सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250771MN000000A505

क	फ़ाइल संख्या FILE NO.	1) S/49-65/CUS/AHD/2024-25 2) S/49-66/CUS/AHD/2024-25 3) S/49-67/CUS/AHD/2024-25 4) S/49-68/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-150 to 153-25-26
ग .	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	14.07.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Orders – In – Original No. 261/ADC/VM/O&A/2023-24, dated 28.03.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	14.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1) M/s. Ratnesh Metal Industries Pvt. Ltd., (Now known as M/s. MP Steel (India) Pvt. Ltd.) Survey No. 900, Near Ashram Chokdi, Village – Ranasan, Taluka – Vijapur Mehsana - 382870 2) Shri Sumer S. Sanghavi, Ex-Director of M/s. Ratnesh Metal Inds. Pvt. Ltd, (Now known as M/s. MP Steel (India) Pvt. Ltd.,, 47, Highway Park Society, Sabarmati, Ahmedabad. 3) Shri Rajesh S. Sanghavi, Ex-Director of M/s. Ratnesh Metal Inds. Pvt. Ltd, (Now known as M/s. MP Steel (India) Pvt. Ltd.,, 54, Hindu Colony, Opp. Sardar Patel Stadium Rd. Navrangpura, Ahmedabad.- 380 009 4) Shri Viral Shah, DGM – Export of M/s. Ratnesh Metal Inds. Pvt. Ltd, (Now known as M/s. MP Steel (India) Pvt. Ltd.,, Survey No. 900/1, Near Ashram Chokdi, Village – Ranasan, Taluka – Vijapur Mehsana – 382870

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं

	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER IN APPEAL

Four appeals, as per details given in the table below, have been filed challenging Order – In – Original No. 261/ADC/VM/O&A/2023-24, dated 28.03.2024, dated 13.06.2022, (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as 'the adjudicating authority') :

Sr. No.	Appeal File No.	Name and address of the Appellant	Herein after referred to as
1.	S/49-68/CUS/ AHD/24-25	M/s. Ratnesh Metal Industries Pvt. Ltd., (Now known as M/s. MP Steel (India) Pvt. Ltd.) Survey No. 900, Near Ashram Chokdi, Village – Ranasan, Taluka – Vijapur Mehsana – 382870	Appellant No. 1
2.	S/49-67/CUS/ AHD/24-25	Shri Sumer S. Sanghavi, Ex-Director of M/s. Ratnesh Metal Industries. Pvt. Ltd, (Now known as M/s. MP Steel (India) Pvt. Ltd.,, 47, Highway Park Society, Sabarmati, Ahmedabad	Appellant No. 2
3.	S/49-65/CUS/ AHD/24-25	Shri Rajesh S. Sanghavi, Ex-Director of M/s. Ratnesh Metal Industries Pvt. Ltd, (Now known as M/s. MP Steel (India) Pvt. Ltd. 54, Hindu Colony, Opp. Sardar Patel Stadium Road., Navrangpura, Ahmedabad.- 380 009	Appellant No. 3
4.	S/49-66/CUS/ AHD/24-25	Shri Viral Shah, DGM – Export of M/s. Ratnesh Metal Inds. Pvt. Ltd, (Now known as M/s. MP Steel (India) Pvt. Ltd.,, Survey No. 900/1, Near Ashram Chokdi, Village – Ranasan, Taluka – Vijapur Mehsana – 382870	Appellant No. 4

2. Facts of the case, in brief, are that intelligence was gathered by Directorate of Revenue Intelligence, Lucknow Zonal Unit, hereinafter referred to as DRI, LZU, that the Appellant No. 1 have misused the Advance Authorization Scheme in 0810136454 dated 06.11.2015 and contravened the provisions of para 4.7 of the Handbook of Procedures, (2004-2009) & (2009-2014); Custom's Notification No. 93/2004-Customs, dated 17.09.2004, Customs Notification No. 96/2009-Customs, dated 11.09.2009, Customs Notification No. 18/2015-Customs, dated 01.04.2015 and provisions of Customs Act of the Customs Act, 1962. Intelligence was further developed by DRI, LZU and it was found that the Appellant No. 1 have been issued Advance Authorizations No. 0810073933 dated 12.08.2008, No. 0810074246 dated 26.08.2008, No. 0810075047 dated 29.09.2008, No. 0810079063 dated 30.03.2009, No. 0810080098 dated 21.05.2009, No. 0810081589 dated 21.07.2009, No. 0810082956 dated 16.09.2009, No. 0810084403

dated 25.11.2009, No. 0810085115 dated 21.12.2009, No. 0810136454 dated 06.11.2015, No. 0810136455 dated 06.11.2015, No. 0810136687 dated 09.12.2015 and No. 0810137320 dated 29.02.2016 for the import of stainless steel melting scrap under Para 4.7 of the Handbook of Procedures, (2004- 2009); (2009-2014) & (2015-20).

2.1 These Advance Authorizations had authorized the Appellant No. 1 to import Stainless Steel Melting Scrap at NIL rate of Customs for manufacturing of finished goods meant for export by use of these inputs. Details of these Advance Authorizations issued to the Appellant No. 1 are given in the table below:

TABLE I

Sl. No.	LIC NO.	DATE	ALLOWED IMPORT ITEM	QTY (MT)	VALUE (CIF)	EXPORT ITEM	QTY (MT)	FOB VALUE	Notfn. No.
1	8100 7393 3	12.08.08	STAINLESS STEEL MELTING SCRAP	187	1334022 5	STAINLESS STEEL ROUNDS/FTALS/ HEXAGONS/ANGLES BRIGHT BARS	Not Available	1516 4460	93/04
2	8100 7424 6	26.08.08	STAINLESS STEEL MELTING SCRAP	206.8	1276000 0	STAINLESS STEEL ROUNDS/FTALS/ HEXAGONS/ANGLES BRIGHT BARS	Not Available	1760 0000	93/04
3	8100 7504 7	29.09.08	STAINLESS STEEL MELTING SCRAP	180.4	1880000 0	STAINLESS STEEL ROUNDS/FTALS/ HEXAGONS/ANGLES BRIGHT BARS	164	2914 0000	93/04
4	8100 7906 3	30.03.09	STAINLESS STEEL MELTING SCRAP	60.9	4000000	STAINLESS STEEL ROUNDS/FTALS/ HEXAGONS/ ANGLES BRIGHT BARS	Not Available	6250 000	93/04
5	8100 8009 8	21.05.09	STAINLESS STEEL MELTING SCRAP (72042190)	262.5	1725000 0	STAINLESS STEEL BRIGHT BARS/ ROUNDS/FTALS/ HEXAGONS/ANGLES	250	2625 0000	93/04
6	8100 8158 9	21.07.09	STAINLESS STEEL MELTING SCRAP	385	2229500 0	STAINLESS STEEL ROUNDS/FTALS/ HEXAGONS/ANGLES BRIGHT BARS (72224020) (61/0)	Not Available	2744 0000	93/04
7	8100 8295 6	16.09.09	STAINLESS STEEL MELTING SCRAP (72042190)	210	2592000 0	STAINLESS STEEL BRIGHT BARS/ ROUND/FTALS/ HEXAGONS/ANGLES (72224020) (61/0)	300	2592 0000	96/09
8	8100 8440 3	25.11.09	STAINLESS STEEL MELTING SCRAPE OF GRADE AISI-201 (72042190)	315	4032000 0	STAINLESS STEEL ROUNDS/FTALS/HEX AGONS/ANGLES BRIGHT BARS OF GRADE AISI-201 (72224020) (61/0)	300	4032 0000	96/09
9	8100 8511 5	21.12.09	STAINLESS STEET MELTING SCRAPE	315	3024000 0	STAINLESS STEEL ROUNDS/FTALS/HEX AGONS/ANGLES/BA RS OF GRADE AISI-304	224	9570 0000	96/09
10	8101 3645 4	06.11.15	STAINLESS STEET MELTING SCRAPE	510	4316400 0	STAINLESS STEEL BRIGHTS ROUND BARS/ROUNDS	500	6930 0000	18/15

			RELEVANT GRADE (68041000) GRINDING WHEELS			BARS/ANGLE BARS/FLAT BARS/SQUARE BARS/HEX.BARS			
11	8101 3645 5	06.11.15	STAINLESS STEET MELTING SCRAPE RELEVANT GRADE	510	1933800 0	STAINLESS STEEL BRIGHTS ROUND BARS/ROUNDS BARS/ANGLE BARS/FLAT BARS/SQUARE BARS/HEX BARS	1500	3795 0000	18/15
12	8101 3732 0	29.02.16	STAINLESS STEEL MELTING SCRAP	Not Availa ble	4316400 0	STAINLESS STEEL ROUNDS/FTALS/ HEXAGONS/ANGL ES BRIGHT BARS	Not Availa ble	6930 0000	18/15
13	8101 3668 7	09.12.15	STAINLESS STEEL MELTING SCRAPE RELEVANT GRADE	510	5936700 0	STAINLESS STEEL BRIGHT ROUND BARS/ROUNDS BARS/ANGLE BARS/FLAT BARS/SQUARE BARS/HEX BARS	500	9570 0000	18/15

2.2 A Search was conducted by the DRI officers of Noida Regional Unit and Ahmedabad Zonal Unit at the factory premises of the Appellant No. 1 situated at Survey No. 900/1, Village- Ranasan Tal.- Vijapur, Mehsana, Gujarat on 29/30.08.2017 and after completion of the investigation process, Show Cause Notice No. DRI/NRU/CI/26/INT-O/ENQ-26/2017, dated 20.11.2019 was issued to the Appellant No. 1, Appellant No. 2, Appellant No. 3 and Appellant No. 4 in respect of Advance Authorizations vide No. 810075047 dated 29.09.2008, No. 810080098 dated 21.05.2009, No. 810082956 dated 16.09.2009, No. 810085115 dated 21.12.2009 & No. 810136454 dated 06.11.2015. A letter F. No: DRI/NRU/CI/26/INT-O/ENQ-26/2017 dated 20.11.2019 was issued from the office of the Additional Director, DRI Lucknow addressing the Principal Commissioner / Commissioner of Customs, Custom House, Ahmedabad with a request to look into the matter and take measures to safeguard revenue in respect of the remaining Advance Authorizations.

2.3 Acting upon the information received from DRI, search was conducted at the premise of the Appellant No. 1 situated at 11, Parvati Nagar, Opp Dhananjay Tower, Near Kothari Automobiles, Satellite, Ahmedabad in the presence of independent panchas / witnesses as per Warrant dated 27.11.2020 by the team of officers from HQ, Preventive, Customs and the proceedings were recorded under Panchnama dated 27.11.2020 on the same spot. During the search, files / documents related to Advance Authorization No. 0810073933, No. 0810079063, No. 0810074246, No. 0810081589 & No. 0810084403 were segregated and withdrawn for further investigation.

2.4 On being inquired, the Appellant No. 4, DGM of M/s. Ratnesh Metal Industries Pvt. Ltd. informed that they were engaged in manufacturing of SS Angle, SS Flat, Hexagon, Round, Square etc. at M/s. Ratnesh Metal Industries Pvt. Ltd., Survey No. 900, Nr. Ashram Chokdi, Vill Ranasan, Tal - Vijapur, Mehsana. He further submitted that the Appellant No. 1 had earlier imported Stainless Steel Melting Scrap without payment

of duty under Advance Authorizations/Licenses obtained from DGFT, Ahmedabad by declaring that the Appellant No. 1 is manufacturing Stainless Steel by using Induction Furnace & VOD (Vacuum Oxygen Decarburization) but actually they were not having VOD facilities in their factory. Therefore, they had availed higher import benefits as against the norms for manufacturing of Stainless Steel by Non-VOD or Non-AOD (Argon Oxygen Decarburization) facilities.

2.5 The Appellant No. 4, further informed that DRI, Lucknow had also conducted investigation on the same issue and issued demand notice in respect of 5 similar Advance Authorizations / Licenses. Upon inquiry by the officers, he replied that the SCN does not cover the Advance Authorizations in respect of which files / documents were withdrawn by the officers during the search proceedings i.e. Advance Authorization Nos. 0810073933, No. 0810079063, No. 0810074246, No. 0810081589 & No. 0810084403 but covers other such Authorizations / Licenses, i.e., No. 081007547; No. 0810080098; No. 0810082956; No. 0810085115 & No. 0810136454. He also informed that there was no demand issued in respect of the 8 Authorizations/Licenses as mentioned above and also DRI, Lucknow had not carried out any inquiry in respect of that 08 Authorizations / Licenses. Further, License No: 0810136455; No. 0810137320 & No. 0810136687 had been surrendered by the Appellant No. 1.

2.6 Summons dated 23.12.2020, 02.02.2021, 11.02.2021, 22.03.2021, 30.07.2021 & 18.10.2022 were issued by the Superintendent, HQ Preventive, Customs, Ahmedabad but no one from the side of the Appellant No. 1 or their representative appeared for hearing. Accordingly, this notice is issued on the basis of available records & evidence with this office. The Appellant No. 1 imported Stainless Steel Melting Scrap of SS 304, 316, 201 etc. quality and exported finished products, i.e. Bright Bars, Angle Bars, Flat Bars, Hexagonal Bars etc. They imported and exported under relevant Advance Authorization Schemes (93/2004, 96/2009 & 18/2015) & under SION (Standard Input Output Norms) - C525, C-355 & C-524. 10. As per SION C-525, import of stainless steel melting scrap of known chemical composition may be permitted within the overall quantity of item No. 1 (a) but up to 90% to induction furnace units having AOD/VOD facilities and electronic furnace units. For units having induction furnace without AOD/VOD, import of stainless steel melting scrap will however be permitted within the overall quantity of item No. 1 (a) but up to 60% only.

2.7 It was already established in the investigation conducted by the DRI Lucknow that the factory i.e. the Appellant No. 1 contained only one induction furnace for melting of raw material with two crucibles having 2.5 tonnes and 3.0 tonne capacity each and only one of it remains functional at a time and the other was kept on standby. The furnace used for melting of raw material in the factory was not an AOD/VOD furnace rather it was an Induction Furnace. The quality / grade of the of the finished product (S.S. Ingot) depended upon the quality / grade of the S.S. Scrap used for melting into the induction furnace e.g. with a S.S. Scrap quality / grade of 304 and 316, S.S. Ingot of 304 and 316 respectively, were produced. These ingots were hot rolled in rolling section and

then finished into bright bar section. It was also established in the investigation conducted by the DRI, that the Appellant No. 1 was well aware that they were not eligible to apply for Advance Authorization Scheme under 'no norms category' i.e. under para 4.7 HBP Vol.1 and that their application should have been filed under SION norms category at C-525 (where S.S. Scrap is major input for production of export product S.S. Ingot). Further, that their application should also have not been under the SION category of C-524 (wherein S.S. Ingot is major input for production of export product Bright etc. since they were importing Stainless Steel Scrap not SS Ingots). Thus, instead of SION entry at C-524, the Appellant No. 1 were required to fulfil the export obligation as per SION C-525, wherein maximum 60% quantity of input i.e. stainless steel melting scrap was permitted to import for exporting stainless steel ingots which in their case is the intermediate product to produce & export finished products i.e. Bright Bars, Angles Bars, Flat Bars, hexagonal Bars, Square Bar. He admitted that in their application of Advance authorizations, they erroneously applied SION C-524 input quantity i.e. 1.05% of Raw Material Instead of C-525 input quantity (@60%). The Appellant No. 1 was under impression that Ferro Nickel and Ferro Chrome were already present in the aforesaid quantity imported under above mentioned authorizations and in place of Ferro Alloys permitted under Sr. No. of C-525, they requested for full quantity of Stainless Steel Melting Scrap. The DGFT later disallowed this excess quantity of 40% stainless steel melting Scrap.

2.8 The DGFT, Ahmedabad vide letter dated 06.09.2018, informed that, license No. 0810136455 dated 06.11.2015, No. 0810136687 dated 09.12.2015 and No. 0810137320 dated 29.02.2016 have been surrendered by the Appellant No. 1. As such inquiry conducted in present SCN was restricted to 5 licenses only in respect of which action has not been initiated by DRI. Vide letter dated 19.01.2019, Shri Chandrakant B. Patel, Chartered Engineer informed that he has not issued any Certificate stating that the Appellant No. 1 have installed VOD converters at their plant. It was already established in the investigation conducted by the DRI, that Shri Chandrakant B. Patel, Chartered Engineer had issued a Certificate for the import requirement of the Appellant No. 1 based on technical specifications provided by the Consultant but he did not issue Certificate in respect of VOD converters at the plant of the Appellant No. 1. This confirmed that no VOD/AOD facility was ever available at the plant of the Appellant No. 1 and as he denied to issue any Certificate with regard to VOD converter installed at the plant of the Appellant No. 1, it appeared that a fake / fabricated Certificate was produced before the authorities of Ministry of Steel in order to fraudulently avail the benefit beyond the permitted Norms, as the Ministry of Steel recommended DGFT for fixation of norms on the basis of certificate of Chartered Engineer submitted to their authorities by the Appellant No. 1. The Ahmedabad Customs, vide letter dated 02.03.2023 requested the Deputy Commissioner, ICD - Khodiyar to provide item wise ledger in respect of Advance License No. 810073933 dated 12.08.2008, No. 810074246 dated 26.08.2008, No. 810079063 dated 30.03.2009, No. 810081589 dated 21.07.2009 & No. 810084403 dated 25.11.2009. The Deputy Commissioner, ICD - Khodiyar vide his email dated 21.03.2023 provided item wise ledger in respect of the above mentioned Advance Licenses.

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

TABLE 2

Sr. No.	Advance Authorisation No.	Import Qty.	Exported Qty.	Utilisation of Input @60% SION norms eligible export Qty.	Excess Input Qty. Mts.	Duty calculation Duty forgone	Customs Port	BE No.	BE Date	Item wise value	Duty forgone
1	810073933 dated 12.08.2008	149.95	230.791	138.4746	11.4754	7.43, 4.0454	INSB16	653547, 651619	15.11.2008, 17.09.2008	633513, 366450	200845, 93720
2	810074246 dated 26.08.2008	206.8	203.456	122.0736	84.7264	13.622, 19.98, 18.73	INSB16	652552, 651615, 651365	13.10.2008, 17.09.2008, 08.09.2008	675357, 1006468, 943500	172723, 257405, 241300
3	810081589 dated 21.07.2009	223.06	345.062	207.0372	16.0228	32.3944, 16.0228	INSB16	651326, 3429836	08.09.2008, 06.05.2011	1631827, 662293	417340, 177817
4	810079063 dated 30.03.2009	45.566	77.778	466,668	-1.1008	NA	NA	NA	NA	NA	NA
5	810084403 dated 25.11.2009	44.91	91.815	55.089	-10.179	NA	NA	NA	NA	NA	NA
	Total				112.2246					5919407.4	1561150

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

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

- Section 112(a) of Customs Act 1962;
- Section 114AA of Customs Act 1962

2.11 Advance Authorizations are issued to allow duty free import of input which are to be used in the manufacturing of finished products for export subject to normal allowable wastage arise during the production of export products. Advance Authorizations issued by DGFT are governed by the provisions contained in HBP V.I, 2009-14 and HBP 2015-20. The Para 4.7 of HBP, 2015-20 gives an option to the importer to request the Regional Authority of DGFT for issuance of Advance Authorization on the basis of self-declaration by the applicant with regard to consumption of inputs to their export products provided norms of SION does not exist to the particular items. However, the wastage claimed by the applicant will be subject to wastage norms as decided by Norms Committee. In such case where SION is not fixed, Regional Authority may also issue Advance Authorization, based on self- declaration by applicant as per the provision of relevant Paras of relevant Hand Book of Procedures applicable at the point of time of issuance of Advance Authorization.

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

2.13 As per definition contained in Standard Input Output Norms (SION) against entry C-525, they were eligible for 60% of Stainless Steel Scrap to fulfill the requisite export obligation, therefore, they were liable to pay duties of Customs of an amount equal to excess import which is beyond the permitted norms with interest at the rate of 15% / 18% per annum from the date of clearance of goods against such excess input. This

failure on the part of the importer to pay customs duties led to outright violation of the conditions of the Notification read with the Policy in vogue rendering goods, so imported and in excess to permitted norms is liable for confiscation under section 111 (o) of the Customs Act, 1962.

2.14 As per the provisions contained in Para 4.1.3, Para 4.1.5, Para 4.1.9 of the Foreign Trade Policy, 2009-14; Para 4.22, Para 4.24, Para 4.28 of the Handbook of Procedures Vol-1, 2009-14; Para 4.03, Para 4.11, Para 4.12, Para 4.16 of Foreign Trade Policy, 2015-2020; Para 4.04, Para 4.06, Para 4.7, Para 4.15, Para 4.16, Para 4.20, Para 4.21, Para 4.42, Para 4.44, Para 4.49, Para 4.50, Para 4.51 of the Handbook of Procedures, 2015-20; Customs Notification No. 93/2004-Customs, dated 17.09.2004, Customs Notification No. 96/2009-Customs, dated 11.09.2009, Customs Notification No. 18/2015-Customs, dated 01.04.2015, they have to fulfill export obligation as per the Standard Input Out Norms (SION) which define the amount of input(s) required to manufacture a unit of output for export purpose. The Appellant No. 1 applied for Advance Authorizations under no norms category even-after knowing what was the right norms, therefore, it appeared that the Appellant No. 1 by their act of non-compliance of the aforesaid provisions of law have contravened the respective provisions of the Foreign Trade Policy and conditions of the Notification for the time being in force. The importer was bound to pay the amount of Customs duty on pro rata basis on the input / raw material beyond. the permitted norms in compliance with Policy and the provisions of the Notification, which they did not do till the matter came to the notice of DRI and an investigation was initiated by the DRI on this account. The Appellant No. 1 appeared to have grossly failed to observe the subject conditions of the Policy and the Notification and also preferred to suppress the fact of their failure from the government authorities with mala fide intention of evading duty of Customs.

2.15 It was already established in the investigation conducted by the DRI Lucknow that Shri Sumer S Sanghvi (Appellant No. 2) had signed the application under Para 4.7 to obtain Advance Authorization scheme under No norms Category in place of SION norms under C-525 and for adopting fraudulent means, i.e., obtain undue advantage of SION norms under C-525 applicable to plant having induction furnace with AOD / VOD converters by false declaration to Ministry of Steel and DGFT and presented a fake / fabricated Certificate of Chartered Engineer before the Government authorities vide his letter dated 21.04.2009. The act of commission and omission of taking undue benefits of import of excess raw material and availed higher tax exemption benefit by providing wrong information and forged Certificate, rendered himself liable for penal action under the provisions of Section 112 (a) and 114AA of the Customs Act, 1962. It was already established in the investigation conducted by the DRI Lucknow that Shri Viral Shah (Appellant No. 4) was very much aware the fact that AOD / VOD facility was not available in their factory Premises. Further, the Appellant No. 4 was aware about the Norms under SION 525 (as per his Statement dated 30.08.2017). The Appellant No. 4 was also aware that other Advance Authorizations were issued in past to the firm under No Norms Category i.e. under Para 4.7 of HBP Vol-I. Even then their claim for higher

norms beyond permitted norms (as established in the various correspondences to DGFT, Ministry of Steel) clearly indicates the Appellant No. 4 was very much aware that in other Authorization too they have fraudulently availed excess quantity of raw material that is Stainless Steel specially when they did not have AOD / VOD facility installed and working, this wilful mis-statement, suppression of fact attracts penal provisions under Customs Act 1962. The act of commission and omission of taking undue benefits of import of excess raw material and availed higher tax exemption benefit by providing wrong information and forged Certificate, rendered himself liable for penal action under the provisions of Section 112 (a) and 114AA of the Customs Act, 1962.

2.15 It was already established in the investigation conducted by the DRI Lucknow that Shri Rajesh S Sanghvi, Director M/s. Ratnesh Metal Industries Pvt. Ltd (Appellant No. 3), has grossly failed in his responsibility. He in his Statement dated 12.12.2017 had informed that they do not have AOD / VOD facility installed in M/s. Ratnesh Metal Industries Pvt. Ltd. He also admitted that they were eligible for 60 percent Stainless Steel Scrap against the Export as per the Note 6 of S. No. C-525. Since nothing has been heard from him on the same therefore it appeared that the Appellant No. 3 had knowingly suppressed the fact in order to avoid the payment of Government dues which their firm has achieved by fraudulent means and this wilful mis-statement, suppression of fact attracts penal provisions under Customs Act 1962. The act of commission and omission of taking undue benefits of import of excess raw material and availed higher tax exemption benefit by providing wrong information and forged Certificate, render himself liable for penal action under the provisions of Section 112 (a) and 114AA of the Customs Act, 1962.

2.16 The Appellant No. 1 in terms of condition of the Notification No. 93/2004-Cus, 96/2009-Cus & 18/2015-Cus at the time of import of duty free raw material under Advance Authorization scheme against all Advance Authorizations, the registered customs port of import i.e. at ICD, *That They shall observe all the terms and conditions of the said notification, shall observe all the terms and conditions specified in the license, shall fulfill the export obligations as specified in the said notification and the license and shall produce evidence of having so fulfilled the export obligations within 30 days from the expiry of specified export obligation period to the satisfaction of the Government, In the event of failure to fulfill full or part of the export obligations as specified in the said notification and license. I/We the obligor(s) herein undertake to pay the customs duty for the exemption and also interest @ 15% per annum thereon forthwith and without any demure, to the Government, shall comply with the conditions and limitations stipulated in the said Import and Export Policy as amended from time to time, shall not change the name and style under which we, the obligor(s) are doing business or change the location of the manufacturing premises except with the written permission of the Government*

2.17 It appeared from the discussions made in the preceding paras that the Appellant No. 1 had failed to observe obligations undertaken in above clauses of bond, therefore, in terms of the provision of the Notifications they were required to pay the

Customs Duty for the exemption along with interest thereon. Thus, to conclude, the Appellant No. 1 had imported stainless steel melting scrap vide Bills of Entry as mentioned in Table in Para 17 of the impugned order above, without payment of Customs duty under Advance Authorizations issued by the DGFT which the Appellant No. 1 was required to pay against import of input i.e. stainless steel melting scrap in excess which was beyond the permitted norms, i.e., beyond 60% as allowed, where they fraudulently preferred to file their application for grant of Advance Authorization under Para 4.7 of the FTP in no norms category as it can be seen that the Appellant No. 1 had no Induction Furnace with AOD / VOD facility as evidenced by the following:

a. Panchnama dated 29 /30.08.2017 recorded on the spot by DRI, Noida Regional Unit Team, which clearly reveals even though the Party had Induction Furnace within their premises they did not have AOV / VOD facility.

b. Statement of Shri Yogesh Kumar Yadav, in-charge of Melting Section of the Appellant No. 1 was recorded on 29.08.2017 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein Shri Yogesh Kumar Yadav, stated that NO AOD/ VOD (Argon Oxygen Decarburization) / (Vacuum Oxygen Decarburization) furnace is installed in the factory.

c. Statement of Shri Viral Shah, DGM-Export and Additional Director of M/s. Ratnesh Metal Industries Pvt. Ltd. (Appellant No. 4) was recorded on 30.08.2017 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein the Appellant No. 4 stated that the Appellant No. 1 purchased part of AOD machineries in 2009 but the project was called off due to unavoidable circumstances and AOD facilities never been installed in factory premises. Further, it is to state that VOD facilities never been installed too.

d. Statement of Shri Rajesh S. Sanghvi, Director of M/s Ratnesh Metal Industries Pvt. Ltd. (Appellant No. 3) was recorded on 12.12.2017 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein the Appellant No. 3 stated that we never had AOD / VOD facility nor do we have AOD / VOD facility at present.

e. Statement of Shri Chandrakant B. Patel, Chartered Engineer recorded on 11.06.2019 by DRI, Noida Regional Unit Team under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, wherein Shri Chandrakant B. Patel has denied issuing any Certificate to the Appellant No. 1 and that he has never visited the premises of the Appellant No. 1.

f. Statement of Shri Viral Shah, DGM-Export and Additional Director of M/s Ratnesh Metal Industries Pvt. Ltd, (Appellant No. 4) was recorded on 27.11.2020 by HQ Preventive, Customs Ahmedabad Team under Section 108 of the Customs Act, 1962, before the Inspector (Preventive), wherein the Appellant No. 4 stated that the Appellant No. 1 had earlier imported the Stainless Steel Melting Scrap without payment of duty under Advance Licenses obtained from DGFT, Ahmedabad. The said Advance Licenses were obtained considering that the firm

is producing stainless steel through induction furnace and VOD route. However, on inquiry by the officers, the Appellant No. 4 stated that they were not having VOD (Vacuum Oxygen Decarburization) or AOD (Argon Oxygen Decarburization) facilities in their factory at the material time of obtaining the licenses and accordingly they have availed higher import benefits as against the norms provided for manufacture of Stainless Steel by Non-VOD or Non AOD facilities. The Appellant No. 4 stated that DRI Lucknow had also conducted inquiry into the same issue and had issued demand notice against 5 such Advance Licenses No. 810073933 dated 12.08.2008, No. 810074246 dated 26.08.2008, No. 810079063 dated 30.03.2009, No. 810081589 dated 21.07.2009 & No. 810084403 dated 25.11.2009 were not covered under the Demand Notice issued by the DRI, Lucknow. Further, License No: No. 0810136455; No. 0810137320 & No. 0810136687 had been surrendered by the Appellant No. 1.

2.18 Since, the Appellant No. 1 had attempted to obtain undue advantage of norms beyond the allowed norms as prescribed in C-525 applicable to plant having induction furnace with AOD / VOD converters by false declaration to Ministry of Steel and DGFT and presenting a fake / fabricated Certificate of Chartered Engineer before the Government authorities, they had evaded the duty of Customs which was liable to be recovered from them under Customs Notification No. 93/2004-Cus, dated 10.09.2004, as amended & Notification No. 96/2009-Cus, dated 11-09-2009, as amended, Notification No. 18/2015-Cus, dated 01/04/2015 as amended, for contravening the provisions of the Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedures (2004-09) & (2009-14), Volume-I. Since the Appellant No. 1 as well its Directors had willfully mis-stated and suppressed the facts for fraudulently gaining undue advantage under para 4.7 of Hand Book of Provision Vol -I and thus evaded payment of applicable Customs duty of Rs.15,61,150/- on a quantity of 112.2246 MT (in-excess) input material valued to Rs. 59,19,408/- was recoverable from the Appellant No. 1 along with an interest due thereupon from the date of import of such material rendered the goods liable to confiscation under section 111 (o) of the Customs Act, 1962 and attracts penal provisions under section 112 (a) & 114 AA of Customs Act 1962.

2.19 Further it was clearly stated on the EODC / Bond Wavier Letter issued by the Foreign Trade Development Officer that, "The Waiver of bond is issued without prejudice and will not preclude Customs Authority to take action against the licensee at any stage if any sort of misdeclaration, misrepresentation or misuse of the scheme is noticed". Therefore, the Customs had every right to take necessary action including issuance of Show Cause Notice for recovering the duty evaded, where the act of misuse of Advance Authorization by the Appellant No. 1 by misdeclaration, misrepresentation of having AOD / VOD facility for fraudulently gaining undue advantage under para 4.7 of Hand Book of Provision Vol -I and submitting a Fake Certificate and thus evaded payment of applicable Customs duty.

2.20 Accordingly, a Show Cause Notice vide F.No. VIII/10-67/Prev./HQ/2023-24

dated 14.07.2023 was issued to the Appellant No. 1, proposing, as to why:

a) Subject quantity of 112.2246 MT of goods imported duty free under Customs Notification No. 93/2004-Cus, dated 10.09.2004, as amended & Customs Notification No. 96/2009-Cus, dated 11.09.2009, Notification No. 18/2015-Cus, dated 01.04.2015 as amended, having total assessable value of Rs. 59,19,408/- should not be held liable for confiscation under Section 111 (o) of the Customs Act, 1962, for being imported fraudulently under the exemption Customs Notification No. 93/2004-Cus, dated 10.09.2004, as amended & Notification No. 96/2009-Cus, dated 11.09.2009, as amended Notification No. 18/2015-Cus, dated 01.04.2015 as amended, without observing various conditions laid down under the said Notification as well as for contraventions of the provisions of the Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedures (2004-09) & (2009-14), Volume-I as discussed in detail above;

b) Fine as contemplated under Section 125 should not be imposed on them in lieu of confiscation as the impugned goods were not available for confiscation;

c) Customs Duty amounting to Rs. 15,61,150/- (Rupees Fifteen Lakhs Sixty One Thousand One Hundred Fifty Only) payable on the aforesaid quantity of 112.2246 MT goods imported, in respect of which excess quantity was imported beyond the permitted norms through the fraudulent Certificate as discussed in the paras above, which were imported by availing the benefit of exemption of Customs Notification No. 93/2004-Cus, dated 10.09.2004, as amended & Notification No. 96/2009-Cus, dated 11.09.2009, as amended, Notification No. 18/2015-Cus, dated 01.04.2015 as amended, for contravening the provisions of the Foreign Trade Policy (2004-09) & (2009-14) read with the Hand Book of Procedures (2004-09) & (2009-14), Volume-I, should not be demanded and recovered from them along with interest under the conditions of Customs Notification No. 93/2004-Cus, dated 10.09.2004, as amended & Notification No. 96/2009-Cus dated 11.09.2009 Notification No. 18/2015-Cus, dated 01.04.2015 as amended;

d) Penalty should not be imposed upon the Appellant No. 1 under Section 112 (a) of the Customs Act, 1962, for improper importation of goods availing exemption of Notification and without observance of the conditions set out in the Notification and by availing excess consumption of Raw Material beyond the permitted norms by reasons of misrepresentation and suppression of facts as elaborated above resulting in non-payment of duty, which rendered the goods liable to confiscation under section 111 (o) of the Customs Act, 1962;

e) Penalty should not be imposed upon the Appellant No. 1 under Section 114AA of the Customs Act, 1962, for submitting false declaration regarding AOD / VOD facility to avail higher degree of entitlement of import of Raw Material.

2.20.1 The said Show Cause Notice was also issued to the following persons, proposing, as to why:

i. Penalty should not be imposed on Shri Sumer S. Sanghvi, Director of M/s.

Ratnesh Metal Industries Pvt. Ltd (Appellant No. 2) under Section 112 (a) of the Customs Act, 1962 for act of omission or commission which has resulted in claim of obtain undue advantage of excess raw material beyond the permitted SION norms;

ii. Penalty should not be imposed on the Appellant No. 2 under Section 114 AA of the Customs Act, 1962 for act of omission or commission, who signed the various documents for application under Para 4.7 to obtain Advance Authorization scheme under No Norms Category in place of proper SION norms under C525 by adopting fraudulent means i.e. by false declaration to Ministry of Steel and DGFT and presented a fake / fabricated Certificate of Chartered Engineer before the Government authorities;

iii. Penalty should not be imposed on Shri Rajesh S. Sanghvi, Director of M/s. Ratnesh Metal Industries Pvt. Ltd. (Appellant No. 3) under Section 112 (a) of the Customs Act, 1962 for act of omission or commission which has resulted in claim of obtain undue advantage of excess raw material beyond the permitted SION norms;

iv. Penalty should not be imposed on the Appellant No. 3 under Section 114AA of the Customs Act, 1962 for act of omission or commission which has resulted in abetment for claim of undue advantage i.e. excess raw material beyond the permitted SION norms which attracts Penal action for mis-statement, suppression of fact attracting penal provisions under Customs Act 1962. Even after knowing the fact that they are covered by Serial No. 525 of SION, he never came forth to pay the duty in those Authorizations where raw material was consumed in excess by the reason of fraudulent means to claim the excess quantity of raw material consumed in Authorization issued to the Appellant No. 3;

v. Penalty should not be imposed on Shri Viral Shah, DGM-EXPORT of M/s. Ratnesh Metal Industries Pvt. Ltd. (Appellant No. 4) under Section 112 (a) of the Customs Act, 1962 for act of omission or commission which has resulted in claim of obtain undue advantage of excess raw material beyond the permitted SION norms;

vi. Penalty should not be imposed on the Appellant No. 4 under Section 114AA of the Customs Act, 1962 for act of omission or commission which has resulted in abetment for claim of undue advantage, i.e., excess raw material beyond the permitted SION norms. Vide letter 18 July 2016, the Appellant No. 4 was very much aware that AOD / VOD facility was not available in their factory Premises, he had also mentioned other Advance Authorizations issued in past to the firm under Norms Category. The Appellant No. 4 was aware about the Norms under SION 525 (as per his Statement dated 30.08.2017). Therefore, the Appellant No. 4 was very much aware that in other Authorization excess quantity was claimed by them, which attracts penal action for mis-statement, suppression of fact attracting penal provisions under Customs Act 1962. Even after knowing the fact that they were covered by Serial No. 525 of SION, he never came forth to pay the duty in those Authorizations where raw material was consumed in excess by the reason of fraudulent means to claim the excess quantity of raw material consumed in Authorization issued to the Appellant No. 1.

2.21 Consequently, the Adjudicating Authority passed the following order:

i. He held the goods viz. 112.2246 MT of Stainless Steel Melting Scrap imported Duty free under Notification No.93/2004-Cus, dated 10.09.2004, Notification No.96/2009-Cus, dated 11.09.2009, Notification No.18/2015-Cus, dated 01.04.2015, having total assessable value of Rs. 59,19,408/- (Rupees Fifty Nine Lakhs, Nineteen Thousand Four Hundred and Eight Only), imported by the Appellant No, 1, as detailed under Table in Para 17 of the Show Cause Notice, liable for confiscation under Section 111 (o) of the Customs Act, 1962. However, since the same were not physically available for confiscation, he gave an option to redeem the same on payment of fine amounting to Rs. 6,00,000/- (Rupees Six Lakhs only) under Section 125 (1) of the Customs Act, 1962;

ii. He confirmed the Duty of Customs amounting to Rs.15,61,150/- (Rupees Fifteen Lakhs Sixty One Thousand One Hundred and Fifty Only) payable on the aforesaid quantity of 112.2246 MT of impugned goods imported by the Appellatn No. 1 by availing the benefit of exemption of Notification No. 93/2004-Cus, dated 10.09.2004, Notification No. 96/2009-Cus, dated 11.09.2009, Notification No. 18/2015-Cus, dated 01.04.2015 read with the provisions of the Foreign Trade Policy (2004-09) & (2009-14), and the Hand Book of Procedures (2004-09) &.(2009-14), and order to recover the same under the conditions of Notification No. 93/2004-Cus., dated 10.09.2004, as amended, Notification No. 96/2009-Cus., dated 11.09.2009, as amended and Notification No.18/2015-Cus., dated 01.04.2015, as amended;

iii. He ordered to charge and recover interest at the applicate rate on the above confirmed demand at (ii) above from the Appellant No. 1 under the conditions of Customs Notification No. 93/2004-Cus, dated 10.09.2004, Notification No.96/2009-Cus dated 11.09.2009 and Notification No. 18/2015-Cus, dated 01.04.2015, as amended;

iv. He imposed a penalty of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand only) on the Appellant No. 1 under Section 112 (a) (ii) of the Customs Act, 1962;

v. He imposed a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on the Appellant No. 1 under Section 114AA of the Customs Act, 1962;

vi. He imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Appellant No. 2 under Section 112 (a) (ii) of the Customs Act, 1962;

vii. He imposed a penalty of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only) on the Appellant No. 2 under Section 114AA of the Customs Act, 1962;

viii. He imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Appellant No. 4 under Section 112 (a) (ii) of the Customs Act, 1962;

ix. He imposed a penalty of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only) on the Appellant No. 4 under Section 114AA of the Customs Act, 1962;

x. He imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Appellant No. 3 under Section 112 (a) (ii) of the Customs Act, 1962;

xi. He imposed a penalty of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only) on the Appellant No. 3 under Section 114AA of the Customs Act, 1962;

3. Being aggrieved with the impugned order passed by the adjudicating authority, all the 04 (four) Appellants have filed the present appeals.

The Appellant No. 1 have, inter-alia, raised various contentions and filed detailed submissions on following points, in support of their claims:

3.1 The adjudicating authority erred in confirming Show Cause Notice dated 14.07.2023 without appreciating the factual and legal aspects involved in the present matter and therefore, the impugned order dated 28.03.2024 is required to be quashed and set aside in the interest of justice. It is submitted that they were issued the Advance Authorizations to import stainless steel melting scrap at NIL rate of Custom duty for manufacture of finished goods meant for export by use of these inputs. They had been duly following applicable law and procedures in respect of the Advance Authorizations issued by Regional office of the Director General of Foreign Trade (DGFT), Ahmedabad from time to time.

3.2 It is submitted that the Advance Authorization is issued to allow duty free import of inputs, which are physically incorporated in the export product, allowing normal allowance for wastage. The objective of the Scheme is to provide registered exporters with their requirement of basic inputs/raw materials at international prices without payment of Customs duty in India subject to the condition of export of manufactured goods with specific percentage of value addition. Pursuant to the Advance Authorization scheme, the Appellant was issued Advance Authorizations in the year 2008-09 for which various imports were taken place in the year 2008-11. As per the scheme, the Appellant completed its export obligation and was issued EODC / Bond Waiver letter as per below:

Sr. No	Advance License No. & Date	Date
1	No. 0810084403 Date. 25.11.2009	13.03.2015
2	No. 0810074246 Date. 26.08.2008	14.02.2012
3	No. 0810081589 Date. 21.07.2009	14.02.2012
4	No. 0810073933 Date. 12.08.2008	14.02.2012
5	No. 0810079063 Date. 30.03.2009	30.12.2011

3.3 It is submitted that all 5 Advance licenses are fully utilized and exhausted and EODC / Bond Waiver letters are issued by the DGFT, Ahmedabad.

3.4 The action of the Customs authorities is premature considering the facts that the DGFT already issued EODC / Bond Waiver letters for all the 5 Advance Authorization and no action pursuant to the aforesaid Advance Authorizations has been initiated by DGFT. For the aforesaid Advance Authorizations, the licensing authority is the DGFT, which comes under the Ministry of Commerce and Industry, and is the competent authority in respect of advance licenses, both for issue and redemption. While Customs Department is a department of Central Board of Indirect taxes and Customs (CBIC) under

the aegis of Ministry of Finance. It is submitted that it is not for the Customs authorities to interpret the licensing policy and to enforce the same once a valid license is produced. This function is with the licensing authority. If this bifurcation of the function is not adhered to there is every likelihood of utter confusion. The licensing authority may interpret one way and the customs authorities may take contrary view producing conflict between the two authorities resulting in harassment to the importer. If the license is granted for a particular item by the licensing authority the customs authority will have no right or power to go beyond the license.

3.5 In the present case, the licensing authority has accepted the fulfilment of export obligation and have issued EODC / Bond Waiver letter and have discharged the Appellant from any further obligation. That being the position, the Customs authorities cannot deny the benefit of Customs duty exemption under the Notifications governing the advance licensing scheme. If at all they felt that the Appellant had violated any of the terms and conditions of the licenses, they should have referred the matter to the licensing authority for appropriate action rather than taking action suo motu action. It is submitted that right to import of the goods under the Notification flows from the possession of the advance license and existence of notification does not empower the Customs Department to go beyond the license.

3.6 The Hon'ble Supreme Court in the case of Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi reported in 2002 (11) TMI 108 SUPREME COURT, was concerned with the denial of Customs Duty exemption in respect of imports made under advance licensing scheme on the ground that in the application for advance license the importer had indicated the value of the goods imported at an amount larger than those actually spent. In the said case the Hon'ble Supreme Court held as follows:

"13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the Adjudicating Authoritys' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

3.7 Reliance is placed upon the case of Autolite (India) Ltd. v Union of India reported in 2003 (157) E.L.T. 13 (Bom.), wherein the Hon'ble Bombay High Court held as under:

"...In the present case also, the licensing authorities have not found fault with the statement of the petitioner that the die steel is a material required in the manufacture of resultant product and have granted advance licence to the petitioner. Assuming that the licensing authorities have wrongly accepted the statement of the petitioner, so long as the licence is valid and subsisting the import of materials set out in the advance licence are liable to be cleared duty free, under Notification No. 116 of 1988 and the Customs authorities cannot deny duty free clearance of the materials set out in the licence. It is open to the Customs authorities to sit in appeal and hold that the licensing authorities have erroneously endorsed advance licence to permit import of die steel as a material required in the manufacture of the resultant product. In this view of the matter, we are of the opinion that the impugned orders passed by the Customs authorities below cannot be sustained."

3.8 Further reliance is also placed upon the following decisions:

- *Hindustan Lever Limited v Commissioner of Customs (EP), Mumbai reported in 2012 (281) E.L.T. 241 (Tri. - Mumbai);*
- *C.C. (EP) v. Jupiter Exports - 2007 (213) E.L.T. 641 (Bom.);*
- *PTC Industries Ltd. v. Union of India 2010 (252) E.L.T. 42 (All.)*

3.9 Reference is also placed upon the Circular: 11/2023-Cus. (Instruction) dated 13.03.2023 in the case of MEIS wherein it has been held that proposing recovery of duty wherein an assesee has used MEIS scrip issued to it by DGFT, has to be first decided by DGFT. Therefore, the allegation of misrepresentation before the licensing authority and consequent denial of Customs duty exemption are not legally sustainable as the licensing authority has not questioned the Appellant with regard to the usage of stainless steel metal scraps in the manufacture of export products and have issued Advance Licenses in accordance with the standard input / output norms prescribed in the policy. Once advance licenses have been issued for a given quantity and for a given value, the Customs cannot deny benefit of Customs duty exemption in respect of such quantity and value of import on extraneous grounds for which they have no jurisdiction to investigate. Therefore, so long as the terms and conditions of Advance Licenses have not been violated by the Appellant, the benefit of Customs Duty exemption under the aforesaid Notifications cannot be denied or withheld.

3.10 The adjudicating authority erred in holding that the Appellant has made excess Duty-free imports of stainless steel melting scrap than the admissible norms for manufacturing of their export product. The adjudicating authority has held that the Appellant has failed to meet the export obligation on the excess imports of the said input. Thus, the Appellant failed to satisfy the condition of fulfilling the export obligation in respect of the excess quantity of stainless steel melting scrap imported Duty free under the Customs Notifications. Q. R. S. It is submitted that the DGFT already issued EODC / Bond Waiver letter for all the five Advance Authorizations which are under dispute in the impugned order. The DGFT office issued EODC / Bond Waiver letters after satisfying about the fulfilment of the conditions of the license as per the Notification regarding import and export. After issuance of EODC / Bond Waiver letters, no action has been initiated

by DGFT. With regard to license condition, the licensing authority has certified full discharge of export obligation by Appellant therefore, the Adjudicating Authority ought not to hold that the Appellant failed to satisfy the condition of fulfilling the export obligation in respect of the excess quantity of stainless steel melting scrap imported Duty free.

3.11 It is submitted that once export obligation is fulfilled and major portion of the duty-free imported material has been used in the goods exported, exemption cannot be denied on the ground of excess import of duty-free material or by questioning the norms fixed by DGFT. To buttress this contention, reliance is placed upon the following decisions:

- *Aditya Birla Nuvo Ltd. reported in 2010 (249) E.L.T. 273 (T);*
- *Aditya Birla Ltd. Vs. CC Bangalore reported in 2010 (249) ELT 273 (Tri.- Bang.);*
- *Hindustan Lever Ltd. Vs. CC (EP) Mumbai reported in 2012 (281) ELT 209 (Tri-Mumbai).*

3.12 The adjudicating authority erred in confirming Show Cause Notice dated 14.07.2023 without appreciating the fact that there is inordinate delay in issuing Show Cause Notice dated 14.07.2023. It is submitted that the present proceedings are related to the following Advance Authorizations which were issued to the Appellant in the year 2008-2009:

Sr. No.	Advance Authorisation No.	Import Qty.	Exported Qty.	Utilisation of input 60% SION norms C%525 on eligible Export Qty.	Excess Input Qty Mtrs	Duty Calculation	Customs Port	BE No. BE Date	Item wise value	Duty forgone
1	810073933 dated 12.08.2008	149.95	230.791	138.4746	11.4754	7.43	INSB16	653547 15.11.2008	633513	200845
						4.0454	INSB16	651619 17.09.2008	366450	93720
2	810074246 dated 26.08.2008	206.8	203.456	122.0736	84.7264	13.622	INSB16	652552 13.10.2008	675357	172723
						19.98	INSB16	651615 17.09.2008	1006468	247405
						18.73	INSB16	651365 08.09.2008	943500	241300
3	810081589 dated 21.07.2009	223.06	345.062	207.0372	16.0228	32.3944	INSB16	651326 08.09.2008	1631827	417340
						16.0228	INSB16	3429836 06.05.2011	662293	177817
4	810079063 dated 30.03.2009	45.566	77.778	46.6668 - 1.008	NA	NA	NA	NA	NA	NA
5	810084403 dated 25.11.2009	44.91	91.815	55.089	NA	-10.179	NA	NA	NA	NA
					112.2246					5919407.4

3.13 As enumerated in the table above, the Advance Authorizations were issued in the year 2008-09 for which the respective import was undertaken in the year 2008 to 2011. The EODC / Bond waiver letters were issued in the year 2011 to 2015. It is to be

noted that out of the disputed Advance Authorizations, no demand has been raised for Advance Authorization No. 810079063 dated 30.03.2009 and No. 810084403 dated 25.11.2009. The DRI initiated its investigation in the year 2017, wherein a search was conducted at the factory premises of the Appellant. Subsequently, a search was conducted at the premises of the Appellant in the year 2020 by the Customs officers, Statements of the concerned persons were recorded in the year 2017 and 2020, and Panchama was recorded on 29 / 30.08.2017 however, the Show Cause Notice was issued on 14.07.2023. It is submitted that the initial investigation started in 2017 however, it took 6 years to complete the investigation and issue Show Cause Notice dated 14.07.2023. In fact, the aforesaid Advance Authorizations were issued in the year 2008-09, and EODC / Bond Waiver letters were issued in the year 2011-2015, even then Revenue took more than 8 years to issue the Show Cause Notice dated 14.07.2023 which is beyond the reasonable period.

3.14 Reliance is placed upon the decision of the Hon'ble CESTAT, Bangalore in the case of Shree Renuka Sugars Ltd. (SRSL) versus Commissioner of C. Ex., Bangalore reported in 2006 (10) TMI 59 - CESTAT, BANGALORE wherein the Hon'ble CESTAT, Bangalore dismissing the appeal barred by limitation held as under:

> *"5....The investigation was carried out in the factory premises on 23-11-2002, whereas the show cause notice was issued on 20-4- 2005. Therefore, the demands have been raised after inordinate delay of more than 800 days. Therefore, in terms of cited Apex Court judgment, demands got barred by time. The Apex Court has earlier also held that when show cause notices have been issued after inordinate delays, the demands would be barred by time as rendered in the case of Mopeds India Ltd. v. CCE -1991 (56) E.L.T. 241 (T.) affirmed by the Apex Court as reported in 1991 (53) E.L.T. A79 (S.C.) and Gammon India Ltd. v. CCE - 2002 (146) E.L.T. 173 maintained by Apex Court in 2002 (146) E.L.T. A313 (S.C.)."*

3.15 Reliance is also placed upon the decision of the Hon'ble CESTAT, Bangalore in the case of Lovely Food Industries & Anr. versus CCE, Cochin reported 2005 (11) TMI 7 - CESTAT, Bangalore wherein the Hon'ble CESTAT, Bangalore held as under:

> *"4. But the main question that is to be decided in the present case is as to whether the benefit can be given to a person solely on the ground that the department took about three years to issue the Show Cause Notice. In this regard, the Tribunal, in the case of Indian Petrochem. Corpn. Ltd. v. CCE, Vadodara 2000 (125) E.L.T. 1048 (Tribunal) held that where there is delayed issue of Show Cause Notice, then the benefit of time bar has to be extended to the appellant. In view of this judgment and in the light of the fact that the department took 3 years time to issue the Show Cause Notice, the appeals are allowed by grant of benefit of time bar, with consequential relief, if any."*

3.16 Therefore, at the outset, it is submitted that the Show Cause Notice has been issued beyond a reasonable time and there is an inordinate delay of more than 6 years from the date of investigation, and the Show Cause Notice dated 14.07.2023 and impugned order dated 28.03.2024 are liable to set aside on this count alone.

3.17 The Adjudicating Authority erred in confirming the Show Cause Notice dated 14.07.2023 without appreciating the fact that the Show Cause Notice has been issued beyond reasonable time. It is reiterated that the Advance Authorization license was issued to the Appellant in the year 2008-09 and the EODC / Bond Waiver was issued in the year 2011-15. The DGFT never initiated any action. The DRI, LZU initiated investigation in the year 2017 and requested the Customs Department to take measures in the case of disputed Advance Licenses vide letter dated 20.11.2019. However, search was conducted by Preventive, Customs only on 27.11.2020 and the Show Cause Notice was issued on 14.07.2023.

3.18 The disputed Advance Authorization were issued in the year 2008-2009 and last shipping bills were issued as under:

Sr. No.	Advance Authorization	Date	Last Shipping Bill No. and Date
01.	810073933	12.08.2008	5078428, dated 20.08.2011
02.	810074246	26.08.2008	1385151, dated 24.07.2009
03.	810081589	21.07.2009	1403704, dated 20.11.2009

3.19 It is submitted that the Show Cause Notice dated 14.07.2023 is issued beyond a reasonable period of time. In the present case, the Advance Authorizations were issued in the year 2008-09, last Shipping Bills were issued in the year 2009-2011 but the Show Cause Notice dated 14.07.2023 has been issued in the year 2023. This shows that there is an inordinate delay of more than 12 years in issuance of the Show Cause Notice dated 14.07.2023. The Revenue was silent for 6 years before even initiating the investigation in the year 2017. In case there was any violation of any conditions under the Advance Authorization Scheme or any other provisions of the Act, the Revenue ought to have taken action before EODC / Bond Waiver was issued or even after that but within a reasonable time.

3.20 In the case of Spectra Fashions v Union of India reported in 2016 (41) S.T.R. 184 (Cal.), the Hon'ble Calcutta High Court set aside Show Cause Notice and Order-in-Original having been issued beyond six years from the relevant date and held as under:

> *"9. In the present case, the advance licence was obtained in the year 2002. Though the condition-sheet appended to the advance licence obliged the first petitioner to complete the corresponding export within a period of 18 months from the date of the licence, the export was permitted to be continued till the year 2005. The export transaction appears to have been completed in 2005 as would be evident from a writing dated February 23, 2005 issued by the office of the Director General of Foreign Trade certifying that the export obligation against the relevant advance licence had been fulfilled.*
>
> *10. The date of the last of the shipping bills relied upon by the petitioners is February 09, 2005.*

13. Since it is evident that no notice was issued by the department to the first petitioner within five years of February, 2005, the steps taken by the respondent authorities to recover the duty exemption afforded to the first petitioner cannot be permitted to continue. The show-cause notice dated July 11, 2011, a copy where of appears as Annexure P-8 to the petition at page 60 thereof, is set aside as being without jurisdiction. As a consequence, all steps taken pursuant to the show cause notice, including the order-in-original dated February26, 2014, are also set aside."

Therefore, it is submitted that the demand raised in the Show Cause Notice is beyond reasonable period and the Show Cause Notice dated 14.07.2023 and impugned order is liable to be set aside.

3.21 Further, it is submitted that the adjudicating authority has erred in holding that the import item i.e. Stainless Steel Melting Scrap to be used in production of export item i.e. "Stainless Steel Rounds / Flats / Hexagons / Angles / Bars of Grade AISI 304", for which the Appellant obtained Advance Authorizations, falls under the SION entry at C-525, they were required to fulfill their export obligation as per the norms stipulated in SION entry No. C-525 instead of applying for Advance Authorization Scheme under Para 4.7 of HBP i.e. under no norms condition on the basis of self-declaration. The adjudicating authority erred in holding that the Appellant applied for Advance Authorization scheme under Para 4.7 of Hand Book of Procedures i.e. on the basis of self-declaration by them despite the fact that their export product i.e. Stainless Steel Rounds / Flats / Hexagons / Angles / Bars of Grade AISI 304 would fall within the SION category of C-525, wherein norms for utilization of scrap has been fixed at 60% imported material i.e. the import of stainless steel melting scrap of known composition may be permitted within the overall quantity of items under SION C 525 1(a) but upto 60% only, if the plant have induction furnace without the facility of AOD/VOD. Therefore, the Appellant were required to pay Customs Duties on proportionate basis in respect of the authorizations where the raw material import was in excess than the permitted norms.

3.22 It is submitted that the Appellant applied under the no norms category wherein the DGFT is to prescribe the norms. In the no norms category, exporters first obtain the Advance Authorization from the concerned authority, which allows them to import raw materials, inputs, or components duty-free, subject to the condition of export obligation. The exporter utilizes the imported materials to manufacture the export product as per the terms and conditions specified in the Advance Authorization. After completing the manufacturing process, the exporter submits an application to the Norms Committee or relevant authority for fixation of norms. Therefore, the onus is not on the Appellant when the Norms Committee is supposed to provide the SION category.

3.23 Even otherwise, it is submitted that Note 6 of the SION C-525 at the relevant time, i.e., before 25.02.2009 read as under:

"Note 6: Import of Stainless Steel Melting Scrap of known chemical composition may be permitted within the overall quantity of item no. 1(a) but up to 60% and 90% respectively to Induction Furnace and Electric Furnace based units. In such a case, quantity of respective ferroalloy/metal to be allowed as per formula at Sl.No. 2 will have to be reduced to account for the recoverable alloying element(s) (Nickel, Copper, Chromium and Vanadium) present in the stainless steel scrap. The reduced quantity of these ferroalloys/metals shall be obtained by deducting the equivalent quantity of ferroalloy/metal to be obtained using the following formula from the total quantity to be worked out as per formula at Sl. No. 2 in the SION read with Note 3:

Alloy Steel Scrap Quantity (kg) x % of relevant element in scrap / % of relevant element in ferroalloy/metal/compound"

3.24 Thereafter, the Director General of Foreign Trade vide Public Notice No. 150/2008, dated 25.02.2009 amended the Note 6 of SION C-525 and substituted as under:

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

Alloy Steel Scrap Quantity (kg) x % of relevant element in scrap / 1.115% of relevant element in ferroalloy/metal/compound"

3.25 Therefore, prior to 25.02.2009, there was no condition of having AOD / VOD facility to avail benefit of 90% of import of stainless steel melting scrap. The Appellant has been issued Advance Authorization No. 810073933 on 12.08.2008 and No. 810074246 on 26.08.2008 which is before the amendment in Note 6 of SION C-525. In fact, by 25.02.2009, the Appellant had undertaken import of stainless melting scrap vide various Bills of Entry. Therefore, the condition of AOD / VOD facility will not be applicable in the case of Advance Authorization Nos. 810073933 on 12.08.2008 and 810074246 on 26.08.2008.

3.26 It is well settled that unless and until specifically stated, public notice is not retrospective in nature. Reliance is placed upon the following cases:

- *Patel Impex Pvt. Ltd. v Collector of Customs, Ahmedabad reported in 1984 (16) E.L.T. 497 (Tribunal);*

- *Director General of Foreign Trade v Kanak Exports, 2015 (326) E.L.T. 26 (S.C.);*
- *R.P. International v Union of India and others reported in 2017 (353) E.L.T. 307 (P & H).*

3.27 It is submitted that at the time of applying for Advance Authorization and at the time of import of stainless steel melting scrap, there was no condition to have AOD / VOD facility. Had there been such a condition, the Appellant would have installed it before hand to comply with the said condition.

3.28 The adjudicating authority has erred in imposing penalty under Section 112 (a) (ii), and 114AA of the Act. It is submitted that in view of the above submissions made, the disputed goods were not liable for confiscation under the provisions of Section 111 (o) of the Act, no penalty and interest ought to have been imposed on the Appellant.

3.29 The Appellant No. 2 in addition to above grounds raised by the Appellant No. 1 have submitted that:

- The entire case of the Revenue rests upon the letter dated 21.04.2009, addressed to the Joint Industrial Advisor of Ministry of Steel, New Delhi which is signed by the Appellant. There is nothing on record to show that the Appellant had any knowledge about the alleged offence. It is pertinent to note that none of the co-noticee have alleged anything against the Appellant, futhr no Statement of the Appellant has been recorded. The Revenue has failed to prove that the signature on the alleged letter dated 21.04.2009, addressed to the Joint Industrial Advisor of Ministry of Steel, New Delhi is of the Appellant;
- The entire case is based upon assumption and presumption without checking veracity of the signature of any FSL report stating that the signature of the alleged letter dated 21.04.2009 is of the Appellant. In absence of any knowledge or corroborative evidence, the penalty upon the Appellant is liable to set aside;
- Reliance is placed upon the following cases where the penalty upon the Director has been set aside in the absence of any role attributed:
  - *Ved Prakash Wadhwani vs. Commissioenr of Customs, Ahmedabad reported in 2008 (4) TMI 667 – CESTAT, Ahmedabad;*
  - *Hemant Gogla vs. Commissioner of C. Ex. & ST, Allahabad reported in 2019 (367) ELT 278 (Tri. – All.);*
  - *Debesh Prasad Nanda vs. Commissioner of C. Ex., New Delhi reported in 2016 (332) ELT 233 (Tri. - Del.);*

3.30 The Appellant No. 3 in addition to above grounds raised by the Appellant No. 1 have submitted that:

- The Revenue has not brought any evidence to prove that the Appellant was aware about the alleged contravention. The Revenue has not brought any evidence to substantiate the role of the Appellant. The adjudicating authority only relied upon the Statement of the Appellant, wherein, the Appellant has not

categorically accepted his role in the alleged contravention. The Revenue has not relied upon any cogent evidence to prove his involvement;

- The entire case is based upon assumption and presumption. In absence of any knowledge or corroborative evidence, the penalty upon the Appellant is liable to set aside;
- In the present case, the adjudicating authority has not brought forward any shred of evidence to show that the Appellant was aware about the alleged mis-declaration. Reliance is placed upon the following decisions to support the aforesaid contentions:
  - *Commissioner of Customs (Import) vs. Trinetra Impex Pvt. Ltd. reported in 2020 (372) ELT 332 (Del.);*
  - *Suresh Rajaram Newagi vs. Commissioner of Cus., reported in 2008 (228) ELT 211;*
- Reliance is placed upon the following cases where the penalty upon the Director has been set aside in the absence of any role attributed:
  - *Ved Prakash Wadhwani vs. Commissioenr of Customs, Ahmedabad reported in 2008 (4) TMI 667 – CESTAT, Ahmedabad;*
  - *Hemant Gogla vs. Commissioner of C. Ex. & ST, Allahabad reported in 2019 (367) ELT 278 (Tri. – All.);*
  - *Debesh Prasad Nanda vs. Commissioner of C. Ex., New Delhi reported in 2016 (332) ELT 233 (Tri. - Del.);*

3.31 The Appellant No. 4 in addition to above grounds raised by the Appellant No. 1 have submitted that:

- The Appellant in his Statement dated 30.08.2017 has stated that during the year 2009, the Company purchased parts of AOD machineries but the project was called off;

It is pertinent to note that the Appellant at the relevant time was only an employee of the Company and had no decision-making powers. As an employee, his work was limited to following instructions and directions in the course of employment. As such, the Appellant has not benefited from the alleged transactions. The Revenue has not alleged that the Appellant has gained anything over and above his salary. The Appellant ought not to be penalized when he had no decision-making power and has not personally benefited from the alleged contravention;

- Reliance is placed upon the following decisions to support the aforesaid contentions:
  - *O.P. Agarwal vs. Commissioner of Customs, Kandla reported in 2005 (185) ELT 387 (Tri. – Del.);*
  - *Gammon India Ltd. vs. Commissioner of Customs (Import), Mumbai reported in 2019 (369) ELT 918 (Tri. – Mumbai);*
  - *Bhushan Steel & Strips Ltd. vs. Commissioner of C. Ex., Ghaziabad reported in 2015 (329) ELT 625 (Tri. – Del.);*
  - *Z. U. Alvi vs. CCE, Bhopal reported in 2000 (117) ELT 69 (T);*

In view of the above, all the 04 (four) Appellants have contended that the impugned order dated 28.03.2024 passed by the adjudicating authority is even otherwise bad, erroneous and therefore, it deserves to be set aside.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 26.06.2025, following the principles of natural justice. Ms. Shweta Garge, Advocate appeared for the hearing on behalf of the Appellants and re-iterated the submission made at the time of filing the appeals.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the adjudicating authority and the defense put forth by the Appellant in their appeals.

5.1 On going through the material on record, I find that the following issues need to be addressed:

i. Whether the Show Cause Notice dated 14.07.2023 is time-barred under Section 28 of the Customs Act, 1962;

ii. Whether the Customs authorities can re-open the issue of fulfillment of export obligation and deny exemption benefits once DGFT, the licensing authority, has issued Export Obligation Discharge Certificates (EODC)/Bond Waiver letters;

iii. Whether the demand for duty, confiscation of goods, and imposition of penalties on all the Appellants are sustainable in law.

5.2 The SCN was issued on 14.07.2023. The Advance Authorizations were issued in 2008-09, imports were undertaken from 2008 to 2011, and EODC / Bond Waiver letters were issued by DGFT between 2011 and 2015. The DRI investigation commenced in 2017. Section 28 of the Customs Act, 1962, provides for a normal period of limitation of two years from the relevant date for demand of duty. An extended period of five years can be invoked only in cases where duty has not been levied or has been short-levied or erroneously refunded by reason of "fraud, collusion or any willful mis-statement or suppression of facts by the importer or exporter or agent or employee of the importer or exporter, or for contravention of any of the provisions of this Act or the rules or regulations with intent to evade payment of duty."

5.3 The Appellant No. 1 argues that the SCN is time-barred due to inordinate delay while referring to the following judicial precedents:

- Shree Renuka Sugars Ltd. (SRSL) (supra): This CESTAT judgment, citing Supreme Court cases like Mopeds India Ltd. and Gammon India Ltd., held that

demands raised after inordinate delays (e.g., more than 800 days from investigation) would be time-barred.

- Lovely Food Industries & Anr. (supra): This CESTAT judgment, citing Indian Petrochem. Corpn. Ltd., granted the benefit of time-bar where the department took about three years to issue the SCN.

- Spectra Fashions v Union of India [2016 (41) S.T.R. 184 (Cal.)]: The Calcutta High Court set aside an SCN and OIO issued beyond six years from the relevant date.

5.4 The imports in question date back to 2008-2011. The EODC / Bond Waivers, which signify the closure of the export obligation from DGFT's end, were issued by 2015. Even if the "relevant date" is considered as the date of fulfillment of export obligation or the date of issuance of EODC (latest being 2015), the SCN issued in July 2023 is clearly beyond the normal period of two years and even the extended period of five years. For the extended period to be invoked, the Department must prove "fraud, collusion, willful mis-statement, suppression of facts, or contravention with intent to evade duty." While the impugned order alleges fraudulent means and suppression of facts (e.g., regarding AOD / VOD facility, fake Certificate), the investigation by DRI commenced in 2017. If the alleged fraud / suppression was discovered or ought to have been discovered by 2017, the SCN should have been issued within the extended period from the "relevant date" (which would be prior to 2017). Issuing an SCN in 2023 for alleged violations from 2008-2011, even with an investigation starting in 2017, indicates an inordinate and unexplained delay. The burden is on the Revenue to demonstrate that the alleged suppression was such that it could not have been discovered earlier through normal diligence.

5.5 The Supreme Court in Cosmic Dye Chemical vs. Collector of Central Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)] held that "suppression of facts" means not an innocent or a bona fide omission but a deliberate act of suppressing facts with the intention to evade duty. Mere inaction or failure to declare does not amount to suppression. In Pahwa Chemicals Pvt. Ltd. v. CCE [2005 (189) ELT 257 (SC)], it was clarified that mere failure to declare does not automatically amount to suppression of facts. The Department has not adequately explained why, despite the commencement of investigation in 2017, it took six more years to issue the SCN. This delay itself suggests a lack of diligence or that the alleged suppression was not so deep-rooted as to prevent earlier discovery.

5.6 The adjudicating authority implicitly relies on the extended period by alleging fraud and suppression. However, the sheer passage of time from the imports (2008-2011), the issuance of EODCs (2011-2015), and even the commencement of investigation (2017) to the issuance of the SCN (2023) is excessive and unexplained. The delay itself undermines the claim of active suppression that could not have been

discovered earlier. The judgments cited by the Appellant No. 1 clearly establish that such inordinate delays render the SCN time-barred. Therefore, considering the inordinate and unexplained delay in issuing the Show Cause Notice, which is far beyond even the extended period of limitation from the relevant dates of imports and fulfillment of export obligations, the SCN dated 14.07.2023 is held to be time-barred.

5.7 This issue concerns the jurisdictional interplay between DGFT (the policy / licensing authority) and Customs (the enforcement / duty collection authority). The Appellant No. 1 argues that once DGFT has issued EODC / Bond Waiver, Customs cannot question the fulfillment of export obligation.

- Titan Medical Systems Pvt. Ltd. v Collector of Customs, New Delhi [2002 (11) TMI 108 SUPREME COURT]: The Supreme Court held that once an advance license was issued and not questioned by the licensing authority, Customs authorities cannot refuse exemption on an allegation of misrepresentation. If there was misrepresentation, it was for the licensing authority to take steps.

- Autolite (India) Ltd. v Union of India [2003 (157) E.L.T. 13 (Bom.)]: The Bombay High Court held that so long as the license is valid and subsisting, duty-free clearance cannot be denied by Customs, even if the licensing authorities might have "wrongly accepted" the importer's statement.

- Sheshank Sea Foods Pvt. Ltd. v. Union of India [1996 (88) E.L.T. 626 (S.C.)]: The Supreme Court held that Customs cannot question the correctness of a license issued by DGFT unless it is found to be fraudulent or obtained by misrepresentation, and that too, it is primarily for the licensing authority to act.

- East Coast Commercial Co. Ltd. v. Collector of Customs [1997 (91) E.L.T. 248 (S.C.)]: Reiterated that once a license is issued, Customs cannot go behind it unless it is proved to be invalid.

- Commissioner of Customs, Mumbai v. Concor India Ltd. [2012 (275) E.L.T. 3 (S.C.)]: The Supreme Court recognized DGFT as the expert body for policy matters.

- Commissioner of Customs, Chennai v. B.S. Refrigeration [2011 (271) ELT 578 (Mad.)]: The Madras High Court held that Customs cannot deny benefit of exemption notification if DGFT has certified fulfillment of export obligation.

- Aditya Birla Nuvo Ltd. [2010 (249) E.L.T. 273 (T)] and Hindustan Lever Ltd. Vs. CC (EP) Mumbai [2012 (281) ELT 209 (Tri- Mumbai)]: These cases support that once export obligation is fulfilled and certified by DGFT, exemption cannot be denied by Customs by questioning the norms fixed by DGFT.

5.8 Circular no. 11/2023-Cus. (Instruction) dated 13.03.2023 (MEIS case), though for MEIS, reinforces the principle that policy-related issues, especially regarding scrips / licenses issued by DGFT, should first be addressed by DGFT. The adjudicating authority relies on the "without prejudice" clause in the EODC / Bond Waiver and the allegation of fraud / misrepresentation. While the EODC / Bond Waiver states it is "without prejudice" to Customs' right to take action for misdeclaration / misrepresentation, this clause cannot be interpreted to grant Customs unfettered power to re-open matters already settled by the licensing authority, especially concerning export obligation fulfillment. The judicial pronouncements cited above clearly establish that the primary jurisdiction to determine the validity of the license or the fulfillment of export obligation lies with DGFT. Customs can only act if DGFT itself cancels the license or EODC, or if there is a clear finding by DGFT that the conditions were violated. The "without prejudice" clause allows Customs to act on issues like mis-declaration of goods, but not to sit in judgment over DGFT's policy decisions or certification of export obligation fulfillment unless DGFT itself initiates action or finds fraud in the issuance of the EODC.

5.9 In the present case, the DGFT has issued EODC / Bond Waiver letters for all five disputed Advance Authorizations. This signifies that the licensing authority has been satisfied that the Appellant No. 1 has fulfilled its export obligations as per the terms and conditions of the scheme. The impugned OIO, in questioning the validity of the norms and alleging misrepresentation, is effectively sitting in judgment over the actions of the DGFT. This contravenes the established legal position that Customs' jurisdiction is limited to verifying compliance with the conditions of the exemption notification, not questioning the validity of the license itself. The proper course of action for the Customs authorities, if they found any discrepancy, was to refer the matter back to the DGFT for cancellation or modification of the EODC. The action taken by the Customs Department is premature and lacks the necessary jurisdiction. The DGFT's issuance of EODC / Bond Waiver letters discharges the Appellant's liability, and Customs cannot take suo motu action to recover duty on this ground.

5.10 The impugned order alleges that a fake / fabricated Chartered Engineer's Certificate was produced to fraudulently avail benefits. If this fraud was in obtaining the Advance Authorization or the EODC itself, the primary authority to act on this would be DGFT, which issued these documents. The impugned order does not indicate that DGFT has cancelled the Advance Authorizations or the EODC / Bond Waivers based on this alleged fraud. In the absence of such action by the licensing authority, Customs' suo motu denial of benefits on grounds related to policy compliance (like AOD / VOD facility or SION norms) is questionable. The principle is that the enforcing authority (Customs) cannot override the policy decisions or certifications of the policy-making / licensing authority (DGFT).

5.11 The Appellant No. 1 also argued that the AOD / VOD condition or specific SION norms were not applicable retrospectively through below detailed judicial precedents:

- Patel Impex Pvt. Ltd. v Collector of Customs, Ahmedabad [1984 (16) E.L.T. 497 (Tribunal)]: This case supports the principle that public notices or conditions cannot be applied retrospectively unless specifically stated.

- Director General of Foreign Trade v Kanak Exports [2015 (326) E.L.T. 26 (S.C.)] and R.P. International v Union of India [2017 (353) E.L.T. 307 (P & H)]: These cases generally deal with the non-retrospective application of policy changes. If the alleged non-compliance with AOD/VOD norms was based on a condition that was not in force or was subsequently amended after the licenses were issued and EODCs granted, then applying it retrospectively to deny benefits would be illegal. The adjudicating authority has not adequately addressed this aspect.

5.12 The Adjudicating Authority's conclusion that the Appellant No. 1 fraudulently availed higher benefits by not having AOD / VOD facilities is flawed for the licenses and imports that took place before February 25, 2009. The condition simply did not exist at that time. The DGFT Public Notice dated February 25, 2009, is not retrospective. Therefore, the allegations against the Appellant No. 1 regarding a lack of AOD / VOD facilities and the consequent duty demand on the imports under licenses issued prior to this date are legally unsustainable. Therefore, considering that DGFT, the competent licensing authority, has issued EODC / Bond Waiver letters certifying the fulfillment of export obligations, and in the absence of any action by DGFT to cancel these authorizations or EODCs, the Customs authorities cannot suo motu re-open the issue of export obligation fulfillment or deny the exemption benefits based on alleged non-compliance with policy conditions.

5.13 Given the findings on issue that the Show Cause Notice is time-barred, and on issue that Customs lacks jurisdiction to question the EODC / Bond Waiver in the absence of DGFT's action, the entire proceedings initiated by the SCN become unsustainable. Consequently, the demand for duty, confiscation of goods, and imposition of penalties, which are all predicated on the validity of the SCN and the alleged contraventions, automatically fall. Therefore, the demand for duty, confiscation of goods, and imposition of penalties upon the Appellant No. 1 are not sustainable in law.

5.14 The Adjudicating Authority held the goods liable for confiscation under Section 111 (o) of the Customs Act, 1962, and imposed a fine of Rs. 6,00,000/- in lieu of confiscation. Penalties were also imposed under Sections 112 (a) (ii) and 114AA upon the Appellant No. 1. The Appellant correctly argues that the question of redemption fine does not arise when the goods are not available for confiscation. The impugned OIO itself acknowledges that the goods are "not physically available for confiscation". This principle has been upheld by a catena of judgments, including CC Vs. Finesse Creation Inc., - 2009 (248) ELT 122 (Bom.), which was affirmed by the Supreme Court. Furthermore, the imposition of penalties is a consequence of the underlying duty demand and the findings of fraud. As established in the discussion above, the entire basis for the demand is flawed

due to the DGFT's EODC, the retrospective application of a Public Notice, and the inordinate delay. If the duty demand cannot be sustained, the penalties must also fail. The penalties imposed are based on the premise that the Appellant No. 1 committed an act that rendered the goods liable for confiscation, a premise that is not supported in this case. The imposition of a fine in lieu of confiscation on already-exported goods is not legally tenable. The penalties imposed upon the Appellant No. 1 are also unsustainable as the foundational grounds of duty evasion and fraudulent misrepresentation are not legally sound.

6. Since, it has already held in the above para that the demand of duty and confiscation of goods under Section 111 (o) of the Customs Act, 1962 are legally not sustainable, consequently, the penalties imposed upon the Appellant No. 2, Appellant No. 3, & Appellant No. 4 under Section 112 (a) (ii) and Section 114 AA of the Customs Act, 1962 are unwarranted and also liable to be set aside.

7. In view of the detailed discussions and findings above, this appellate authority concludes that the appeals filed by all the 04 (four) Appellants is sustainable on merits. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

i. The appeals filed by all the 04 (four) Appellants are hereby ALLOWED.
ii. The impugned Order-in-Original No. 261/ADC/VM/O&A/2023-24, dated 28.03.2024 is hereby SET ASIDE.
iii. Consequently, the demand for Customs duty, confiscation of goods, and imposition of penalties on all the 04 (four) Appellants are hereby set aside.

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

F. No. S/49-65/CUS/AHD/2024-25
S/49-66/CUS/AHD/2024-25
S/49-67/CUS/AHD/2024-25
S/49-68/CUS/AHD/2024-25

Date: 14 .07.2025

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CUSTOMS (APPEALS), AHMEDABAD.

To,

1) M/s. Ratnesh Metal Industries Pvt. Ltd.,
(Now known as M/s. MP Steel (India) Pvt. Ltd.)
Survey No. 900, Near Ashram Chokdi,
Village – Ranasan, Taluka – Vijapur
Mehsana - 382870

2) Shri Sumer S. Sanghavi,
Ex-Director of M/s. Ratnesh Metal Inds. Pvt. Ltd,
(Now known as M/s. MP Steel (India) Pvt. Ltd.,,
47, Highway Park Society,
Sabarmati, Ahmedabad.

3) Shri Rajesh S. Sanghavi,
Ex-Director of M/s. Ratnesh Metal Inds. Pvt. Ltd,
(Now known as M/s. MP Steel (India) Pvt. Ltd,
54, Hindu Colony, Opp. Sardar Patel Stadium Rd.
Navrangpura, Ahmedabad - 380 009

4) Shri Viral Shah, DGM – Export of
M/s. Ratnesh Metal Inds. Pvt. Ltd,
(Now known as M/s. MP Steel (India) Pvt. Ltd.,
Survey No. 900/1, Near Ashram Chokdi,
Village – Ranasan, Taluka – Vijapur
Mehsana – 382870

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1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Ahmedabad.
3. The Additional Commissioner of Customs, Custom, Ahmedabad.
4. Guard File.