



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन, पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइलसंख्या/ File No.	: VIII/10-67/Prev/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: F.No.VIII/10-67/Prev/O&A/HQ/2023-24 dated 14.07.2023
C	मूलआदेशसंख्या/ Order-In-Original No.	: 261/ADC/VM/O&A/2023-24
D	आदेशतिथि/ Date of Order-In-Original	: 28.03.2024
E	जारीकरनेकीतारीख/ Date of Issue	: 28.03.2024
F	द्वारापारित/ Passed By	: Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: M/s. Ratnesh Metal Industries Pvt. Ltd., (now M/s MP Steel (India) Private Limited), Survey No. 900, Near ashram Chokdi, Village- Ranasan, Taluka Vijapur, Mehsana- 382870
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ %अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धारा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

Brief facts of the Case:-

1. Intelligence was gathered by Directorate of Revenue Intelligence, Lucknow Zonal Unit, hereinafter referred to as DRI, LZU, that M/s Ratnesh Metal Industries Pvt. Ltd. (IEC No. 0898001501), 306-C, GCP Business Center, Opposite Memnagar Fire Station, Navrangpura, Ahmedabad (hereinafter referred to as "M/s Ratnesh") have misused the Advance Authorization Scheme in 0810136454 dated 06.11.2015 and contravened the provisions of para 4.7 of the Handbook of Procedures, (2004-2009) & (2009-2014); Customs Notification No. 93/2004-Customs dated 17.09.2004, Customs Notification No. 96/2009-Customs dated 11.09.2009, Customs Notification No. 18/2015-Customs dated 01.04.2015 and provisions of Customs Act of the Customs Act, 1962. Intelligence was further developed by DRI, LZU and it was found that M/s Ratnesh have been issued Advance Authorizations No. 0810073933 dated 12.08.2008, 0810074246 dated 26.08.2008, 0810075047 dated 29.09.2008, 0810079063 dated 30.03.2009, 0810080098 dated 21.05.2009, 0810081589 dated 21.07.2009, 0810082956 dated 16.09.2009, 0810084403 dated 25.11.2009, 0810085115 dated 21.12.2009, 0810136454 dated 06.11.2015, 0810136455 dated 06.11.2015, 0810136687 dated 09.12.2015 and 0810137320 dated 29.02.2016 for the import of stainless steel melting scrap under Para 4.7 of the Handbook of Procedures, (2004-2009); (2009-2014) & (2015-20) .

2. These Advance Authorizations have authorized M/s Ratnesh to import Stainless Steel Melting Scrap at NIL rate of Customs duty for manufacturing of finished goods meant for export by use of these inputs. Details of these Advance Authorisations issued to M/s Ratnesh are given in the table below -

Table 1

Sl No	LIC DETAILS		ALLOWED IMPORT			ALLOWED EXPORT			Notfn. No.
	LIC NO	DATE	IMPORT ITEM	QTY (MT)	VALUE (CIF)	EXPORT ITEM	QTY (MT)	FOB VALUE	
1	0810073933	12.08.08	STAINLESS STEEL MELTING SCRAP	187	13340225	STAINLESS STEEL ROUNDS/ FTALS/ HEXAGONS/ ANGLES BRIGHT BARS	Not Available	15164460	93/04
2	0810074246	26.08.08	STAINLESS STEEL MELTING SCRAP	206.8	12760000	STAINLESS STEEL ROUNDS/ FTALS/ HEXAGONS/ ANGLES BRIGHT BARS	Not Available	17600000	93/04
3	0810075047	29.09.08	STAINLESS STEEL MELTING SCRAP	180.4	18800000	STAINLESS STEEL ROUNDS/ FTALS/ HEXAGONS/ ANGLES BRIGHT BARS	164	29140000	93/04
4	0810079063	30.03.09	STAINLESS STEEL MELTING SCRAP	60.9	4000000	STAINLESS STEEL ROUNDS/ FTALS/ HEXAGONS/ ANGLES BRIGHT BARS	Not Available	6250000	93/04
5	0810080098	21.05.09	(72042190) STAINLESS STEEL MELTING SCRAP	262.5	17250000	(72224020) (61/0)- STAINLESS STEEL BRIGHT BARS/ ROUNDS/ FTALS/ HEXAGONS/ ANGLES	250	26250000	93/04
6	0810081589	21.07.09	STAINLESS STEEL MELTING SCRAP	385	11809000	STAINLESS STEEL ROUNDS/ FTALS/ HEXAGONS/ ANGLES BRIGHT BARS	Not Available	22295000	93/04
7	0810082956	16.09.09	(72042190) STAINLESS STEEL MELTING SCRAP	210	23520000	(72224020) (61/0)- STAINLESS STEEL BRIGHT BARS/ ROUND/ FTALS/ HEXAGONS/ ANGLES	200	27440000	93/04
8	0810084403	25.11.09	(72042190) STAINLESS STEEL MELTING SCRAP OF GRADE AISI - 201	315	18144000	(72224020) (61/0)- STAINLESS STEEL ROUNDS/ FTALS/ HEXAGONS/ ANGLES BRIGHT BARS OF GRADE AISI-201	300	25920000	96/09

9	0810085115	21.12.09	(72042190) STAINLESS STEEL MELTING SCRAPE OF GRADE AISI - 304	315	30240000	(72224020) (61/0)- STAINLESS STEEL ROUNDS/ FTALS/ HEX AGONS/ ANGLES/ BA RS OF GRADE AISI- 304	300	40320000	96/09
10	0810136454	06.11.15	(72042190) STAINLESS STEEL MELTING SCRAPE RELEVANT GRADE	510	43164000	(72224020) (61/0) - STAINLESS STEEL BRIGHTS ROUND BARS/ ROUNDS BARS/ ANGLE BARS/ FLAT BARS/ SQUARE BARS/ HEX BARS	500	69300000	18/15
			(68041000) GRINDING WHEELS	100					
11	0810136455	06.11.15	(72042190) STAINLESS STEEL MELTING SCRAPE RELEVANT GRADE	510	19338000	(72224020) (61/0) STAINLESS STEEL BRIGHTS ROUND BARS/ ROUNDS BARS/ ANGLE BARS/ FLAT BARS/ SQUARE BARS/ HEX BARS	500	37950000	18/15
12	0810137320	29.02.16	STAINLESS STEEL MELTING SCRAP	Not Availa ble	43164000	STAINLESS STEEL ROUNDS/ FTALS/ HEXAGONS/ ANGLES BRIGHT BARS	Not Available	69300000	18/15
13	0810136687	09.12.15	(72042190) STAINLESS STEEL MELTING SCRAPE RELEVANT GRADE	510	59367000	(72224020) (61/0) - STAINLESS STEEL BRIGHT ROUND BARS/ ROUNDS BARS/ ANGLE BARS/ FLAT BARS/ SQUARE BARS/ HEX BARS	500	95700000	18/15

3. A Search was conducted by the DRI officers of Noida Regional Unit and Ahmedabad Zonal Unit at the factory premises of M/s Ratnesh situated at Survey No. 900/1, Village- Ranasan Tal.- Vijapur, Mehsana, Gujarat on 29/30.08.2017 and after completion of the investigation process, Show Cause Notice No. DRI/NRU/CI/26/INT-O/ENQ-26/2017 dated 20.11.2019 was issued to M/s. Ratnesh Metal Industries Pvt. Ltd., Mr. Sumer S. Sanghvi, Mr. Rajesh S. Sanghavi & Sh. Viral Shah in respect of Advance Authorizations vide No. 810075047 dated 29.09.2008, No. 810080098 dated 21.05.2009, No. 810082956 dated 16.09.2009, No. 810085115 dated 21.12.2009 & No. 810136454 dated 06.11.2015.

4. A letter F. No: DRI/NRU/CI/26/INT-O/ENQ-26/2017 dated 20.11.2019 was issued from the office of the Additional Director, DRI Lucknow addressing the Principal Commissioner/Commissioner of Customs, Custom House, Ahmedabad with a request to look into the matter and take measures to safeguard revenue in respect of the remaining Advance Authorizations.

5. Acting upon the information received from DRI, search was conducted at the premise of M/s. Ratnesh Metal Industries Pvt. Ltd. situated at 11, Parvati Nagar, Opp Dhananjay Tower, Near Kothari Automobiles, Satellite, Ahmedabad in the presence of independent panchas/witnesses as per warrant dated 27.11.2020 by the team of officers from HQ, Preventive, Customs and the proceedings were recorded under panchnama dated 27.11.2020 on the same spot. During the search proceedings, files/documents related to Advance Authorisation No. 0810073933, 0810079063, 0810074246, 0810081589 & 0810084403 were segregated and withdrawn for further investigation.

6. On inquired, Shri Viral Bharatbhai Shah, DGM of M/s. Ratnesh informed that they engaged in manufacturing of SS Angle, SS Flat, Hexagon, Round, Square etc. at M/s. Ratnesh Metal Industries Pvt. Ltd., Survey No. 900, Nr. Ashram Chokdi, Vill - Ranasan, Tal - Vijapur, Mehsana. He further submitted that M/s. Ratnesh had earlier imported Stainless Steel Melting Scrap without payment of duty under Advance Authorizations/Licenses obtained from DGFT, Ahmedabad by declaring that M/s.

Ratnesh is manufacturing Stainless Steel by using Induction Furnace & VOD (Vacuum Oxygen Decarburization) but actually they were not having VOD facilities in their factory. Therefore, they have availed higher import benefits as against the norms for manufacturing of Stainless Steel by Non-VOD or Non-AOD (Argon Oxygen Decarburization) facilities.

7. Shri Viral Bharatbhai Shah, DGM of M/s. Ratnesh further informed that DRI, Lucknow had also conducted investigation on the same issue and issued demand notice in respect of 5 similar Advance Authorizations/Licenses. Upon inquiry by the officers, he replied that the SCN does not cover the Advance Authorizations in respect of which files/documents were withdrawn by the officers during the search proceedings i.e. Advance Authorization Nos. 0810073933, 0810079063, 0810074246, 0810081589 & 0810084403 but covers other such Authorizations/Licenses i.e. 081007547; 0810080098; 0810082956; 0810085115 & 0810136454. He also informed that there was no demand issued in respect of the 8 Authorizations/Licenses as mentioned above and also DRI, Lucknow had not carried out any inquiry in respect of that 8 Authorisations/Licenses. Further, License No: 0810136455; 0810137320 & 0810136687 has been surrendered by M/s Ratnesh.

8. Summons dated 23.12.2020, 02.02.2021, 11.02.2021, 22.03.2021, 30.07.2021 & 18.10.2022 were issued by the Superintendent, HQ Preventive, Customs, Ahmedabad but no one from the side of M/s. Ratnesh or their representative appeared for hearing. Accordingly, this notice is issued on the basis of available records & evidence with this office.

9. M/s. Ratnesh imported Stainless Steel Melting Scrap of SS 304, 316, 201 etc. quality and exported finished products, i.e. Bright Bars, Angle Bars, Flat Bars, Hexagonal Bars etc. They imported and exported under relevant Advance Authorization Schemes (93/2004, 96/2009 & 18/2015) & under SION (Standard Input Output Norms) - C525, C-355 & C-524.

10. As per SION C - 525, import of stainless steel melting scrap of known chemical composition may be permitted within the overall quantity of item No. 1 (a) but up to 90% to induction furnace units having AOD/VOD facilities and electronic furnace units. For units having induction furnace without AOD/VOD, import of stainless steel melting scrap will however be permitted within the overall quantity of item No. 1 (a) but up to 60% only.

11. It has already been established in the investigation conducted by the DRI Lucknow that the factory i.e. M/s. Ratnesh contains only one induction furnace for melting of raw material with two crucibles having 2.5 tonnes and 3.0 tonne capacity each and only one of it remains functional at a time and the other was kept on standby. The furnace used for melting of raw material in the factory was not an AOD/VOD furnace rather it was an Induction Furnace. The quality/grade of the finished product (S.S. Ingot) depended upon the quality/grade of the S.S. Scrap used for melting into the induction furnace e.g. with a S.S. Scrap quality/grade of 304 and 316, S.S. Ingot of 304 and 316 respectively, were produced. These ingots were hot rolled in rolling section and then finished into bright bar section.

12. It has also been established in the investigation conducted by the DRI, Lucknow that M/s. Ratnesh was well aware that they were not eligible to apply for Advance Authorisation Scheme under 'no norms category' i.e. under para 4.7 HBP Vol.1 and that their application should have been filed under SION norms category at C-525 (wherein S.S. Scrap is major input for production of export product S.S. Ingot). Further, that their application should also have not been under the SION category of C-524 (wherein S.S. Ingot is major input for production of export product Bright etc. since they were importing Stainless Steel Scrap not SS Ingots). Thus, instead of SION entry at C-524, M/s Ratnesh were required to fulfil the export obligation as per SION C-525, wherein

maximum 60% quantity of input i.e. stainless steel melting scrap was permitted to import for exporting stainless steel ingots which in their case is the intermediate product to produce & export finished products i.e. Bright Bars, Angles Bars, Flat Bars, Hexagonal Bars, Square Bar. He admitted that in their application of Advance authorizations, they erroneously applied SION C-524 input quantity i.e. 1.05% of Raw Material Instead of C-525 input quantity (@60%). M/s. Ratnesh was under impression that Ferro Nickel and Ferro Chrome were already present in the aforesaid quantity imported under above mentioned authorizations and in place of Ferro Alloys permitted under Sr. No. of C-525, they requested for full quantity of Stainless Steel Melting Scrap. The DGFT later disallowed this excess quantity of 40% stainless steel melting Scrap.

13. DGFT, Ahmedabad vide letter dated 06.09.2018, informed that, license No. 0810136455 dated 06.11.2015, 0810136687 dated 09.12.2015 and 0810137320 dated 29.02.2016 have been surrendered by M/s Ratnesh. As such inquiry conducted in present SCN is restricted to 5 licenses only in respect of which action has not been initiated by DRI.

14. Vide letter dated 19.01.2019, Shri Chandrakant B. Patel, Chartered Engineer informed that he has not issued any certificate stating that M/s. Ratnesh Metal Industries Pvt. Ltd. have installed VOD converters at their plant.

15. It has already been established in the investigation conducted by the DRI, that Shri Chandrakant B. Patel, Chartered Engineer has issued a certificate for the import requirement of M/s Ratnesh Metal Industries Private Limited based on technical specifications provided by the Consultant but he did not issue certificate in respect of VOD converters at the plant of M/s Ratnesh. This confirms that no VOD/AOD facility was ever available at the plant of M/s Ratnesh and as he denied to issue any certificate with regard to VOD converter installed at the plant of M/s Ratnesh, it appears that a fake/fabricated certificate was produced before the authorities of Ministry of Steel in order to fraudulently avail the benefit beyond the permitted Norms, as the Ministry of Steel recommended DGFT for fixation of norms on the basis of certificate of Chartered Engineer submitted to their authorities by M/s Ratnesh.

16. This office vide letter dated 02.03.2023 requested the Deputy Commissioner, ICD Khodiyar to provide item wise ledger in respect of Advance License No. 810073933 dated 12.08.2008, 810074246 dated 26.08.2008, 810079063 dated 30.03.2009, 810081589 dated 21.07.2009 & 810084403 dated 25.11.2009. The Deputy Commissioner, ICD Khodiyar vide his email dated 21.03.2023 provided item wise ledger in respect of the above mentioned Advance Licenses.

17. M/s Ratnesh applied for advance authorisation scheme under Para 4.7 of Hand Book of Procedures i.e. on the basis of self-declaration by them despite the fact that their export product i.e. Stainless Steel Rounds/Flats/Hexagons/Angles/Bars of Grade AISI 304 would fall within the SION category of C-525, wherein norms for utilization of scrap has been fixed at 60% imported material i.e. the import of stainless steel melting scrap of known composition may be permitted within the overall quantity of items under SION C 525 1(a) but upto 60% only, **if the plant have induction furnace without the facility of AOD/VOD**. As the import item i.e. **"Stainless Steel Melting Scrap of Grade AISI 304"** to be used in production of export item i.e. **"Stainless Steel Rounds/ Flats/ Hexagons/ Angles/ Bars of Grade AISI 304"**, for which M/s Ratnesh obtained Advance Authorizations, which falls under the SION entry at c-525, against duty free import of raw material by them under advance authorisation scheme, they were required to fulfill their EO as per the norms stipulated in SION entry No. C-525 instead of applying for Advance Authorisation Scheme under Para 4.7 of HBP i.e. under no norms condition on the basis of self-declaration. Therefore, M/s Ratnesh are required to pay customs duties on proportionate basis in respect of the authorizations where the raw material import was in excess to permitted norms. A chart in respect of import

undertaken by M/s Ratnesh under Advance Authorisations issued to them vis-à-vis export effected thereunder and, therefore, the quantity of excess input remained with them is as under: -

TABLE – 2

Sr No	Advance Authorisation No	Import Qty.	Exported Qty.	Utilisation of Input @60% SION norms C%525 on eligible export Qty.	Excess Input	Duty calculation					
						Qty. Mts.	Customs Port	BE No.	BE Date	Item wise value	Duty forgone
	810073933 dated 12.08.2008	149.95	230.791	138.4746	11.4754	7.43	INSBI6	653547	15.11.2008	633513	200845
						4.0454	INSBI6	651619	17.09.2008	366450	93720
2	810074246 dated 26.08.2008	206.8	203.456	122.0736	84.7264	13.622	INSBI6	652552	13.10.2008	675357	172723
						19.98	INSBI6	651615	17.09.2008	1006468	257405
						18.73	INSBI6	651365	08.09.2008	943500	241300
						32.3944	INSBI6	651326	08.09.2008	1631827	417340
3	810081589 dated 21.07.2009	223.06	345.062	207.0372	16.0228	16.0228	INSBI6	3429836	06.05.2011	662293	177817
4	810079063 dated 30.03.2009	45.566	77.778	46.6668	-1.1008	NA	NA	NA	NA	NA	NA
5	810084403 dated 25.11.2009	44.91	91.815	55.089	-10.179	NA	NA	NA	NA	NA	NA
						112.2246				5919407.4	1561150

LEGAL PROVISIONS RELATED TO ADVANCE AUTHORISATION SCHEME

18. Following provisions of law appear relevant and applicable in the instant case:-

Para 4.7 of the Handbook of Procedures 2004-09, 2009-14 & 2015-20;
 Notification No. 93/2004-Customs dated 17.09.2004;
 Customs Notification No. 96/2009-Customs dated 11.09.2009;
 Customs Notification No. 18/2015-Customs dated 01.04.2015;
 Section 111(o) of Customs Act 1962;
 Section 112(a) of Customs Act 1962;
 Section 114AA of Customs Act 1962

19. Advance Authorizations are issued to allow duty free import of input which are to be used in the manufacturing of finished products for export subject to normal allowable wastage arise during the production of export products. Para 4.03 of the Foreign Trade Policy, 2015-20 stipulated as under:-

“4.03 Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

(ii) On the basis of self declaration as per paragraph 4.7 of Handbook of Procedures."

20. Advance Authorizations issued by DGFT are governed by the provisions contained in HBP V.I, 2009-14 and HBP 2015-20. The Para 4.7 of HBP, 2015-20 gives an option to the importer to request the Regional Authority of DGFT for issuance of Advance Authorisation on the basis of self-declaration by the applicant with regard to consumption of inputs to their export products provided norms of SION does not exist to the particular items. However, the wastage claimed by the applicant will be subject to wastage norms as decided by Norms Committee. In such case where SION is not fixed, Regional Authority may also issue Advance Authorisation, based on self-declaration by applicant as per the provision of relevant Paras of relevant Hand Book of Procedures applicable at the point of time of issuance of Advance Authorisation. Viz. Para 4.07 of Hand Book of Procedures is reproduced below for ready reference:-

"4.7 Self Declared Authorisations where SION does not exist

- (i) Regional Authority may also issue Advance Authorisation where SION is not fixed, based on self declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee. The provisions in this regard are given in paragraph 4.03 and 4.11 of FTP.**
- (ii) In case of revision / rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website.**
- (iii) No Authorisation under this paragraph will be issued by Regional Authority for items listed in paragraph 4.11 of FTP."**

21. Standard Input Output Norms (SION) define the amount of input(s) required to manufacture a unit of output for export purpose. M/s Ratnesh applied for Advance Authorisations to export **"Stainless Steel Rounds/Flats/Hexagons/Angles/Bars of Grade AISI 304"** by using import item i.e. **"Stainless Steel Melting Scrap of Grade AISI 304"** in production of export product as mentioned in the authorizations. M/s Ratnesh applied for advance authorisation scheme under Para 4.7 of Hand Book of Procedures i.e. on the basis of self-declaration by them despite the fact that their export product i.e. Stainless Steel Rounds/Flats/Hexagons/Angles/Bars of Grade AISI 304 would fall within the SION category of C-525, wherein norms for utilization of scrap has been fixed at 60% imported material i.e. the import of stainless steel melting scrap of known composition may be permitted within the overall quantity of items under SION C 525 1(a) but upto 60% only, **if the plant have induction furnace without the facility of AOD/VOD.** As the import item i.e. **"Stainless Steel Melting Scrap of Grade AISI 304"** to be used in production of export item i.e. **"Stainless Steel Rounds/ Flats/ Hexagons/ Angles/ Bars of Grade AISI 304"**, for which M/s Ratnesh obtained Advance Authorisations, falls under the SION entry at c-525, against duty free import of raw material by them under advance authorization scheme, they were required to fulfill their EO as per the norms stipulated in SION entry No. C-525 instead of applying for Advance Authorisation Scheme under Para 4.7 of HBP i.e. under no norms condition on the basis of self-declaration. Entries of set norms at SION C-525 1(a) is reproduced below for ready reference:-

<u>Sl. No.</u>	<u>Export Item</u>	<u>Qty</u>	<u>Name of import item</u>	<u>Quantity allowed</u>
525	Stainless Steel (Excluding Exhaust Valve Steel) Semi-finished Products (Blooms, Billets & Slabs) and Ingots:	1 Tonne	1.Major Inputs : (a) Non-alloy Steel Melting Scrap, Pig Iron, Sponge Iron including Hot Briquetted Iron (HBI)	In Kg As per Note 2.
	2.Additives (Ferro Alloys/ Metals/ Compounds) :		(In Kg per Kg. content of alloying element in the export product)	
			(a)(i) Ferro Silicon (Si :75%)	1.43
			(a)(ii) High Carbon Ferro Manganese (Mn :75%) OR	1.43
			(a)(ii) Manganese Metal	1.04
			(b) Charge Chrome, High Carbon Ferro Chrome (Cr :60%) Or	1.79
			(b) Low Carbon Ferro Chrome (Cr : 70%)	1.53
			(c) Unwrought Nickel (Ni :99%) Or	1.04
			(c) Ferro Nickel, Nickel Oxide Sinter (Ni : 40%)	2.58
			(d) Lead (Pb : 99%) Scrap/ Shots/ Wires/ Powder in cored wire	1.60
			(e) Ferro Molybdenum (Mo: 65%)	1.58

	Or	
	(e) Molybdenum Oxide (Mo : 60%)	1.89
	(f) Ferro Titanium (Ti : 70%)	2.43
	(g) Ferro Tungsten (W: 75%)	1.38
	(h) Any other Nobel/ Special Ferro-alloys (Ferro Vanadium, Ferro Boron, Ferro Phosphorous, etc.)	1.38
	(i) Any other Metal (not present in aforesaid ferro-alloys) in unwrought or wrought form or in powder form or powders in cored wires	1.04
	(j) Sulphur stick / Sulphur powder in cored wire	2.00
	3.Consumables/ Misc. Inputs :	In kgs
	(a) Ferro-Silicon (Si: 75%) (for de-oxidation/ Reduction)	20
	(b) Graphite Electrodes (For units with EAF Furnace only)	4
	(c) Relevant CI, Steel Rolls for Hot Rolling Mill/ Continuous Casting Machine (against export of rolled products only)	0.6
	(d) Relevant Copper lined Moulds, Copper Moulds/ Tubes for Continuous Casting (if export product is produced through Continuous Casting route with/ without further rolling)	0.01

	<i>(e) Casting Powder</i>	<i>1</i>
	<i>(f) Aluminium wires, Notched bars, scraps, shots, ingots, Dross, Powder in Cored Wire and Ferro Aluminium.</i>	<i>2</i>
	<i>(g) CaSi Lumps, CaFeLumps, Powder of CaFeAl, café, CaSi in Cored wire.</i>	<i>0.1</i>
	<i>(h) Rolling Mill Oil, Hydraulic Oil, Lubricating Oil (against export of rolled products only)</i>	<i>0.5</i>
	<i>(i) Celox Inserts, Temperature Tips, Oxygen Probes, Sampler Probes, Sampler Tips.</i>	<i>0.1</i>
	<i>(j) Relevant Shear Blades, Saw Blades.</i>	<i>0.01</i>
	<i>(k) Oxygen Lance pipes, Submerged tuyers, Atmospheric injector</i>	<i>0.1</i>
	<i>(l) Calcium Carbide</i>	<i>0.5</i>
	<i>(m) Low silica Calcined lime/ lime stone</i>	<i>100</i>
	<i>(n) Refractories:</i>	
	<i>i) Relevant Shaped Refractories (Fired/ Un-fired Bricks/ Shapes)</i>	<i>20</i>
	<i>ii) Relevant Monolithic Refractories (including Castables, ramming mass, gunning mixes)</i>	<i>4</i>
	<i>iii) Relevant Special Refractories i.e. C.C. refractory (Shrouds, Mono Block Stopper, SE Nozzles), Slide Gate refractory, Porous Plug,</i>	<i>1</i>

	Zircon/ Zirconia Nozzles & Tundish Nozzles	
	(o) Calcined / Raw Petroleum coke	10
	4. Energy Sources:	
	(a) Relevant fuel for electric power for Steel making and Auxiliaries (for units with captive power plant/ source only)	10,00,500 K. Cal
	(b) Relevant Lubricant for captive power plant	1 Kg.
	(c) Relevant fuel for fuel fired reheating furnace (if & only if export product is supplied in rolled condition)	2,61,000 K. Cal
	(d) Relevant fuel for electric power for hot rolling mill & auxiliaries (if & only if export product is supplied in rolled condition)	2,17,500 K. Cal
	(e) Relevant fuel for ladle / tundish/ ferro-alloy heating	35,000 K. Cal
	(f) Relevant fuel for Boilers for VOD (to units having VOD facilities only)	1,30,500 K. Cal

Note 1 : This norm is applicable for export product manufactured adopting Electric Arc Furnace/ Electric Induction Furnace using Non-alloy Steel Melting Scrap as the basic input..

Note 2 : The total quantity of imported inputs allowed against Sl. No. 1(a) and Sl. No. 2 shall be limited to 1115 Kg. Further, individual quantity of Pig Iron and Sponge Iron/ HBI allowed against Sl. No. 1(a), if any, shall not exceed 20% and 65% respectively of the total quantity of items to be permitted therein.

Note 3: Quantities of Ferro Alloys/ Metals/ Compounds have been worked out based on a specified percentage of alloying element in the Ferro Alloys/ Metals/ Compounds as indicated therein within the parenthesis against each alloy. If the percentage of alloying element in the ferro-alloy is higher/ lower, the revised (i.e lower / higher) quantity may be worked out on pro-rata basis as under:

Quantity permitted in norm \times % of element in ferroalloy/ metal/ compound as per the norm
 Actual % of element in the imported ferroalloy/ metal/ compound

Note 4: For a given alloying element in steel, wherever two alternate ferroalloy / metals / compound of the same alloying element have been permitted and it is proposed to import a combination of both, individual quantities of each ferro-alloy may be worked out based on the specified (part) quantities of the alloying element in two forms (but within the overall quantity of alloying element in the steel), using the content based formula given therein.

Note 5: Alloying element(s) in steel is/are prescribed by specifying the minimum value or a range or the maximum value. For calculating the quantities of ferro alloys/ metals/ compounds as per the content based formula given in the SION, the prescribed minimum or the mid value of the range or 0.8 times the maximum value of the respective alloying element(s) in the export product shall be taken into consideration.

Note 6: Import of stainless Steel Melting Scrap of known chemical composition may be permitted within the overall quantity of item no. 1(a) but upto 90% to Induction Furnace units having AOD/VOD facilities and Electric Furnace units. For units having Induction Furnaces without AOD/VOD, import of stainless steel melting scrap will however, be permitted within the overall quantity of item No. 1(a) but upto 60% only. Only such grade of stainless Steel Melting Scrap will be allowed that is relevant to the export product. In such a case, quantity of respective ferroalloy/metal to be allowed as per formula at Sl.No. 2 will have to be reduced to account for the recoverable alloying element(s) (Nickel, Copper, Chromium and Vanadium) present in the stainless steel scrap. The reduced quantity of these ferroalloys/metals shall be obtained by deducting the equivalent quantity of ferroalloy/metal to be obtained using the following formula from the total quantity to be worked out as per formula at Sl. No. 2 in the SION read with Note 3

Alloy Steel Scrap Quantity (kg) \times % of relevant element in scrap

1.115 \times % of relevant element in ferroalloy / metal / compound

Note 7: The specified quantities of energy sources/ fuel for electric power generation (in K.Cal) against import item 4(a) & 4(c) which correspond to electric power consumption of 500 and 100 KWH per tonne of export product have been allowed assuming that Captive Power Plant (CPP)/ Source of matching capacity exist. In case CPP/source in a given unit is of lower capacity, quantity of fuel to be allowed for import will be reduced on pro rata basis.

Note 8: Quantity of energy sources/ fuels (in K.Cal) correspond to a fuel having unit heat value of 8700 K.Cal. Import of any other fuel of higher/lower unit heat value (as long as it is relevant to the facilities installed in the unit) may be permitted, quantity of which (in Kgs./ Cubic Meters/ K. Liters) may be worked out by dividing the K.Cal figures given in the SION by the actual unit heat value of the imported fuel.

Note 9 : Import of items at Sl.No. 3(b), (c), (d), (i), CC Refractories under 3(n) (iii) and 4(c) shall not be permitted against export of steel ingots.

Note 10 : The Item "Low Carbon Ferro Chrome" under 2(b) above is to be allowed only to manufacturers not having Argon Oxygen Decarburisation (AOD) and Vacuum Oxygen decarburization (VOD) . However, this input may be allowed @ 80 kg (max) to units with only VOD facilities and @10 Kgs (max) to units with only AOD facilities.

With effect from 26.02.2009, vide Notification No. 150/_____, Note 6 was amended as under:-

Note 6: Import of Stainless Steel Melting Scrap of known chemical composition --

6.

22. As per definition contained in Standard Input Output Norms (SION) against entry C525, they were eligible for 60% of Stainless Steel Scrap to fulfill the requisite export obligation, therefore, they are liable to pay duties of Customs of an amount equal to excess import which is beyond the permitted norms with interest at the rate of 15%/18% per annum from the date of clearance of goods against such excess input. This Failure on the part of the importer to pay customs duties led to outright violation of the conditions of the notification read with the Policy in vogue rendering goods, so imported and in excess to permitted norms is liable for confiscation under section 111(o) of the Customs Act, 1962, which reads as under:

"111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—

(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;"

23. As per the provisions contained in Para 4.1.3, para 4.1.5 , para 4.1.9 of the Foreign Trade Policy, 2009-14; Para 4.22, para 4.24 , para 4.28 of the Handbook of Procedures vol-I, 2009-14; Para 4.03, para 4.11, para 4.12, para 4.16 of Foreign Trade Policy, 2015-2020; Para 4.04, para 4.06, para 4.7, para 4.15, para 4.16, para 4.20, para 4.21, para 4.42, para 4.44, para 4.49, para 4.50, para 4.51 of the Handbook of Procedures, 2015-20; Customs Notification No. 93/2004-Customs dated 17.09.2004, Customs Notification No. 96/2009-Customs dated 11.09.2009, Customs Notification No. 18/2015-Customs dated 01.04.2015, they have to fulfill export obligation as per the standard Input Out norms(SION) which define the amount of input(s) required to manufacture a unit of output for export purpose. M/s Ratnesh applied for Advance Authorizations under no norms category even-after knowing what was the right norms, therefore, it appears that M/s Ratnesh by their act of non-compliance of the aforesaid provisions of law have contravened the respective provisions of the Foreign Trade Policy and conditions of the notification for the time being in force. The importer was bound to pay the amount of Customs duty on pro rata basis on the input/raw material beyond the permitted norms in compliance with Policy and the provisions of the Notification, which they did not do till the matter was came to the notice of DRI and an investigation was initiated by the DRI on this account. M/s Ratnesh appears to have grossly failed to observe the subject conditions of the Policy and the notification and also preferred to

suppress the fact of their failure from the government authorities with mala fide intention of evading duty of Customs.

24. It has already been established in the investigation conducted by the DRI Lucknow that Shri Sumer S Sanghvi has signed the application under Para 4.7 to obtain Advance Authorization scheme under No norms Category in place of SION norms under C525 and for adopting fraudulent means i.e. obtain undue advantage of SION norms under C525 applicable to plant having induction furnace with AOD/VOD converters by false declaration to Ministry of Steel and DGFT and presented a fake/fabricated certificate of Chartered Engineer before the Government authorities vide his letter dated 21.04.2009. The act of commission and omission of taking undue benefits of import of excess raw material and availed higher tax exemption benefit by providing wrong information and forged Certificate, render himself liable for penal action under the provisions of Section 112(a) and 114AA of the Customs Act, 1962.

24.1. It has already been established in the investigation conducted by the DRI Lucknow that Shri Viral Shah was very much aware the fact that AOD/VOD facility was not available in their factory Premises. Further Viral Shah was aware about the Norms under SION 525 (as per his statement dated 30.08.2017). Shri Shah was also aware that other Advance Authorizations were issued in past to the firm under No Norms Category i.e. under Para 4.7 of HBP Vol-I. Even then their claim for higher norms beyond permitted norms (as established in the various correspondences to DGFT, Ministry of Steel) clearly indicates the Shri Viral Shah was very much aware that in other authorization too they have fraudulently availed Excess quantity of raw material that is Stainless Steel specially when they did not have AOD/VOD facility installed and working, this wilful mis-statement, suppression of fact attracts penal provisions under Customs Act 1962. The act of commission and omission of taking undue benefits of import of excess raw material and availed higher tax exemption benefit by providing wrong information and forged Certificate, render himself liable for penal action under the provisions of Section 112(a) and 114AA of the Customs Act, 1962.

24.2. It has already been established in the investigation conducted by the DRI Lucknow that Shri Rajesh S Sanghvi, Director M/s. Ratnesh Metal Industries Pvt Ltd, has grossly failed in his responsibility. He in his statement dated 12/12/2017 had informed that they do not have AOD/VOD facility installed in M/s. Ratnesh. He also admitted that they were eligible for 60 percent Stainless Steel Scrap against the Export as per the note 6 of S.No C 525. Since nothing has been heard from him on the same therefore appears that Shri Sanghvi has knowingly suppressing the fact in order to avoid the payment of Government dues which their firm has achieved by fraudulent means and this wilful mis-statement, suppression of fact attracts penal provisions under Customs Act 1962. The act of commission and omission of taking undue benefits of import of excess raw material and availed higher tax exemption benefit by providing wrong information and forged Certificate, render himself liable for penal action under the provisions of Section 112(a) and 114AA of the Customs Act, 1962.

24.3. Whereas the importer in terms of condition of the notification No. 93/2004-Cus, 96/2009 –Cus & 18/2015-Cus at the time of import of duty free raw material under Advance Authorization scheme against all Advance Authorizations, the registered customs port of import i.e. at ICD, That They *shall observe all the terms and conditions of the said notification, shall observe all the terms and conditions specified in the license, shall fulfill the export obligations as specified in the said notification and the license and shall produce evidence of having so fulfilled the export obligations within 30 days from the expiry of specified export obligation period to the satisfaction of the Government, In the event of failure to fulfill full or part of the export obligations as specified in the said notification and license. I/ We the obligor(s) herein undertake to pay the customs duty for the exemption and also interest @ 15% per annum thereon forthwith and without any demure, to the Government, shall comply with the conditions and limitations stipulated in*

the said Import and Export Policy as amended from time to time, shall not change the name and style under which we, the obligor(s) are doing business or change the location of the manufacturing premises except with the written permission of the Government.

24.4. It would appear from the discussions made in the preceding paras that the importer has failed to observe obligations undertaken in above clauses of bond, therefore, in terms of the provision of the notifications they are required to pay the customs duty for the exemption alongwith interest thereon.

25. Thus, to conclude, M/s Ratnesh had imported stainless steel melting scrap vide Bills of Entry as mentioned in Table in para 17 above without payment of Customs duty under Advance Authorisations issued by the DGFT which M/s Ratnesh Metal Industries Pvt. Ltd was required to pay against import of input i.e. stainless steel melting scrap in excess which was beyond the permitted norms i.e. beyond 60% as allowed, where they fraudulently preferred to file their application for grant of Advance Authorisation under Para 4.7 of the FTP in no norms category as It can be seen that M/s. Ratnesh Metal had no Induction Furnace with AOD/VOD facility as evidenced by the following:

- a. Panchnama dated 29/30.08.2017 recorded on the spot by DRI, Noida Regional Unit Team, which clearly reveals even though the Party had Induction Furnace within their premises they did not have AOV/VOD facility.
- b. Statement of Shri Yogesh Kumar Yadav, incharge of Melting Section of M/s Ratnesh was recorded on 29.08.2017 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein Shri Yogesh Kumar Yadav, stated that **NO AOD/ VOD** (Argon Oxygen Decarburization)/(Vacuum Oxygen Decarburization) furnace is installed in the factory.
- c. Statement of Shri Viral Shah, DGM-Export and Additional Director of M/s Ratnesh was recorded on 30.08.2017 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein Shri Viral Shah, stated that M/s Ratnesh Metal Industries Pvt. Ltd. purchased part of AOD machineries in 2009 but the project was called off due to unavoidable circumstances and AOD facilities never been installed in factory premises. Further, it is to state that VOD facilities never been installed too.
- d. Statement of Shri Rajesh S. Singhvi, Director of M/s Ratnesh Metal Industries Pvt. Ltd was recorded on 12.12.2017 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein Rajesh S. Singhvi, stated that **We never had AOD/VOD facility nor do we have AOD/VOD facility at present.**
- e. Statement of Shri Chandrakant B. Patel, Chartered Engineer recorded on 11.06.2019 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein Shri Chandrakant B. Patel has denied issuing any Certificate to M/s Ratnesh Metal Industries Pvt. Ltd and that he has never visited the premises of M/s Ratnesh Metal Industries Pvt. Ltd.
- f. Statement of Shri Viral Shah, DGM-Export and Additional Director of M/s Ratnesh was recorded on 27.11.2020 by HQ Preventive, Customs Ahmedabad Team under Section 108 of the Customs Act, 1962, before the Inspector (Preventive), wherein Shri Viral Shah, stated that M/s. Ratnesh Metal Industries Pvt. Ltd. had earlier imported the Stainless Steel Melting

Scrap without payment of duty under Advance Licenses obtained from DGFT, Ahmedabad. The said Advance Licenses were obtained considering that the firm is producing stainless steel through induction furnace and VOD route. However, on inquiry by the officers Shri Viral Shah stated that they were not having VOD (Vacuum Oxygen Decarburization) or AOD (Argon Oxygen Decarburization) facilities in their factory at the material time of obtaining the licenses and accordingly they have availed higher import benefits as against the norms provided for manufacture of Stainless Steel by Non-VOD or Non AOD facilities. Shri Viral Shah stated that DRI Lucknow had also conducted inquiry into the same issue and had issued demand notice against 5 such Advance Licenses No. 810073933 dated 12.08.2008, 810074246 dated 26.08.2008, 810079063 dated 30.03.2009, 810081589 dated 21.07.2009 & 810084403 dated 25.11.2009 were not covered under the Demand Notice issued by the DRI, Lucknow. Further, License No: 0810136455; 0810137320 & 0810136687 has been surrendered by M/s Ratnesh.

Since, M/s Ratnesh had attempted to obtain undue advantage of norms beyond the allowed norms as prescribed in C525 applicable to plant having induction furnace with AOD/VOD converters) by false declaration to Ministry of Steel and DGFT and presenting a fake/fabricated certificate of Chartered Engineer before the Government authorities, they have evaded the duty of Customs which is liable to be recovered from them under Customs Notification No. 93/2004-Cus, dated 10-09-2004, as amended & Notification No. 96/2009-Cus, dated 11-09-2009, as amended, Notification No. 18/2015-Cus, dated 01/04/2015 as amended, for contravening the provisions of the Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedures (2004-09) & (2009-14), Volume-I. Since M/s Ratnesh Metal Industries Pvt. Ltd as well its Directors has willfully mis-stated and suppression of facts for fraudulently gaining undue advantage under para 4.7 of Hand Book of Provision Vol -I and thus evaded payment of applicable Customs duty of Rs.15,61,150/-on a quantity of 112.2246 MT (in-excess) input material valued to **Rs. 59,19,408/-** is recoverable from M/s Ratnesh along with an interest due thereupon from the date of import of such material rendered the goods liable to confiscation under section 111(o) of the Customs Act, 1962 and attracts penal provisions under section 112(a) & 114 AA of Customs Act 1962.

25.1. Further it is clearly stated on the EODC/Bond Waiver Letter issued by the Foreign Trade Development Officer that,

“The Waiver of bond is issued without prejudice and will not preclude Customs Authority to take action against the licensee at any stage if any sort of misdeclaration, misrepresentation or misuse of the scheme is noticed”

Therefore The Customs has every right to take necessary action including issuance of Show Cause Notice for recovering the duty evaded, where the act of misuse of Advance Authorization by M/s Ratnesh Metal Industries Pvt. Ltd by misdeclaration, misrepresentation of having **AOD/VOD facility** for fraudulently gaining undue advantage under para 4.7 of Hand Book of Provision Vol -I and submitting a Fake Certificate and thus evaded payment of applicable Customs duty.

Show Cause Notice:-

26. Accordingly, a Show Cause Notice vide F.No. VIII/10-67/Prev./HQ/2023-24 dated 14.07.2023 was issued to M/s Ratnesh Metal Industries Pvt. Ltd. (IEC No. 0898001501), 306-C, GCP Business Center, Opposite Memnagar Fire Station, Navrangpura, Ahmedabad, asking them to Show Cause as to why: -

- a) Subject quantity of **112.2246 MT of goods** imported duty free under Customs Notification No. 93/2004-Cus, dated 10-09-2004, as amended & Customs Notification No. 96/2009-Cus, dated 11-09-2009, Notification No. 18/2015-Cus, dated 01/04/2015 as amended, having total assessable value of **Rs. 59,19,408/-** only should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported fraudulently under the exemption Customs Notification No. 93/2004-Cus, dated 10-09-2004, as amended & Notification No. 96/2009-Cus, dated 11-09-2009, as amended Notification No. 18/2015-Cus, dated 01/04/2015 as amended, without observing various conditions laid down under the said notification as well as for contraventions of the provisions of the Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedures (2004-09) & (2009-14), Volume-I as discussed in detail above;
- b) Fine as contemplated under Section 125 should not be imposed on them in lieu of confiscation as the impugned goods are not available for confiscation;
- c) Customs Duty amounting to Rs.15,61,150/- (Rupees Fifteen Lakhs Sixty One Thousand One Hundred Fifty Only) payable on the aforesaid quantity of **112.2246 MT goods imported**, in respect of which excess quantity was imported beyond the permitted norms through the fraudulent Certificate as discussed in the paras above, which were imported by availing the benefit of exemption of Customs Notification No. 93/2004-Cus, dated 10-09-2004, as amended & Notification No. 96/2009-Cus, dated 11-09-2009, as amended, Notification No. 18/2015-Cus, dated 01/04/2015 as amended, for contravening the provisions of the Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedures (2004-09) & (2009-14), Volume-I, should not be demanded and recovered from them along with interest under the conditions of Customs Notification No. 93/2004-Cus, dated 10-09-2004, as amended & Notification No. 96/2009-Cus dated 11-09-2009 Notification No. 18/2015-Cus, dated 01/04/2015 as amended;
- d) Penalty should not be imposed upon M/s. Ratnesh Metal Industries Pvt Ltd under Section 112(a) of the Customs Act, 1962, for improper importation of goods availing exemption of notification and without observance of the conditions set out in the notification and by availing excess consumption of Raw Material beyond the permitted norms by reasons of misrepresentation and suppression of facts as elaborated above resulting in non-payment of duty, which rendered the goods liable to confiscation under section 111(o) of the Customs Act, 1962;
- e) Penalty should not be imposed upon M/s. Ratnesh Metal Industries Pvt Ltd under Section 114AA of the Customs Act, 1962, for submitting false declaration regarding AOD/VOD facility to avail higher degree of entitlement of import of Raw Material.

27. The said Show Cause Notice also called upon following persons to Show Cause as to why penalties should not be imposed upon them. Details of which are as under:

27.1. Shri Sumer S Sanghvi (Director of M/s. Ratnesh Metal Industries Pvt Ltd) :

- i) Why penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962 for act of omission or commission which has resulted in claim of obtain undue advantage of excess raw material beyond the permitted SION norms.
- ii) Penalty should not be imposed on him under Section 114 AA of the Customs Act, 1962 for act of omission or commission, who signed the various documents for application under Para 4.7 to obtain Advance Authorization scheme under No norms Category in place of proper SION norms under C525 by adopting fraudulent means i.e. by false declaration to Ministry of Steel and

DGFT and presented a fake/fabricated certificate of Chartered Engineer before the Government authorities.

27.2. Shri Rajesh S Sanghvi (Director of M/s. Ratnesh Metal Industries Pvt Ltd) :

- i) Penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962 for act of omission or commission which has resulted in claim of obtain undue advantage of excess raw material beyond the permitted SION norms.
- ii) Penalty should not be imposed on him under Section 114AA of the Customs Act, 1962 for act of omission or commission which has resulted in abetment for claim of undue advantage i.e. excess raw material beyond the permitted SION norms which attracts Penal action for mis-statement, Suppression of fact attracting penal provisions under Customs Act 1962. Even after knowing the fact that they are covered by Serial No. 525 of SION, he never came forth to pay the duty in those authorizations where Raw material was consumed in Excess by the reason of fraudulent means to claim the excess quantity of Raw Material consumed in Authorization issued to M/s. Ratnesh Metal Industries Pvt Ltd.

27.3. Shri Viral Shah (DGM-EXPORT of M/s. Ratnesh Metal Industries Pvt Ltd)

- i) Penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962 for act of omission or commission which has resulted in claim of obtain undue advantage of excess raw material beyond the permitted SION norms.
- ii) Penalty should not be imposed on him under Section 114AA of the Customs Act, 1962 for act of omission or commission which has resulted in abetment for claim of undue advantage i.e. excess raw material beyond the permitted SION norms. Vide letter 18 July 2016, Shri Viral Shah was very much aware that AOD/VOD facility was not available in their factory Premises, he has also mentioned other Adv. Authorizations issued in past to the firm under Norms Category. Viral Shah was aware about the Norms under SION 525 (as per his statement dated 30.08.2017). Therefore, Shri Viral Shah was very much aware that in other authorization Excess quantity was claimed by them, which attracts Penal action for mis-statement, Suppression of fact attracting penal provisions under Customs Act 1962. Even after knowing the fact that they are covered by Serial No. 525 of SION, he never came forth to pay the duty in those authorizations where Raw material was consumed in Excess by the reason of fraudulent means to claim the excess quantity of Raw Material consumed in Authorization issued to M/s. Ratnesh Metal Industries Pvt Ltd.

28. The noticee were asked to clearly state in their written reply to this notice as to whether they desire to be heard in person before the case is adjudicated and if no reply is received within thirty (30) days from the date of receipt of the notice or if they do not appear before the Adjudicating Authority for Personal Hearing while the case is posted for hearing, the case will be decided on the basis of available records without any further reference to them.

Submissions made in response to Show Cause Notice:-

29. In response to the Show Cause Notice vide F.No. VIII/10-67/Prev./HQ/2023-24 dated 14.07.2023 neither M/s Ratnesh Metal Industries Pvt. Ltd, Mehsana nor any of the other co-noticee presented any submission.

30. Later on, during the course of personal hearings following submissions were made by the noticee:

30.1. M/s Ratnesh Metal Industries Pvt. Ltd., Mehsana :

- i) In response to letter of personal hearing dated 30.10.2023 for personal hearing on 10.11.2023, they presented a written submission on 10.11.2023 wherein, they reiterated the points regarding confiscation and penalties as they were proposed in the Show Cause Notice dated 14.07.2023. They also requested adjournment of hearing by 4 weeks as they needed time to prepare a reply to the Show Cause Notice.
- ii) In response to letter of personal hearing dated 11.12.2023 for personal hearing on 18.12.2023, they presented a written submission on 22.12.2023 wherein, they reiterated the points regarding confiscation and penalties as they were proposed in the Show Cause Notice dated 14.07.2023. They also requested adjournment of hearing by another 4 weeks as they needed time to prepare a reply to the Show Cause Notice.
- iii) In response to letter of personal hearing dated 02.01.2024 for personal hearing on 18.01.2024, they did not presented any submission.
- iv) In response to personal hearing dated 09.02.2024 for personal hearing on 11.03.2024, Shri Kushal V Bhanshali, Director of M/s Ratnesh Metal Pvt. Ltd. [now M P Steel (India) Private Limited] presented that they need time till first week of April, 2024 to present their view. They also presented that the name of their company has been changed. Earlier, their name was "M/s Ratnesh Metal Private Limited" and now their name is "M/s M P Steel (India) Private Limited". Their address though is same i.e. "Survey No. 900, Near Ashram Chokdi, Village- Ranasan Tal.- Vijapur, Mehsana, Gujarat"

30.2. Shri Rajesh S. Sanghavi:

- i) In response to letter of personal hearing dated 30.10.2023 for personal hearing on 10.11.2023, they presented a written submission on 10.11.2023 wherein, he reiterated the points regarding penalties, as proposed on him in the Show Cause Notice dated 14.07.2023. He also requested adjournment of hearing by 4 weeks as they needed time to prepare a reply to the Show Cause Notice.
- ii) In response to letter of personal hearing dated 11.12.2023 for personal hearing on 18.12.2023, he presented a written submission on 22.12.2023 wherein, he reiterated the points regarding penalties, as proposed in the Show Cause Notice dated 14.07.2023, and also requested adjournment of hearing by another 4 weeks as he needed time to prepare a reply to the Show Cause Notice.
- iii) In response to letter of personal hearing dated 02.01.2024 for personal hearing on 18.01.2024, he presented a written submission on 18.01.2024 wherein, he reiterated the points regarding penalties, as proposed in the Show Cause Notice dated 14.07.2023, and also requested adjournment of hearing by another 5 weeks as he needed time to prepare a reply to the Show Cause Notice.
- v) In response to personal hearing dated 09.02.2024 for personal hearing on 11.03.2024, Shri Rajesh S. Sanghavi, presented that he and his brother Shri Sumer S, Sanghavi, need time till first week of April, 2024 to present their reply and appear before the adjudicating authority. He also presented that the name of the company has been changed. Earlier, its name was "M/s Ratnesh Metal Private Limited" and now its name is "M/s M P Steel (India) Private Limited". The address of the company though, is same i.e. "Survey No. 900, Near Ashram Chokdi, Village- Ranasan Tal.- Vijapur, Mehsana, Gujarat".

30.3. Shri Sumer S. Sanghavi:

- i) In response to letter of personal hearing dated 30.10.2023 for personal hearing on 10.11.2023, they presented a written submission on 10.11.2023 wherein, he reiterated the points regarding penalties, as proposed on him in the Show Cause Notice

dated 14.07.2023. He also requested adjournment of hearing by 4 weeks as they needed time to prepare a reply to the Show Cause Notice.

ii) In response to letter of personal hearing dated 11.12.2023 for personal hearing on 18.12.2023, he presented a submission on 22.12.2023 wherein, he reiterated the points regarding penalties, as proposed in the Show Cause Notice dated 14.07.2023, and also requested adjournment of hearing by another 4 weeks as he needed time to prepare a reply to the Show Cause Notice.

iii) In response to letter of personal hearing dated 02.01.2024 for personal hearing on 18.01.2024, he presented a submission on 18.01.2024 wherein, he reiterated the points regarding penalties, as proposed in the Show Cause Notice dated 14.07.2023, and also requested adjournment of hearing by another 5 weeks as he needed time to prepare a reply to the Show Cause Notice.

vi) In response to personal hearing dated 09.02.2024 for personal hearing on 11.03.2024, Shri Rajesh S. Sanghavi, presented that he and his brother Shri Sumer S, Sanghavi, need time till first week of April, 2024 to present their reply and appear before the adjudicating authority.

30.4. Shri Viral Shah:

i) In response to letter of personal hearing dated 30.10.2023 for personal hearing on 10.11.2023, did not present any submission.

ii) In response to letter of personal hearing dated 11.12.2023 for personal hearing on 18.12.2023, he presented a written submission on 22.12.2023 wherein, he reiterated the points regarding penalties, as proposed in the Show Cause Notice dated 14.07.2023, and also requested adjournment of hearing by another 4 weeks as he needed time to prepare a reply to the Show Cause Notice.

iii) In response to letter of personal hearing dated 02.01.2024 for personal hearing on 18.01.2024, he presented a written submission on 18.01.2024 wherein, he reiterated the points regarding penalties, as proposed in the Show Cause Notice dated 14.07.2023, and also requested adjournment of hearing by another 5 weeks as he needed time to prepare a reply to the Show Cause Notice.

vii) In response to personal hearing dated 09.02.2024 for personal hearing on 11.03.2024, Shri Viral Shah, presented that he need time till second week of January, 2025 to present his reply and appear before the adjudicating authority. He also presented that the name of the company has been changed. Earlier, its name was "M/s Ratnesh Metal Private Limited" and now its name is "M/s M P Steel (India) Private Limited". The address of the company though, is same i.e. "Survey No. 900, Near Ashram Chokdi, Village- Ranasan Tal.- Vijapur, Mehsana, Gujarat".

Personal Hearings:-

31. Opportunity of Personal Hearings were given to the noticee of the Show Cause Notice dated 14.07.2023. Personal hearings were given to each one of the noticee on 21.10.2023, 10.11.2023, 18.12.2023, 18.01.2024 and 11.03.2024.

31.1 However, on each occasion no proper submission was made. However, in response to the last Personal Hearing dated 11.03.2023, Shri Kushal V. Bhanushali appeared on behalf of M/s Ratnesh Metal Industries Pvt. Ltd and intimated that the name of their firm has now changed. The new name of the firm being M/s M P Steel (India) Private Limited. It was also communicated that the address has remained unchanged i.e. Survey No. 900, Near Ashram Chikdi, Village-Ranasan, taluka-Vijapur, Mehsana. Other than that, no concrete submission was made by an of the noticee however, yet another extension was sought by them. Infact, Shri Viral Shah (one of the Noticee) requested that due to his overseas work an extension to personal hearing till second week of January, 2025, may please be granted to him.

32. It is thus, evident from the records that whenever a response to a personal hearing has been received from the noticee, it has only been a reiteration of the penal provisions proposed in the Show Cause Notice dated 14.07.2023 along with request for adjournment of personal hearing.

Discussion and findings:

33. I have gone through the relevant records as well as written submissions made by the Noticees. I have also given due consideration to the submissions made by the of the Noticees in response to the Show Cause Notice dated 14.07.2023 and during the course of personal hearing.

34. Following issues are to be decided in this case :-

- a) Whether the subject quantity of **112.2246 MT of** goods imported duty free under Customs Notification No. 93/2004-Cus, dated 10-09-2004, as amended & Customs Notification No. 96/2009-Cus, dated 11-09-2009, Notification No. 18/2015-Cus, dated 01/04/2015 as amended, having total assessable value of **Rs. 59,19,408/-** only should be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported fraudulently under the exemption Customs Notification No. 93/2004-Cus, dated 10-09-2004, as amended & Notification No. 96/2009-Cus, dated 11-09-2009, as amended Notification No. 18/2015-Cus, dated 01/04/2015 as amended, without observing various conditions laid down under the said notification as well as for contraventions of the provisions of the Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedures (2004-09) & (2009-14), Volume-I as discussed in detail above?
- b) Whether the consequential actions such as recovery of Customs Duty with interest, liability of confiscation of the excess quantity of the imported goods and the penal liability on M/s. Ratnesh and it's Directors and DGM (Export) would arise or otherwise ?

35. The main objective of the Advance Authorisation Scheme is to allow Duty free import of raw materials for production of export items only and at the same time the Government has to ensure that no extra quantities of raw material are imported Duty free. An export obligation is usually set as a condition for issuing Advance Authorization. The Director General of Foreign Trade (DGFT) has notified the Standard Input Output Norms (SION) to specify the required quantity of inputs needed to produce a unit of outputs for exporting. Advance Licenses are issued based on the inputs and export items given under SION, and the importer needs to ensure that the goods sought for import are used in the export product. Based on the Standard Input Output Norms (SION), the Government issues Advance Authorization for inputs and export items. The Advance Authorization allows Duty-free import of inputs, which are physically incorporated in the export product. The quantity of inputs allowed for a given product is based on specific norms defined for that export product. In absence of SION for a particular product, the exporter can apply for Advance Authorisation under 'No Norms Category'.

36. Advance Authorizations issued by DGFT are governed by the provisions contained in the Hand Book of Procedures. Para 4.7 of the Hand Book of Procedures, 2015-20 gives an option to the importer to request the Regional Authority of DGFT for issuance of Advance Authorisation on the basis of self-declaration by the applicant with regard to consumption of inputs to their export products provided norms of SION does not exist for particular items. However, the wastage claimed by the applicant will be subject to wastage norms as decided by Norms Committee. In such case where SION is

not fixed, Regional Authority may also issue Advance Authorisation, based on self-declaration by applicant as per the provision of relevant Paras of relevant Hand Book of Procedures applicable at the point of time of issuance of Advance Authorisation. Para 4.07 of the Hand Book of Procedures, 2015-20 is reproduced below

“4.7 Self-Declared Authorisations where SION does not exist

(i) Regional Authority may also issue Advance Authorisation where SION is not fixed, based on self declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee. The provisions in this regard are given in paragraph 4.03 and 4.11 of FTP.

(ii) In case of revision / rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website.

(iii) No Authorisation under this paragraph will be issued by Regional Authority for items listed in paragraph 4.11 of FTP.”

37. Similarly, Para 4.03 of the Foreign Trade Policy, 2015-20 also stipulated as under

“4.03 Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

(ii) On the basis of self declaration as per paragraph 4.7 of Handbook of Procedures.”

38. It would be evident from the above that in case the Norms for the export product is not fixed as per SION or adhoc norms, Advance Authorisation would be issued/obtained under Self Declaration scheme under Para 4.07 of the Hand Book of Procedures.

39. M/s. Ratnesh procured thirteen Advance Authorisations under Advance Authorisation Scheme for their export product, viz. Stainless-Steel Rounds/Flats/Hexagons/Angles/Bars of Grade AISI 304, under ‘No Norms Category’ from DGFT by applying for it under Para 4.7 of Hand Book of Procedures, as mentioned under Table-1 of the Show Cause Notice. However, the present demand pertains to the goods imported, viz. stainless steel melting scrap, vide five Advance Authorisations which were issued based on M/s. Ratnesh’s applications under No Norms Category in terms of Para 4.7 of Hand Book of Procedure, as detailed at Table under Para 17 of the Show Cause Notice.

41.6 M/s. Ratnesh procured Advance Authorisations under Para 4.7 of Hand Book of Procedures i.e. on the basis of self-declaration by them. However, their export product, Stainless-Steel Rounds/Flats/Hexagons/ Angles /Bars of Grade AISI 304, would fall within the SION category of C-525. Thus, M/s. Ratnesh are not entitled to procure Advance Authorisations for their aforesaid export product in terms of Para 4.7 of the Hand Book of Procedure under No Norms Category. This fact is not disputed by M/s. Ratnesh.

41.7 Under SION category of C-525, norms for utilization of steel melting scrap in the export product viz. Stainless Steel (excluding Exhaust Valve Steel) Semi-finished products (Blooms, Billets & Slabs) and Ingots, has been fixed at 60% of imported material i.e. the import of stainless steel melting scrap of known composition may be permitted within the overall quantity of items under SION C 525 1(a) **but upto 60% only, if the plant have induction furnace without the facilities of AOD/VOD**(Argon Oxygen Decarburisation/Vaccum Oxygen Decarburisation). Relevant norms at SION C-525 (C-525 1(a)) are as under-

Sl.No	Export Item	Quantity			Import Item	Qty.Allowed
C525	Stainless Steel (Excluding Exhaust Valve Steel) Semi-finished Products (Blooms, Billets & Slabs) and Ingots	1 Tonne	1		Major Inputs :	In Kg
				a)	Non-alloy Steel Melting Scrap, Pig Iron, Sponge Iron including Hot Briquetted Iron (HBI)	As per Note 2.

Note: 1. This norm is applicable for export product manufactured adopting Electric Furnace/ Electric Induction Furnace using Non-alloy Steel Melting Scrap as the basic input.

Note: 2. The total quantity of imported inputs allowed against Sl.No. 1 (a) and Sl No. 2 shall be limited to 1115 kg. Further, individual quantity of Pig Iron and Sponge Iron/ HBI allowed against Sl. No. 1(a), if any, shall not exceed 20% and 65% respectively of the total quantity of items to be permitted therein.

Note: 3. Quantities of Ferro Alloys/Metals/Compounds have been worked out based on a specified percentage of alloying element in the Ferro Alloys/Metals/Compounds as indicated therein within the parenthesis against each alloy. If the percentage of alloying element in the ferro-alloy is higher/lower, the revised (i.e lower / higher) quantity may be worked out on pro-rata basis as under:

Quantity permitted in norm x % of element in ferroalloy/metal/compound as per the norm
Actual % of element in the imported ferroalloy/metal/compound

Note: 4. For a given alloying element in steel, wherever two alternate ferroalloy / metals / compound of the same alloying element have been permitted and it is proposed to import a combination of both, individual quantities of each ferro-alloy may be worked out based on the specified (part) quantities of the alloying element in two forms (but within the overall quantity of alloying element in the steel), using the content based formula given therein.

Note: 5. Alloying elements (s) in steel is/are prescribed by specifying the minimum value or a range or the maximum value. For calculating the quantities of ferro alloys/ metals/ compounds as per the content based formula given in the SION, the prescribed minimum or the mid value of the range or 0.8 times the maximum value of the respective alloying element (s) in the export product shall be taken into consideration.

Note: 6. Import of Stainless Steel Melting Scrap of Known chemical composition may be permitted within the overall quantity of item No. 1 (a) but upto 90% to Induction Furnace units having AOD/VOD facilities and Electric Furnace units. For units having Induction Furnaces without AOD/VOD, import of stainless steel melting scrap will however, be permitted within the overall quantity of item No. 1(a) but upto 60% only. Only such grade of Stainless Steel Melting Scrap will be allowed that is relevant to the export product. In such a case, quantity of respective ferroalloy/metal to be allowed as per formula at Sl. No. 2 will have to be reduced

to account for the recoverable alloying element (s) (Nickel, Copper, Chromium and Vanadium) present in the stainless steel scrap. The reduced quantity of these ferroalloys/metals shall be obtained by deducting the equivalent quantity of ferroalloy/metal to be obtained using the following formula from the total quantity to be worked out as per formula at Sl. No. 2 in the SION read with Note 3:

Alloy Steel Scrap Quantity (kg) x % of relevant element in scrap

1.115 x % of relevant element in ferroalloy / metal / compound

Note 7: The specified quantities of energy sources/ fuel for electric power generation (in K.Cal) against import item 4(a) & 4(c) which correspond to electric power consumption of 500 and 100 KWH per tonne of export product have been allowed assuming that Captive Power Plant (CPP)/Source of matching capacity exist. In case CPP/source in a given unit is of lower capacity, quantity of fuel to be allowed for import will be reduced on pro rata basis.

Note 8: Quantity of energy sources/ fuels (in K.Cal) correspond to a fuel having unit heat value of 8700 K.Cal. Import of any other fuel of higher/lower unit heat value (as long as it is relevant to the facilities installed in the unit) may be permitted, quantity of which (in Kgs./ Cubic Meters/ K. Liters) may be worked out by dividing the K.Cal figures given in the SION by the actual unit heat value of the imported fuel.

Note 9: Import of items at Sl.No. 3(b), (c), (d), (i), CC Refractories under 3(n) (iii) and 4(c) shall not be permitted against export of steel ingots.

Note 10: The Item "Low Carbon Ferro Chrome" under 2(b) above is to be allowed only to manufacturers not having Argon Oxygen Decarburization (AOD) and Vacuum Oxygen decarburization (VOD). However, this input may be allowed @ 80 kg (max) to units with only VOD facilities and @10 Kgs (max) to units with only AOD facilities.

41.8 For units having Induction Furnaces without AOD/VOD, import of stainless steel melting scrap is permitted within the overall quantity of item No. 1(a) of SION C-525 but upto 60% only. It is seen that during the visit to the factory premises of M/s. Ratnesh by the DRI officers on 29/30.08.2017, it was revealed that only one Induction Furnace for melting of raw material with two crucibles having 2.5 Ton and 3.0 Ton capacity each and only one of it remains functional at a time and the other was kept on standby and the furnace used for melting of raw material in the factory was without AOD/VOD facilities.

41.9 Shri Yogesh Kumar Yadav, In-charge of Melting Section of M/s. Ratnesh in his statement dated 29.08.2017, recorded under Section 108 of the Customs Act, 1962, inter alia, stated that no AOD (Argon Oxygen Decarburization)/VOD (Vacuum Oxygen Decarburization) furnace is installed in the factory.

41.10 Further, Shri Viral Shah in his statement dated 30.08.2017 made it clear that M/s Ratnesh was well aware that they were not eligible to apply for Advance Authorisation scheme under 'no norms category' i.e. under Para 4.7 of HBP Vol.1 and that their application should have been filed under SION norms category at C-525; that M/s Ratnesh were required to fulfil the export obligation as per SION C-525, wherein maximum 60% quantity of input i.e. stainless steel melting scrap was permitted to import for exporting stainless steel ingots which in their case is the intermediate product to produce & export finished products i.e. Bright Bars, Angles Bars, Flat Bars, Hexagonal Bars, Square Bar. He admitted that in their application of Advance authorizations, they erroneously applied SION C-524 input quantity i.e. 1.05% of Raw Material instead of C-525 input quantity (@60%). He also stated that they understood the mistake committed by them in declaration of norms in application to Advance Authorisation, and agreed to pay Duty involved on import of excess quantity against permitted norms under SION C-525.

41.11 Shri. Rajesh S. Sanghvi, Director of M/s. Ratnesh in his statement dated 12.12.2017, stated that they never had AOD/VOD facility nor do they have AOD/VOD facility at the time of recording of the statement; that they had established an AOD plant in their manufacturing unit in the year 2011 but it was never operational and that plant was sold in the year 2013 in non-functional condition to M/s. Nami Steel. He further stated that as per Note 6 of SION norms C-525, if there is AOD/VOD facility then 90% import is allowed and in case of induction furnace without AOD/VOD facilities, it is allowed to 60% only. Shri Rajesh S. Sanghvi has admitted that they do not have AOD/VOD facility and in such case entitlement was only 60% import, however they imported 90% raw material. However, to a specific question as to why they had applied under No Norms Category, whereas according to facility of the manufacturing unit they were required to apply under SION C-525, Shri Rajesh S. Sanghvi did not furnish any reply.

41.12 The Investigative Agency has found that M/s. Ratnesh imported excess quantity of the said input viz. Stainless-Steel Melting Scrap, against five Advance Authorisations procured by them under No Norms category.

41.13. It would be evident from paras supra that it is an admitted fact that their export product, Stainless-Steel Rounds/Flats/Hexagons/Angles/Bars of Grade AISI 304, would fall within the SION category of C-525. Thus, M/s. Ratnesh had erroneously applied and procured Advance Authorisations for their aforesaid export product in terms of Para 4.7 of the Hand Book of Procedure under No Norms Category. **M/s. Ratnesh should have filed applications for Advance Authorisation for their aforesaid export product under SION norms category at C-525.** Further, it is also an admitted fact that M/s. Ratnesh do not have AOD/VOD Furnace in their factory and hence their entitlement for Duty free import of the said input, viz. stainless-steel melting scrap, was only upto 60% of the quantity of the export product. It is established from all these admitted facts that the quantity of stainless-steel melting scrap imported by M/s. Ratnesh was in excess than the norms fixed by DGFT under SION norm for C-525 for their aforesaid export product.

41.14 M/s. Ratnesh do not have induction furnace with AOD/VOD facilities in their factory and hence their entitlement for Duty free import of the said input, viz. stainless-steel melting scrap, was only upto 60% of the quantity of the export product but the quantity of said input imported by them under the advance authorisations was much in excess than the permissible percentage. This aspect is found to have been investigated by the DRI officers. During investigation, DRI is found to have approached the office of the Deputy Director General of Foreign Trade (DGFT), Ahmedabad and made request to provide relevant documents. Vide letter dated 06.09.2018, the Deputy Director General of Foreign Trade, Ahmedabad has submitted a Certificate dated 20.11.2009 which was issued by Shri Chandrakant B. Patel, Chartered Engineer certifying that M/s Ratnesh had VOD converters at their plant. Scanned image of this Certificate dated 20.11.2009 is as under-

TO WHOM IT MAY CONCERN

This is to confirm that M/S RATNESH METAL INDUSTRIES PVT LTD have installed 1.5 MT capacity Induction Furnace made by ELECTROTHERM at their plant at Survey No 900, Village Ranasan, Tal. Vijapur, Dist Mehsana 382870

I further certify that M/S RATNESH METAL INDUSTRIES PVT LTD have also installed VOD converters at their plant.



Signature:

Name Chandrakant B Patel

Retn No. M-128529-1

Address 9/C Ashapuri Society,
Canal Highway Road, Ghodasar
Ahmedabad 380050

Phone No. 25398198

Res: address 9/C Ashapuri Society,
Ghodasar, Ahmedabad 380050

Name & address of institution The Institute of Engineers
With which registered (India) 8 Ghokale Road,
Kolkatta 700020

Place : Ahmedabad
Date : 20/11/09

41.15 It would be seen from above that Shri Chandrakant B. Patel, Chartered Engineer certifies that M/s. Ratnesh Metal Industries Pvt. Ltd. have installed 1.5 MT capacity Induction Furnace at their factory at Vijapur and M/s. Ratnesh have also installed VOD converters at their plant.

41.16 M/s. Ratnesh is found to have submitted a Certificate of a Chartered Engineer, which certified that M/s. Ratnesh had installed 1.5 M.T. capacity Induction Furnace and also installed VOD Converter in their plant, to the Joint Industrial Advisor of Ministry of Steel, New Delhi under their letter dated 21.04.2009, by requesting to recommend for ratification of Norms in respect of Advance License No.0810074246 dated 26.08.2008. Scanned image of this letter is as under-



Ratnesh

Metal Industries Pvt. Ltd.

ISO 9001:2000 Certified Company

April 21, 2009

SPEED POST

Shri B D Ghosh
Joint Industrial Adviser
Ministry of Steel
(Technical Wing)
Udyog Bhawan,
NEW DELHI 110 011

Ref: Your letter No.2(13)/2006-TN (Vol IV) dt 23.3.2009
Re: Ratification of Norms in respect of Advance Licence No.0310074246 dt
26.8.2008

Dear Sir,

We refer your above said letter dt 23.3.2009

As requested by you we enclose herewith Chartered Engineer Certificate confirming that we have installed 1.5 MT capacity induction furnace and have also installed VOD converters in our plant

We hope you will find above to your satisfaction and request you to please recommend for ratification of norms and oblige.

Thanking you.

Yours faithfully,
FOR RATNESH METAL IND PVT LTD

(S S SINGHVI)
Director
Encl: As above
Cc to: Shri Kishan Kumar, DDQFT, Udyog Bhawan, New Delhi

(File No 01/80-050/00962/AM09)

Office : 327-A, Ashar Arcade, Opp. Mahanagar Fire Station, Navrangpura, Ahmedabad - 380 005, Gujarat, India.
Ph. : +91-79-2640148/7/88/89/97 Fax : +91-79-26400722 E-mail : info@ratneshmetal.com Web : www.ratneshmetal.com
Works : Survey No. 900, Village Ratnesh, Tal. Vajapur Dist. Mahesana, Pin-382870, Gujarat, India. Ph. : +91-2763-284481

It would be seen from paras supra that date of the aforesaid Certificate issued in the name of a Chartered Engineer, viz. dated 20.11.2009 conflict with the date of the letter of M/s. Ratnesh, forwarding a certificate of Chartered Engineer, viz. dated 21.04.2009 inasmuch as the certificate bears a post date. This fact underlines the forgery done by M/s. Ratnesh in this matter. It is significant to say here that Shri. Chandrakant B. Patel, Chartered Engineer has identified the discrepancy in the said Certificate on the basis of the details like place and date typed on the said Certificate and vide statement dated 11.06.2019 he has confirmed that the said Certificate is not issued by him.

41.17 Shri Chandrakant B. Patel, Chartered Engineer vide letter dated 19.01.2019, addressed to DRI, Lucknow, submitted that he had not issued any Certificate stating that M/s. Ratnesh Metal Industries Pvt.Ltd. had installed VOD Converters at their plant. Shri Chandrakant B. Patel, Chartered Engineer in his statement dated 11.06.2019 also denied that he had issued the Certificate dated 20.11.2009. During recording of his statement, Shri Chandrakant B. Patel is also found to have submitted a copy of Certificate issued by him to M/s. Ratnesh. He further stated that from the Certificate issued by him and shown to him by DRI there is a difference in these two Certificates, that the Certificate which was issued by him contains the details like place and dates duly typed on computer, however, the copy of Certificate shown to him by DRI contains place and date typewritten and he never issued any installation Certificate to the said Company.

41.18 Facts narrated at paras *supra* have revealed that a fake/fabricated Certificate was produced by M/s. Ratnesh before the authorities of Ministry of Steel in order to fraudulently avail the benefit beyond the permitted Norms. Shri Viral Shah, DGM (Export) of M/s. Ratnesh in his statement dated 30.08.2017, has, interalia, stated that their letter dated 21.04.2009, addressed to the Joint Industrial Advisor of Ministry of Steel, New Delhi, must have been submitted by oversight. This submission is not found proper in as much as the Ministry of Steel as well as DGFT have confirmed the receipt of the said letter dated 21.04.2009 from M/s. Ratnesh. Further, Shri Chandrakant B. Patel has categorically denied that the impugned Certificate was issued by him. M/s. Ratnesh vide letter dated 13.01.2020 has, interalia, stated that mistakenly some Certificate was issued by them at the relevant time by some staff and the same was immediately clarified about by further correspondences and repeated clarifications by them that, they in fact do not have any VOD facilities in their plant, much prior to the subject of investigation and the resultant Show Cause Notice. This submission indicated that M/s. Ratnesh have accepted the submission of the subject fake Certificate, but blamed some staff of their Company for that. It is a fact that as per the letter F No. 2(13) 2014-TD dated 30.08.2018 of Deputy Industrial Adviser of Ministry of Steel, New Delhi, addressed to the DRI, Noida, Shri. S.S. Sanghvi, Director of M/s. Ratnesh had issued a letter dated 21.04.2009. The said letter dated 21.04.2009, image of which is pasted at para 41.16 *supra* is found to have forwarded the said fake Certificate issued in the name of a Chartered Engineer to the Ministry of Steel for the purpose of ratification of their norms in respect of Advance Authorisation. Although M/s. Ratnesh had claimed that they clarified the said error immediately, no documents were submitted by them to substantiate their claims. Thus, it is revealed that M/s. Ratnesh had fraudulently procured the Advance Authorisations, as mentioned at Table in Para 17 of the Show Cause Notice, by mis-declaring before the Ministry of Steel and DGFT regarding installation of VOD facility with their Induction Furnace in order to wrongly avail higher SION import ratio of melting scrap and subsequently to procure excess quantity of Duty-free imported melting scrap than admissible.

42. Whether the consequential actions such as recovery of Customs Duty with interest, liability of confiscation of the excess quantity of 112.2246 MT of the impugned goods and the penal liability on M/s. Ratnesh and it's Directors and DGM (Export) would arise or otherwise?

42.1 Now, the issue being taken up is relating to Customs Duty demand of Rs. 15,61,150/- with interest. The said demand pertains to the goods imported, viz. stainless steel melting scrap, vide five Advance Authorisations which were issued based on M/s. Ratnesh's applications under No Norms Category in terms of Para 4.7 of Hand Book of Procedure, as detailed at Table under Para 17 of the Show Cause Notice dated 14.07.2024.

42.2 During the period from 2008 to 2016, M/s. Ratnesh imported the input for their export product, viz. stainless Steel melting scrap, against Advance Authorisations issued by DGFT, by availing the Customs Duty exemption in terms of the provisions contained under Notification No. 93/2004-Cus dated 17.09.2004, No.96/2009-Cus dated 11.09.2009 and No.18/2015-Cus dated 01.04.2015, pertaining to the particular period, vide various Bills of Entry, as mentioned at Table under Para 17 of the Show Cause Notice. These Duty-free imports were also in terms of the provisions contained under Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedure (2004-09) & (2009-14). One post importation condition of the aforesaid Notifications is that the export obligation as specified in the Advance License/Authorisation (both in value and quantity terms) is discharged within the period specified in the said License/Authorisation or within the extended period as may be granted by the Licensing Authority. M/s. Ratnesh had made excess import of Duty free material viz. stainless steel melting scrap, on the basis of self declared norms in respect of 05 Advance Authorisations, as mentioned at para 17 of the Show Cause Notice. The norms fixed by

DGFT was lower than self declared norms. Hence, as discussed in paras supra, M/s. Ratnesh had made excess Duty free imports of stainless steel melting scrap than the admissible norms for manufacturing of their export product. M/s. Ratnesh failed to meet the export obligation on the excess imports of the said input. Thus, M/s. Ratnesh failed to satisfy the condition of fulfilling the export obligation in respect of the excess quantity of stainless steel melting scrap imported Duty free under the aforesaid Customs Notifications. As the import item i.e. Stainless Steel Melting Scrap to be used in production of export item i.e. "Stainless Steel Rounds/ Flats/ Hexagons/ Angles/ Bars of Grade AISI 304", for which M/s Ratnesh obtained Advance Authorisations, falls under the SION entry at C-525, they were required to fulfill their export obligation as per the norms stipulated in SION entry No. C-525 instead of applying for Advance Authorisation Scheme under Para 4.7 of HBP i.e. under no norms condition on the basis of self-declaration. Therefore, M/s. Ratnesh are required to pay Customs Duties on proportionate basis in respect of the authorizations where the raw material import was in excess than the permitted norms. Resultantly, M/s. Ratnesh is liable to pay the Customs Duty, along with interest, payable on the excess quantity of the said goods in respect of which the export obligation is not fulfilled by them, as detailed at para 17 of the Show Cause Notice.

42.3 M/s. Ratnesh in terms of condition of the Notifications No. 93/2004-Cus, 96/2009 -Cus & 18/2015-Cus, at the time of import of Duty free raw material under Advance Authorization scheme against all Advance Authorizations, executed Bond before the Customs Authority at the registered Customs port of import, i.e. ICD, Khodiyar, that they shall observe all the terms and conditions of the said Notification, shall observe all the terms and conditions specified in the license, shall fulfill the export obligations as specified in the said Notification and the license and shall produce evidence of having so fulfilled the export obligations within 30 days from the expiry of specified export obligation period to the satisfaction of the Government. In the event of failure to fulfill full or part of the export obligations as specified in the said Notification and license, they undertake to pay the Customs Duty for the exemption and also interest @ 15% per annum thereon forthwith .

42.4 I further find that it is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions prescribed therein. Conditions laid down in a exemption Notification are required to be strictly followed for the purpose of availing the benefit of exemption of Duty. In the instant case, M/s Ratnesh have failed to fulfill their export obligation in respect of the excess quantity of Duty free inputs imported under Notifications No.93/2004-Cus dated 17.09.2004, No.96/2009-Cus dated 11.09.2009 and No.18/2015-Cus dated 01.04.2015, Thus, M/s Ratnesh were required to pay Duty alongwith Interest for their act of non-fulfilment of the said condition of these Notifications. Hon'ble Supreme Court in the case of **Commissioner of Central Excise Chandigarh I Vs. Maahan Dairies reported in 2004 (166) E.L.T. 23 (S.C.)** has observed that it is a settled law that in order to claim benefit of a Notification, a party must strictly comply with the terms and conditions of the Notification.

The **Hon'ble Supreme Court, in the case of M/s Dilip Kumar & Co. reported at 2018 (361) ELT 577 (SC)**, has affirmed the above principle wherein it has been observed as under:

19. *The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous. it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are*

capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

52. To sum up, we answer the reference holding as under - (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject assessee and it must be interpreted in favour of the revenue. (3) The ratio in *Sun Export case (supra)* is not correct and all the decisions which took similar view as in *Sun Export case (supra)* stands overruled

Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti vs Commissioner of Central Excise ...** on 23 February, 2022, reported in 2022 (58) G.S.T.L. 129 (S.C.) **has observed that** it is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. Relevant para of the said judgment is re-produced below-

"8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.

8.1 It is settled law that the notification has to be read as a whole. **If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification.** An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.

8.2 The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions."

Similarly, in the case of **M/s Medreich Sterilab Ltd. reported at 2020(371) ELT 639 (Mad.)** Hon'ble High Court of Madras has observed as under:

9. It is well-settled law that to avail the exemption of duty under any Notification, the Rules and Regulations and the conditions prescribed therein have to be strictly adhered and there is no place for equity or intendment in the interpretation of the taxing Statutes. By holding that the Rules of 1996 are only procedural or directory in nature, the Learned Tribunal has frustrated the very purpose of Rules 3 and 4 in question by holding that the Assessee is entitled to the exemption for import made on 28-6-2003. There is no dispute before us that the registration under Rules 1996 was granted in favour of the Assessee only on 14-7-2003 and not at any point of time prior to that and therefore we cannot uphold the order passed by the Learned Tribunal.

42.5 It would be evident from the discussions made in the paras *supra* that M/s. Ratnesh failed to observe obligations undertaken in above clauses of Bond, therefore, in terms of the provision of the aforesaid Notifications they are required to pay the Customs Duty for the exemption alongwith interest thereon.

42.6 Further it is clearly stated on the EODC/Bond Waiver Letter issued by the Foreign Trade Development Officer that,

“The Waiver of bond is issued without prejudice and will not preclude Customs Authority to take action against the licensee at any stage if any sort of misdeclaration, misrepresentation or misuse of the scheme is noticed”

Therefore The Customs Department has every right to take necessary action including issuance of Show Cause Notice for recovering the duty evaded, where the act of misuse of Advance Authorization by M/s Ratnesh Metal Industries Pvt. Ltd by misdeclaration, misrepresentation of having **AOD/VOD facility** for fraudulently gaining undue advantage under para 4.7 of Hand Book of Provision Vol -I and submitting a Fake Certificate and thus evaded payment of applicable Customs duty.

In the present case the subject Advance Authorisations were procured by M/s. Ratnesh by mis-declaring before the Ministry of Steel regarding installation of VOD facility with their induction furnace in order to avail higher SION import ratio of stainless steel melting scrap available to the manufacturer having such facility. By using the input norms fixed under these Advance Authorisations, M/s. Ratnesh had imported Duty free stainless melting scrap under Customs exemption Notifications. Thus, even if the Export Obligation Discharge Certificates in respect of these Advance Authorisations are issued by DGFT, present Show Cause Notice is correctly issued for the recovery of the Customs Duty involved in the excess quantity of the said input beyond the admissible limit, imported Duty free under the aforesaid Customs Notifications.

42.7. M/s. Ratnesh vide letter dated 13.01.2020 has contended that they had only imported 60% of the permissible imports against the Advance Authorisations in question. This percentage of imports is found to have been worked out by considering the difference in the actual import quantity and the permissible import quantity as burning loss. However, no order issued by the Licensing Authority viz. DGFT, permitting the specified percentage of burning loss in these cases is submitted by M/s. Ratnesh. Thus, this contention is not worth for any consideration. Further, M/s. Ratnesh vide letter dated 22.02.2023 have further contended that natural loss to the extent of 9% is to be allowed over and above 60% of import permissible as per C-525 of SION. It is stated that against Advance Authorisation No. 0810085115 dated 21.12.2009 and No. 081037320 dated 29.02.2016, they are allowed to import 69% of export obligation considering the fact that 9% was pertaining to natural loss or other impurities. The Advance Authorisation No.081037320 dated 29.02.2016 is not included in the demand raised vide the present Show Cause Notice. In respect of Advance Authorisation No.0810085115 dated 21.12.2009, DGFT, New Delhi vide letter No. AR-382 dated 20.09.2016 has stated that the request of M/s. Ratnesh Metal Industries Private Limited was examined and noted that the applicant has Induction Furnace and has no Vacuum Oxygen Degassing (VOD) facility and therefore, only 60% SS Scrap could be allowed against the export. Accordingly, DGFT, Ahmedabad vide letter dated 10.03.2017 directed M/s. Ratnesh to regularize the excess imports in terms of Para 4.49 of HBP. On the basis of these letters/orders, M/s. Ratnesh Metal Industries Pvt.Ltd vide two challans dated 09.10.2017 deposited the amount of Duty pertaining to the quantity of imports made beyond the permissible norms with interest. These orders of DGFT, New Delhi are applicable only to the Advance Authorisation numbers specified therein.

42.8 The present demand pertains to excess imports of input viz. stainless melting scrap, against five Advance Authorisations (081007393, 0810079063, 0810074246, 0810081589 and 0810084403) issued by DGFT, as detailed in Table under Para 17 of the Show Cause Notice. The Show Cause Notice also proposes to demand an amount of

Customs Duty and amount of interest towards the total demand of Customs Duty amounting to Rs.15,61,150/- and the amount of interest on the said amount of Customs Duty.

43. Now, I proceed to examine the proposal to confiscate the subject quantity of 122.2246 MT of Stainless Steel Melting Scrap, imported Duty free under Customs Notification No.93/2004-Cus, dated 10.09.2004, Notification No.96/2009-Cus, dated 11.09.2009 and Notification No. 18/2015-Cus, dated 01.04.2015 as amended, having total assessable value of Rs. 59,19,408/-under Section 111(o) of the Customs Act, 1962.

43.1 Section 111 (o) provides for confiscation of imported goods which are exempted, subject to any condition, from Duty or any prohibition in respect of the import thereof under the Customs Act 1962 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.

43.2 As per the provisions contained in Para 4.1.3, para 4.1.5 , para 4.1.9 of the Foreign Trade Policy, 2009-14; Para 4.22, para 4.24 of the Handbook of Procedures, 2009-14; Para 4.03, para 4.11, para 4.12, para 4.16 of Foreign Trade Policy, 2015-2020; Para 4.04, para 4.06, para 4.7, para 4.15, para 4.16, para 4.20, para 4.21, para 4.42, para 4.44, para 4.49, para 4.50, para 4.51 of the Handbook of Procedures, 2015-20; Notification No.93/2004-Cus. dated 17.09.2004, Notification No.96/2009-Cus. dated 11.09.2009, Notification No.18/2015-Cus. dated 01.04.2015, M/s. Ratnesh have to fulfill export obligation as per the standard Input Out Norms(SION) which define the amount of input(s) required to manufacture a unit of output for export purpose. M/s. Ratnesh applied for Advance Authorizations under No Norms category even-after knowing what was the right norms, therefore, M/s Ratnesh by their act of non-compliance of the aforesaid provisions of law have contravened the respective provisions of the Foreign Trade Policy and conditions of the Notification for the time being in force. M/s. Ratnesh was bound to pay the amount of Customs Duty on pro rata basis on the input/raw material beyond the permitted norms in compliance with Policy and the provisions of the Notifications. M/s Ratnesh are proved to have grossly failed to observe the subject conditions of the Policy and the notifications and also preferred to suppress the fact of their failure from the Government authorities with mala fide intention of evading Duty of Customs. Hence the aforesaid goods are liable to confiscation in terms of the provisions of Section 111(o) of the Customs Act, 1962.

43.3 The goods are liable to confiscation when they are imported relying on exemption notification, but that exemption is subject to a condition. If that condition is not observed, the **Hon'ble Supreme Court In the case of Sheshank Sea Foods Pvt. Ltd. Karnataka etc. Vs Union of India & Ors., reported in 1996 (88) ELT 626 (SC)**, held that the goods are liable to confiscation and the Customs Authorities had absolute power to take action under Section 111(o). This decision of Hon'ble Supreme Court also pertains to the jurisdictional authority of Customs Officers to initiate proceedings when conditions of import under the schemes in Foreign Trade Policy had not been fulfilled. Relevant paras of this judgment are reproduced below-

9. Section 111(o) states that when goods are exempted from Customs duty subject to a condition and the condition is not observed, the goods are liable to confiscation. The case of the respondents is that the goods imported by the appellants, which availed to the said exemption subject to the condition that they would not be sold, loaned, transferred or disposed of in any other manner, had been disposed of by the appellants. The Customs authorities, therefore, clearly had the power to take action under the provisions of Section 111(o).

We do not find in the provisions of the Import and Export Policy or the Hand Book of Procedures issued by the Ministry of Commerce, Government of India, anything that even remotely suggests that the aforesaid power of the Customs authorities had been taken away or abridged or that an investigation into such alleged breach could be conducted only by the licensing authority. That the licensing authority is empowered conduct such an investigation does not by itself preclude the Customs authorities from doing so.

The communication of the Central Board of Excise and Customs dated 13th May, 1969, refers to the breach of the condition of a license and suggests that it may not be possible to take action under Section 111 (o) in respect thereof. It is true that the terms or the said Exemption Notification were made part of the appellants' licences and, in that sense, a breach of the terms of the said Exemption Notification is also a breach of the terms of the license, entitling the licensing authority to investigate. But the breach is not only of the terms of the license; it is also a breach of the condition in the Exemption Notification upon which the appellants obtained exemption from payment of Customs duty and, therefore, the terms of Section 111 (o) enable the Customs authorities to investigate.

For these reasons, we find no merit in the appeals and dismiss them with cost."

43.4 However, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of **M/s Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertilchem Ltd Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, held that even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed.

44. Penalty under Section 112 (a) and Section 114AA of the Customs Act, 1962 is also proposed against M/s. Ratnesh. In terms of the provisions of Section 112(a) of the Customs Act, 1962, any person, 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, is liable to penalty. M/s. Ratnesh, had imported the impugned goods against various Advance Authorisations by availing exemption notifications but without observance of the conditions set out in the notifications and in the Foreign Trade Policy and Handbook of Procedure. M/s. Ratnesh had fraudulently procured excess quantity of raw material, viz stainless steel melting scrap, beyond the permitted norms by reasons of misrepresentation and suppression of facts as elaborated at paras supra, resulting in non-payment of Duty, which rendered the said goods liable to confiscation under Section 111(o) of the Customs Act, 1962. Resultantly, M/s. Ratnesh is liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

44.1 As per Section 114AA of the Customs Act, 1962, penalty can be levied when a person knowingly or intentionally makes, signs or used or causes to be made, signed or used, any declaration, statement or document, which is false or incorrect. It is an admitted fact that M/s. Ratnesh had submitted false declaration before DGFT regarding AOD/VOD facility in their factory to fraudulently avail higher degree of entitlement of import of raw material for their export product viz. stainless steel melting scrap. It is also proved that M/s. Ratnesh had used a fake Certificate in the name of a Chartered Engineer regarding the installation of VOD Converters with their induction furnace in their factory which was submitted before the Officials of Ministry of Steel and DGFT in order to fraudulently avail the higher SION import ratio of melting scrap available to the manufacturer having such facility. By adopting such fraudulent acts, penal provisions of Section 114AA of the Customs Act, 1962 are liable to be invoked against M/s. Ratnesh.

45. Penalty on Shri Sumer S. Sanghvi, Director of M/s. Ratnesh under Section 112(a) and Section 114AA of the Customs Act, 1962 is also proposed. Shri Sumer S. Sanghvi has signed the application under Para 4.7 to obtain Advance Authorization scheme under No Norms Category in place of SION norms under C-525. Further, as stated at para 41.16 *supra*, Shri Sumer S. Sanghvi has signed the letter dated 21.04.2009, addressed to the Joint Industrial Advisor of Ministry of Steel, New Delhi, enclosing thereunder a fake Certificate issued in the name of a Chartered Engineer, with a request to recommend for rectification of their SION Norm in respect of Advance License/Authorisation No.0810074246 dated 26.08.2008. These fraudulent actions on the part of Shri Sumer S. Sanghvi, Director of M/s. Ratnesh have, of course, invited penal actions against him in terms of Section 112 (a) and Section 114AA of the Customs Act, 1962.

45.1. Penalty on Shri Viral Shah, DGM (Export) of M/s. Ratnesh under Section 112(a) and Section 114AA of the Customs Act, 1962 is also proposed. It is evident from his statement dated 30.08.2017 that Shri Viral Shah was very much aware that AOD/VOD facility was not available in their factory and he has also mentioned other Advance Authorizations issued in past to the firm under No Norms Category. Shri Viral Shah was aware about the Norms under SION C-525 .Therefore Shri Viral Shah was very much aware that excess quantity of input was claimed by them than permissible norms, which attracts Penal action for mis-statement, suppression of fact attracting penal provisions under Customs Act 1962. Even after knowing the fact that they are covered by Serial No. C-525 of SION, he never came forth to pay the Duty in those Authorizations where raw material was imported in excess by the reason of fraudulent means to claim the excess quantity of raw material imported against Authorization issued to M/s. Ratnesh Metal Industries Pvt. Ltd. Thus, Shri Viral Shah, DGM (Export) of M/s. Ratnesh is liable to be punished under Section 112(a) and Section 114AA of the Customs Act, 1962.

45.2 Penalty on Shri Rajesh S. Sanghvi, Director of M/s. Ratnesh under Section 112(a) and Section 114AA of the Customs Act, 1962 is also proposed. It is apparent from the statement dated 12.12.2017 of Shri. Rajesh S. Sanghvi that even after knowing the fact that they are covered by Serial No. 525 of SION, Shri Rajesh S Sanghvi never came forth to pay the Duty in those authorizations where raw material was imported in excess by the reason of fraudulent means to claim the excess quantity of raw material imported in Authorization issued to M/s. Ratnesh Metal Industries Pvt Ltd. Hence, penal provisions under Section 112(a) and Section 114AA of the Customs Act, 1962 are invokable against Shri Rajesh S. Sanghvi, Director of M/s. Ratnesh.

46. In view of discussions and findings at paras *supra*, I pass the following order-

ORDER

- (i) I hold the goods viz. 112.2246 MT of Stainless Steel Melting Scrap imported Duty free under Notification No.93/2004-Cus, dated 10.09.2004, Notification No.96/2009-Cus, dated 11.09.2009, Notification No.18/2015-Cus, dated 01.04.2015, having total assessable value of **Rs. 59,19,408/- (Rupees Fifty Nine Lakhs, Nineteen Thousand Four Hundred and Eight Only)**, imported by M/s. Ratnesh Metal Industries Pvt. Ltd., as detailed under Table in Para 17 of the Show Cause Notice, liable for confiscation under Section 111(o) of the Customs Act, 1962. However, since the same are not physically available for confiscation. I give an option to redeem the same on payment of Fine amounting to **Rs. 6,00,000/- (Rupees Six Lakhs only)** under Section 125 (1) of the Customs Act, 1962;
- (ii) I confirm the Duty of Customs amounting to **Rs.15,61,150/- (Rupees Fifteen Lakhs Sixty One Thousand One Hundred and Fifty Only)** payable on the aforesaid quantity of 112.2246 MT of impugned goods imported by M/s. Ratnesh Metal Industries Pvt. Ltd. by availing the benefit of exemption of Notification No.93/2004-Cus, dated 10.09.2004, Notification No.96/2009-Cus, dated 11.09.2009, Notification No.18/2015-Cus, dated 01.04.2015 read with the provisions of the Foreign Trade Policy (2004-09) & (2009-14), and the Hand Book of Procedures (2004-09) & (2009-14), and order to recover the same under the conditions of Notification No.93/2004-Cus., dated 10.09.2004, as amended, Notification No.96/2009-Cus., dated 11.09.2009, as amended and Notification No.18/2015-Cus., dated 01.04.2015, as amended;
- (iii) I order to charge and recover interest at the applicable rate on the above confirmed demand at (ii) above from M/s. Ratnesh Metal Industries Pvt.Ltd. under the conditions of Customs Notification No. 93/2004-Cus, dated 10.09.2004, Notification No.96/2009-Cus dated 11.09.2009 and Notification No.18/2015-Cus, dated 01.04.2015, as amended;
- (iv) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand only)** on M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 112(a)(ii) of the Customs Act, 1962;
- (v) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** on M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 114AA of the Customs Act, 1962;
- (vi) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on Shri Sumer S. Sanghvi, Director of M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 112(a)(ii) of the Customs Act, 1962;
- (vii) I impose a penalty of **Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only)** on Shri. Sumer S Sanghvi, Director of M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 114AA of the Customs Act, 1962;
- (viii) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on Shri. Viral Shah (DGM-Export) of M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 112(a)(ii) of the Customs Act, 1962;
- (ix) I impose a penalty of **Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only)** on Shri Viral Shah (DGM-Export) of M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 114AA of the Customs Act, 1962;

- (x) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on Shri. Rajesh S Sanghvi, Director of M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 112(a)(ii) of the Customs Act, 1962;
- (xi) I impose a penalty of **Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only)** on Shri. Rajesh S Sanghvi, Director of M/s. Ratnesh Metal Industries Pvt.Ltd. under Section 114AA of the Customs Act, 1962.

Vishal
28/3/24
(Vishal Malani)
Additional Commissioner

DIN- 20240371MN000000C314

F.No.VIII/10-67/Prev/O&A/HQ/2023-24

Date: 28.03.2024.

To,

- ✓ 1. M/s. Ratnesh Metal Industries Pvt. Ltd.,
(now M/s MP Steel (India) Private Limited),
Survey No. 900, Near ashram Chokdi,
Village- Ranasan, Taluka Vijapur, Mehsana- 382870
2. Shri Sumer S. Sanghvi,
(Director of M/s. Ratnesh Metal Industries Pvt. Ltd.),
c/o Shantilal D. Sanghvi,
47, Highway Park Society,
Sabarmati, Ahmedabad
3. Shri. Rajesh S Sanghvi, Director of
(Director of M/s. Ratnesh Metal Industries Pvt. Ltd.),
c/o Shantilal D. Sanghvi,
54, Hindu Colony, Opposite Sardar Patel Stadium Road,
Navrangpura, Ahmedabad - 380009
4. Shri Viral Shah (DGM-Export) of
M/s. Ratnesh Metal Industries Pvt. Ltd.
Survey No. 900/1, Near ashram Chokdi,
Village- Ranasan, Taluka Vijapur, Mehsana- 382870

COPY TO:-

1. The Pr. Commissioner of Customs, Gujarat Zone, Ahmedabad.
2. The Additional Director General, Directorate of Revenue Intelligence, Lucknow Zonal Unit, 2/31, Vishal Khand, Gomtinagar, Lucknow-226010.
3. Director General of Foreign Trade, HUDCO Bhawan, Near Ishwar Bhuvan, Navrangpura, Ahmedabad.
4. The Additional Commissioner (TRC), Customs, Ahmedabad for information please.
5. The DC, Customs, ICD, Khodiyar.
6. The Superintendent (Systems), Customs, Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
7. Guard File.