कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- **370421**
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421
PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in

A. File No.	:	GEN/ADJ/COMM/55/2024-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	**MUN-CUSTM-OOO-COM- 40- 24-25**
C. Passed by	:	**K. Engineer,** **Principal Commissioner of Customs,** **Customs House, AP & SEZ, Mundra**
D. Date of order and Date of issue:	:	21.01.2025. 21. 01.2025
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/55/2024-Adjn-O/o Pr Commr-Cus-Mundra, dated 31.01.2024.
F. Noticee(s) / Party / Importer	:	**1. M/s. Krishna Recycling Industries** (IEC-AAUFK0234C), CM-458, "Rukmanikunj", Near Virani School, Kalibid, Bhavnagar-364002. **2. M/s. Winwin Maritime Limited**, Gandhidham (Shipping lines agent) on behalf of M/s Meridian Lines, Shyam Parogon, 1st floor, DBZ-South/61/A, Near Rotary Bhavan Gandhidham-370201. **3. M/s Asia Inspection Agency Co. Ltd.**, 39/896 Nichada Thani Moo 3, Samakee Road, Bangtalad, Pakkret Nonthaburi 1112, Thailand.
G. DIN	:	**20250171MO000000D093**

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

   Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

3. "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

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

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

5. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

7. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

8. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

9. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

FACT OF THE CASE IN BRIEF

M/s. Krishna Recycling Industries (IEC-AAUFK0234C), Survey Block No. 957 and 958, Village Kubadtal, Tehsil Daskroi, Ahmedabad-382433 (hereinafter referred as *'importer'* for the sake of brevity), filed Bill of Entry No. 5415461 dated 13.09.2021 (hereinafter referred as *'BE'*) for importation of goods, declared as 'Stainless Steel Melting Scrap Grade-201' (hereinafter referred as *'imported goods'*) falling under CTH 72042190.

2. Whereas, an information was received stating that the Pre-Shipment Inspection Certificate in the said BE is bogus, as the containers were not opened and goods were not examined; that the container tracking on PICT (Pakistan International Container Terminal Limited) divulged that the container had originated from Pakistan. The screenshot of tracking of one Container No. GRMU2031056 at PICT website was also forwarded.

The details of the BE is as under:

BE No & date	Description of Goods & CTH declared	Container No(s)	Qty (MTs)	Declared Ass. Value (Rs.)	Declared Duty Payable (Rs.)
5415461 dated 13.09.2021	Stainless Steel Melting Scrap Grade -201 CTH – 72042190	GRMU2031056 TCKU3652030 TDRU2902074	16.430 17.640 17.145	32,17,164	5,79,090
	Total		**51.215**	**32,17,164**	**5,79,090**

3.1. Acting upon the said information, it was noticed that by virtue of Notification No.5/2019-Customs dated 16.02.2019, tariff item 98060000 i.e. *'all goods originating in or exported from the Islamic Republic of Pakistan'* was inserted in Chapter 98 of Section XXI to the First Schedule of the Customs Tariff Act, 1975, which attracts 200% BCD.

3.2. It was further noticed that the BE was filed on 13.09.2021, was out of charged on 16.09.2021. Thereafter, acting on the received information, Summons dated 04.02.2022 and 04.03.2023 were issued to M/s. Winwin Maritime Ltd (Shipping lines agent) to submit load port documents related to the goods transported vide Container Nos GRMU2031056, TCKU3652030 and TDRU2902074 under the Bill of Lading No.02548-3 dated 31.08.2021 (hereinafter referred as *'BL'*) and to tender

statement. M/s. Winwin Maritime Ltd. vide its letter dated 14.03.2022 submitted that they have sent many e-mails to Port of Loading for documents, but they have not received any response from the other end. A Summon dated 23.03.2022 was issued again to M/s. Winwin Maritime Ltd. But the said shipping line agent neither submitted the load port documents nor appeared for tendering statement.

3.3. A Summon dated 23.05.2022 was issued to the said Importer to submit relevant records and to tender statement. **Statement of Shri Mukesh Agarwal, Partner of the Importer was recorded on 13.06.2022** wherein he interalia stated:

(i) *that he is Partner of the Importer and looking after the purchase, sales & finance of the company;*

(ii) *that they have imported "Stainless Steel Melting Scrap Grade 201" from a Malaysian Company viz. M/s. Global Square (M) SDN BHD;*

(iii) *that they have uploaded the PSIC No. Asia/2021/1800553 dated 29.08.2021 issued by M/s. Asia Inspection Agency Co. Ltd., which was provided to them by their Supplier and they have neither appointed M/s. Asia Inspection Agency Co. Ltd. (i.e. Pre-Shipment Inspection Agency) for any inspection nor made any payment for inspection of goods imported vide the said BE;*

(iv) *that as per their sales order/contract No. GSM/SO/2108/002 dated 02.08.2021, vide which they have entered into a contract with their supplier M/s. Global Square (M) SDN BHD, they have been informed that the goods will be of UAE Origin;*

(v) *that they have been given freight certificate dated 31.08.2021 by M/s. Global Square (M) SDN BHD, vide which the Supplier had informed them that the supplier had paid USD 900 per container from Jebel Ali to Mundra and thus they have no idea that the containers are coming from Pakistan;*

(vi) *that they have no idea about the inspection of goods done at Jebel Ali Port, since they had not appointed the PSIA (Pre-Shipment Inspection Agency) for inspection of goods and they were under impression that the goods are being inspected and loaded from Jebel Ali Port for Mundra.*

3.5. An email dated 19.06.2023 was sent to PSIA (Pre-Shipment Inspection Agency), M/s. Asia Inspection Agency Co. Ltd. on their email id info@aiacl.com (as per the details available in PSIC [Pre-Shipment Inspection Certificate] on e-Sanchit portal), to provide the details of inspection carried out by them, duly supported with the photographs/video as stipulated under para 2.56 "Responsibility and Liability

of PSIA, Importer and Exporter" of the Handbook of Procedures (2015-20). But no response was received from their side.

3.6. Again, Summons dated 05.01.2024 were issued to M/s. Winwin Maritime Ltd(Mundra), Gandhidham to submit load port documents pertaining to the imported goods transported under Bill of lading No. 02548-3 and to tender statement.

3.7. A statement of Shri Dhawal Rameshbhai Rawal, Operation Manager of M/s. Winwin Maritime Limited (Mundra), Gandhidham was recorded on 08.01.2024, wherein he *inter alia* stated that;

- they were the delivery agent of containers No. GRMU2031056, TCKU3652030 and TRDU2902074 under Bill of Lading 02548-3 dated 31.08.2021.
- that he is producing copy of Load Port Bill of Lading no. KJEAMR02548 dated 29.08.2021 of Container No. GRMU2031056, Load Port Bill of Lading no. KJEAMR02550 dated 29.08.2021 of Container No. TCKU3652030 and Bill of Lading No. KJEAMR02551 dated 29.08.2021 of Container No. TDRU2902074
- that all containers were loaded from Port of Karachi to Jebel Ali in the Vessel Independent Spirit and thereafter both said containers were transshipped from Jebel Ali to Mundra in Vessel Cape Moreton vide BL No. 02548-3 dated 31.08.2021.
- that the containers were not opened at Jebel Ali for any purpose and they were transshipped from Jebel Ali to Mundra as received from Karachi to Jebel Ali.

4. Analysis of Enquiry :

4.1. The tracking of the Container No(s). GRMU2031056 (on the official website of Pakistan International Container Terminal Ltd. i.e. https://pict.com.pk/en) (information of which is provided to this office) showed that the Container Seal Number and the Container Number is same as it is in the import documents submitted by the Importer. Further, the Shipping Agent has submitted the movement details viz; load port Bill of Lading from Karachi to UAE and transshipment documents viz; Bill of lading from UAE to Mundra. Therefore, it appeared that the goods in all the containers were originated from Pakistan; that the container were stuffed in Pakistan and nowhere opened in the route from Karachi, Pakistan to UAE and UAE to Mundra as the seal number applied to the containers at Karachi found to be the same at Mundra. The Screenshot of the

tracking of the Container No. GRMU2031056 on the website https://pict.com.pk/en is affixed hereunder:

Tracking of container no **GRMU2031056**

4.2. The details of the Bill of Lading no. KJEAMR02548, KJEAMR02550 and KJEAMR02551 all dated 29.08.2021 and Bill of Lading No. 02548-3 dated. 31.08.2021, provided by the delivery agent i.e. M/s. Winwin Maritime Ltd (Mundra), Gandhidham are as under;

Details Mentioned in the Bill of Lading	**Bill of Lading No. KJEAMR02548, KJEAMR02550 and KJEAMR02551 all dated 29.08.2021**	**Bill of Lading No. 02548-3 dated. 31.08.2021**
Vessel/Voyage	Independent Spirit	Cape Moreton
Port of Loading	**Karachi, Pakistan**	Jebel Ali, UAE
Port of Discharge	Jebel Ali, UAE	Mundra, India
Name and Address of Shipper	M/s. Metal Power Engineering, Back Side Wazirabad Chungi, Near Pindi By-pass, G.T. Road-Gujranwala-Pakistan	M/s. Global Square(M) SDN BHD Reg No: 426177-W No: 41, Jalan 6/2, Taman Industri Selesa, Jaya-43300, Balakong, Selangor Darul, Ehsan.
Name and Address of Consignee	M/s. Super Alloy Metal Trading LLC, PO Box: 515000, Sharjah Media City (AL Shams), Sharjah-UAE.	M/s. Krishna Recycling Industries, Survey Block No.957 and 958 Village Kubadtal, Tehsil Daskroi, Ahmedabad -382433.

Container No(s).	GRMU2031056, TCKU3652030 and TDRU2902074	GRMU2031056, TCKU3652030 and TDRU2902074
Seal No(s).	304386 304392 304356	304386 304392 304356
Package	Stainless Steel Melting Scrap Grade 2205	Stainless Steel Melting Scrap Grade 2205
Weight	16430Kgs 17640Kgs 17145Kgs	16430Kgs 17640Kgs 17145Kgs

4.3. From the above details and documents i.e. Bill of Lading No. KJEAMR02548, KJEAMR02550 and KJEAMR02551 all dated 29.08.2021 and Bill of Lading No. 02548-3 dated. 31.08.2021, provided by the M/s. Winwin Maritime Ltd(Mundra), Gandhidham, it appeared that the Goods were originated from Karachi, Pakistan, from where the goods were exported to Jebel Ali vide Bill of Lading No. KJEAMR02548, KJEAMR02550 and KJEAMR02551 all dated 29.08.2021 in Container No(s). GRMU2031056, TCKU3652030 and TDRU2902074 respectively sealed with Seal No(s). 304386, 304392 and 304356 respectively. Further, it appears that the same goods were exported as it is from Jebel Ali, UAE to Mundra vide Bill of Lading No. 02548-3 dated. 31.08.2021 in same Container No(s). i.e. GRMU2031056, TCKU3652030 and TDRU2902074 sealed with same seal Seal No(s). i.e. 304386, 304392 and 304356 respectively. Therefore, it appeared that the goods imported to Mundra port (India) were originated from Karachi Pakistan.

4.4. Further, Importer failed to provide any specific clarification in respect of the tracking of the container on PICT website with same seal number. Hence, it appeared that the goods imported by the importer are originated from Pakistan.

4.5. In addition, as per the FTP, at the time of the clearance of metal scrap, Importer shall furnish to the Customs Pre-Shipment Inspection Certificate as per the format to Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G, to the effect that the consignment was checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall also furnish copy of the contract with the exporter stipulated that the consignment does not contain any radioactive contaminated material in any form. As it is apparently clear that the containers were never opened in the route from Karachi, Pakistan to Jebel Ali UAE and thereafter from Jebel Ali, UAE to Mundra, India; therefore, it appeared that the goods are not examined in

UAE and hence, the pre-shipment certificate submitted by the importer in the instant case is bogus/invalid. Further, letter to DGFT has been issued for taking the required action against the importer i.e. M/s. Krishna Recycling Industries for violating trade regulations and causing significant economic repercussions.

4.6. Further, the PSIA also not responded to the correspondence and have not clarified the matter, whether the Pre-shipment Inspection Certificate has been issued by them or otherwise. Therefore, it appeared that the PSIA is aware of the fact that the importer has furnished bogus PSIC said to have issued by their agency. Further, letter to DGFT has been issued for taking the required action against the PSIA i.e. M/s. Asia Inspection Agency Co. Ltd. for violating trade regulations and causing significant economic repercussions.

5. Duties on import of Pakistan Originated Goods:

Vide Notification 5/2019-Customs dated 16.02.2019, In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, tariff item 9806 00 00 has been inserted for All goods originating in or exported from the Islamic Republic of Pakistan, which attracts 200% BCD.

6. Calculation of Duty on Goods:

Accordingly, the imported goods i.e. Stainless Steel Melting Scrap Grade 2205 should be classifiable under CTH 98060000 and attracts duties as BCD @ 200% & SWS @ 10% with IGST @18%. The duty calculation on the said imported goods is as under;

Table-A

BE No & date	Description of Goods	Qty (Kgs)	Declared Value (in Rs.)	Declared Duty Payable (in Rs.)	Revised Duty payable * (in Rs.)
5415461 dated 13.09.2021	Stainless Steel Melting Scrap Grade 201	51215	32,17,163/-	5,79,089/-	89,30,844/-

* **[BCD @200%: 64,34,326/- + SWS@10%: 6,43,433/- + IGST@18%: 18,53,086/- = 89,30,844/-]**

7. Relevant Provisions of Law:

The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under provisions of Customs Act, 1962 and the other laws for the time being in force are summarized as under:

Notification No.05/2019-Customs dated 16.02.2019:

G.S.R. .....(E). – WHEREAS, the Central Government is satisfied that the import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), should be increased and that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in the following manner, namely:-

In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
9806 00 00	All goods originating in or exported from the Islamic Republic of Pakistan	-	200 %	-

SECTION 1. Short title, extent and commencement.*—(1) This Act may be called the Customs Act, 1962.*

(2) It extends to the whole of India 2 [and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder ***committed outside India by any person****].*

SECTION 17 Assessment of duty *— (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

SECTION 46 Entry of goods on importation *(4) The importer while presenting a bill of entry stall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

SECTION 28 Recovery of duties not levied or not paid or short-levied or short-paid orerroneously refunded

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

Explanation- For the purposes of this section, "relevant date" means,-

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in n case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

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

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

SECTION 111 Confiscation of improperly imported goods, etc. *- The following goods brought from a place outside India shall be liable for confiscation:*

..

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration

made under Section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

...

Section 112 Penalty for improper importation of goods, etc.

—Any person,—

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

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

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

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 219 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 220 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

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

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. *- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

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

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

***Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

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

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

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

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

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

***SECTION 114AA Penalty for use of false and incorrect material.** —If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*

***SECTION 117 Penalties for contravention, etc., not expressly mentioned**. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shrift be liable to a penalty not exceeding ten thousand rupees.*

8. Contravention of Provisions:

8.1. In terms of Section 46(4) of the Customs Act, 1962, the importer, while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry. Further, in terms of Section 46(4A), the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.

8.2. The impugned bill of entry was self-assessed by the importer in terms of Section 17(1) of the Customs Act, 1962. The said bill of entry was not selected for first check by the system. If the goods are of UAE Origin the goods attracted BCD

@0.00%, however, the goods appeared to be Pakistan Origin; therefore, the imported goods shall attract BCD@ 200% with applicable SWS @ 10% and IGST @ 18%.

8.3. From the above discussed facts and statutory provisions, it appeared that the imported goods i.e., "Stainless Steel Melting Scrap Grade 201" Classified by the importer under CTH 72042190 are originated from Pakistan and is classifiable under CTH 98060000 which attract higher rate of BCD@200%. Therefore the imported goods appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962 and required to be seized under Section 110 of the Customs Act, 1962. However, as the goods are not available for seizure, the same could not be seized, but the importer appeared liable for penal action under Section 112 of the customs Act, 1962. Further, The total duty payable, as detailed in Table-A at para 6, amounting to **Rs. 89,30,844/- (BCD@200%; SWS@10% & IGST@18%) (Rs. Eighty Nine Lakh Thirty Thousand Eight Hundred and Forty Four only)** as per notification no. 05/2019-Customs dated 16.02.2019, seemed required to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Further, the duty amounting to Rs. 5,79,089/- paid by the importer at the time of clearance of goods, seemed liable to be appropriated against the duty demanded. The importer seemed well aware of the facts that the goods stuffed in said containers were originated from Pakistan and that the said containers were not opened on the route to Mundra Port, India. Hence, it appeared that the importer knowingly and intentionally made incorrect declaration for the COO of the goods with a willful intension to evade payment of duty applicable on the goods Originated from Pakistan and Imported to India; therefore, the importer M/s. Krishna Recycling Industries. rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

8.4. Further, it appeared that the importer knowingly and intentionally made incorrect declaration for the COO and made mis-declaration of the goods in terms of classification and applicable duties with a willful intension to evade payment of appropriate customs duty leviable on the imported goods; Further, the importer has also submitted pre-shipment inspection certificate which appeared bogus as the containers were not opened and goods were not examined by the inspection certificate agency based in UAE. Hence, the importer rendered them liable for penalty under Section 114AA for short payment of duty on self-assessed Bill of Entry.

8.5. It further appeared that it was in the knowledge of M/s Winwin Maritime Limited, Gandhidham who was having all the documents for the fact that the goods were loaded at Karachi Port whereas another Bill of lading was prepared for giving the impression that the goods were supplied from Jebel Ali and therefore, it further

appeared that by their said act of omission and commission which led to evasion of duty and caused loss to Government revenue, M/s Winwin Maritime Limited, Gandhidham rendered themselves liable for imposition of penalty under Section 114AA and 117 of Customs Act, 1962.

8.6. Further, the PSIA i.e. M/s. Asia Inspection Agency Co. Ltd. (PSIA) also not responded to the correspondence and have not clarified the matter, whether the Pre-shipment Inspection Certificate has been issued by them or otherwise. Moreover, the PSIA has also issued pre-shipment inspection certificate which appeared bogus as the containers were not open and goods were not examined by them based in UAE. Hence, the PSIA rendered them liable for penalty under Section 114AA for submitting/issuing false and incorrect material and thereby involved themselves by helping in evasion of duty.

9.1. In view of the above, **M/s. Krishna Recycling Industries (IEC-AAUFK0234C)**, Survey Block No.957 and 958 Village Kubadtal, Tehsil Daskroi, Ahmedabad -382433, were called upon to show cause to **the Pr. Commissioner of Customs**, Custom House, Mundra having his office situated at 1st Floor, Custom House, PUB, Mundra, within thirty days from the receipt of this notice as to why:-

(i) **51215 Kgs** of "Stainless Steel Melting Scrap Grade 201" imported in Container No(s). GRMU2031056, TCKU3652030 and TDRU2902074 covered under Bill of Entry No. 5415461 dated 13.09.2021 valued at **Rs. 32,17,163/- *(Rupees Thirty Two Lakhs Seventeen Thousand and One Hundred Sixty Three Only)*** should not be confiscated under Section 111 (m) of the Customs Act, 1962.

(ii) Classification of **51215 Kgs** of "Stainless Steel Melting Scrap Grade 201" as detailed above at point no. (i) under Chapter Tariff Heading No. 72042190 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

(iii) The Customs Duty of **Rs. 89,30,844/-** (BCD@200%; SWS@10% & IGST@18%) ***(Rupees Eighty Nine Lakh Thirty Thousand Eight Hundred and Forty Four only)*** should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962. Further, the Customs Duty of **Rs. 5,79,089/-**already paid by the importer against the said Bill of Entry should not be appropriated

(iv) Interest at appropriate rate should not be charged and recovered from them under the provisions of Section 28AA of the Customs Act, 1962.

(v) Penalty should not be imposed upon them under the provisions of Section 112 and/or 114A of the Customs Act, 1962.

(vi) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

9.2. Vide above Show Cause Notice dated 31.01.2024 **M/s. Winwin Maritime Limited, Gandhidham** were also called upon to show cause to **the Commissioner of Customs**, Customs House, Mundra having his office situated at 1st Floor, Custom House, PUB, Mundra, within thirty days from the receipt of this notice as to why:

(i) Penalty should not be imposed on the shipping line under Section 114AA and 117 of the Customs Act, 1962.

9.3. Vide above Show Cause Notice dated 31.01.2024 **M/s Asia Inspection Agency Co. Ltd.** the Pre-shipment Inspection Agency were also called upon to show cause to **the Commissioner of Customs**, Mundra having his office at 'Custom House', 1st Floor, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why;

(i) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

10. Defence Submission

M/s Krishna Recycling Industries vide letter dated 10.04.2024 submitted their written reply. In which they interalia stated that:

10.1 The Noticee references communication between the department and the shipping line agent, M/s Winwin Maritime Limited (Shipping Line) as part of the investigation process. The shipping line agent vide letter dated 14.03.2022 submitted that they have sent various emails to the Port of Loading for documents, but they have not received any documents. In pursuit of load port documents, the department issued a summons to the aforementioned agent on 23 March 2023 but the shipping agent neither appeared for giving statement nor gave any response to the Summons.

10.2 In response to summons issued on 23 May, 2022, statement of Shri Mukesh Agarwal, Director of the importers was recorded (Statement of Shri Mukesh Agarwal, is at Exhibit-"B") is said to have been recorded under Section 108 ibid on 13.06.2022, wherein, inter alia, he is said to have stated that he is partner of the importer and looking after the purchase, sales and finance of the company ; that they have imported Stainless Steel Melting Scrap Grade 201 from a Malaysian company viz., M/s Global Square (M) SDN BHD ; that they have uploaded the PSIC

No. ASIA/2021/1800553 dated 29.08.2021 issued by M/s Asia Inspection Agency Co. Ltd., which was provided to them by their supplier and that they have not appointed M/s Asia Inspection Agency Co. Ltd., as Inspection Agency and have not made any payment for inspection of the said goods ; that as per their Sales Order /Contract No. GSM/SO/2108//002 dated 02.08.2021 vide which they have entered into an contract with their supplier M/s Global Square (M) SDN BHD , they have been informed that the goods will be of UAE origin ; that they have been given freight certificate dated 31.08.2021 by their supplier vide which the supplier had informed them that the supplier had paid USD 900 per container from Jebel Ali to Mundra and thus they had no idea that the containers were coming from Pakistan ; that they have no idea about the inspection of goods done at Jebel Ali Port, since they had not appointed the PSIA for inspection of goods and they were under impression that the goods are being inspected and loaded from Jebel Ali Port for Mundra.

10.3 The department sent email dated 19.06.2023 to PSIA on their email id. But nor response was received from their side. Strange enough the department issued only one summons on email to the PSIA who is the main person on the basis of whose certificate entire import was accepted by the importer to be of UAE origin and which is later on found by the department to be a bogus certificate issued by this PSI Agency. Still the department did not seriously take any action against PSIA. In paragraph 3.5 of the Show Cause Notice, the department refers to the email dated 19 June 2023, and the statement dated 13 June, 2022 wherein the importers unequivocally stated that they had not engaged M/s Asia Inspection Agency Co. Ltd. for the inspection of the imported goods, nor had they incurred any inspection charges. In pursuit of validating the importers' claim, the department issued only one summons on 19 June, 2023 to M/s Asia Inspection Agency Co. Ltd., seeking their participation and testimony in the matter. Notably, the Inspection Agency did not respond to either summons by appearing before the department to provide evidence.

This inability of the department to produce the Inspection Agency points to a potential gap in the investigatory process, raising questions about the thoroughness and reach of the department's efforts to substantiate claims and gather relevant evidence. It suggests a need for a more concerted and effective approach to investigating the roles and responses of PSIAs in importation processes, particularly when allegations of non-compliance and discrepancies in documentation and procedures arise.

The Show Cause Notice draws attention to the department's attempts to verify the inspection activities of the Pre-Shipment Inspection Agency (PSIA), as mandated by Para 2.56 of the Handbook of Procedures (2015-2020), which outlines the "Responsibility and Liability of PSIA, Importer, and Exporter." According to the

notice, the department reached out to the said Inspection Agency via email on 18 April 2022 and again on 10 January 2024, requesting specific details of the inspection process undertaken by them, supported by photographs or videos as evidence. However, these inquiries did not elicit any response from the Inspection Agency.

The lack of response from the PSIA, especially in light of allegations of document fabrication, raises significant concerns about the effectiveness of the department's investigative efforts. By concluding the investigation with merely issuing emails to the agency implicated in the alleged discrepancies, the department may have inadvertently allowed the PSIA to avoid scrutiny. This situation underscores a potential oversight in the department's approach to investigating and holding accountable entities suspected of malpractice. It is pertinent to note that Customs department or the DGFT did not initiate action against the PSIA. Thus, in light of the above, the Noticee would like to cross examine the investigating officer.

10.4 Statement of Shri Dhawal Ramesh bhai Rawal, Operation Manager of M/s Winwin Maritime Limited (Mundra) Shipping line agent was recorded under Section 108 of the Customs Act, 1962, wherein, he inter alia said to have stated that they were the delivery agents of Container No. GRMU2031056 and TCKU3652030 and TRDU2902074under Bill of Lading No. 02548-3 dated 31.08.2021 ; that that he produced copy of Load Port Bill of Lading for all the 3 containers in question ; that all the containers were loaded from Port of Karachi to Jebel Ali in the vessel Independent Spirit and thereafter these containers were transshipped from Jebel Ali to Mundra in Vessel Cape Moreton vide the said Bill of Lading dated 31.08.2021 ; that the containers were not opened at Jebel Ali for any purpose and they were transshipped from Jebel Ali to Mundra as received from Karachi to Jebel Ali. However, it is very strange that the department did not ask this person to state the source of his information about the fact that these 3 containers were originating from Pakistan and were never opened at port of loading in UAE and he was not asked why he did not bring this fact on record at the time of import to the importer or the department. The importer would like to cross examine this individual. (Statement annexed as Exhibit- "C").

10.5 The importer would like to submit that in some other file on the same issue, there is an email issued by ADG, NCTC that email is the very basis of the investigation in the present case is required to be put to a scanner. The importer would like to state that it is basically a screenshot of tracking of container available at PICT website. The said screenshot is a part of communication which is labeled as "Confidential/Urgent Risky consignment from Pakistan at Mundra Port – 1 Message. (Copy at Exhibit-"D")

This is a copy of email correspondence made by the Additional Director General, NCTC with the top authorities posted in Customs department at Mundra Port and Ahmedabad office. The email states that based on detailed risk analysis (there is no specific intelligence received by the department), the NCTC has identified following risky consignments at Mundra Custom House in relation to mis-declaration of country of origin of goods. It would kindly be appreciated that this is just depending on the data analysis made by the computer software that the NCTC short listed certain consignments and alleging mis-declaration of Country of Origin as declared by the importers. The table annexed in the email describes the Country of Origin as declared by the importers which in all the cases is UAE. However, it is nowhere mentioned in the email as to what is the actual Country of Origin of the goods. The last column given in the table annexed to the email is "seal number on PICT". Therefore, it is very obvious that the department is trying to assume only on the basis of container seal number declared in ICES and the one seen on PICT being the same.

10.6 The importer would like to say and submit that the department has failed to prove that the subject goods were originating from Pakistan or were exported from Pakistan. Attention is drawn to Notification No.5/2019-Cus dated 16.02.2019 as per which import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan should be increased to 200%. The essential requirement to impose tax or duty @ 200% is to prove or the satisfaction about the fact that the goods have been originating in from Pakistan or exported from Pakistan. The department has nowhere shown that the goods on which duty @ 200% is being demanded from the importer were actually the goods originating from Pakistan or exported from Pakistan. Merely establishing that the container number and seal number were same is not sufficient to establish pro nature of the goods itself to have been originating from Pakistan or imported from Pakistan. There could also be the possibility that these containers with the same seal number were transshipped to Pakistan from some other country. Therefore, the department is required to prove that the goods contained in these containers were originating from Pakistan or they were exported from Pakistan.

10.7 So far as the origin of the goods within these containers is concerned, the importer has provided the evidence in the form of photographs supplied by the supplier which exhibit empty containers, containers being loaded, etc., which prove that the scrap in question was loaded from Jebel Ali Port in UAE. Next condition required to attract provisions of the said notification is that the goods exported should have been exported from Pakistan. The department has not been able to prove that the goods within these containers were exported from Pakistan. It is an unrebuttable fact that the goods have been exported to Mundra Port from Jebel Ali

Port of UAE. There is no evidence that we have made any payment for the goods to any supplier of Pakistan. There is a documentary evidence about the payment made by the importer to the supplier against the documents through bank.

Therefore, it is submitted that the demand of duty @ 200% is not sustainable vide the present show cause notice.

10.8 Falling back to the email of Additional Director General, NCTC, we would submit that the entire exercise of the department is futile.

It will kindly be seen that in the entries relating to some importer named Alang Auto & General Engg. Co. (P) Ltd., second last and third last rows, the seal number shown in last two columns which are showing Container seal number in ICES and seal number on PICT is the same for both the containers viz., 95878. For Container No. PCLU2010527 the seal number is 95878 and for Container No. PRSU2141199 also the seal number is 95878. There cannot be the same seal used on both the containers. Similarly for the present importer, there are 3 entries in the said table, out of which the first entry seal number in last 2 columns is same. The seal number in the last column for the remaining 2 containers, the last column shows the remark "Overwritten". It means there is no data to prove that these 2 containers had the same serial number on the seals as per the intelligence shared by ADG, NCTC with the Customs department at Mundra. Therefore, it is crystal clear that in the absence of any details available regarding the seal numbers shown on PCIT website for the remaining two containers were the same, the department has assumed that these seal numbers in the remaining 2 containers are the same as shown in tracking of PCIT website. This raises serious doubt on the genuineness of the data contained in the email in respect of other importers including the present importer. Since the data is itself suspicious, the entire exercise which has been carried out by the department for demanding duty @ 200% from the importer based on the assumptions and presumptions is also highly jeopardized and cannot be upheld.

The conclusion drawn by the department, as detailed in paragraph 4.3 of the Show Cause Notice, that the goods imported to Mundra port originated from Pakistan, stems from what appears to be a notably limited investigation. This observation is particularly concerning given the department's failure to extend its inquiry to the supplier, a party that, according to Para 2.56 of the Handbook of Procedures (HBP), shares responsibility and liability along with the PSIA, importer, and exporter. The absence of any effort to issue summons to or otherwise engage with the supplier to ascertain the veracity of the facts concerning the exportation of the goods in question marks a significant oversight in the investigative process.

This lack of thoroughness in the investigation not only undermines the credibility of the department's conclusions but also fails to uphold the principles of

due diligence and comprehensive scrutiny expected in such regulatory inquiries. By not seeking out all relevant parties and information, the department's efforts fall short of ensuring that all aspects of the case are adequately explored and that any conclusions drawn are firmly grounded in a full spectrum of evidence.

Such an approach highlights the necessity for a more exhaustive and diligent investigation that includes engagement with all stakeholders implicated in the importation process. Without such an effort, the reliability of findings and the fairness of any subsequent actions taken based on those findings may be called into question. Thus, in light of the above, the Noticee would like to cross examine the investigating officer.

10.9 The department's reliance on the statement of Shri Mukesh Agarwal, Director of the importer, is noteworthy, as he unequivocally stated unawareness of the goods' origin from Pakistan. Given these circumstances, the importer requests the opportunity to cross-examine Shri Dhawal Rameshbhai Rawal, Operation Manager of Shipping line agent. This request is rooted in the need to clarify the sequence of events and the handling of the containers, as well as to scrutinize the accuracy and completeness of the information provided by the dealing agent. This cross-examination is deemed crucial for establishing a transparent and thorough understanding of the situation, thereby allowing for an informed assessment of the allegations made. The importer would like to cross examine Shri Dhawal Rameshbhai Rawal O.M of dealing agent.

10.10 The supplier M/s Global Square (M) SDN BHD had issued Invoice No. IV-00562 dated 31.08.2021. (Copy of Invoice with Packing List and other documents collectively annexed as Exhibit-"E" colly.) In the column relating to description of goods it only mentions Stainless Steel Melting Scrap Grade 201 and mentions 3 container numbers. It does not anywhere mention the country of origin of the said goods. The Port of Loading is shown as Jebel Ali, UAE. This means that the said goods have been loaded at the port of Jebel Ali, UAE. If the fact was different, the supplier was the responsible person as the importer would not have known this fact from the said invoice. The invoice is supported by Packing list and Certificate of Origin. In the Certificate of Origin, the supplier has certified that this shipped material is UAE origin. There is a Test Certificate issued by the supplier stating that the goods shipped in the below mentioned containers (3 containers in question) are as per the actual specification of the materials. Now in this certificate there is a reference to Purchase Order and the goods shipped in these containers are as per actual specification mentioned in the P.O. The Purchase Order clearly states that the goods to be supplied by the supplier should be of UAE origin. Finally, the supplier has sent us a Freight Certificate which shows that supplier has paid freight from UAE to Mundra. The FORM-6 and FORM-9 which is a Transboundary

Movement Document in the column no.2 "Waste Generator's Name and site of generation" the supplier has mentioned their name and address. This shows that waste was generated in UAE. Hence, there cannot be any thought about it being brought from Pakistan. In the document named "Steel Import Monitoring System" there is a column to mention Manufacturer Country, in which it is mentioned UAE.

In the Sales Order dated 02.08.2021 signed between the supplier and the importer, which is for supply of 100 MT SS Melting Scrap, it is clearly mentioned the origin of goods as UAE. (Copy of Sales Order is at Exhibit-"F")

M/s Winwin Maritime Limited has issued invoice for various services provided at the port of discharge and in this invoice (Invoice No. Draft dated 15.09.2021) there is mention of 3 container numbers but there is no mention of the fact that these containers were transshipped from Pakistan enroute UAE. The importer could not have gathered any information from this invoice as well. (Copy of Invoice is at Exhibit-"G").

Then there is Pre shipment Inspection Certificate which was supplied to the importer by the Supplier. Certificate No. ASIA/2021/1800553. This certificate shows Country of inspection: UAE and place of inspection as Sharjah, UAE. (Copy of PSIC is at Exhibit-"H").

The importer would like to produce copy of correspondence with the supplier on email. The email dated 07.08.2021 requests the supplier to send draft Bill of Lading and loading details and loading snaps for reference. Another email dated 10.08.2021 asks the supplier to send fresh loading details, material should be loaded 20 MT per container. It is pertinent to point out the language and intent of importer, the goods were required to be loaded and if the goods were intended to be transshipped from Pakistan, perhaps this language would not have been used.

10.11 The specimen copy of Bill of Lading shows country of origin of goods UAE and 3 container numbers are mentioned. Because the seal numbers were not mentioned in the draft, by email dated 27.08.2021 the importer requested the supplier to mention seal numbers in draft Bill of Lading. The mail further requested supplier to send proper loading photos of containers like empty containers, 25% loaded, 50% loaded, 75% loaded and full loaded, half closed and sealed containers for reference. Accordingly, the supplier sent another specimen Bill of Lading and photographs. (Copy at Exhibit-I colly)

Vide email dated 11.09.2021 the importer requested supplier to send PSIC and requested to send Airway Bill Number for PSIC. (Copy of correspondence on email at Exhibit-J colly.)

10.12 On 15.06.2022, after the investigation was started by the department, the importer wrote to the supplier to send loading pictures of Bill of Lading no.

02548-3 Material SS 201 – 51.215 MT against the same contract for Customs purpose. The photographs were sent by the supplier which clearly show that empty containers (Number of Container mentioned), half-filled containers and half closed container. This leads the importer to believe that the containers were being loaded in UAE at Jebel Ali Port. Hence, there was no reason to believe that the supplier was playing some mischief with moto best known to him. (Copy of correspondence at Exhibit-K colly)

10.13 The pictures of containers clearly show that the story of the department about the containers being not unloaded, loaded at Jebel Ali does not hold any water. It is for the department to prove beyond doubt by thorough investigation that the goods received by the importer were in fact were having Country of Origin as Pakistan.

10.14 The department failed to appreciate that as per Trade Notice No.03/2022-23 dated 26.04.2022 issued by the DGFT, New Delhi,

The Trade Notice under reference outlines the procedure for the issuance of Pre-Shipment Inspection Certificates (PSIC) online, a system that was mandated to begin from 01 July 2022. According to this procedure, a PSIC is to be generated by the Pre-Shipment Inspection Agency (PSIA) upon completion of the necessary inspection activities, with photographic and video evidence of the inspection, including loading or unloading of containers, to be uploaded online during this process. The generated PSIC becomes accessible to the importer via the Directorate General of Foreign Trade (DGFT) website, where it can be printed by entering the PSIC number. Additionally, Customs authorities have the capability to verify the authenticity of the PSIC online.

This system enhances transparency and accountability in the pre-shipment inspection process by ensuring that all relevant evidence supporting the inspection's findings is readily available and verifiable. However, it's critical to note that even before the mandate for online PSIC issuance took effect on 01 July 2022, the requirement for photographic and video evidence and its online upload was established to facilitate verification by both the importers and the Customs authorities.

Given these procedures, if the DGFT, Customs, and NCTC were unable to obtain or verify the authenticity of the PSIC due to systemic or procedural failures, it raises questions about the expectations placed on importers regarding their ability to discern the genuineness of such documents. Importers, without specific reasons to doubt the validity of the PSIC provided to them, rely on the assumption that documents generated through official or seemingly official channels are genuine. The lack of a mechanism for importers to independently verify the authenticity of a

PSIC, especially prior to the implementation of the online verification system, underscores a significant gap in the regulatory framework designed to safeguard against the submission of fraudulent documents.

This situation highlights the necessity for a robust system that not only mandates the online issuance and verification of PSICs but also ensures that all parties involved in the importation process, including importers, have access to reliable and effective tools for verifying the authenticity of critical documents. Without such measures in place, holding importers solely responsible for the genuineness of PSICs may not reflect a fair or reasonable expectation, particularly in cases where systemic limitations hinder such verification.

The stipulations within the Trade Notice, mandating the upload of videography and photographic evidence of the loading or unloading of containers onto the Directorate General of Foreign Trade (DGFT) website, underscore a commitment to enhancing the transparency and integrity of the importation process. This requirement facilitates a more robust verification process, allowing not only the importers but also the Customs authorities to ascertain the authenticity of the Pre-Shipment Inspection Certificate (PSIC).

This provision is designed to mitigate risks associated with fraudulent practices and ensure compliance with import regulations. By requiring visual evidence to be uploaded and made accessible for verification, the Trade Notice aims to establish a more secure and transparent chain of custody for imported goods. This measure serves as a safeguard against the submission of falsified documents and helps to prevent the importation of goods that do not meet the regulatory standards or that have been misrepresented in their documentation.

The requirement for Customs authorities to actively verify the genuineness of the PSIC represents a critical step towards ensuring that all entities involved in the importation process adhere to the highest standards of compliance and due diligence. It emphasizes the shared responsibility among PSIA, importers, and Customs officials to maintain the integrity of international trade practices.

However, the effectiveness of this system relies on the diligent implementation of these verification processes by all parties involved. Any lapses in carrying out these responsibilities can lead to vulnerabilities in the importation process, potentially allowing non-compliant or misrepresented goods to enter the supply chain. Therefore, it is imperative that the mechanisms for uploading, accessing, and verifying photographic and video evidence are user-friendly, reliable, and actively utilized by both the DGFT and Customs authorities to fulfill their regulatory roles effectively.

The situation highlights a significant challenge within the regulatory and compliance framework governing imports. If key regulatory bodies like the Directorate General of Foreign Trade (DGFT), Customs, and the National Customs Targeting Center (NCTC) were unable to collect necessary information or verify the authenticity of the Pre-Shipment Inspection Certificate (PSIC), it presents a critical gap in the enforcement and oversight mechanisms intended to secure the importation process. This gap not only undermines the efficacy of regulatory protocols but also places an undue burden on importers, who rely on these institutions for guidance and validation of compliance requirements.

Importers, in the absence of specific indications to doubt the documents they receive, generally operate on the premise that the documents provided by inspection agencies, especially PSICs, are genuine. This assumption is based on the trust in regulatory and oversight frameworks to prevent and flag any instances of non-compliance or fraudulent documentation before they impact the importation process. When this trust is compromised due to failures in verification by the responsible authorities, it raises questions about the reasonableness of expecting importers to independently ascertain the genuineness of such critical documents.

10.15. The crux of the issue lies in the importer's limited capacity to verify the authenticity of PSICs beyond the assurances provided by the issuing agencies and the supposed validation by regulatory bodies. Without access to a mechanism or tool that allows for independent verification of these documents' authenticity, importers are at a significant disadvantage and potentially exposed to regulatory penalties through no fault of their own.

This scenario underscores the necessity for a more robust, transparent, and accessible verification system that empowers all stakeholders, including importers, to confirm the genuineness of essential documents like PSICs. It also highlights the need for regulatory bodies to enhance their oversight and verification processes to prevent lapses that could lead to the acceptance of bogus documents, thereby protecting the integrity of the importation process and safeguarding the interests of compliant importers.

The undersigned respectfully submits that the Trade Notice explicitly mandates the online issuance of Pre-Shipment Inspection Certificates (PSIC) effective from 1st July 2022, a requirement similarly articulated in paragraph 2.52 of the Handbook of Procedures (HBP) 2015-2020. It is pertinent to note that the Pre-Shipment Inspection Agency (PSIA), being directly appointed by the exporter, holds primary accountability for any inaccuracies or mis-declarations contained within the PSIC. Consequently, the liability of the exporter arises secondary to that of the PSIA. Importantly, the importer bears no responsibility for discrepancies or the authenticity of the PSIC, as the importer relies solely on the documents furnished

by the supplier for submission alongside the bill of entry. Therefore, it is submitted that the allegations levied in the subject show cause notice are unfounded and lack a substantive basis.

10.16 In paragraph 4.4, the allegations suggest a failure on the part of the importer to provide explicit clarification regarding the tracking of the container with the same seal number on the PICT website. It is crucial to highlight that during his deposition, Shri Mukesh Agarwal, the Partner of the importing entity, unequivocally stated their unawareness of the goods being sourced from Pakistan. This testimony underscores the absence of any intent or knowledge on the part of the importer concerning the origin of the goods, thereby challenging the premise of the allegations made.

The show cause notice accuses the importer of submitting a Pre-Shipment Inspection Certificate (PSIC) that is purportedly fictitious and void, on the grounds that the containers were neither unsealed nor inspected at Jebel Ali, and the sealed containers were transshipped from Jebel Ali to Mundra without undergoing the requisite inspection as stipulated in the Foreign Trade Policy. This assertion fails to consider the importer's reliance on the integrity and authenticity of documents provided by the supplier, including the PSIC. The importer's role, fundamentally, is to ensure compliance with regulatory requirements through the submission of these documents at the time of entry. The allegation overlooks the procedural adherence by the importer to the stipulated norms and the inherent expectation of genuineness in the documents received from the supplier.

10.17 The importer wishes to assert that the motivations behind importing the specified goods from Pakistan have not been elucidated by the department. It is important to highlight that these goods are readily available globally, rendering the choice to import specifically from Pakistan as commercially unfeasible, particularly considering the significant customs duties applicable to such imports. Furthermore, the importer had no economic or logistical rationale to route the goods through the UAE if the intent was to evade customs duties, especially given that container movements could be readily monitored via the PICT website. The department has not presented any allegations suggesting mens rea, or intent to commit wrongdoing, on the part of the importer concerning the evasion of customs duties through the importation process via the UAE.

The department's investigation lacks a comprehensive examination at both the supplier's and the Pre-Shipment Inspection Agency's (PSIA) levels. Despite the meticulous selection process for appointing a PSIA, the expectation remains that such agencies operate with integrity. If the agency in question issued fraudulent pre-shipment certificates, it is unreasonable to expect the importer to have knowledge of the goods being sourced from a country other than the UAE, especially

when the sales order explicitly stated the goods would originate from the UAE. This situation underscores a significant gap in the oversight and accountability mechanisms expected of appointed agencies, absolving the importer of responsibility for the origins of the goods as described in the documents provided by the supplier.

The department's reliance on the statement of Shri Mukesh Agarwal, Partner of the importer, is noteworthy, as he unequivocally stated unawareness of the goods' origin from Pakistan. This request is rooted in the need to clarify the sequence of events and the handling of the containers, as well as to scrutinize the accuracy and completeness of the information provided by the dealing agent. This cross-examination is deemed crucial for establishing a transparent and thorough understanding of the situation, thereby allowing for an informed assessment of the allegations made. The importer would like to cross examine Manager of dealing agent.

Be that as it may, assuming without admitting that the supplier had supplied the goods originating from Pakistan and these goods were liable for Customs duty @ 200%. The importer would again like to say and submit that the goods were examined by the Customs officers at Mundra before giving out of charge. The officers also did not find any evidence to believe that the goods were originating from Pakistan, So in the given facts and the documentary evidences, the importer could least be expected to know the country of origin of goods being of Pakistan.

Now, since the goods have been cleared from Customs on payment of proper duty and used in recycling, it is not feasible for the importer to pay the differential Customs duty as is being demanded qua the present show cause notice as it will cause huge financial loss to the importer.

10.18 The provisions of **Section 28(4) of the Customs Act, 1962 are not applicable to the facts and circumstances in the present case.** There is no collusion between the importer and supplier for sending the goods originating from Pakistan in the guise of goods originating from UAE. This fact is not proved from whatever little documentary evidence has been produced on record by the department. There is no allegation in the show cause notice that the importer had any extra benefit of using scrap of Pakistan origin instead of UAE origin. The importer is giving in the subsequent paragraphs the quantum of scrap purchased every year from UAE and there has not been a single case booked by the department for evasion of Customs duty or the importer having imported scrap of Pakistan origin in the guise of UAE.

10.19 There is no willful mis-statement on the part of the importer. The bill of entry has been filed on the basis of documents received from the supplier. The Pre-Shipment Agency Certificate has been furnished as received from the supplier. The importer has been provided all the documents by the supplier including the photographs showing goods being loaded on the containers which disprove the theory of the department that 2 containers in question were not unloaded and loaded at Jebel Ali port in UAE.

There is no suppression of facts by the importer or their employees, as the photographs clearly show that the containers are empty and then loaded at Jebel Ali Port. Even otherwise, based on the documentary evidences provided by the supplier, there was nothing which could have led the importer believe that the goods were originating from Pakistan and therefore there is no question of importer having suppressed any facts from the department.

In fact, the importer would like to allege that the departmental agencies have failed to perform their duties well. The containers tracking was not the responsibility of the importer, as the importer had no idea of these 3 containers being transshipped to India via UAE, if the story of the department is to be believed which is based only on the basis of the fact that the container numbers and seal numbers were the same.

The NCTC has tracked the containers and informed the department after more than a year of containers having been cleared out of charge by Customs, now if the NCTC could track the containers after the clearance of goods from Customs, why this could not have been done by NCTC before the containers reached Mundra Port.

10.20 On the above basis, the department issued first summons on 04.02.2022 and the show cause notice is issued on 31.01.2024, almost 2 years after the department gained knowledge about short payment of Customs duty. It is a trite of law that the department has to issue show cause notice within one year of detection of offence. The period of five years is not available to the department for investigation and issuance of notice, but five years period is to cover the extended period for demanding duty short paid or not paid. We would like to place reliance on the decision of the Honorable Tribunal which is based on various judgments pronounced by the Honorable Apex Court, the decision is in the case of Advanced Spectra Tek Pvt. Ltd. Reported in 2019 (369) ELT 871 (Tri-Mumbai) wherein delayed demand notice issued has been set aside. Therefore, the demand notice is time barred in this case also.

The importer respectfully points out that the department's issuance of the show cause notice on January 31, 2024, nearly two years subsequent to the

first summons on February 4, 2022, raises significant legal questions regarding timeliness. As per established legal precedent, it is mandated that the department must issue a show cause notice within one year from the discovery of the alleged customs duty shortfall, highlighting a discrepancy in adherence to procedural timelines in this case.

This distinction is critical, as the statutory period of five years is intended to encompass the extended timeframe for the recovery of duties not paid or short-paid, and not for the protraction of investigative or notice issuance processes. In support of this argument, the Noticee wishes to draw attention to a pertinent decision by the Honorable Tribunal in the case of Advanced Spectra Tek Pvt. Ltd., reported in 2019 (369) ELT 871 (Tri-Mumbai). This ruling, reinforced by various judgments from the Honorable Apex Court, decisively set aside a delayed demand notice on the grounds of it being time-barred.

Given the precedence established by the aforementioned decision, the Noticee argues that the demand notice in the present case similarly falls outside the permissible statutory period and is, therefore, legally untenable. This assertion rests on the principle that procedural timelines are integral to ensuring fairness and certainty in legal processes, thereby safeguarding the rights of the parties involved against undue delay.

10.21 Specifically, the records indicate that the Noticee procured 15,167.322 MT of scrap in 690 containers in the year 2021-22; 17,601.955 MT in 800 containers in the year 2022-23 and 12,411.135 MT in 564 containers in the year 2023-24 (upto 31.12.2023). There is no case of the department against importer about any evasion of Customs duty. The present consignment is only 51.215 MT which is a meagre quantity as against our regular imports and there cannot be any moto to save Customs duty by importing 51 MT of scrap from Pakistan as against thousands of MT in past years from UAE origin. It is pertinent to note that, throughout these transactions, there has been no prior instance of the department raising concerns regarding customs duty evasion by the Noticee.

The disputed consignment, consisting merely of 51.215 MT, represents a fraction of the importer's typical volume of trade, underscoring the lack of motive for duty evasion on such a negligible quantity, especially when considered against the backdrop of the importer's substantial and compliant import history. This argument is put forth to challenge the notion that the Noticee would engage in elaborate schemes to evade customs duties on a relatively minor shipment, thus calling into question the basis and rationale of the allegations pertaining to this specific consignment. The importer's consistent compliance history and the proportional insignificance of the disputed consignment strongly suggest that the

motive attributed to the Noticee for duty evasion lacks both logic and evidentiary support.

Given the outlined facts, it becomes manifest that the allegations of collusion, fraud, or willful misstatement by the Noticee are unfounded. The crux of the department's case hinges on the tracking of container seal numbers via the PICT website, from which an assumption was made that the containers did not originate from the port of Jebel Ali, UAE. This assumption led to the application of the extended period under Section 28(4) of the Customs Act for the demand of duty on goods cleared on November 24, 2020. However, this invocation of the extended period is questionable since the normal statute of limitations has already elapsed, rendering the demand for duty time-barred.

Furthermore, the department's reliance on the statement of the importer's Manager, recorded under Section 108 of the Customs Act, to issue the show cause notice inadvertently makes this statement binding on the department itself. According to this statement, the Noticee was unaware of any misconduct by the supplier regarding the origin of the goods. This unawareness negates any possibility of collusion with the supplier, willful misstatement, or suppression of facts by the Noticee. Consequently, the extended five-year period for demanding duties on unassessed goods does not apply in this case, as the normal two-year period from the relevant date had expired prior to the issuance of the show cause notice.

10.22 In support of these arguments, the Noticee intends to cite various legal precedents established by courts, including the Tribunal, asserting that the criteria for invoking the extended period are consistent across Customs, Central Excise, and Service Tax laws. Thus, judgments pertaining to any of these duties are applicable to the others. It is crucial to emphasize that the provisions for the extended period should only be applied in exceptional cases where there is a deliberate intent to evade tax, as per the landmark judgment by the Honorable Supreme Court in the case of Tamil Nadu Housing Board reported in 1994 (74) E.L.T. 9 (SC). The pertinent extract from this judgment, underscoring the necessity of a clear intent to evade duty for the application of the extended period, reads as follows:

> *"3. Section Excise Officer to initiate proceedings 11A of the Act empowers the Central where duty has not been levied or short-levied within six months from the relevant date. But this period to commence proceedings under proviso to the Section stands extended to five years if the duty could not be levied or it was short-levied due to fraud, collusion, wilful misstatement or suppression of facts etc. The proviso to Section 11A reads as under :*
>
> *"Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud,*

collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder, with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words" Central Excise Officer", the words "Collector of Central Excise" and for the words "six months", the words "five years" were substituted."

A bare reading of the proviso indicates that it is in nature of an exception to the principal clause. Therefore, its exercise is hedged on one hand with existence of such situations as have been visualized by the proviso by using such strong expression as fraud, collusion etc. and on the other hand it should have been with intention to evade payment of duty. Both must concur to enable the Excise Officer to proceed under this proviso and invoke the exceptional power. Since the proviso extends the period of limitation from six months to five years, it has to be construed strictly. The initial burden is on the Department to prove that the situations visualized by the proviso existed. But once the Department is able to bring on record material to show that the appellant was guilty of any of those situations which are visualized by the Section, the burden shifts and then applicability of the proviso has to be construed liberally. When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In Padmini Products v. Collector of Central Excise 1989 (43) E.L.T. 195, it was held that where there was scope for doubt whether case for duty was made out or not, the proviso to Section 11A of the Act would not be attracted. The appellant is a statutory body. It had taken out licence for concrete as it was being sold to outsiders. No licence was taken out for wood products as according to it, it was advised so by the Excise Department itself. It would have been better if the appellant would have examined the officer who was advised not to take licence. But mere non-examination of officer could not give rise to an inference that the appellant was intentionally evading payment of duty. When the appellant was found not to have been making any profit and it had taken out licence for concrete unit then in absence of any other material to prove any deliberate act of the appellant the presumption of reasonable doubt of the appellant cannot be said to have been successfully rebutted. The finding of the Tribunal that there was an intention on the part of the appellant to evade payment of duty, is not based on any material. It was an inference drawn for which there was no basis."

This reference underscores the principle that the imposition of the extended period for duty demand requires a demonstrable intent to evade tax, a criterion not met in the present case according to the evidence and circumstances described.

The legal precedent set by the Hon'ble Supreme Court in Nestle India Ltd. vs. CCE [2009 (235) E.L.T. 577 (S.C.)] clearly articulates that the invocation of the extended

period of limitation necessitates a conduct beyond mere inaction or failure on the part of the assessee. There must be a deliberate or conscious act of withholding information by the assessee to meet the threshold of willful suppression. The essence of suppression implies a deliberate and conscious decision not to disclose a fact, with the intention of obtaining an unjust advantage. This interpretation underscores the principle that mere oversight or inaction does not equate to willful suppression or misstatement.

Furthermore, the judgment in CC vs. Tin Plate Co. of India Ltd. [1996 (87) E.L.T. 589 (S.C.)] reinforces this standpoint, establishing that suppression involves an intentional omission of facts aimed at wrongful gain. This precedent highlights the requirement for a positive act of deceit to constitute suppression.

Moreover, it is acknowledged within jurisprudence that matters involving interpretational discrepancies cannot be grounds for faulting the assessee. Interpretational issues, by their nature, suggest that there is room for legitimate disagreement on the application or understanding of the law, which cannot be construed as willful suppression or misstatement by the assessee. Therefore, in scenarios where the contention revolves around the interpretation of statutory provisions or policies, alleging suppression or misstatement against the assessee is unjustifiable.

These rulings emphasize that for the extended period of limitation to be applicable, there must be unequivocal evidence of an intentional act by the assessee to withhold information or misstate facts for the purpose of evading duty. In the absence of such evidence, the application of the extended period based on assumptions or interpretational disagreements is both legally unsound and contrary to the principles established by the highest court.

The Honorable Supreme Court, in the case of Jaiprakash Industries Ltd. Vs. Commissioner of Central Excise (2002) 146 ELT 481, has set a precedent that in instances of bona fide doubt regarding the non-excisability of goods, the extended period of limitation cannot be invoked. This is predicated on the absence of any evidence pointing to fraud, collusion, willful misstatement, or suppression of facts by the Department. Such a stance is crucial, underscoring that mere failure or negligence, such as not obtaining a license or not paying duty, does not suffice to justify the invocation of the extended period.

This principle is further supported by a series of judgments from the Honorable Supreme Court and various tribunals, demonstrating a consistent legal doctrine. For instance, the Supreme Court's decision in Padmini Products v. Collector of Central Excise (1989) 43 ELT 195 (S.C.), and similarly in M/s. Continental Foundation Joint Venture Vs. CCE (2007) 216 ELT 177, along with Pushpam

Pharmaceuticals Company Vs Collector of C. Ex., Bombay (1995) 78 ELT 401, and several others, affirm that a bona fide misunderstanding regarding statutory obligations does not equate to willful or fraudulent conduct warranting the application of the extended period for duty assessment.

These rulings collectively highlight a judicial consensus that for the extended period to be applicable, there must be concrete evidence of an intent to deceive or evade on the part of the assessee. Absent such evidence, the default position leans towards the normal period of limitation, emphasizing the importance of distinguishing between genuine errors or interpretative uncertainties and acts of deliberate evasion.

10.23 In essence, the jurisprudence surrounding the application of the extended period of limitation underlines a threshold for evidentiary requirements that necessitate more than mere oversight or interpretational errors to trigger the imposition of extended liability. This body of case law serves as a foundational element in arguing against the applicability of the extended period in situations where the conduct in question arises from a bona fide belief or understanding of the law, rather than from an intent to defraud the revenue.

The Noticee underscores that the principles of ignorance or misunderstanding applicable to them should similarly extend to the assessing officer in the context of the Customs Act. This argument draws upon the judgment of the Hon'ble Supreme Court in the case of CC v. N.M.K. Jewellers - 2008 (225) E.L.T. 3 (S.C.), which underscores the notion that both parties—the importer and the assessing officer—are subject to the same standards of knowledge and interpretation of the law. Further reliance is placed on the Tribunal's decision in CEV Engineering Pvt. Ltd. Jong Sung Kim v. CCE - 2014-TIOL-796-CESTAT-DEL = 2015 (38) S.T.R. 93 (Tri.), and the Supreme Court's decision in Jyanti Food Processing (P) Ltd. v. CCE - 2007 (215) E.L.T. 327 (S.C.), to reinforce this perspective.

The essence of these rulings is the recognition that, in cases where the law's complexity or ambiguity leads to genuine misunderstanding or ignorance on the part of the importer, the assessing officer, who is also navigating the same legal landscape, can similarly experience such challenges. This mutual vulnerability to the intricacies of the law suggests that penal actions, especially those predicated on the assertion of willful non-compliance or evasion, require careful consideration of the contexts within which decisions were made by both parties.

10.24 In light of these precedents, the Noticee submits that the impugned show cause notice is fundamentally flawed and should be dismissed on the grounds of limitation alone. This argument hinges on the assertion that the legal and factual matrix surrounding the case does not justify the invocation of the extended period

of limitation, particularly when considering the established legal benchmarks regarding ignorance and the bona fide interpretation of the law's requirements. This standpoint advocates for a balanced and equitable approach to assessing alleged violations, especially in complex regulatory environments where the potential for genuine misunderstanding is significant.

10.25 The allegation in paragraph 8.3 of the show cause notice, asserting that the Noticee knowingly and intentionally misrepresented the Country of Origin of the goods to evade customs duties, is challenged by the Noticee on the grounds of lack of prior knowledge. The submission includes a chronology of events and photographs provided by the supplier, demonstrating the containers' loading process, which collectively aim to prove the importer's lack of foresight regarding the goods' actual origin.

The assertion that the Noticee had prior knowledge and deliberately made false declarations to circumvent duty payments is a serious accusation that demands substantial evidence. The burden of proof rests with the department to present irrefutable evidence substantiating that the Noticee possessed prior knowledge of the goods' origin and that any misdeclaration was made with the intent of duty evasion.

Merely alleging prior knowledge without supporting evidence is insufficient for the imposition of penalties. The legal framework requires concrete proof of intent to evade duties for penalties under Sections 114A and 114AA of the Customs Act to be validly applied. In the absence of such evidence, proposing penalties based on assumptions or unfounded allegations is not justifiable.

10.26 The Noticee's defense, supplemented by documentary evidence, seeks to establish that any discrepancies in the Country-of-Origin declaration were not the result of willful deceit but rather stemmed from information provided by the supplier, on which the Noticee relied in good faith. Without clear and convincing evidence to the contrary, the proposed penalties under Section 114A and 114AA are not tenable, emphasizing the principle that penalties for duty evasion require a demonstrable intent to defraud, which has not been established in this case.

10.27 The Noticee contends that the burden of proof improperly shifted to them to demonstrate the goods' trans-shipment route from Pakistan to Jebel Ali, then to India, contradicts established legal principles. The Noticee has dutifully submitted all requisite documentation, including the Certificate of Origin (COO), freight certificates, Pre-Shipment Inspection Agency (PSIA) documents, and photographs evidencing the loading of the containers at the Jebel Ali port. These documents, furnished by the supplier, corroborate the Noticee's claim that the

goods were loaded at Jebel Ali, challenging the department's skepticism regarding their authenticity.

In legal terms, the principle that the onus of proof lies with the party asserting a fact is fundamental. This principle is supported by precedents such as Pr Commissioner of Income Tax vs. Daksha Jain (2018 11 TMI 1182), Gokuldas Exports vs. Jain Exports Pvt Ltd (2003 (157) ELT 243 (SC)), and Phoenix Mills vs. Union of India (2004 (168) ELT 310), which collectively emphasize that it is the responsibility of the Revenue to substantiate its claims with evidence—a requirement not met in this case.

10.28 Moreover, the Noticee highlights the absence of any contractual relationship with parties in Pakistan, noting that their agreement was with a supplier in Malaysia, as documented. The Show Cause Notice (SCN) does not allege any direct dealings between the Noticee and Pakistani exporters, nor does it assert the Noticee 's awareness of such connections. Consequently, the charge of knowingly submitting forged or bogus PSIC rests on unfounded assumptions rather than concrete evidence.

This position is further reinforced by legal precedents, such as the Hon'ble CESTAT's decision in Jupiter Dyechem Pvt Ltd vs. Commissioner of Customs (2023 (5) TMI 670) and Agarwal Industrial Corporation Ltd. Vs. Commr. of Cus. Manglore (2020 (373) ELT 280 (Tri-Bang)), where similar allegations regarding mis-declaration of the country of origin were overturned. These cases underscore the judiciary's stance that accusations must be substantiated by incontrovertible evidence, particularly when the Noticee has provided comprehensive documentation supporting their case.

Thus, the Noticee argues that the department's allegations, based on presumption and lacking in concrete evidence, cannot form the basis for demanding duty. The Noticee maintains that they have complied with all legal requirements and documentation procedures, and any allegations to the contrary should be dismissed for lack of substantiation.

The Noticee draws upon the precedent set by the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) in the case of Agarwal Industrial Corporation Ltd. vs. Commissioner of Customs, Mangalore reported in 2020 (373) ELT 280 (Tri-Bang), which presents a directly analogous situation. In this case, the Tribunal dropped the demands against the importer, recognizing several key factors that are pertinent to the current matter:

1. **Non-prohibited Goods**: The Tribunal noted that the goods in question, bitumen, were not prohibited under the Customs Act, the Foreign Trade Policy, or

any other law in force at the time of importation. Similarly, in the current case, the Noticee emphasizes that the goods imported are not prohibited or restricted.

2. **No Prohibition on Country of Origin**: It was acknowledged that there was no prohibition on the goods originating from Iran, under any applicable legislation or policy. This aspect mirrors the current scenario where the allegations are centered not on the legality of the goods themselves but on their declared country of origin.

3. **Absence of Allegations or Evidence against the Importer**: Crucially, the Tribunal found that no evidence or statements during the investigation implicated the appellant in manipulating or falsifying the country of origin documents. The appellant had declared the country of origin based on the documents provided by their UAE-based supplier, and no direct involvement in the misdeclaration was established.

4. **Lack of Incriminating Evidence**: The Revenue failed to produce any documents or evidence demonstrating the appellant's involvement in the alleged misdeclaration of the country of origin.

10.31 The Noticee relies on this decision to argue that, akin to the Agarwal Industrial Corporation Ltd. case, they too have not been implicated by any evidence or statements as being involved in changing or manipulating the country of origin documents. The declaration regarding the country of origin was made based on documents received from the supplier, without any proven or alleged involvement in their creation or modification.

This precedent underscores the principle that mere discrepancies in documentation, absent clear evidence of the Noticee's direct involvement in deliberate misdeclaration or manipulation, should not be grounds for punitive action. The Noticee asserts that this case further strengthens their position that the allegations and proposed penalties are unfounded and should be dismissed in the absence of concrete evidence to the contrary.

The Noticee challenges the demand for the Integrated Goods and Services Tax (IGST) amounting to Rs. 18,53,086/- on the import of goods, citing a misapplication of legal provisions. Specifically, the contention arises from the invocation of Section 28 of the Customs Act, 1962, for the demand of IGST, which is argued to be beyond the scope of this section given the definition of "duty" within the Act.

Section 2(15) of the Customs Act, 1962, explicitly defines "duty" as a duty of customs leviable under the act itself, thereby limiting its purview to customs duties and excluding IGST, which is governed by the IGST Act, 2017. The IGST, representing a component of India's comprehensive Goods and Services Tax (GST)

system, is distinct from customs duties and is levied under its own specific legislative framework.

10.32 The argument posits that Section 28 of the Customs Act, which pertains to the recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded, does not extend its reach to the IGST due to the statutory delineation of "duty" within the act. As such, the demand for IGST based on provisions within the Customs Act is characterized as legally unfounded.

Given this interpretation, the Noticee advocates for the quashing of the IGST demand, arguing that it has been improperly issued without the requisite legal foundation. This position underscores a critical examination of the legal bases for tax and duty demands, emphasizing the need for adherence to the specific legislative provisions governing different types of levies. The Noticee, therefore, seeks relief from the IGST demand on the grounds that it exceeds the statutory authority granted by the Customs Act, 1962.

The Noticee, while maintaining their stance on the previous submissions, seeks to present an additional, conditional argument. They highlight that had the department disclosed the issues regarding the origin of the goods at the time of the bill of entry assessment, the Noticee would have sought permission for the re-export of the containers, as per the provisions of Circular No. 100/2003-Cus dated November 28, 2003. This circular provides for the re-export of imported goods under certain conditions, potentially averting the imposition of high duties that render the import economically unfeasible, especially in cases where the duty rate is as prohibitive as 200%.

The Noticee emphasizes that paying a duty rate of 200% on the said goods is not commercially sustainable for any entity involved in the recycling industry. This perspective is supported by previous instances where the department, upon identifying discrepancies or issues at the assessment stage, has allowed importers to re-export the goods upon request. The Noticee references a specific Order-in-Original (OIO No.1/Pr.Commr/NOIDA-CUS/2022-23 dated April 7, 2022) from the NOIDA Customs Commissionerate as Exhibit-"J", which illustrates a precedent for such allowances.

This argument underscores a missed opportunity for remediation that could have been facilitated by the department's timely communication of concerns regarding the goods' compliance. It suggests that a collaborative and transparent approach during the assessment process could enable Noticee to rectify situations that may otherwise lead to significant financial and operational burdens due to the imposition of elevated duty rates or penalties. The Noticee thus implies that the department's handling of the situation did not adequately consider potential remedies available

within the existing regulatory framework, which could have mitigated the dispute's escalation.

10.33 The Noticee contends that the proposed confiscation of goods under Section 111(m) of the Customs Act is both arbitrary and unlawful, as highlighted in paragraph 8.3 of the notice, which acknowledges the unavailability of the goods for seizure. This acknowledgment implies that since the goods have already been cleared and are not physically available for confiscation, the legal basis for such action is untenable. Consequently, the Noticee argues for the dismissal of the proposal for confiscation on these grounds.

This argument is reinforced by various legal precedents established by courts, which stipulate that in instances where goods have been cleared from customs and are not available for physical confiscation, neither confiscation nor a subsequent redemption fine is justifiable. The legal principle underlying these rulings emphasizes the impracticality and illegality of confiscating goods that are no longer within the jurisdiction or control of customs authorities, essentially rendering any such action moot.

By citing these case laws, the Noticee seeks to underline the importance of adhering to established legal standards and procedures, arguing that any deviation represents a misapplication of the law. The Noticee's submission, therefore, challenges the proposal for penal action under Section 112 in the absence of the goods for confiscation, advocating for a reconsideration of the legal basis for such penalties in light of the goods' status and relevant judicial precedents.

The Noticee contends that the imposition of a penalty under Section 112 of the Customs Act, 1962, is contingent upon the lawful confiscation of goods under Section 111(m) of the same act. Given that the Noticee has previously argued against the confiscation of goods—primarily on the basis that the goods are no longer available for seizure—the logical extension of this argument is that penalties under Section 112 cannot be justified in this context. This stance is based on the principle that penalties related to the confiscation of goods should only be applicable when the confiscation itself is legally and procedurally valid.

Furthermore, the Noticee raises a procedural concern regarding the specificity of the show cause notice. Section 112 of the Customs Act comprises multiple sub-sections, each pertaining to different violations and circumstances under which penalties may be imposed. The Noticee points out that the show cause notice fails to identify the specific sub-section(s) under which the penalty is being proposed. This lack of specificity not only complicates the Noticee's ability to respond effectively to the allegations but also raises questions about the procedural fairness of imposing a penalty based on a vaguely worded or unspecified legal basis.

The Noticee's arguments underscore the importance of clarity and precision in legal proceedings, especially where penalties or punitive actions are concerned. The assertion is that, without a clear and direct invocation of the appropriate legal provisions, the imposition of a penalty lacks a solid legal foundation. This perspective appeals to the principles of legal clarity, due process, and the right of the accused to a fair and informed response to allegations made against them.

By challenging both the basis for confiscation under Section 111(m) and the specificity of the allegations under Section 112, the Noticee seeks to highlight procedural deficiencies and legal inconsistencies in the show cause notice, arguing for the dismissal of the proposed penalty on these grounds.

10.34 The Noticee argues against the imposition of penalties under Sections 114A and 114AA of the Customs Act, 1962, on grounds that the requisite legal conditions for such penalties have not been met.

The Noticee submits that Section 114A, which pertains to penalties for collusion, wilful misstatement, or suppression of facts leading to non-payment or part-payment of duty, is inapplicable in their case. They emphasize that their earlier submissions clearly demonstrate the absence of any such conduct. Specifically, the Noticee has consistently argued that there was no intent to deceive or withhold information from the customs authorities, and all actions taken were based on the documents and information provided by their suppliers. The lack of any willful misstatement or suppression of facts, as per their claim, negates the foundation upon which penalties under Section 114A could be imposed.

Regarding Section 114AA, which concerns penalties for knowingly producing false documents or making false statements, the importer contends that this proposal is baseless and erroneous due to the absence of concrete evidence indicating any knowing or intentional wrongdoing on their part. They highlight the financial and reputational costs incurred in seeking legal redress against these allegations, further arguing that their actions have not constituted any offense warranting penal action under this section.

10.35 The Noticee references the judgment of the Honorable Supreme Court in the case of Shri Ram & Anr. vs. State of UP (AIR 1975 SC 175), where it was established that for abetment to be proven, there must be intentional aid given to the commission of a crime. Drawing a parallel, the Noticee asserts that the department has failed to produce any evidence that the Noticee had prior knowledge of the goods' origin or engaged in any attempt to evade customs duties through misdeclaration. This absence of evidence, according to the Noticee, further undermines the justification for imposing penalties under Section 114AA.

These arguments collectively aim to refute the basis for the proposed penalties, emphasizing the need for evidence of intentional wrongdoing for such penalties to be legally justified. The Noticee's defense underscores a principle of fairness and due process, asserting that penalties should only be levied when there is clear and convincing evidence of deliberate attempts to violate customs regulations.

10.36 The Noticee expresses a desire to conduct cross-examinations of key individuals involved in the investigation and handling of the consignment in question, aiming to clarify critical aspects of the case and strengthen their defense. Here's a breakdown of the request:

Cross-Examination of Investigating Officers

The Noticee seeks to question the investigating officers to understand the expectation placed on Noticee's to monitor container movements on foreign websites, especially when no orders were placed for goods originating from the country in question (Pakistan in this case). This line of inquiry aims to probe the responsibilities for tracking such shipments and the mechanisms in place to alert the relevant authorities, including why the department was not informed about the containers' arrival at Mundra port at the time of bill of entry filing.

Cross-Examination of Shri Dhawal Rameshbhai Rawal, Operation Manager of M/s Winwin Maritime (Mundra) shipping line agent.

Further, the Noticee requests to cross-examine Shri Dhaval R. Raval, Manager of M/s Winwin Maritime shipping line, delivery agent. These examinations aim to uncover details about the shipment's routing, documentation, and any possible discrepancies or miscommunications that may have led to the current situation.

11. M/s Winwin Maritime Limited (Shipping Line) Noticee No. 2 submitted their written submission vide letter dated 25.05.2024 wherein they interalia stated that:

11.1 Reply against allegation/ Charge against Winwin Maritime as per the SCN.

For convenient understanding, paragraph 8.5 of the SCN is extracted below.

> *8.5. It further appears that it was in the knowledge of M/s Winwin Maritime Maritime Limited, Gandhidham and was having all the documents for the fact that the goods were loaded at Karachi Port whereas another Bill of lading was prepared for giving the impression that the goods were supplied from Jebel Ali and therefore, it further appears that by their said act of omission and commission which led to evasion of duty and caused loss to Government revenue, M/s Winwin Maritime Maritime Limited, Gandhidham has rendered themselves liable*

*for imposition of penalty under Section 114AA and 117 of Customs Act, 1962.*The following specific replies are given against the above charges alleged against Winwin Maritime;

i. Winwin Maritime has not accepted cargo bookings at the port of origin for the importer.

ii. Winwin Maritime has not issued the Bills of Ladings (Original or Switch) to the exporter or importer.

iii. Only when Winwin Maritime called for the documents from Port of Loading, as required by SIIB, pursuant to the investigation, Winwin Maritime get the knowledge regarding the existence of the switch bill of lading.

iv. The importer has secured the PSIC, and certificate of origin and on the strength of the same has declared the port of origin in the Bill of Entry and paid duty accordingly. Winwin Maritime has not participated in any of the said activities.

Reply to the allegation of violation of section 114AA of the Customs Act.

11.2 That penalty under Section 114AA of the Customs Act, 1962 was introduced primarily to cover cases of bogus/fraudulent exports without any documents and cases where goods were not available for seizure/ confiscation; that imposition of penalty under Section 114AA after imposing penalty under section 112 amounts to double jeopardy. Section 114AA of the Act is extracted hereunder for quick reference.

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

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

11.3 Winwin Maritime did not make any false statements, documents, or declarations before Customs authorities. Hence, penalties under Section 114AA, which apply to cases where export benefits are claimed using forged documents without actual export, are not applicable.

11.4 Section 114AA was intended to penalize those who claim export benefits without exporting goods, as discussed in the Twenty-Seventh Report of the

Standing Committee on Finance. The section aims to address serious criminal intent in fraudulent export benefit claims, not duty evasion cases.

11.5 Even if Section 114AA were to cover imports, it would only apply to misdeclarations made for the purposes of the Customs Act, which focuses on revenue augmentation and trade regulations. Responsibility for such declarations lies with the consignee who files the statutory Bills of Entry.

11.6 The Bill of Entry, a crucial document filed during imports, contains critical information that the importer must declare. The accuracy of this document is essential and is reviewed during personal hearings.

11.7 To invoke Section 114AA and impose a penalty, the specific offence must be established. This section combines various elements that must be proven to determine guilt or innocence.

11.8 Winwin Maritime acted as an agent under the Indian Contract Act, 1872. Their role in issuing delivery orders was part of the contractual obligations under the Contract Act, Bills of Lading Act, or the Carriage of Goods by Sea Act.

11.9 Winwin Maritime did not abet duty avoidance or provide false declarations regarding the consignment, and thus penalties cannot be imposed on them.

11.10 Reply to the allegation under Section 117 of the Customs Act, 1962.

Section 117 of the Customs Act, 1962 reads as:

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

i. Winwin Maritime Maritime has not acted in contravention of the provisions of the Customs Act, of 1962.

ii. Invocation of penal provision u/s 117 shows the same has been incorporated without any valid or legal grounds. This suggests that the incorporation of this provision lacks justification or support according to established legal principles or regulations. In essence, it implies that the reference to section 117 as a punitive measure lacks proper legal reasoning or justification.

11.11 For the said reasons and in the above circumstances, Winwin Maritime has acted only as the Indian delivery agent of the disclosed Principal and has not declared the port of loading in the EDI system for assessment and payment of duty and hence is not liable for imposition of penalty under Section 114AA and Section 117 of the Customs Act, 1962.

11.12 In the above circumstances, they humbly consider this as their reply to the subject SCN and request to;

a. Set aside the show cause notice against M/s. Winwin Maritime Limited; and
b. Drop the allegations and charges framed against M/s. Winwin Maritime Limited under the subject Show Cause Notice; and
c. Not to impose any penalty upon M/s. Winwin Maritime Limited, as the agent for the alleged violations of any of the provisions of the Customs Act 1962 or any other applicable law; and
d. To give an opportunity of personal hearing, to provide further clarifications required, before this authority during adjudication of the subject SCN and pass orders accordingly;
e. Allow us to leave, alter, amend, or modify our submission till the time the matter is decided; and
f. To permit cross-examination of necessary witnesses/representatives of the importer and the vessel operator or their agent; and
g. To pass any other relief as may be pleased by the Hon'ble Authority.

11.13 Further, the Noticee M/s WINWIN Maritime Ltd. Vide letter dated 21.11.2024 submitted their additional reply in which they interalia stated that:

a) Winwin Maritime had no knowledge (mens rea) of the issuance of first-leg bills of lading, switch bills of lading, or the factum of transshipment. Consequently, the imposition of penalties under the cited sections is contrary to the Commissioner's own findings and is both illegal and unsustainable.

b) The Commissioner has failed to appreciate the scope of the agency relationship between Winwin Maritime and M/s. Meridian Lines. Winwin acted solely as the Indian agent of M/s. Meridian Lines and had no control over, knowledge of, or participation in any overseas activities conducted by Meridian or their other agents.

c) Winwin Maritime did not issue any bill of lading on behalf of the delinquent shipping line, M/s. Meridian Lines, or the people in charge of the vessels in question. All the bills of lading involved were issued by a separate juristic entity, and such issuance occurred outside India.

d) The bills of lading in question were issued at foreign ports by a distinct juristic entity on behalf of M/s. Meridian Lines. In these bills, Winwin Maritime is mentioned solely as a delivery agent in India. As such, the delivery agent appointed for operations within India has no role until the goods are discharged at an Indian port following customs clearance

e) Winwin Maritime's agency relationship with M/s. Meridian Lines is strictly limited to operations within the territorial jurisdiction of India. Consequently, no liability can be imposed on Winwin for any actions or omissions of M/s. Meridian Lines relating to the issuance of first-leg bills of lading, switch bills of lading, transshipment, or concealment of the port of origin of the goods—activities that occurred outside the territorial waters of India.

f) Winwin Maritime did not file any Import General Manifests (IGMs) for the vessels in question with the Customs Authorities. These manifests were filed by the respective vessel agents. The findings to the contrary are factually incorrect.

g) That the Show Cause Notice in question has been issued beyond the statutory period of two years as prescribed under Section 28(1)(a) of the Customs Act, 1962. Under the said provision, where non-levy or short levy of duty is not attributable to collusion, willful misstatement, or suppression of facts, the notice must be issued within two years from the relevant date.

h) It is observed that, notwithstanding the above, the current Show Cause Notice has been issued under Section 28(4) of the Act, thereby invoking an extended period of limitation. However, the Notice does not establish any case of wilful misstatement or suppression of facts, which is a necessary precondition for invoking this extended limitation period.

i) In light of the foregoing, it is clear that the Winwin company bears no responsibility for the actions of M/s. Meridian Lines or their agents in relation to the issuance of the first-leg bills of lading, switch bills of lading, or the transshipment of goods. The findings of the Commissioner, based on a misapprehension of the agency relationship and the scope of Winwin's involvement, are legally flawed and unsustainable. Furthermore, the Show Cause Notice issued beyond the prescribed statutory period, without substantiating the essential elements of collusion, willful misstatement, or suppression of facts, is invalid. Therefore, it is respectfully requested that the Show Cause Notice be quashed and any penalty or liability imposed on Winwin be dismissed as legally untenable.

12. RECORD OF PERSONAL HEARING:

'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order, Therefore, Noticees were given first personal hearing on 14.11.2024 and second personal hearing on 09.12.2024. Details of the personal hearing held are given as under:

1st Personal Hearing held on 14.11.2024:- Noticee No. 1, M/s Krishna Recycling Industries had sought an adjournment vide letter dated 05.11.2024. From Noticee No. 3, M/s Asia Inspection Agency Co. Ltd., No communication was received. However, Noticee No. 2, M/s WINWIN Maritime Pvt. Ltd through their authorized representative appeared for personal hearing and stated that:

> M/s. Winwin Maritime Private Limited operates as the Indian delivery agent for M/s. Meridian Lines, a principal based overseas. The Customs Department issued a Show Cause Notice (SCN) alleging violations under Sections 114AA and 117 of the Customs Act, 1962 against Winwin. Further, she stated that as an Indian delivery agent, the company's responsibilities are limited to:
>
> a. Compiling the received information to facilitate the vessel operator in filing the Import General Manifest (IGM).
>
> b. Issuing delivery orders upon receiving surrendered bills of lading and local charges from consignees.
>
> **That Winwin Maritime did not:**
>
> i. Participate in booking cargo at the port of origin nor received any export bookings from overseas.
>
> ii. Issue bills of lading.

iii. Engage in freight collection or declarations made by importers in Bills of Entry.
iv. Assisting the consignee/importer in customs and cargo clearance.

She read para 8.5 of Show Cause Notice. She stated that only after receiving the summons, Winwin coordinated with their principal with regards to the subject shipments and obtained the documents which were submitted to the department. Winwin did not had any previous knowledge about the previous/first leg bills of lading.

Further, with regards to the penalties imposed under Section 114AA, she stated that the said provision penalizes the use of false documents to claim export benefits without actual export. The provision is designed to address fraudulent intent and serious criminal conduct, as discussed in the 27th Report of the Standing Committee on Finance. Winwin Maritime has neither prepared nor submitted false declarations, statements, or documents before Customs authorities. The company only became aware of the existence of the switch bill of lading during the investigation, upon obtaining documents from its principal as requested by the authorities.

And that Section 117 applies to contraventions of the Customs Act where no specific penalty is prescribed. She argued that no provision of the Customs Act was contravened, as its role was limited to facilitating vessel operators in filing IGMs. It is reiterated that Winwin had no prior knowledge of these documents, which only surfaced at a later stage.

Further it was humbly prayed by her for dropping of all allegations and charges framed under the SCN and removal of proposed penalties under Sections 114AA and 117 of the Customs Act, 1962. She asked for one week's time to submit the additional submissions and argument notes.

2nd Personal Hearing held on 09.12.2024:- Noticee No. 3, M/s Asia Inspection Agency Co. Ltd., neither appeared nor sought any adjournment. However, M/s Krishna Recycling Industries appeared for personal hearing through its authorized representative and stated that:

"the issue involved in the case that the containers were likely travelled from Karachi to Dubai and the Indian importer imported the goods from Dubai to India and the issue is on this line only is that is 200% of duty issue. Further, they added that there is case of overwritten seal numbers. Further they

added that M/s Krishna Recycling Industries imports hundreds of containers per year since last few years. So, importing one container, it cannot be the intention to have any benefit. Especially in the scrap, the margins are hardly 5% and in some of the material duty is 0%. So there should not be any point to import scrap from Pakistan instead of Dubai.

Further, they added that what is another thing that is transpired that this information had at the time of clearance it would have been notified to them, they would have re-exported. In another case at Mudra port itself, they have got a favorable order because it was a live consignment. Now here in this case, what has happened that information is culminated into Show Cause Notice after more than one year. So it is not possible for them to re-export because the goods are already melted and used."

13. Discussions and Findings

13.1 I have carefully gone through the impugned **Show Cause Notices** SCN No. GEN/ADJ/COMM/55/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 31.01.2024 issued by the Pr. Commissioner of Customs, Custom House, Mundra, relied upon documents, legal provisions and the records available before me. The main issues involved in the case which are to be decided in the present adjudication are as below whether:

(i) Classification of 51215 Kgs of "Stainless Steel Melting Scrap Grade 201" imported in Container No(s). GRMU2031056, TCKU3652030 and TDRU2902074 covered under Bill of Entry No. 5415461 dated 13.09.2021 under Chapter Tariff Heading No. 72042190 is liable to be rejected & the same is liable to be classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

(ii) 51215 Kgs of "Stainless Steel Melting Scrap Grade 201" imported in Container No(s). as detailed in point no (i) valued at **Rs. 32,17,163/-** ***(Rupees Thirty-Two Lakh Seventeen Thousand and One Hundred Sixty-Three Only)*** are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

(iii) The Customs Duty of **Rs. 89,30,844/-** (BCD@200%; SWS@10% & IGST@18%) ***(Rupees Eighty Nine Lakh Thirty Thousand Eight Hundred and Forty Four only)*** is liable to be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Further, the Customs Duty of Rs. 5,79,089/-already paid by the importer against the said Bill of Entry is liable to be appropriated.

(iv) Importer is liable to be penalised under the provisions of Section 112 and/or 114A, 114AA of the Customs Act, 1962.

(v) M/s Winwin Maritime Limited, Gandhidham is liable to be penalised under Section 114AA and 117 of the Customs Act, 1962.

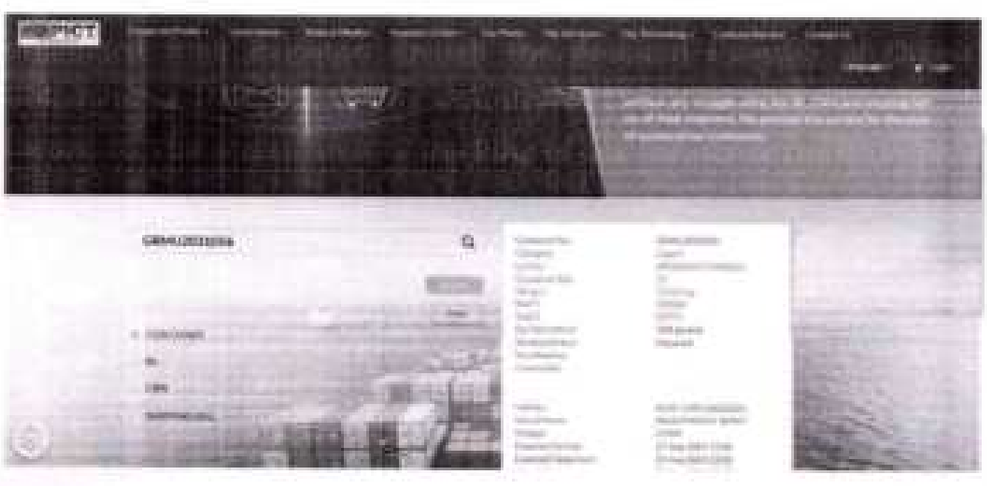
(vi) M/s Asia Inspection Agency Co. Ltd the Pre-shipment Inspection Agency is liable to be penalised under Section 114AA of the Customs Act, 1962.

13.2 After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is as to whether the goods imported by M/s. Krishna Recycling Industries are mis-classified under customs Tariff Item 72042190 and the same is to be re-classified under Customs Tariff Item 98060000.

13.3 Rejection of classification and re-classification of Goods

(i) I find that in present case the dispute of classification has arisen solely on the basis of origin of goods. The Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted a specific entry "9806 00 00" in Customs Tariff Act, 1975 which stipulates that all goods originating in or exported from the Islamic Republic of Pakistan shall be classifiable under Custom Tariff Item "9806 00 00" in Chapter 98 of Section XXI, in the First Schedule to the Customs Tariff Act, 1975. The show cause notice alleges that the goods originated in Pakistan, therefore, it is correctly classifiable under Customs Tariff Item-98060000.

(ii) I find that that information was received stating that Pre-Shipment Certificate in the BE No. 5415461 dated 13.09.2021 is bogus, as the containers were not opened and goods were not inspected and the container tracking on PICT (Pakistan International Container Terminal Limited) divulged that the container had originated from Pakistan though the declared Country of Origin and Port of Shipment is UAE, hence the Country of Origin declared by the Importer seems incorrect. The screen-shot of tracking of one container i.e. GRMU2031056 at PICT website was also forwarded, which is reproduced below for reference: -



iii) Based on the information, summons were given to M/s Winwin Maritime Limited (Mundra), Gandhidham and during statement, Shri Dhawal Rameshbhai Rawal, Operation Manager of M/s Winwin Maritime Limited submitted copy of Load Port Bill of Lading No. KJEAMR02548 dated 29.08.21, KJEAMR02550 dated 29.08.21 and KJEAMR02551 dated 29.08.21. He further stated that these containers were loaded from Karachi to Jebel Ali and thereafter transshipped from Jebel Ali to Mundra vide BL No. 02548-3 dated 31.08.21. The details and comparative chart of Bill of Ladings provided by the delivery agent M/s. Winwin Maritime Limited Gandhidham with BL No. 02548-3 dated 31.08.21 has been shown in para 4.2.

iv) I find that documentary evidence in the form of Bills of Lading no. KJEAMR02548 dated 29.08.21, KJEAMR02550 dated 29.08.21 and KJEAMR02551 dated 29.08.21. for transport of "SS Melting Scrap Grade 201" in Container no. GRMU2031056, TCKU3652030 and TDRU2902074 from Karachi Port to Jebel Ali revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to Jebel Ali, UAE. The above said Bills of Lading show that the Container Nos. GRMU2031056, TCKU3652030 and TDRU2902074 bearing seal no. 304386, 304392 and 304356 respectively have left from PKKHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 29.08.2021 on board the vessel "Independent Spirit". The Container numbers and seal numbers shown in Bill of Lading matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates.

v) I find that Shri Dhawal Rameshbhai Rawal, Operation Manager of M/s. Winwin Maritime Limited (Mundra), Gandhidham, in his statement dated 08.01.2024 recorded under Section 108 of the Customs Act, 1962 stated that all containers were loaded from Port of Karachi to Jebel Ali in the Vessel Independent Spirit and thereafter said containers were trans-shipped from Jebel Ali to Mundra in Vessel Cape Moreton vide BL No. 02548-3 dated 31.08.2021 and the containers were not opened at Jebel Ali for any purpose and they were trans-shipped from Jebel Ali to Mundra as received from Karachi to Jebel Ali. I find that on the same containers, the same seals were found intact, when the container left Karachi Port and landed at Mundra Port, via Jebel Ali. This sufficiently makes it clear that the goods "SS melting Scrap 201" was loaded on Karachi port, on the containers GRMU2031056, TCKU3652030 and TDRU2902074 with seal Nos. 304386, 304392 and 304356 respectively, and the same were unloaded directly at Mundra Port. The chronology of dates also indicates clearly that the goods were loaded at Karachi for onward movement to Mundra via Jebel Ali. The fact that documentation was so created to camouflage the origin Port again is confirmatory that goods were of Pakistan origin.

vi) I find that importer has submitted PSIC No. Asia/2021/1800553 dated 29.08.2021 wherein it has been mentioned that the issuing agency visually inspected the consignment in Sharjah, UAE for nine hours and certified that the goods are metallic scrap and does not contain any symbol related to ionizing radiation or any marking related to transport of dangerous goods classified as class 7. Further, they also declared that goods didn't contain any arms, ammunition and radiations were well within range. As evident from the documents, the containers were never opened in the route from Karachi, Pakistan to Jebel Ali, UAE and thereafter from Jebel Ali, UAE to Mundra, it can be concluded that the goods were never inspected by PSIA and the PSIC produced is fake/forged/bogus in nature. The same was just created to camouflage the country of origin/port of export

vii) I find that Noticee in his submission dated 10.04.2024 has contended that department has not been able to prove that exports were from Pakistan. Here, Noticee has failed to appreciate the fact that besides documentary evidences in the form of Bills of Lading, the container tracking details which are relied upon in Notice also suggests that goods were loaded from Karachi, Pakistan. The forged/bogus PSIC (discussed in above para) submitted by Noticee also substantiates the same stories. There is not even an iota of doubt that the goods were exported from Pakistan. Hence, the contention made by Noticee is not sustainable here. Further, Noticee has contended that department has not been able to clear whether goods were originating from Pakistan or exported from Pakistan. In this regard, as per Bill of Lading data and container detail it has been proved beyond doubt that goods are exported from Pakistan. Further, in the Bill of Lading issued at Karachi Port, Form No. E has been mentioned. Form E is the **export declaration form** which is used for export purpose in Pakistan, where exporter declares that this shipment is being processed against the foreign exchange. Hence, from this it is clear and evident that goods have been exported from Pakistan only. In both the case either goods being exported or originated from Pakistan Basic Customs duty @200% is applicable. Hence, the contention raised by Noticee appears to be of no relevance and just to divert the adjudication proceedings.

viii) Further, Noticee has contended that in some other file on the same matter, there is an email communication made by NCTC, which is the very basis of the investigation in the present case. There is no mention of actual Country of Origin. Here, again Noticee has failed to appreciate that in the last paragraph of email communication, it is clearly written that the consignment is of Pakistan Origin. Further, Noticee has contended that in the same email communication for another importer M/s Alang Auto & General Engg. Co (P) Ltd, seal no. has been repeated for two containers pertaining to Bill of Entry No. 9659743 dated 21.11.2020 which is

not possible. I find the same to be a clerical mistake. I have the copy of Bill of Lading wherein the seal no has been categorically mentioned i.e. for Container Nos. PRSU 2141199 seal No. is 095878 and for PCLU 2010527 seal no is 095894. Further, in the electronic record of Bill of Entry the seal no has been found as per Bill of Lading. Hence, the contention made by Noticee here has no force and is just to deviate and mis-lead the adjudicating process.

ix) Noticee has contended that there is no action initiated by the Customs department nor there any recommendation by the Customs department to DGFT for cancellation of the authorization of M/s Asia Inspection Agency Co Ltd for allegedly issuing fake PSIC and not responding to the summons issued by the Customs department. Here again Noticee has failed to appreciate that in the Show Cause Notice itself it is mentioned that letter to DGFT has already been forwarded to initiate action against the PSIA. Further, Noticee has contended that they have limited capacity to verify the PSIC and their role is to ensure compliance with regulatory requirements through the submission of these documents at the time of entry. The allegation overlooks the procedural adherence by the importer to the stipulated norms and the inherent expectation of genuineness in the documents received from the supplier. I find that in the statement dated 13.06.2022 representative of Noticee stated that they have even not appointed PSIC and just relied on the documents given by supplier. From this, it is clear that Noticee has not been diligent as required since inception of import and has even no intent to verify the genuineness of the PSIC. I find that as per Handbook of procedures para 2.53 responsibility of PSIA, Importer and exporter has been fixed. The same is reproduced as below:

2.53 Responsibility and Liability of PSIA and Importer

(a) In case of any mis-declaration in PSIC or mis-declaration in the online application form for recognition as PSIA, the PSIA would be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended, in addition to suspension/ cancellation of recognition.

(b)The importer and exporter would be jointly and severally responsible for ensuring that the material imported is in accordance with the declaration given in PSIC. In case of any mis-declaration, they shall be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended.

Further, it is pertinent to mention here that as per Section 46 (4A) of the Customs Act, 1962, Importer has to verify the authenticity of documents submitted by them.

In view of the above, I find no force in the contention that they are not responsible for genuineness of the documents submitted by them.

x) Noticee has contended that the documents received from supplier indicates that goods are of UAE Origin. It is the supplier who is responsible as the importer would not have known this fact from the said invoice. I find that here Noticee has not appreciated the fact that as per section 46 (4A), they are responsible to verify the authenticity of documents. Their statement that they didn't appoint PSIA shows that they have not even intended to verify the genuinity. DGFT in trade notice has made Importer responsible for the genuinity of PSIC. So by just saying that they have filed B/E on basis of documents supplied by overseas supplier, they can't run away from the responsibility assigned to them as per the provisions of Customs Act, 1962. Hence, the contention of the Noticee is not sustainable.

xi) Noticee in his written submission has sought cross examination of the following person:

a) Investigation Officer- Noticee has sought the cross examination of investigation officer to question the expectation placed on Noticee to Monitor container movements on foreign websites. The Noticee has also sought cross examination on the ground that no action was initiated against PSIA. In this regard, I observe that it was not only the container tracking details, which was relied upon in the investigation. The forged PSIC and Bills of lading were also the key factors in determining the fact that goods were exported from Pakistan. I find that as per the provisions of Section 46 (4A), the Importer has to verify the authenticity of documents submitted to customs authority. If they are declaring the country of origin as UAE, then they have to be responsible for genuineness of Country of Origin Certificate. By just saying that documents were provided by overseas supplier, and they relied on them, can't save them from the penal consequences as per Customs Act, 1962. Further as per section 46 (4) they have to submit a declaration about the truth and content of the Bills and documents supporting the same. In the statement dated 11.04.2022, Shri Mukesh Agarwal, Partner of M/s Krishna Recycling Industries, stated that they have not even appointed the PSIA for issuance of PSIC. Hence despite knowing the fact that they have not verified the authenticity of documents, they have given declaration under section 46(4) as to truth of the contents of Bill of Entry. It is evident that provisions of section 46 of Customs Act, 1962 itself imparts responsibility to Importer for verification of authenticity and genuineness of documents/ declaration/any information provided by them. Accordingly, I find that the officer has worked within the ambit of provisions of Customs Act, 1962. Further, the second allegation that Officer has not initiated the action against PSIA is also not sustainable as the Show Cause Notice para 4.6 explicitly mentions that the letter has been sent to DGFT for taking the required action against PSIA. Hence, I find that the grounds mentioned by Noticee for cross examining the Investigation Officer are devoid of merit and appear insufficient.

b) Shri Dhawal Rameshbhai Rawal- Noticee has requested to cross examine the above person on the ground to uncover the details about shipment's routing, documentation, and any possible discrepancies or miscommunication. I find that the documents i.e. Bills of lading provided by Shri Dhawal Rameshbhai Rawal, Operational Manager of M/s Winwin Maritime Ltd during statement recorded under Section 108 of the Customs Act, 1962 has already been relied upon in the Show Cause Notice and their authenticity and legality have not been challenged by the Noticee in their written submission. So there is nothing to uncover the details about shipment routing which is already well established through Bill of Lading and Container Tracking details. Therefore, I find that the grounds for cross examination is vague/unclear and based on assumptions. It appears rather with a motive to delay and mis-lead the adjudication process.

c) I observe that when there is no lis regarding the facts but certain explanation of the circumstances, there is no requirement of cross examination. Reliance is placed on Judgment of **Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273]**, as follows:

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

Therefore, I find that cross examination in the instant case is not necessary. The same has not been sought citing valid reasons and appears to be sought with a motive to mislead and deviate the adjudication process.

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

e) I find that in the instant case there remains no scope of ambiguity for a man of prudence. Therefore, I observe that no purpose would be served to allow cross

examination of such person as same has been sought only with the motive to protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

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

ii) Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.

iii) Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):- wherein it has been observed that cross-examination not to be claimed as a matter of right.

iv) Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9).

v) Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261) ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

xii) From the facts and evidences on the records as discussed above, I find that the Container Nos. GRMU2031056, TCKU3652030 and TDRU2902074 bearing seal nos. 304386, 304392 and 304356 respectively were not opened at Jebel Ali as the seal affixed at Karachi Port is found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin etc. were forged. The Containers were actually loaded from Karachi Port and it has reached Mundra via Jebel Ali and the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan as

also evident from the container tracking details. Thus, it is beyond doubt that 51215 Kgs of Stainless Steel Melting Scrap Grade 201, loaded in the containers no. GRMU2031056, TCKU3652030 and TDRU2902074 was exported from Islamic Republic of Pakistan.

xiii) In the above para, I have held on the basis of available documents and evidences that the impugned goods imported under the Bills of Entry bearing no. BE No. 5415461 dated 13.09.2021 were of exported/originated from Pakistan, now I proceed to classify the said goods:

I find that Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted tariff item 98060000 in Ch. 98 of the First Schedule to Customs Tariff Act, 1975. The relevant portion of the Notification 05/2019-Customs dated 16.02.2019 is produced hereunder for sake of clarity: -

"In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

1	*2*	*3*	*4*	*5*
"9806 00 00	*All goods originating in or exported from the Islamic Republic of Pakistan*	*-*	*200 %*	*-"*

I find that the classification adopted by the importer of the impugned goods under Customs Tariff Item 72042190 is not correct and the same is correctly classifiable under Customs Tariff Item 98060000 of Customs Tariff Act, 1975 in terms of Notification No. 05/2019-Customs dated 16.02.2019 as the goods imported by them has originated/exported from Islamic Republic of Pakistan.

13.4 Confiscation of the impugned Goods

a) Now, I proceed further to discuss the second issue to be decided. As far as confiscation of goods are concerned, I find that Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

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

b) As discussed in above para, the goods were mis-declared in terms of classification and Country of Origin, hence the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

c) The Noticee in his submission dated 10.04.2024 has contended that since the goods have already been cleared and are not physically available for confiscation, the legal basis for such action is untenable. I find that this position has already been settled in case of ***Dadha Pharma Private Limited vs Secretary to Govt of India 2000 (126) E.L.T. 535 (Mad),*** the Hon'ble High Court categorically held that:

"A careful reading of the sections would clearly show that it is the liability to confiscation that is spoken to and not the actual confiscation. Therefore, it would mean that the power to adjudicate upon for the imposition of penalty for improper importation, springs from the liability to confiscate, and not actual confiscation. This is because not only Section 110 occurs under a different chapter, but the purpose of that section relates only to seizure about which I have already noted. There again the words are "any goods are liable to confiscation under this Act." ***Merely because the department by reason of its inaction is not in a position to seize the goods, does not and cannot disable it adjudicating upon the liability for action under Section 111 read with Section 112 of the Act.*** *In other words, the language of both the sections above referred to does not warrant the actual confiscation, but merely speaks of the liability of the goods being confiscated. This is the plain and most unambiguous meaning of the phraseology 'liable to confiscation' spoken to in these two sections."*

I am fortified in my conclusion by referring to Collector of Customs and Central Excise v. Amrutalakshmi, AIR 1975 Mad., 43 and Munilal v. Collector, Central Excise, Chandigarh, AIR 1975 Punj. and Haryana 130. In both these cases, though this line of interpretation has not been adopted, it has been categorically found that having regard to the scope of these two sections viz. Section 110 on the one hand and Section 111 read with Section 112 on the other, being independent of each other, seizure is not necessary for confiscation. This will be an added reasoning to any conclusion. Therefore, the second point raised by the petitioner also has to be rejected."

Hence, from above decision of Hon'ble High Court and plain reading of Section 111, it is clear that liability of confiscation of a goods and actual confiscation of goods are different things. Once, the goods are found violating the relevant provisions of Customs Act, 1962, the liability of confiscation arises as per Section 111 of the Customs Act, 1962 and the physical availability of goods or seizure doesn't alter this position.

In view of the above discussions, I find that the impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Applicability of Redemption fine-

As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid reads as under:-

*"**Section 125**. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act*

or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

Provided *that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [3] [no such fine shall be imposed]:*

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

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

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

Explanation.*-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]*

first proviso which was introduced vide Finance Act, 2018 which says that *where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply.* Behind the proviso, there is an assumption that goods become liable for confiscation when there is demand under Section 28. Interestingly, the liability to confiscation is assumed to arise even in cases that do not involve an extended period of limitation not being cases of collusion or willful mis-statement or suppression of facts.

At this point, one has to understand that there cannot be a demand of duty, where the goods are seized and are in the possession of the government. It is a basic principle that goods and duty travel together. Thus, when the goods are in the possession of the government having been seized, there cannot be a demand for duty. Duty payment, even differential duty payment arises when the goods are confiscated and ordered for release to the importer. Section 125(2) which provides that *where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods,* makes this above position clear.

Thus, the proviso which is inserted in Section 125 referring to cases under Section 28 which are essentially in respect of demand of duty where the goods are not seized/ detained by the department gives room for interpretation that Redemption fine is imposable even if the goods are not seized and are not available for confiscation.

Further, these points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

"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 regularized, 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 authorized by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization 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."

Further, In the case of ***M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)*** it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is misdeclaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

In case of ***Synergy Fertichem Ltd vs Union of India, reported in 2020 (33) G.S.T.L 513 (Guj.)*** has relied on the judgment in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.) and *"held that we would like to follow the dictum as laid down by the Madras High Court"*.

Hence, from the above discussion and relying on the above judgments, I find that goods are liable for confiscation and fine can be imposed in view of judgment in case of ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]*** .

13.5 Duty Demand under Section 28(4) with applicable interest under Section 28AA of the Customs Act, 1962.

a) The present Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

> *"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*
>
> *(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*
>
> *(a) collusion; or*
>
> *(b) any willful mis-statement; or*
>
> *(c) suppression of facts."*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

The term "relevant date" For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:

> ***Explanation 1*** *. - For the purposes of this section, "relevant date" means,-*
>
> *(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*
>
> *(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*
>
> *(c) in a case where duty or interest has been erroneously refunded, the date of refund;*
>
> *(d) in any other case, the date of payment of duty or interest.*

b) Noticee has contended that there was no collusion, mis-statement and suppression on their part as they have provided the PSIC as received from supplier and they have also provided the photographs showing the goods being loaded. The

matter is discussed in length in above paras. I observe that by just saying that they have provided the PSIC as received from supplier, they can't wash away the responsibility assigned to them through provisions of Customs Act, 1962. Even DGFT have also fixed the responsibility on importer for any mis-declaration in PSIC as per para 2.53 of Handbook of Procedures. They have to verify the authenticity of the every documents submitted to customs authority as per the provisions of section 46(4A) of the Customs Act, 1962. By producing fake/forged PSIC, an element of wilful suppression of facts has been well established in this case. The photographs submitted by them doesn't enlighten the fact that goods were loaded in UAE. On seeing photographs, nothing can be substantiated that goods were loaded in UAE. Hence, I find no force in the contention of the Noticee.

e) Further Noticee has contended that extended period can't be invoked except in cases of deliberate intent to evade duty or wilful suppression in view of judgments pronounced by several courts. They have relied on *Tamil Nadu Housing Board reported in 1994 (74) E.L.T. 9 (SC), Nestle India Ltd. vs. CCE [2009 (235) E.L.T. 577 (S.C.)], Advanced Spectra Tek Pvt. Ltd., reported in 2019 (369) ELT 871 (Tri-Mumbai),CC vs. Tin Plate Co. of India Ltd. [1996 (87) E.L.T. 589 (S.C.)], Jaiprakash Industries Ltd. Vs. Commissioner of Central Excise (2002) 146 ELT 481,Padmini Products v. Collector of Central Excise (1989) 43 ELT 195 (S.C.), M/s. Continental Foundation Joint Venture Vs. CCE (2007) 216 ELT 177, Pushpam Pharmaceuticals Company Vs Collector of C. Ex., Bombay (1995) 78 ELT 401* and other related orders. I have gone through all these case wherein it has been stressed that extended period can't be invoked in absence of wilful misstatement, suppression etc. which is also evident from the Customs Act, 1962 itself. I find that the contention of importer that they have not suppressed the material facts is not sustainable. The importer not only misdeclared the Country of origin but also submitted forged PSIC as a supporting document, to effect clearance of their goods. They never approached the PSIC agency before submitting Bill of Entry or even during the course of investigation, when the fact of misdeclaration was brought to their knowledge along with doubtful PSIC and the first leg Bill of lading, which shows the goods were exported from Pakistan. Further, after introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is the obligatory on the part of the importer to declare the correct country of country of origin of impugned goods and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. It is unreasonable to expect that an officer assessing the Bill of Entry will presume that the imported goods would have originated from any other country than declared and will start tracking of the containers on website of Ports of suspected country. The importer, therefore, by not disclosing the true and correct facts to the proper officer at the time of clearance of imported goods, have indulged in mis-declaration and

mis-classification by way of suppression of facts and willfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Sub-section (4A) to Section 46 of the Customs Act, 1962, requires him to ensure completeness, correctness and authenticity of the information. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual origin of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011,** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self- assessment, is required to ensure that he declared the correct classification, country of origin, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. In **EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, the CESTAT**, Principal Bench observed as under -

> *"19. The responsibility therefore, rests entirely on the importer and without such a provision, the Customs law cannot function. Sub-section (1) of section 46 requires the importer to make an entry of the goods imported. Sub-section (4) requires him to make a declaration confirming the truth of the contents of the Bill of Entry."*

By the self-assessment scheme, a trust is placed in the hands of Trade, for speedy clearance by way of facilitation. Therefore, in light of doctrine *"No man can take advantage of his own wrong"*, trade is not liberally allowed to advance their plea, justifying every act or omission as bonafide error in order to escape from the clutches of penal liabilities.

d) Noticee has further relied on various cases which are different in terms of facts and scenario of this case. I observe that decisions from Higher Courts cannot straight away be used as precedents for other cases, and must be decided based after comparison of facts. Further, cases with different facts and circumstances cannot be relied upon. This is because the facts and circumstances of each case are unique, and the principles of natural justice must be applied to the specific context of the case. A single additional or different fact can make a significant difference in the conclusions of two cases. Hence, I find that it is not proper to blindly rely on a decision when disposing of cases. Further, I observe that the following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire

aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

e) Noticee has contended that it is the responsibility of revenue to substantiate its claim with evidence that is the requirement not made in this case. Noticee has placed reliance on *Pr Commissioner of Income Tax vs. Daksha Jain (2018 11 TMI 1182), Gokuldas Exports vs. Jain Exports Pvt Ltd (2003 (157) ELT 243 (SC)), and Phoenix Mills vs. Union of India (2004 (168) ELT 310), Jupiter Dyechem Pvt Ltd vs Commissioner of Customs (2023 (5) TMI 670), Agarwal Industrial Corporation Ltd vs Commr. of Cus. Manglore (2020 (373) ELT 289 (Tri- Bang)* wherein it was held that it is the responsibility of revenue to substantiate its claim with evidence, Here Noticee has failed to appreciate the fact that enough documentary evidences like Bills of lading, Container tracking details and forged PSIC have been provided to substantiate the fact that goods were exported/originated from Pakistan and element of suppression has been proved beyond doubt. Further, in case of ***Chennai Port (import) vs Sree Nakoda Enterprises Customs Appeal No. 40261/2023 decided on 31.05.2023*** Hon'ble Tribunal has meticulously explained the burden of proof and held that Section 123 of the Customs Act requires burden of proof in certain cases and in the light of our above discussion, the 'burden of proof' which has not been defined under the Customs Act, therefore, has to be looked into from the point of the Indian Evidence Act. When a statutory authority entertains a doubt, a Show Cause Notice will be naturally issued based on certain observations and it is for the **noticee to satisfy and to prove that the observations / allegations of the statutory authority issuing such Show Cause Notice is wrong. The burden of proof, therefore, is always there on the noticee initially, which has to be discharged in the first place**. So by just stating that they have filed Bill of Entry as per documents supplied by overseas supplier without giving any evidences in support, they can't escape from the duty liability and penal provisions. If this stand of the Importer is given credence, no case of duty evasion as can be booked and all tax evaders on getting caught would just blame the foreign supplier with impunity and seek escape from penal proceedings under the law. Noticee has further contended that IGST can't be demanded under Section 28 of the Customs Act, 1962. In this regard, I find that the matter has already been settled in case of ***Ajwa Dry Fruit Impex vs Union of India, CBIC, state of Kerala, the Joint Commissioner (Appraising Import) 2023 (11) TMI 773*** wherein Hon'ble High Court of Kerala ruled that

"Sub-section (15) of Section 2 defines duty which means customs duty. ***Section 28 empowers the assessing authority to assess and recover the duties not levied,***

not paid, short levied or short paid or erroneously refunded. Section 28 therefore is not only in respect of duty which means customs duty but, it is in respect of duties which may be applicable on imported item/goods. ***Even otherwise, the assessment order is defined under Sub-section 2 of Section 2 of the Customs Act empowers the assessing authority to determine the dutiability of any goods and the amount of duty/tax, cess or any sum so payable under the Customs Act or Customs Tariff Act, 1975 (51 of 1975) or under any other law*** *for the time being in force, with reference to exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under the said Act or under the Customs Tariff Act or under any other law for the time being in force."*

"The petitioner has claimed exemption from payment of IGST under the Notification No.02/2017-Integrated tax (Rate) dated 28.06.2017. Therefore, the competent authority is empowered to make assessment regarding claim of exemption from the IGST under Section 28 of the Act."

From above decision of Hon'ble High Court, it is clear and evident that IGST can be demanded under Section 28 of the Customs Act, 1962. Hence, in view of the above discussions, I find that the contention of Noticee is not sustainable.

f) The facts and evidences placed before me clearly states that the Importer has willfully indulged in mis-stating and suppressing the fact that the goods were of Pakistan Origin. The importer had mis-declared the Country of Origin of such goods covered under the said Bills of Entry, as UAE. The importer had submitted all the documents viz. Pre-shipment Inspection Certificate, country of origin etc. which were fake and created only with the intention to hide the fact about country of origin and to evade payment of appropriate duty. Their act of suppression of facts was unearthed only after intelligence was received and investigation conducted by SIIB. The importer knowingly and deliberately has suppressed the material facts of Country of Origin from the Department and mis-declared the same in the Bills of Entry with a clear intention to evade the differential Customs Duty. Had the SIIB not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. The Importer cannot take a stand that he had no idea of the fraud perpetrated by his supplier and seek relief from the charges made in the notice, in the face of the evidence available in the instant case, including especially submission of false PSIC certificate. If such leniency is extended in financial crimes, no case can be booked against erring Importers. The preponderance of probability in the instant case clearly points to culpability on the part of the Importer.

g) In view of above, I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962, to demand differential duty in the present case along with

applicable interest as per Section 28AA of the Customs Act, 1962. I also hold that the customs duty already paid is liable to be appropriated against the said demand.

13.6 Imposition of Penalty on M/s Krishna Recycling Industries under Section 112A/114A and 114AA of the Customs Act, 1962.

a) I find that section 114A stipulates that the person, who is liable to pay duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28(8) ibid, is also be liable to pay penalty under section 114A.

b) In above paras, I have held that the Importer has resorted to suppression of fact at the time of filing of Bills of Entry of imported goods by mentioning wrong Customs Tariff Items with an intent to evade the Customs duty. They have deliberately misled the Department, by submitting forged PSIC and other documents fraudulently to evade payment of higher rate of duty imposed on goods originated/exported from Pakistan. Had the investigating agency i.e. SIIB Section, Mundra Customs not initiated investigation against the Importer, the evasion of Customs Duty would not have come to the knowledge of the department. In the present case, the importer has been found liable to pay duty determined under section 28(8) of the customs act, 1962, therefore, for these acts and omissions, the Importer is liable for penal action under Section 114A of the Customs Act, 1962.

c) However, I find that as per 5th proviso of section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under section 112 is not imposable. I find that there is a mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under Section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112 of Customs act, 1962.

d) As regards imposition of penalty under Section 114AA of Customs Act, 1962 on M/s. Krishna Recycling Industries, the Section 114AA envisages penalty on a person who knowingly or intentionally makes, signs or uses, or causes to be made signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. Noticee has provided the forged/fake documents to the customs authority with an intent to evade duty. In the statement dated 13.06.2022 recorded under section 108 of the Customs Act, 1962 Shri Mukesh Agarwal, Partner of M/s Krishna Recycling Industries stated that they have not appointed the PSIA for issuance of PSIC. Hence despite knowing the fact that they have not verified the authenticity of documents, they have given wrong declaration under section 46(4) as to truth of the contents of Bill of Entry. From the discussions held, it is beyond doubt that they have intentionally produced the fake documents and declaration to evade customs duty and hence rendered themselves liable for penalty under Section 114AA of the

Customs Act, 1962. Hence, I hold that M/s. Krishna Recycling Industries has mis-declared the country of origin to evade the duty by way of producing forged or fake document/declaration and for their act of omission and commission they have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

13.7 Imposition of Penalty on M/s Winwin Maritime Limited under Section 114AA and 117 of the Customs Act, 1962.

a) In the written submission dated 25.05.2024 and 21.11.2024 they have stated that they had not got the first leg of Bill of Lading initially. They further stated that Winwin Maritime did not make any false statements, documents or declaration before Customs Authorities, hence penalty under Section 114AA of the Customs Act, 1962 is not imposable on them. They have not participated in booking cargo or issuance of Bill of Lading which is managed by their Principals. They have stated that they have not done any contravention under the act, hence section 117 are not applicable on them.

b) As per plain reading of Section 114AA of the Customs Act, 1962, a person who knowingly or intentionally makes, signs or uses, or caused to be made signed or used, any declaration, statement or document which is false or incorrect in any material particular is liable to be penalized. I find that there is no evidences gathered during investigation, which corroborates that the M/s Winwin Maritime Ltd has intentionally made or signed any declaration/statement/documents which were found incorrect. The Show Cause Notice alleges that they were in knowledge of the fact that goods were loaded at Karachi, however no evidence has been produced in the investigation. No incriminating or false documents/ declarations has been gathered during investigation which were intentionally/knowingly signed by Noticee. It has also not been proved that the Noticee was involved in the preparation of 2nd leg of Bill of Lading. In these circumstances, no penalty under 114AA can be imposed on M/s Winwin Maritime Ltd.

c) As regards imposition of penalty under Section 117 of the Customs Act, 1962, I find that during investigation, they have submitted some documents. During statement recorded on 22.02.2022, **Shri Dhawal Rameshbhai Rawal, Operation Manager of M/s Winwin Maritime Limited (Mundra)** stated that all containers were loaded from Port of Karachi to Jebel Ali in the vessel "Independent Spirit" and thereafter said containers were transshipped from Jebel Ali to Mundra vide BL No. 02548-3 dated 31.08.2021.As agents of their principal, they cannot fully wash away the deliberate actions undertaken by their principal which have played an important role in perpetrating the fraud of evasion of duty. They remain culpable to a certain extent to face penal action for the omissions and commissions committed by their principal. I find that **M/s Winwin Maritime Limited (Mundra)** had not scrutinized

the papers/documents available with them and have failed to exercise the due diligence required from them, hence they are liable to be penalized under Section 117 of the Customs Act, 1962.

13.8 Imposition of Penalty on M/s Asia Inspection Agency Co. Ltd under Section 114AA of the Customs Act, 1962.

a) No defence submission was made by the Noticee. They have neither appeared before me nor sought any adjournment for personal hearing despite giving ample opportunities. Accordingly, I proceed to examine the role of M/s Asia Inspection Agency Co. Ltd, on the basis of available records. I find that that the physical inspection of the goods by PSIA is needed while loading of the container as stated in DGFT Public Notice 12/2015-20 dated 18.05.2015. From the discussion held in foregoing paras, it is crystal clear that Containers were not opened at UAE. However, in the Pre-shipment inspection certificate issued by M/s Asia Inspection Agency Co. Ltd, they have mentioned that they have visually inspected the consignment and the same was found to be metallic scrap. They have also certified that goods doesn't contain any arms or ammunition and the radiations are well within limit. It is proved beyond doubt that they have issued fake certificate despite knowing the fact that they have not inspected the goods physically. Hence, it implicates that they have intentionally signed the false documents i.e. PSIC which was used by importer to camouflage the Country of origin. Accordingly, for this act of omission and commission, M/s Asia Inspection Agency Co Ltd is liable to be penalized under Section 114AA of the Customs Act, 1962.

14. In view of the above, I pass the following order:

ORDER

14.1 I reject the classification of 51215 Kgs. of "Stainless Steel Melting Scrap Grade 201" imported in Container No.(s) GRMU2031056, TCKU3652030 and TDRU2902074 covered under BE No. 5415461 dated 13.09.2021 under CTH 72042190 and order to re-classify the same under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975.

14.2 I hold that 51215 Kgs. of "Stainless Steel Melting Scrap Grade 201" as detailed above in point no (i) valued at **Rs 32,17,163**/- *(Rupees Thirty Two Lakh Seventeen Thousand One Hundred and Sixty Three Only)* are liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further, I impose redemption fine of **Rs. 3,00,000/-** *(Rupees Three Lakh Only)* under Section 125 of the Customs Act, 1962.

14.3 I confirm the demand of differential duty of **Rs. 89,30,844 /-** *(Rupees Eighty Nine Lakh Thirty Thousand Eight Hundred and Forty Four Only)* determined in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962

with applicable interest under section 28AA of the Customs Act, 1962 which is recoverable from Noticee M/s Krishna Recycling Industries. Further I order to appropriate and adjust the customs duty of **Rs. 5,79,089/-** *(Rupees Five Lakh Seventy Nine Thousand Eighty Nine Only)* already paid by them, against the confirmed demand.

14.4 I impose penalty of **Rs. 89,30,844/-** *(Rupees Eighty Nine Lakh Thirty Thousand Eight Hundred and Forty Four Only)* on M/s Krishna Recycling Industries under Section 114A of the Customs Act, 1962. I refrain from imposing penalty under section 112 of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

14.5 I impose penalty of **Rs. 3,00,000/-** *(Rupees Three Lakh Only)* on M/s Krishna Recycling Industries under Section 114AA of the Customs Act, 1962.

14.6 I impose penalty of **Rs. 10,00,000/-** *(Rupees Ten Lakh Only)* on M/s Asia Inspection Agency Co. Ltd under Section 114AA of the Customs Act, 1962.

14.7 I impose penalty of **Rs 2,00,000/-** *(Rupees Two Lakh Only)* on M/s Winwin Maritime Limited under Section 117 of the Customs Act, 1962. However, I refrain from imposing penalty on M/s Winwin Maritime Limited under the provisions of Section 114AA of the Customs Act, 1962 for the reasons discussed above.

15. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(K. Engineer)
Pr. Commissioner of Customs,
Custom House, Mundra.

By Speed post/ By Hand/by E-mail

To (The Noticees),

1. **M/s. Krishna Recycling Industries (IEC-AAUFK0234C),**
   CM-458, "Rukmanikunj", Near Virani School, Kalibid,
   Bhavnagar-364002.
2. **M/s. Winwin Maritime Limited, Gandhidham**
   (Shipping lines agent) on behalf of M/s Meridian Lines,
   Shyam Parogon, 1st floor, DBZ-South/61/A,

Near Rotary Bhavan Gandhidham-370201.

3. **M/s Asia Inspection Agency Co. Ltd.,**
39/896 Nichada Thani Moo 3, Samakee Road,
Bangtalad, Pakkret Nonthaburi 1112, Thailand.

Copy to;

(i) The Addl. Commissioner of Customs (Gr-IV) , Custom House, Mundra.

(ii) The Additional Commissioner of Customs (SIIB), Custom House, Mundra.

(iii) The Deputy/ Assistant Commissioner of Customs (EDI), Custom House, Mundra.

(iv) The Assistant/Deputy Commissioner of Customs, TRC Section, Mundra

(v) Notice Board

(vi) Guard file.