTH 7220 through ASEAN Countries especially Malaysia and violating the Rules meant for Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 in order to avail exemption from payment of Basic Custom Duty. Further, Intelligence suggested that exporters in Malaysia are providing COO Certificate to the Importers of "Cold Rolled Stainless Steel Coil Grade J3 (Grade 200)" mentioning Origin Criteria as either WO (Wholly Obtained) goods or as the Regional Value Content (hereinafter referred to as 'RVC') to be above 35% whereas the same were not actually qualifying the minimum requirement of 35% value addition as per the Notification No. 189/2009-Cus (N.T.) dated 31.12.2009. In view of the above mis-declarations by the importers undue benefits on the basis of the preferential certificates of origin were being availed which resulted into misuse of the FTA resulting in evasion of huge amount of customs duty. Therefore, the above-mentioned nine Bills of Entry were taken up for further verification.

2.3 Intelligence suggested that the appellant had wrongly availed the benefit of the preferential rate of duty, therefore the above mentioned Bills of Entry were taken up for further verification. During the investigation a letter F. No. 456/241/2021-CUS. V dated 23.04.2021 received from Ministry of Finance, Department of Revenue, CBIC, New Delhi regarding the verification of Country of Origin Certificates under AIFTA Preferential Certificates whereby they informed as "*In this regard, it is to inform that the Ministry of International Trade and Industry, Malaysia vide its email dated 25.03.2021 has informed that they have never received a COO application from Artfransi International SDN BHD.*"

2.4 Further, vide email dated 18.05.2021 received from the Principal Assistant Director, Trade and Industry Co-operation Section, Trade and Industry Support Division, Ministry of International Trade and Industry,

Malaysia (MITI) it was informed that they never received any COO application from suppliers mentioned in their email dated 18.05.2021 Including M/s Maly Matel Industry SDN BHD via their ePCO system. Therefore, COO submitted issued in the name of M/s Maly Matel Industry SDN BHD may be considered as non-authentic.

2.5 As the issuing authorities had confirmed that they never received a Country of Origin application from M/s Artfransi International SDN BHD and M/s Maly Matel Industry SDN BHD, therefore, it appears that COOs submitted by the appellant to avail the benefit of Sr. No. 967(1) of Notification No. 046/2011 dated 01.06.2011 are non-authentic.

2.6 Therefore, Show Cause Notice No. F. No. S/15-50/Enq. Royal/ SIIB-C/ CHM/ 21-22 dated 31.01.2023 was issued to the appellant for wrongly availed the benefits of concessional rate of customs duty by misusing the fake COO certificates and therefore, the goods are liable for confiscation under Section 111(m) and 111(0) of the Customs Act, 1962. In the Show Cause Notice it is further alleged that the duty has been paid on 0% preferential rate of duty however, the effective rate of duty would be @ 7.5% BCD and demanded the differential duty of Rs. 23,16,653/- and has further proposed penalty under Section 114A and 114AA of the Customs Act, 1962.

2.6 The adjudicating authority, vide impugned order confiscatedthe goods pertaining to nine Bills of Entry valued at Rs 2,37,97,155/-. However he refrained from imposing the fine as goods are not available for confiscation. He confirmed the differential duty of Rs 23,16,653/- under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962. The adjudicating authority also imposed penalty of Rs 23,16,653/- under Section 114A and penalty of Rs 5,00,000/- under Section 114AA of the Customs Act, 1962.

3. Being aggrieved with the impugnedorder, dated 10.08.2023, the appellant have filed the present appeal and mainly contended that;

- The Department has caused a huge amount of delay in investigating the present matter and issuing the Show Cause Notice and therefore, on this ground alone the show cause notice should not have been adjudicated. The Department received intimation that the Coo certificates in the present case was not genuine in April-May, 2021 and the Bills of Entry were filed in January/ November, 2019, i.e, the Department after almost two years is questioning the authenticity of a document that was filed in January/November, 2019 by the Appellant herein on the bonafide

belief that the same is genuine as the COOs were provided to him by the foreign supplier. Further, even though the intimationregarding the same was given by the Department in April-May, 2021, the Show Cause Notice has been issued in January, 2023, again there was a considerable amount of delay, therefore on this ground alone the show cause notice should not have been adjudicated and the Ld. Respondent has erred in passing the impugned order.

- The Appellant submits that the COO Certificates are very much authentic and the details provided therein are true and correct. As per the knowledge of the Appellant the certificates have been supplied by the exporter/ foreign supplier to the Appellant after duly applying to the concerned authorities and in terms of prescribed format as given under Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009. The department without citing any corroborative document or evidence, has allegedly considered that the authentic COO certificates are not genuine. In Appellant's respectful submission, if the department does not accept the authenticity of any document/ certificate, it needs to provide some corroborative evidence which in the instant case is not available. Further the COO Certificates are provided by the foreign supplier which are arranged after duly applying before the concerned authority and no role is played by the importer in procuring the said certificate. The importer under the bona fide belief imports goods from preferential countries in order to avail concessional rate of duty and if in any manner, the said concessional rate of duty is not availed by the importer, the very essence of preferential import is lost. In the facts and circumstances of the case, even if the COO Certificates were allegedly found to be false and unauthentic, the malafide of the same cannot be attributed to the Appellant/Importer. It is the foreign suppliers in Malaysia who were required to provide genuine COO Certificates. The Appellant/Importer has merely under bona fide, trusted its supplier and thus, there can be no misdeclaration by the Appellant.
- There is no mechanism prescribed for the Importing Company i.e. Appellant herein to check the authenticity of the COO certificate provided by the exporting company beforeimport. The same can only be done by the CBIC If a request for verification is made by the concerned Commissioner of the port/ICD. Hence, under bonafide the Appellant has accepted the COO Certificates by the foreign supplier and submitted the same to claim the benefit of the

exemption notification, therefore the re-assessment of duty @7.5% BCD should be set aside. It is also pertinent to note that said objection was never raised when the goods were cleared for home consumption. Therefore, the doubt regarding authenticity of certificate is only based on assumptions that since the nature of imported commodity is prone to evasion of duty, the Appellant must have also evaded duty by providing unauthentic COO certificates without any logical and reasonable conclusion.

- Because during examination before allowing provisional release of the consignment under Section 18 of the customs Act, 1962, the consignments were found to be as per declaration in value, classification, quantity and description and no discrepancy was found by the department which clearly shows bona fide intent for lawful import by the Appellant. The Appellant filed Bs/E in terms of Section 46 of the Customs Act, 1962 along with Invoice, packing list and Bill of Lading after self-assessing the duty under Section 17(1) of the Customs Act, 1962. All the details provided in the Bs/E were correct and matched with the import documents. Also the country of origin have been correctly mentioned as Malaysia which can be seen by the COO certificates. The certificates were authentic as the same has been provided by the supplier after duly applying and procuring from the concerned government authorities and therefore, the declaration under Section 46 is true and correct. Section 46 of the Act is reproduced hereinbelow for perusal:

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

  ((4A) The importer who presents a bill of entry shall ensure the following, namely:-

  (a) the accuracy and completeness of the information given therein;

  (b) the authenticity and validity of any document supporting it; and

  (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

- Sub-section (4) enumerates that the importer shall make true declaration under the bill of entry and support it with the invoice and other import documents. In the present case, the Appellant has correctly filled Bs/E on the basis of details provided in the import documents. There is no allegation of misdeclaration or undervaluation in the consignments and the allegation of fabricated COO certificates is only based on unreasonable doubt which cannot form a ground for imposition of penalty. Therefore, the Appellant has complied with the requirements laid down under Section 46(4) of the Customs Act, 1962 and the details provided to the department were true and correct.
- Further, Sub-section (4A) puts burden on the importer that the documents provided to the department while filing of bill of entry shall be accurate and authentic and shall be supported with valid documents. In this respect, Appellant submits that the Appellant has ensured that the details provided while filing the Bills of Entry were correct and genuine. The country of origin has been correctly mentioned as Malaysia which can be seen by the COO certificates. The certificates are authentic as the same has been provided by the foreign supplier after duly applying and procuring from the concerned government authorities. It is pertinent to acknowledge that if the consignment is legitimately imported from Malaysia and also acknowledged by the department during examination, then where is the question of providing unauthentic Country of Origin Certificates is, when the goods are actually imported from Malaysia. The act of Appellant does not show any contumacious conduct in order to evade duty and therefore, the allegation levelled in the impugned order is unreasoned, illogical and irrational.
- The Appellant has filed the Bs/E correctly and declared the quantity, description and value of the goods on the basis of the Invoice/packing list given by the foreign supplier. Even the goods were found to be as per declaration by the proper officer and hence were cleared for home consumption. Therefore, it is clear that there was no culpable mind related to the import as also acknowledged in the impugned order. Hence, the demand of differential duty of Rs.23,16,653/ is unsustainable under the facts and circumstances of the case as well as law.
- The COO certificates were provided by the foreign supplier which were duly applied and allowed by the concerned authorities. However, if there was any discrepancy in the certificates, that would be merely because of some technical fault made by the

supplier and the Appellant cannot be held liable for the same as the importer has no role in procuring the COO certificate and it is also not the case of the Department that the Appellant had forged and fabricated the COO certificate therefore, holding the Appellant responsible for the same is unsustainable and no malafide intent can be attributed to the Appellant to evade customs duty. The Appellant in this regard relies on the judgment of Hon'ble CESTAT in the matter of SCORPIAN INTERNATIONAL Versus COMMISSIONER OF CUS., C. EX. & S.T., INDORE 2017 (357) E.L.T. 1093 (Tri. Del.)

- Without admitting, even if the COO certificates had some technical error, without any mala fide intent, the same cannot be considered as a ground for improper importation for confiscation under Section 111(m) & (o) of the Customs Act, 1962. The department has not provided any document to show connivance or involvement of Appellant for the alleged evasion and it is also not the case of the Department that the Appellant has knowingly submitted a false/fabricated COO certificate. Therefore, if the COO certificates were found to be inadequate, that is merely a bona fide mistake on the part of the foreign supplier and cannot contribute to application of Section 111(m) & (0) for confiscation of goods and imposition of penalty on the Appellant who had no role in obtaining the COO Certificate. In this regard Appellant relies on the following judgments:
  (i) COMMISSIONER OF CUSTOMS (PORT), KOLKATA Versus CHIRAG CORPORATION 2020 (374) E.L.T. 444 (Tri. -Kolkata)
  (ii) NORTHERN PLASTIC LTD. Versus COLLECTOR OF CUSTOMS & CENTRAL EXCISE 1998 (101) E.L.T. 549 (S.C.)
  (iii) SPL TECHNOLOGIES PVT. LTD. Versus PR. COMMR. OF CUS. (PREVENTIVE), NCH, NEW DELHI 2019 (368) E.L.T. 756 (Tri. -Del.)
- In the present facts and circumstances of the case, correct particulars were declared by Appellant while filing of the impugned Bs/E and hence the goods were cleared for home consumption. Therefore, when the goods are not improperly imported, the confiscation of the same cannot be done.
- Since there is no malafide intent then imposition of fine and penalty is unsustainable. Reliance is placed on COMMR. OF CUS. (IMPORT), JNCH, NHAVA SHEVA Versus AMRIT CORP. LTD. 2016 (333) E.L.T. 340.

- The adjudicating authority has failed to appreciate that the existence of willful intent is an essential ingredient for the purpose of imposition under Section 114A of the Customs Act, 1962.Therefore, imposition of penalty to the tune of Rs.23,16,653/u/s 114A of the Customs Act, 1962 is unsustainable and deserves to be set aside. The appellant relied upon the judgment of the Hon'ble Supreme Court in the case of CCE, Raipur vs. Uniworth Textiles Limited Supra, wherein it has been categorically held that mere non-payment of duty is not sufficient to prove that such non-payment was on account of suppression of fact or willful misstatement. The term 'suppression of fact' and 'willful misstatement' invokes a degree of intent. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render its suppression.
- Therefore, without admitting, even if the COO certificates had some technical error, without any mala fide intent, the same cannot be considered as a ground for imposition of fine under Section 114A of the Customs Act, 1962 as no willful malafide can be attributed to the Appellant.
- As far as the imposition of penalty under Section 114AA of the Customs Act, 1962 is concerned, Section 114AA of the Act ibid provides that 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. For the above section, the pre-requisite for imposition of penalty is wilful misstatement or knowledge or mala fide intention which can only be gathered by the circumstances and in the present case, it is evident that the mala fide intention is absent on the part of the Appellant. Therefore, Ld. Respondent has erred by imposing penalty to the tune of Rs.5,00,000/-on the Appellant under Section 114AA, when the essential ingredient of knowledge and connivance is absent, the imposition of penalty under Section 114AA is unwarranted and unlawful as the Appellant did not knowingly orintentionally make or sign or use any declaration, statement of document which is false and incorrect in any material particular. Further, the Appellant also did not cause

anybody else to make or sign or use any declaration statement or document which is false or incorrect in any material particular. Reliance is placed on the judgment of Hon'ble CESTAT, New Delhi in the matter of BOSCH CHASSIS ESYSTEMS INDIA LTD. VERSUS COMMR. OF CUS., NEW DELHI (ICD TKD) 2015 (325) E.L.T. 372 (TRI. DEL.).

4. Shri Chandan Kumar Jain, Advocate, appeared for personal hearing on 11.06.2025. He reiterated the submission made at the time of filing appeal. During personal hearing the appellant submitted that:

- The demand has been made in respect of 9 bills of entry filed by the Appellant between 09.01.2019 and 05.11.2019 and the Show Cause Notice was issued on 31.01.2023 'invoking extended period of limitation alleging that the Appellant has wrongly availed the benefits of concessional rate of customs duty by misusing the fake COO certificates.To understand the allegation at hand it is pertinent to understand the process of issuance of COO certificate by the exporting company which is as under:

  a. To claim benefit of preferential rate of BCD on import of goods, the importer in India contacts the exporter/ foreign supplier of the country mentioned under the list of preferential countries as specified fied under relevant notification, and accordingly, places their order for intended purchase. In this case, the Appellant contacted the supplier in Malaysia for import of "SS Cold Rolled Coil/ Circles" for availing preferential rate of duty as per Notification No. 46/2011-Cus dated 01.06.2011 amended by Sr. No. 967(1) Notification No. 82/2018-Cus dated 31.12.2018, for NIL BCD instead of 7.5% BCD at effective rate.

  b. As per the said notification, it is pertinent to provide a Country of Origin certificate as prescribed under Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009 notified vide Notification No. 189/2009-Cus. (N.T.), dated 31.12.2009, to ascertain proof of the origin of the goods.

  c. Upon such order, the supplier applied to the Ministry of International Trade and Industry of Malaysia in a prescribed format and upon verification and approval, the Ministry has provided the COO Certificate, which was then provided to the Appellant along with

invoice and packing list. It is important to note that no role whatsoever is played by the Appellant in India in order to get the COO certificate. The concerned parties are the Ministry of International Trade and Industry of Malaysia and the foreign supplier and the Appellant accepted the COO certificate under bona fide belief of its authenticity, as concessional rate of duty is dependent on Coo.

d. The goods were received by the Appellant in India and the Appellant filed bills of entry along with the COO Certificates claiming preferential rate of duty. There is no mechanism prescribed for the Importing Company i.e. Appellant herein to check the authenticity of the COO certificate provided by the exporting company before or at the timeof import. The same can only be done by the CBIC if arequest for verification is made by the concerned Commissioner of the port/ ICD upon any doubt regarding authenticity of the certificate. Since, Customs Authorities at the Port of Clearance had neither any doubt about the authenticity of certificate nor any available mechanism to verify such COO, consignment was cleared with notification benefit of concessional rate of duty.

e. In this case, allegedly a letter dated 23.04.2021 was received from the Finance Department, Ministry of Revenue, CBIC, New Delhi regarding the verification of COO certificates and another email dated 18.05.2021 was received from MITI informing that they never received any COO application from suppliers mentioned in their email dated 18.05.2021 including M/s Maly Matel Industry SDN BHD via their ePCO system. This communication has come at a belated stage after clearance of the goods, which shows that even the customs officers at the ICD did not have any mechanism to check the authenticity of the COO certificates at the time of import. Therefore, to place this responsibility on the Appellant, who has acted under bona fide belief, is highly unjustified.

f. The importer under the bona fide belief imports goods from preferential countries in order to avail concessional rate of duty and if in any manner, the said concessional rate of duty is not availed by the importer, the very essence of preferential import is lost and thus, in a case where there is any doubt regarding authenticity of the certificate, the Appellant would not have purchased the goods from the supplier altogether.

- The mechanism discussed hereinabove clearly shows that the Appellant has no role in issuance of COO certificates. Further, the whole purpose of import from ASEAN country is to claim the preferential rate of BCD and if in any manner the Appellant is not able to claim the said exemption, the Appellant would not carry out import from such supplier.
- In the present case, there is no allegation that the Appellant was privy to the issuance of allegedly fake COO certificates and therefore, in absence of any wilful misstatement or suppression offacts, the duty demand under Section 28(4) of the Customs Act, 1962 cannot sustain and the duty demand, if any, can only be under Section 28(1) of the Customs Act, 1962.
- In terms of Section 28(1) of the Customs Act, 1962, the show cause notice can be issued within a period of two years from the relevant date. It is submitted that the Bills of Entry were filed between 09.01.2019 and 05.11.2019 after which the goods were duly cleared for home consumption, being the relevant date in the present case. However, the Show Cause Notice was issued on 31.01.2023 after 4 years and therefore, the demand is barred by limitation.
- It is submitted that when the SCN is barred by limitation, the demand of differential duty in consequential impugned order cannot sustain and thus, the demand of customs duty amounting to Rs.23,16,653/- needs to be set aside.
- Further, there is no evidence to show any mala fide or connivance by the Appellant with the foreign supplier and the entire allegation that the Appellant was aware of the fake and false COO certificate is merely based on assumption. Thus, in absence of the pre-requisite ingredient of knowledge and collusion for penal action, the penalty of Rs. 23,16,653/ under Section 114A of the Customs Act, 1962 and penalty of Rs. 5,00,000/- under Section 114AA of the Customs Act, 1962 also need to be dropped.
- Reliance is being placed on cases passed by Hon'ble Commissioner (Appeals), Noida on similar issues in (1) Order-in-Appeal No. NOI-CUSTM-000-APP-86&87-24-25 dated 06.06.2024 in the matter of Choice Cargo Agencies V. Assistant Commissioner, (2) Order-in-Appeal No. NOI-CUSTM-000-APP-349-23-24 dated 03.11.2023 in the matter of M/s S.S. Overseas V. Additional Commissioner and (3) Order-in-Appeal No. NOI-EXCUS-000-APP-336-24-25 dated 06.02.2025 in the matter of M/s Shiv Enterprises V. Additional Commissioner. In the said cases, the Hon'ble Authorities have been

pleased to set aside the imposition of penalty on the observation that there was no mala fide or deliberate misstatement by the Appellant.

5. I have gone through the appeal memorandum filed by the appellant, the impugned order and documents on record. The issue to be decided in present appeal is whether the impugned order passed by the adjudicating authority demanding differential Customs Duty of Rs 23,16,653/- under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA of the Customs Act, 1962 and penalty of Rs 23,16,653/- under Section 114A and penalty of Rs 5,00,000/- under Section 114AA of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It has been observed that the appellant, in the course of their business operations, imported *Cold Rolled Stainless Steel Coil Grade J3 (Grade 200)* from foreign suppliers, namely M/s Artfransi International SDN BHD and M/s Maly Matel Industry SDN BHD, both based in Malaysia. These imports were declared under nine Bills of Entry, filed through their customs brokers M/s R R Logistics and M/s Rishi Kiran Logistics, under Customs Tariff Heading (CTH) 72209090. The appellant declared a NIL rate of Basic Customs Duty (BCD) on all nine Bills of Entry, instead of applying the applicable effective rate of 7.5% BCD, as determined under the assessment provisions of Section 17 of the Customs Act, 1962. This concession was claimed under the provisions of Exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended by Sr. No. 967(I) of Notification No. 82/2018-Cus dated 31.12.2018, citing preferential treatment under the ASEAN-India Free Trade Agreement (AIFTA) and relying on Country of Origin (COO) Certificates purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia. However, based on intelligence inputs suggesting possible misuse of preferential duty benefits, the aforementioned Bills of Entry were selected for detailed scrutiny. During the course of investigation, a communication bearing F. No. 456/241/2021-CUS. V dated 23.04.2021 was received from the Ministry of Finance, Department of Revenue, CBIC, New Delhi. This letter concerned the verification of COO Certificates under AIFTA. It was informed therein that:

- As per an email dated 25.03.2021 from the Ministry of International Trade and Industry, Malaysia, no application for issuance of COO was ever received from M/s Artfransi International SDN BHD.
- Further, an email dated 18.05.2021 from the Principal Assistant Director, Trade and Industry Co-operation Section, Trade and Industry Support Division, MITI, Malaysia, stated that no COO application had

been received via their ePCO system from the suppliers listed in the referenced communication, including M/s Maly Matel Industry SDN BHD.

In light of the above, the COO Certificates submitted in the name of M/s Maly Matel Industry SDN BHD and M/s Artfransi International SDN BHD are considered non-authentic, and the appellant's claim for preferential duty under AIFTA is prima facie found to be irregular.

5.2 Accordingly, the Country of Origin (COO) Certificates submitted by the appellant, which formed the basis for availing the exemption from payment of Basic Customs Duty under the preferential tariff provisions of the ASEAN-India Free Trade Agreement (AIFTA), were found to be non-genuine. The verification conducted by the competent authority in Malaysia namely, the Ministry of International Trade and Industry (MITI) confirmed that no COO applications had been received from the stated exporters through their official ePCO system. Therefore, the COO Certificates relied upon by the appellant lack authenticity and do not meet the requirements prescribed under the relevant customs notifications governing preferential tariff claims. In view of the above, the benefit of exemption from customs duty under the preferential tariff regime is not admissible to the appellant. Consequently, the adjudicating authority has rightly denied the exemption claimed by the appellant and has correctly determined the demand for recovery of differential duty, along with applicable interest under the provisions of the Customs Act, 1962. In my considered opinion, the findings of the adjudicating authority are in accordance with law, and the demand confirmed therein, along with interest, is legally sustainable and liable to be upheld.

5.3 It is observed that the appellant during personal hearing has relied upon the following orders:

(1) Order-in-Appeal No. NOI-CUSTM-000-APP-86&87-24-25 dated 06.06.2024 in the matter of Choice Cargo Agencies V. Assistant Commissioner,

(2) Order-in-Appeal No. NOI-CUSTM-000-APP-349-23-24 dated 03.11.2023 in the matter of M/s S.S. Overseas V. Additional Commissioner and

(3) Order-in-Appeal No. NOI-EXCUS-000-APP-336-24-25 dated 06.02.2025 in the matter of M/s Shiv Enterprises V. Additional Commissioner

I have carefully examined the orders cited and submitted by the appellant in support of their case. Upon perusal, it is noted that in all such cases, the respective authorities have upheld the demand for differential duty,

having found that the conditions for availing exemption under the preferential tariff arrangements were not fulfilled due to the non-authentic nature of the submitted Country of Origin Certificates. In light of these precedents and considering the facts and findings specific to the present case, I find no reason to deviate from the decisions submitted by the appellant. Therefore, the demand of differential duty along with applicable interest, as confirmed by the adjudicating authority in the impugned order, is found to be legally correct and is accordingly upheld.

5.4 I have carefully perused the Order-in-Appeal No. NOI-CUSTM-000-APP-349-23-24 dated 03.11.2023 in the case of *M/s S.S. Overseas vs. Additional Commissioner*, as submitted by the appellant during the course of the personal hearing. Upon examination, I find that the facts and circumstances of the cited case are identical to those of the present matter. In the said decision, the appellate authority upheld the demand for differential duty along with applicable interest; however, the penalties imposed under Sections 114A and 114AA of the Customs Act, 1962 were set aside. The relevant paragraphs of the said decision are reproduced below for reference:

"8.2 I find that since the CBIC has confirmed that the COO Certificate in respect of the subject consignment is not authentic, however, there is no allegation of misuse of exemption on the part of the appellant or the overseas supplier of goods. However, the appellant is not able to prove the genuineness of the COO Certificate in question. Therefore, the exemption of preferential tariff rate, claimed by the appellant on the basis of such a COO Certificate, has been correctly denied to the appellant consequentially confirmation of demand of differential duty with interest in the impugned order is liable to be upheld.

9.1 Regarding the imposition of Penalties under Section 114A and 114AA, I find that the adjudicating authority has imposed penalties under each of the sections by holding that when the importer has submitted false information in the form of invalid certificate of COO to evade payment of Customs Duty, it clearly establishes the ingredients of mens-rea. She has further said that it is a well settled law that in case of tax statute, various penal provisions are in the nature of civil obligations and do not require any mens-rea or wilful intention until and unless the relevant provisions provides for the same.

9.2. Regarding the plea of the appellant regarding penalty is not imposable under Section 114A, my findings are as under:

9.2.1 Section 114A of the Customs Act 1962 reads as under:

"Section 114A : 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."

9.2.2 From the statute it is evident that the existence of a willful intent is an essential ingredient for the purposes of imposition of penalty under Section 114A of the Customs Act. The Hon'ble Supreme Court in the case of CCE, Raipur vs. Uniworth Textiles Limited supra has categorically held that mere non-payment of duty is not sufficient to prove that such non-payment was on account of suppression of fact or willful misstatement. The term 'suppression of fact' and 'willful misstatement' invokes a degree of intent. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.

9.2.3 In another judgment, the Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Company vs. CCE 2002-TIOL-235-CX-SC held as follows:

"Where facts are known to both the parties, the omission by one to do what he might have done and not that he must have done does not constitute suppression of fact".

9.3.1 Section 114AA is extracted 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."

A cursory reading of the provision itself makes it abundantly clear that penalty can be imposed under the said section if a person knowingly or intentionally makes or signs documents which he/ she believes to be false or incorrect. Further, there is no allegation whatsoever that the Appellant has submitted any false or fabricated documents and therefore in absence of any such allegation, no question of imposition of penalty under Section 114AA of the Customs Act arises. Hence, looking into the facts and circumstances of the case, It appears that penalty under Section 114AA of the Customs Act is not applicable in the present case as the Appellant did not knowingly or intentionally make or sign or use any declaration, statement or document which is false or incorrect in any material particular. Further, the Appellant also did not cause anybody else to make or sign or use any declaration, statement or document which is false or Incorrect in any material particular.

9.3.2 I rely upon the judgment of The Hon'ble Andhra Pradesh High Court in the case of Commissioner of Cus., Visakhapatnam Vs. M/s. Jai Balaji Industries Ltd. reported in 2018 (361) E.L.T. 429 (A.P.) which has clearly held that Section 114AA would not get attracted as "sine qua non for invoking the said provision is that it must be established that a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document, which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Act." In this regard, it is useful to refer to a decision of the Mumbai Bench of the Tribunal in the case of M/s. Sameer Santosh Kumar Jaiswal Vs. Commr. of Cus. (Import-II), Mumbai reported in 2018 (362) E.L.T. 348 (Tri. Mum.) wherein, it has been inter alia held that "... from the reading of the above Section 114AA, it is observed that if the person knowingly makes the false declaration or signs any such document then only he will be liable to penalty under Section 114AA."

9.4 I also observe that it is not the case of the department that the consignment in question was not imported from Malaysia or that the COO Certificate presented by the appellant before the Customs authority was either forged or fabricated by the appellant in order to evade payment of Customs duty by way of availing exemption as there is no such finding in the Impugned order.

9.5. In view of the above and in absence of any allegation of any mis-declaration or even knowledge that COO Certificate is not authentic or mens rea or contumacious conduct on the part of the appellant, I find

that the appellant is not liable to penalty under Section 114A and/or 114AA of the Customs Act, 1962.

5.5 It is observed that the Country of Origin (COO) Certificates submitted by the appellant, which formed the basis for availing the exemption from payment of Basic Customs Duty under the preferential tariff provisions of the ASEAN-India Free Trade Agreement (AIFTA), were found to be non-genuine. There is no allegation or evidence of misuse of exemption, fraud, or willful misstatement by the appellant. The appellant has failed to establish the authenticity of the COO, and therefore, the denial of the preferential tariff benefit and the consequent confirmation of differential duty with interest is justified and liable to be upheld and are upheld. However, with respect to the imposition of penalties under Sections 114A and 114AA of the Customs Act, 1962, I referring the above referred decision and the decisions relied upon in the said decision, find that the essential ingredients for invoking these provisions such as willful misstatement, suppression of facts, or intentional submission of false documents are absent in the present case. There is no finding that the COO was forged, fabricated, or knowingly submitted as false by the appellant. In the absence of mens rea or contumacious conduct, the imposition of penalties under Sections 114A and 114AA is not legally sustainable.

5.6 In view of the above, the impugned order confirming the demand of differential duty along with interest is upheld. However, the penalties imposed under Sections 114A and 114AA of the Customs Act, 1962 are set aside.

6. The appeal filed by the appellant is disposed of in above terms.

(Amit Gupta)
Commissioner (Appeals)
Customs, Ahmedabad.

By Registered Post A.D.

सत्यापित/ATTESTED
SUPRERINTENDENT
CUSTOMS (APPEALS), AHMEDABAD

F.Nos. S/49-93/CUS/JMN/2023-24 Dated –16.06.2025

1461

To,

1. M/s Royal Steel Trading,
B-62, Wazirpur Industrial Area,
North West, Delhi - 110052,

2. M/s C J Legal, 140, 1st Floor
Jasola Vihar, New Delhi 110025.

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Jamnagar.
3. The Assistant/Deputy Commissioner of Customs, Customs House, Pipavav.
4. Guard File.