

	<p>सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT</b> <b>Phone No.02838- 271165/66/67/68</b> <b>FAX.No.02838-271169/62,</b> <b>Email-adj-mundra@gov.in</b></p>	
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<b>A FILE NO.</b> फाइल संख्या	GEN/ADJ/ADC/2639/2024-Adjn-O/o Pr. Commr- Cus-Mundra
<b>B OIO NO.</b> आदेश संख्या	MCH/ADC/ZDC/399/2025-26
<b>C PASSED BY</b> जारीकर्ता	<b>Dipak Zala,</b> Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क,Custom House, Mundra/कस्टम हाउस, मुंद्रा।
<b>D DATE OF ORDER</b> आदेश की तारीख	25.11.2025
<b>E DATE OF ISSUE</b> जारी करने की तिथि	25.11.2025
<b>F SCN No. &amp; Date</b> कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/2639/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 10.12.2024
<b>G NOTICEE/ PARTY/ IMPORTER</b> नोटिसकर्ता/पार्टी/आयातक	M/s. Nahar Granites Pvt. Ltd. (IEC: 1398001112)
<b>H DIN/दस्तावेज़ पहचान संख्या</b>	20251171MO0000888A20

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त) अपील,  
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,  
नवरंगपुरा,अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
HAVING HIS OFFICE AT 4<sup>TH</sup> FLOOR, HUDCO BUILDING, ISHWAR BHUVAN  
ROAD,**

**NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –
- i. उक्त अपील की एक प्रति और A copy of the appeal, and  
ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं° 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

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

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**BRIEF FACTS OF THE CASE**

**M/s. Nahar Granites Pvt. Ltd** (IEC- 1398001112)(*herein referred to as the importer*) having address as Plot No. 16/1, GIDC, Kalol District, Gandhinagar, Gujarat-382721, had filed Bill of entry no. 6262540 dated 27.12.2019 for import of " *Remelted Zinc Ingot* " falling under tariff heading 79011200 of First Schedule to the Customs Tariff Act, 1975 from Thailand and availed benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011 as mentioned in Table A.

1.1 Whereas, an investigation was initiated by the Directorate of Revenue Intelligence, Jamnagar Regional Unit against **M/s. Nahar Granites Pvt. Ltd.**,

who were importing “Remelted Zinc Ingot” falling under tariff heading 79011200 of First Schedule to the Customs Tariff Act, 1975. Investigation indicated that various importers including M/s. Nahar Granites Pvt. Ltd., were engaged in import of “Remelted Zinc Ingot” from Thailand and availed benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011, as amended, though the manufacturer/supplier does not meet the criteria of Rules of Origin under AIFTA. “Remelted Zinc Ingot” is classified under CTH 79011200 of First Schedule to the CTA and effective rate of duty on this product was 5%.

2. Investigation was initiated by DRI against the Importer for duty evasion on import of “Remelted Zinc Ingot” from Thailand in respect of the 01 Bill of Entry mentioned below.

**Table-A**

Sl. No.	BE No. & Date	Supplier Name (M/s.)	Country of Origin	Name of the imported item
1.	6262540 dated 27.12.2019	AA Metal Scrap Company Limited, Thailand	Thailand	Remelted Zinc Ingots

**3. Investigation in respect of consignments imported by the Importer:**

**3.1** On scrutiny of documents submitted by the Importer, it appears that the Importer had been importing “Remelted Zinc Ingots” from Thailand based manufacturer from 27.12.2019 and cleared the same through Mundra SEZ Port, Mundra. The goods were manufactured by M/s. AA Metal Scrap Company Ltd. Thailand. It is pertinent to mention that in case of one of the importer of identical goods viz. M/s. Gopinath Metals, verification had been conducted under CAROTAR, 2020 and the verification reports was received from the Thailand authorities wherein they have stated that **“The exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame. We, therefore, are not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, we have revoked the above mentioned Form AI issued for the company.”** Thus, it appears that the imported goods do not meet the origin criteria and therefore, not eligible for benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.

**3.2** The importer had imported 01 consignment of “Remelted Zinc Ingots” from supplier M/s. AA Metal Scrap Company Ltd. Thailand and availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, at Mundra SEZ Port, Mundra. It appears that the importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and

short paid the Customs duties of Rs.5,00,325/- (Rupees Five Lakhs Three Hundred Twenty Five only) at Mundra SEZ Port, Mundra detailed as below mentioned in Table-B:

**Table-B**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Details</b>
<b>1.</b>	Port of Import	Mundra SEZ Port, Mundra
<b>2.</b>	Bill of Entry no. & Date	6262540 dated 27.12.2019
<b>3.</b>	Supplier	AA Metal Scrap Company Ltd. Thailand
<b>4.</b>	Description of Goods	Remelted Zinc Ingots
<b>5.</b>	Assessable Value	7709166
<b>6.</b>	BCD Payable	385458
<b>7.</b>	SWS Payable	38546
<b>8.</b>	IGST Payable	1463971
<b>9.</b>	Total Duty Payable	1887975
<b>10.</b>	Total Duty (IGST) Paid	1387650
<b>11.</b>	<b>Differential Custom Duty Payable</b>	<b>500325</b>

**4. Origin Criteria in terms of Notification No. 189/2009-Cus. (N.T.), dated 31-12-2009:**

**4.1** Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 [hereinafter referred to as “Rules of Origin”] were notified vide Notification No. 189/2009-Cus. (N.T.), dated 31-12-2009, as amended.

**4.2** In terms of Rule-5 read with Rule-3 of the said “Rules of Origin” for the products not wholly produced or obtained in the exporting party (of the Agreement), to qualify for the preferential tariff under the said Preferential Tariff Agreement, the goods must have at least 35% RVC and non-originating materials must have undergone processing to warrant change in CTS level (6 digit) with final process of manufacture within territory of export. Rule-3 and Rule-5 of the said “Rules of Origin” read as follows:-

**“Rule 3. Origin criteria.-** The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-

- a. *products which are wholly obtained or produced in the exporting party as specified in rule 4; or*
- b. *products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6*

**“Rule 5. Not wholly produced or obtained products.-** (1) *For the purpose of clause (b) a/ rule 3, a product shall be deemed to be originating, if-*

- (i) *the AIFTA content is not less than 35 per cent. of the FOB value; and*
- (ii) *the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System*

## **5. Verification under CAROTAR, 2020:**

The OSD (FTA Cell) vide letter dated 09.07.2021 (**RUD-2**) has forwarded the verification report No 0307.07/483 dated 29.06.2021 received from the Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand wherein they confirmed that:

*“(1) The above mentioned certificates of Origin Form AI was authentically issued by the Department of Foreign Trade.*

*(2) “The exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame. We therefore, are not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, we have revoked the above mentioned Form AI issued for the company.”*

**6.** It appears from the verification report issued by the competent authority of Department of Foreign Trade, Thailand that ‘the product’ i.e. ‘*Remelted Zinc Ingots*’ exported by M/s. AA Metal Scrap Company Ltd. was not qualified as originating goods in Thailand in terms of Determination of Origin of goods under the Preferential trade agreement between Government of ASEAN & India Rules, 2009 (Notification No. 189/2009-Customs (NT) dated 31.12.2009). Thus, on the basis of the provisions of sub-section 11 of Section 28DA of Customs Act, 1962, the non-compliance of the imported goods with the country of origin criteria is applicable to all the identical goods i.e. ‘*Remelted Zinc Ingots*’ manufactured by M/s. AA Metal Scrap Company Ltd. and exported to the importer during material period.

## **7. Summary of the Investigation:**

From the investigation conducted and from the foregoing discussions, it

appears that:

- a. The importer i.e. M/s. Nahar Granites Pvt. Ltd., had imported Thailand origin Remelted Zinc Ingots manufactured by M/s. AA Metal Scrap Company Ltd, Thailand, during 27.12.2019. The consignment was directly shipped from Thailand to India.
- b. The importer has classified their imported goods i.e. Remelted Zinc Ingots under tariff heading 79011200 of the first schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended.
- c. The verification of Origin criteria was conducted in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. In that case, the competent authority of Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame and therefore they were not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, they revoked the above mentioned Form AI issued for the company.
- d. Further verification of Origin criteria was conducted by DRI with the Thailand authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. The competent authority of Department of Foreign Trade, Ministry of Commerce reported that the exporter, M/s. AA Metal Scrap Company was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame, thus they revoked the above mentioned Form AI issued for the company.
- e. The goods imported by the importer from M/s. AA Metal Scrap Company Ltd., Thailand were identical goods manufactured by same manufacturer and did not fulfill the criteria of origin in terms of Rule 5 of Origin of Rules. Thus, on the basis of the provisions of sub-section 11 of Section 28DA of Customs Act, 1962, it appears that non-compliance of the imported goods with the country of origin criteria apply to identical goods i.e Remelted Zinc Ingots manufactured by M/s. AA Metal Scrap Company Ltd. and exported to the importer during material period.
- f. The importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and short paid the Customs duties of Rs.5,00,325/- (Rupees Five Lakhs Three Hundred Twenty Five only) (details as per Annexure-A attached to this IR) at Mundra SEZ Port, Mundra.

## **8. Main Legal Provisions relating to the case:**

**8.1 Sub-section (4) of Section 46 of the Customs Act, 1962, specifies that,** *the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods.*

**8.2 Section 17. Assessment of duty. -**

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

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

**Provided** that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

**Explanation.** - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

### **8 . 3 Section 28DA. Procedure regarding claim of preferential rate of duty.**

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -

(i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;

- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
- (iii) furnish such information in such manner as may be provided by rules*
- (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.*

*(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.*

*(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.*

*(4) Where importer fails to provide the requisite information for any reason, the proper officer may,-*

- (i) cause further verification consistent with the trade agreement in such manner as may be provided by rules*
- (ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:*

*Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.*

*(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:*

*Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.*

*(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules*

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

**Provided** that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

- (i) the tariff item is not eligible for preferential tariff treatment;
- (ii) complete description of goods is not contained in the certificate of origin;
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

*Explanation-For the purposes of this Chapter,-*

(a)"certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;

(b)"identical goods" means goods that are same in all respects with reference to

*the country of origin criteria under the trade agreement;*

*(c)"Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;*

*(d)"trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.*

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

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*(a) ...*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*(p)...*

*(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.*

**8.5 SECTION 112. Penalty for improper importation of goods, etc.-**

*Any person, -*

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

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

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

*(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :*

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

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

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

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

**8 . 6 Section 28 (4) of the Customs Act, 1962- Recovery of duties not levied or short-levied or erroneously refunded. –**

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

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

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

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful

*mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.*

### **8.7 SECTION 28AA. Interest on delayed payment of duty. —**

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

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

*(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—*

*(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*

*(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.*

### **8.8 Section 114A of the Customs Act, 1962 read as**

#### **Penalty for short-levy or non-levy of duty in certain cases. —**

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

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

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

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

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

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

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

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

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

## **8.9 Section 114 AA of the Customs Act, 1962 read as -**

### **Penalty for use of false and incorrect material. -**

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or

*incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

**9. Obligations under self-assessment and demand invoking extended period:**

**9.1** The subject Bills of Entry as mentioned above in Table-B, filed by the importer, wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per the verification report conducted under the provisions of CAROTAR, 2020 established that the manufacturer of goods in question had not fulfilled the origin criteria in terms of Rules of origin.

**9.2** Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by not self-assessing the subject goods properly, it appears that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed the benefit of exemption Notification wherein imported goods had not fulfilled the origin criteria by the manufacturer. The importer has failed to possess sufficient information as regards the manner in which country of origin criteria are satisfied and also failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

**9.3** From the verification report it appears that the competent authority of Department of Foreign Trade, Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd, Thailand, declared that the products shown on the Form AI were not qualified as originating goods in Thailand, thus they revoked those products on those Forms AI. As the Country of origin (COO) certificate had been revoked by the issuing authority of Thailand, the preferential tariff treatment to the imports of "Remelted Zinc Ingots" by the importer for the goods supplied by the same supplier i.e. M/s. AA Metal Scrap Company Ltd, Thailand,

is liable for rejection in terms of Section 28DA (11) of the Customs Act, 1962.

**9 . 4** Therefore, it appears that the importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. AA Metal Scrap Company Ltd, Thailand. It appears to be indicative of their *mens rea*. Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra SEZ Port, Mundra and thereby caused evasion of Customs duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case. For the same reasons, the importer also appears liable to penalty under **Section 114A** of the Customs Act, 1962.

**10. Mis-declaration by the importer – liability of goods to confiscation, demand of differential Duty and liability to Penalties:-**

**10.1** Sub-section (4) of section 46 of the Customs Act, 1962, specifies that, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content of such Bill of Entry and shall, in support of such declaration, produced to the proper officer the invoice, if any, and such other documents relating to the imported goods. From the verification report discussed above, it appears that the importer has suppressed the relevant facts and intentionally evaded Customs duty on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962.

**10.2** As mentioned in the foregoing paras, the imported goods under the above said Bills of Entry, as mentioned in Annexure-A to this SCN, have been found to be not corresponding the condition for claiming the exemption against Country of Origin (COO) Certificate in terms of Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported as listed above in Table-B having assessable value of **Rs. 77,09,166/- (Rupees Seventy Seven Lakhs Nine Thousand One Hundred Sixty Six only)** are liable for confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appears that the importer is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

**10.3** As discussed above, it appears that the importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, specially failed to possess sufficient information as regards the manner in which country of origin criteria are satisfied and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/seller. The importer was aware that the Thailand based manufacturer of Remelted Zinc Ingots did not fulfill the origin criteria of

products and they were not eligible for exemption benefit as provided under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Therefore, it appears that they are also liable for imposition of penalty under **Section 114AA** of the Customs Act, 1962.

**1 1 .** The importer was issued Summons (DIN 202301DDZ10000222DAA) dated 27.01.2023, Summons (DIN 20230971NN0000777F01) dated 01.09.2023 and letter DIN - 20230964WW000000EE00) dated 18.09.2023 for appearing in person to assist in the inquiry being made with reference to the ongoing investigation and also to pay up the differential duty alongwith interest / penalty. The importer did not appear on both the dates except a reply received through mail requesting for 01 months' time to investigate at their end.

**1 2 .** Accordingly, Show Cause Notice F. No. GEN/ADJ/ADC/2639/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 10.12.2024 issued to M/s Nahar Granites Pvt. Ltd. (IEC: 1398001112), wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra as to why:-

- i. The Country of Origin certificates in respect of Bill of Entry as mentioned in Table-B, is false and incorrect, as discussed above, in terms of Rule 5 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. The competent authority of Thailand had revoked the Form AI (Certificate of Origin) issued in respect of similar goods exported to India by the some other exporter. Thus, the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the import of goods under Bill of Entry filed at Mundra SEZ Port, Mundra as mentioned in Annexure-A, should not be disallowed in terms of Section 28DA of the Customs Act, 1962 and the Bills of Entry should not be reassessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011.
- ii. The impugned goods having total assessable value of **Rs. 77,09,166/- (Rupees Seventy Seven Lakhs Nine Thousand One Hundred Sixty Six only)** as mentioned in Table-B should not be held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. However, the said goods are not physically available for confiscation.
- iii. The differential Customs duty amounting to **Rs. 5,00,325/- (Rupees Five Lakhs Three Hundred Twenty Five only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, as calculated in "Table-B" mentioned above.
- iv. The Interest at the applicable rate should not be recovered from them on the said differential Customs Duty as mentioned at (iii) above under Section 28AA of the Customs Act, 1962.
- v. Further, Penalty should not be imposed on the Importer under Section 112(a) and/or 112(b) and/or 114A of the Customs Act, 1962.
- vi. Penalty should not be imposed on importer under Section 114AA of the

Customs Act, 1962.

### 13. Written Submissions

**M/s. Nahar Granites Pvt. Ltd. submitted their reply dated 10.11.2025 wherein they have, *inter alia*, submitted that:**

13.1.1 The Noticee submits that the SCN is unsustainable and is liable to be quashed based on understated objections, which are in alternate and without prejudice to one another. It is pertinent to note that, no clear case is made out by the department in the show cause notice against the Noticee and the show cause notice has been issued without appreciating the correct facts and the legal provisions applicable to the present case. The SCN relies on the verification report issued for M/s. Gopianth Metals by the Director of Import Administration and Origin Certificate Division, Department of Foreign Trade, Thailand, to deny the benefit of exemption to the Noticee. In this regard, it is submitted that there is no clear nexus as to how the investigation done on the Other Importer (i.e. M/s. Gopianth Metals) can be the base for initiating investigation against the Noticees.

13.1.2 It is submitted that only one BoE/COO is covered as part of the investigation. Based on this the Department has assumed that all other certificates are invalid. It is submitted based on one certificate, the exemption benefit in respect of all the certificates cannot be denied. Additionally, the Department has invoked Section 28DA of the Customs Act to deny the benefit of exemption to the Noticee. It is submitted that the aforesaid provision was inserted vide the Finance Act, 2020 dated 27.03.2020 whereas the BoE was filed on 27.12.2019 when the said Section was not in force. Thus, it is submitted that the SCN dated 10.12.2024 is vague, unclear, and lacks proper reasoning. In the case of ***CCE v. Brindavan Beverages (P) Ltd., 2007 (213) E.L.T. 487 (S.C.)***, the Hon'ble Supreme Court held that SCN is the foundation on which the Department has to build up its case. If allegations in show cause notice are not specific and on the contrary vague, lack details and/or unintelligible, sufficient to hold that Noticee has not been given proper opportunity to meet allegations indicated in show cause notice.

Reliance in this regard is also placed on the decision of the Hon'ble Bombay High Court in ***Royal Oil Field Private Limited v. Union of India, 2006 (194) ELT 385 (Bom)***, wherein it was held that if a show cause notice is vague and does not disclose any material for raising the demand, then such a show cause notice cannot be said to be validly issued and thus, is liable to be quashed.

In light of the above submissions, it is evident that the SCN in the

present case has been issued without proper application of mind. Thus, it is submitted that the SCN dated 10.12.2024 is liable to be set aside.

13.2.1 It is submitted that in order to give effect to the ASEAN- India Free Trade Agreement (**AIFTA**; *in short*), the Government of India issued Notification No.46/2011-Cus dated 01.06.2011, for extending benefit of preferential treatment to certain goods originating and imported from the ASEAN Countries such as Malaysia, Thailand, Myanmar, etc. The relevant part of the Notification is extracted below:

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 153/2009-Customs, dated the 31st December, 2009 [G.S.R. 944(E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in,—*

*column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX-I; or*

*column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX-II :*

*Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December, 2009.*

TABLE

<b>S. No.</b>	<b>Chapter, Heading, Sub-heading and Tariff item</b>	<b>Description</b>	<b>Rate (in percentage unless otherwise specified)</b>	
(1)	(2)	(3)	(4)	(5)
1000	7901 to 7905	All Goods	0.0	1.0

In terms of the above Notification No. 46/2011-Cus., an importer can claim the benefit of preferential treatment provided that the goods imported by them have originated in ASEAN Countries in accordance with provisions of the

Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 (**“Country of Origin Rules”**) notified under Notification No. 189/2011-Cus. (N.T.) dated 31.12/2009.

The list of ASEAN Countries as provided in Appendix I of Notification No. 46/2011-Cus is reproduced below:

<b>Sr. No.</b>	<b>Country Name</b>
i.	Malaysia
ii.	Singapore
iii.	Thailand
iv.	Vietnam
v.	Myanmar
vi.	Indonesia
vii.	Brunei Darussalam
viii.	Laos
ix.	Cambodia

In the present case, the goods are originating from the Thailand and therefore, the subject goods are eligible for preferential treatment.

Rule 3 of the Country-of-Origin Rules, 2009 provides the criteria to determine the origin of the goods produced in the exporting party i.e. the ASEAN Countries. For ease of reference, the relevant provision is extracted below:

**“3. Origin criteria.** - *The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following :-*

(a) *products which are wholly obtained or produced in the exporting party as specified in rule 4; or,*

(b) *products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.*

Thus, in terms of the above provision, a product shall be deemed to be originating and eligible for preferential treatment if it conforms to the following requirements:

- a. If the product is **wholly obtained or produced** in the exporting country, then it must conform to the standards specified in Rule 4 of the Country-of-Origin Rules.

- b. If the product is **not wholly obtained or produced** in the exporting country, then it must conform to the standards specified under Rule 5 or Rule 6 of the Country-of-Origin Rules.

For ease of reference, Rule 4 of the Country-of-Origin Rules is extracted as below:

**4. Wholly produced or obtained products.**- For the purpose of clause (a) of rule 3, the following shall be considered as wholly produced or obtained in a party:-

(a) plant and plant products grown and harvested in the party;

*Explanation.*- For the purpose of this clause, "plant" means all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants;

(b) live animals born and raised in the party;

(c) products obtained from live animals referred to in clause (b);

*Explanation 1.*- For the purpose of clauses (b) and (c), "animals" means all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.

*Explanation 2.*- For the purpose of this clause, "products" means those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;

(d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the party;

**(e) minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the party's soil, water, seabed or beneath the seabed;**

(f) products taken from the water, seabed or beneath the seabed outside the territorial water of the party, provided that that party has the right to exploit such water, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;

(g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the party and entitled to fly the flag of that party;

(h) products processed and/or made on board factory ships registered with the party and entitled to fly the flag of that party, exclusively from products referred to in clause (g);

(i) articles collected in the party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes; and

*Explanation.*- For the purpose of this clause, "article" means all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or

*processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations;*

**(j) products obtained or produced in the party solely from products referred to in clauses (a) to (i).**

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As per clause (e) of Rule 4, minerals and other naturally occurring substances, extracted or taken from the exporting country's soil, water, seabed or beneath the seabed shall be considered as wholly produced or obtained in the exporting country for the purposes of Rule 3(a) of the Country-of-Origin Rules.

Further, as per clause (j) of Rule 4, products obtained or produced in the exporting country solely from products referred to in clauses (a) to (i). shall also be considered as wholly produced or obtained in the exporting country for the purposes of Rule 3(a) of the Country-of-Origin Rules.

In the present case, the Noticees are importing Remelted Zinc Ingots. For the manufacture of the subject goods, the supplier, M/s. AA Metal Scrap Company Limited, uses Zinc Ash/ Zinc Dross as the raw material. Zinc is found in the soil as part of various minerals which is further processed to produce zinc ash. It is submitted that the zinc is obtained from the soil of Thailand and after processing the same, Zinc Ash/ Zinc Dross is produced which is used as a raw material by the supplier to further produce Remelted Zinc Ingots. Thus, in terms of clause (j) of Rule 4, Remelted Zinc Ingots being a product obtained or produced solely from Zinc, which is a mineral extracted from the soil of Thailand, would be considered as originating from Thailand in terms of Rule 4 read with Rule 3 of the Country-of-Origin Rules, 2009. A copy of Flow Chart explaining the manufacturing process of the subject goods is enclosed herewith and marked as **Annexure-4.**

Without prejudice to the submissions made above, even if it is assumed that the goods are not wholly obtained or produced in Thailand in terms of Rule 4, the subject goods would still be considered as originating from Thailand in terms of Rule 5 of the Country-of-Origin Rules. The relevant provision is reproduced below:

5. *Not wholly produced or obtained products.- (1)For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if –*

**( i ) the AIFTA content is not less than 35 per cent. of the FOB value; and**

**( i i ) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System:**

*Provided that the final process of the manufacture is performed within the territory of the exporting party.*

*(2) For the purpose of clause (i) of sub-rule (1), the formula for calculating the 35 per cent. AIFTA content is as follows :*

*(i) Direct Method*

*AIFTA Material Cost + Direct Labour Cost + Direct Overhead Cost + Other Cost + Profit x 100 % ≥ 35%*

*FOB Price**(ii) Indirect Method*

*Value of Imported Non-AIFTA Materials, Parts or Produce + Value of Undetermined Origin Materials, Parts or Produce*

*x 100 % ≤ 65%*

*FOB Price*

*(3) The parties are free to adopt the method of calculating the AIFTA content, whether it is the direct or indirect method and any verification of the AIFTA content by the importing party shall be done on the basis of the method used by the exporting party.*

*(4) Each party shall adhere to one method of calculating AIFTA content to promote transparency, consistency and certainty :*

*Provided that any change in the method of calculation shall be notified to all the parties at least six months prior to the adoption of the new method.*

*(5) The value of the non-originating materials shall be -*

*(i) the CIF value at the time of importation of the materials, parts or produce; or*

*(ii) the earliest ascertained price paid for the materials, parts or produce of undetermined origin in the territory of the party where the working or processing takes place.*

*(6) The method of calculating for AIFTA content is as set out in Annexure-I annexed to these rules*

In terms of then above Rule, if the products are not wholly produced or obtained products, then they shall be deemed to be originating if the following 2 conditions are satisfied:

- a. If there is a value addition of more than 35% of the FOB value of the products in the exporting country; and
- b. If the non-originating goods have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System.

13.2.2 It is submitted that the supplier is producing Remelted Zinc Ingots from Zinc Ash which is obtained by the supplier from Thailand itself. The supplier is making 100% value addition on the raw materials procured by it. The same is evident from the details of the cost of production.

Secondly, zinc ash is classifiable under Chapter 26 whereas the subject goods are falling under CTH 7901 12 00 of the Customs Tariff Act, 1975. Thus, the goods after manufacturing have undergone a change in tariff.

Thus, in view of the above, it is clear that the subject goods are originating from Thailand.

In addition to this, Rule 13 states that the importer's claim for preferential treatment is required to be supported only by submission of COO/Form A-issued by the designated authority in the exporting country, certifying the goods to be eligible for preferential treatment.

Thus, **if an importer from India** intends to avail the benefit of

Notification No.46/2011-Cus in respect of specified goods imported from Thailand into India, it must fulfill the following conditions–

- a. the COO/Form A-1 duly issued by the relevant authority of Thailand with respect to the goods in question, which has to be submitted before the Indian customs officials at the time of importation.
- b. The COO/Form A-1 duly issued certifying the fact that the goods in question are originating from Thailand with AIFTA.
- c. As against the COO/Form A-1 so issued, the preferential duty treatment is granted by the customs authorities to the importers in respect of the goods so imported.

It is submitted that all the above-mentioned conditions are satisfied by the Noticees and the benefit of preferential tariff treatment is available on the import of goods from ASEAN countries if it is proved by the importer that they originate from ASEAN Countries, in accordance with the Country-of-Origin Rules.

In the present case, the COO/Form A-1 issued by the Department of Foreign Trade, Thailand (**DFT; in short**) was produced by the Noticees at the time of import of the goods. This fact is undisputed. The COO in question has been duly issued by the issuing authority of Thailand. This fact is also undisputed. The certificate so issued is therefore sufficient evidence to show that the goods are originating from Thailand.

Therefore, the question of denying the benefit of the exemption under Notification No. 46/2011-Cus does not arise. Thus, on this ground alone, the entire proceedings become liable to be dropped.

13.3.1 The Noticee submitted that in the instant case, the entire case of the Department is based on certain premises and information that does not conclusively prove that the subject goods have not originated in Thailand.

**Reliance on investigations made against other importer i.e., M/s. Gopinath Metals is not sufficient.**

The Ld. Additional Commissioner at Para 3 of the SCN has relied upon the verification reports received in respect of one of the importers of identical goods, M/s. Gopinath Metals whose COO was revoked by the concerned Thailand Authority on the ground that the supplier, M/s. AA Metal Scrap Company Ltd. was unable to prove that the goods were originating in Thailand within the stipulated time period. Further, the Ld. Additional Commissioner also relied on the verification report forwarded by the OSD (FTA Cell) vide letter dated 09.07.2021 wherein it was stated that M/s. AA Metal Scrap Company Ltd. was unable to prove that the goods were originating in Thailand within the stipulated time period.

Merely on the basis of the above reports, the Ld. Additional Commissioner has concluded that the subject goods are not originating in Thailand on account of which preferential treatment cannot be granted to the Noticees.

13.3.2 It is submitted that the investigating authorities should have examined the Origin Criteria independently for the Noticees and the Ld. Additional Commissioner should not have disregarded the COO submitted by Noticees without scrutinizing it and merely on the basis of the revocation of the

COO of some other importer.

**Imports made by the Noticees cannot be disregarded based on the verification report of a single COO.**

It is submitted that the Department had sent only a single COO (AI 2020-0030679) to the Thailand authorities to verify the validity of the same. The concerned certificate was held invalid by the DFT, Thailand based on the declaration made by the supplier. The Noticee submitted that the Ld. Additional Commissioner proposes to disallow the imports made by the Noticees based on the single Certificate of Origin. It is submitted that such a denial is presumptive and without providing evidence as to how the import made by the Noticees are not valid. Additionally, if all the other certificates were to be invalidated, the Department should have sought the verification of all these certificates in one go. In this regard, it is clear that all other certificates have been considered valid by the overseas government, and therefore imports made under these certificates are also valid.

**Without prejudice to the above, even if the Certificate AI 2020-0030679 is held invalid and revoked, such a revocation is prospective.**

It is submitted that the Certificate of Origin No. AI 2020-0030679 respectively for the imports made by M/s. Gopinath Metals was issued on 03.09.2020 and verification report in respect of the said Certificate was received on 29.06.2021. Whereas the Noticees imported the subject goods on 27.12.2019. Thus, the COO issued in respect of the goods imported by M/s. Gopinath Metals cannot be relied upon to invalidate the COO issued to the Noticees. The COO issued to the Noticees will be considered valid as the revocation will be prospective and cannot be applied retrospectively on the goods that were imported prior to revocation. Thus, it is submitted that the imports made by the Noticees are valid and the revocation will be prospective i.e., effective from June 2021. Further, it is submitted that the Noticees have fulfilled their obligation by producing Form A1 which was validly issued by the DFT, Thailand.

In the instant case, there is a reasonable presumption in favor of the Noticees that the Form A-1/COO has been validly issued by the DFT after undertaking verification of the factory of the supplier with respect to the subject goods. Thus, it is submitted that the Noticees cannot be held responsible for the subsequent invalidation of the COO by the DFT, Thailand.

Moreover, the COO issued in respect of M/s. Gopinath was revoked only on the ground that the supplier, M/s. AA Metal Scrap Company Limited was unable to provide documents to the Issuing Authority within the stipulated time frame. It is submitted that non-submission of documents within the time cannot lead to the conclusion that origin criteria was not met with by the supplier. Further, in response to such revocation, the supplier vide letter dated 02.11.2024 requested the Department of International Trade Promotion, Thailand to cancel the revocation of the COO. A copy of the letter dated 02.11.2024 is enclosed herewith and marked as **Annexure-5**.

Therefore, once the Form A1 validly issued by the issuing authority is produced by the importer to claim the exemption under Notification No. 46/2011-Cus, the Department cannot question the said Certificate.

13.4.1 The Noticee submitted that Rule 13 of Country-of-Origin Rules prescribes for duty benefit to be granted on the basis of a COO/Form A-1 issued by the designated authority. The Noticees claimed the benefit under the

Notification solely on the basis of the COO/Form A-1 issued by the DFT. The Form A-1 is issued from time to time by the Issuing Authority based on applications submitted by the supplier. The Form A-1 so issued is presented to the Customs authorities in India for claiming preferential duty treatment in respect of the goods imported. Under the Country-of-Origin Rules, the supplier/exporter is required to make an application in writing to the Issuing Authority for the issuance of a COO. At this stage, as per the Country-of-Origin Rules, the supplier/exporter is also required to provide appropriate supporting documents to the Issuing Authority for verification of the origin of the goods in accordance with the rules.

For ease of reference the relevant extracts from the Country-of-Origin Rules are extracted below:

**13. Certificate of Origin.** - *Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III annexed to these rules.*

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**ANNEXURE III**

*[see rule 13]*

*Operational Certification Procedures for the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India Rules, 2009.*

*For the purposes of implementing the rules, the following Operational Certification Procedures on the issuance and verification of the AIFTA Certificate of Origin and the other related administrative matters shall be followed:*

**AUTHORITIES**

- 1. The AIFTA Certificate of Origin shall be issued by the Government authorities (Issuing Authority) of the exporting party.*
- 2. Each party shall provide 11 original sets of, or through electronic means, specimen signatures and specimen of official seals used by their Issuing Authorities, including their names and addresses, through the ASEAN Secretariat for dissemination to the other parties. Any change in names, addresses, specimen signatures or official seals shall be promptly informed in the same manner or electronically.*
- 3. For the purposes of determining originating status, the Issuing Authority shall have the right to call for any supporting documentary evidence or carry out any checks considered appropriate.*

**APPLICATIONS**

- 4. The exporter and/or the manufacturer of the products qualified for preferential tariff treatment shall apply in writing to the Issuing Authority of the exporting party requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate,*

*shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to products, the origin of which by their nature can be easily verified.*

5. *At the time of carrying out the formalities for exporting the products under preferential tariff treatment, the exporter or his authorised representative shall submit a written application for the AIFTA Certificate of Origin together with appropriate supporting documents proving that the products to be exported qualify for the issuance of an AIFTA Certificate of Origin.*

**6. Pre-exportation Examination**

(a) *The Issuing Authority shall, to the best of their competence and ability, carry out proper examination upon each application for the AIFTA Certificate of Origin to ensure that -*

(i) *the application and the AIFTA Certificate of Origin are duly completed and signed by the authorised signatory;*

(ii) *the origin of the product is in conformity with the Rules.*

(iii) *other statements of the AIFTA Certificate of Origin correspond to supporting documentary evidence submitted; and*

(iv) *description, quantity and weight of goods, marks and numbers on packages, and number and type of packages, as specified, conform to the products to be exported.*

(b) *Multiple items declared on a single invoice and single AIFTA Certificate of Origin shall be allowed, provided that each item qualifies separately in its own right.*

In accordance with the Country-of-Origin Rules, Form A-1 has to be issued by the DFT only after thorough scrutiny and verification of the data submitted by the exporter and also after the verification of the place of business and factory of the exporter. In fact, it is mandated in Annexure-III to the Country-of-Origin Rules that certificates shall be issued by the issuing authority only after satisfying themselves that the goods sought to be exported fulfill the various requirements of Country-of-Origin Rules.

In the present case, there is indeed a reasonable presumption in the favour of the Noticees that the Form A-1/COO has been validly issued by the DFT after undertaking verification of the factory of the supplier/exporter to verify that the goods are actually originating in the exporting country. No proof has been adduced in the SCN to show that this specified procedure has not been followed in the present case. On the other hand, the fact that DFT has not canceled Form A1/COO issued in respect of the goods imported by the Noticees clearly shows that it is valid and has been correctly issued.

Therefore, once the Form A-1 validly issued by the issuing authority is produced by the importer in support of the exemption under Notification No. 46/2011-Cus, the Department cannot question the said Certificate and contend that the subject goods did not originate from Thailand and consequently, deny the exemption to the goods in question.

13.4.2 The Noticee submitted that the authority has failed to appreciate that Notification No.46/2011-Cus only states that the importer has to satisfy the customs officers about the origin of the goods *in accordance with the provision of the Country-of-Origin Rules*. As per Rule 13 of the Country-of-Origin Rules, it is the certificate of origin that conclusively proves the origin of the goods. No onus is cast on the Importer of the goods to prove origin in any other manner. It is

submitted that the only information that was available with the Noticees was Form A1, which was already submitted at the time of import by the Noticees. Thus, in the absence of any other evidence, the Noticees in the instant case cannot be penalized for the mistake of the issuing authorities.

Further, the Rule is very clear that whatever information is being sought is to be in accordance with domestic laws and regulations. In the instant case, as per the laws in question, the importer is not expected to be in possession of the data pertaining to the supplier/exporter. The fact that the supplier/exporter has not shared the data cannot be a reason to state that the Noticees have not complied with the law.

Therefore, the SCN, denying the benefit of the Exemption Notifications is incorrect and not sustainable.

13.5.1 Chapter VAA was introduced vide Finance Act, 2020 on 27.03.2020. Section 28 DA of Chapter VAA imposes an obligation on the importer to possess sufficient information as regards the manner in which the rules of origin criteria in the agreement is satisfied. The relevant part of the Section 28 DA is produced below –

**28DA. Procedure regarding claim of preferential rate of duty.** - (1) *An importer making claim for preferential rate of duty, in terms of any trade agreement, shall, —*

*(i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*

***(ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;***

*(iii) furnish such information in such manner as may be provided by rules;*

***(iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.***

***(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.***

The aforesaid section did not come into effect even until June 2020. The perusal of the newly introduced provisions makes it clear that by virtue of the same, the importer must submit other additional information apart from the Certificate of Origin to prove the origin of goods. This shows that before the introduction of the said provisions, the Country-of-Origin Rules or the provisions of the Customs Act did not contain any provision warranting the submission of such other information other than Form A1. If such obligations were contemplated by the Country-of-Origin Rules, there was no necessity for such an amendment to be made.

In the present case, the subject goods were imported on 27.12.2019 i.e.

before the introduction of Section 28 DA of the Customs Act, 1962. As on the date of import, there was no obligation on the importer to verify any additional details, apart from obtaining and submitting the COO. If an obligation was always there on the importer, then there would have been no need to introduce Section 28DA. Before the amendment, if the imports are made under a valid Form A1/COO at the time of import, then such imports cannot be called into question at a later stage. There was no additional obligation imposed on the importers to take reasonable care to ensure the truthfulness of the certificate of origin. Thus, the very fact that Section 28DA is now introduced proves that before such introduction there was no obligation cast on the importer to verify the details provided by the supplier/exporter.

13.5.2 In support of the above contention, the Noticee places reliance on the decision of the Hon'ble CESTAT Ahmedabad in the case of **M/s. Kesar Spices v. Commissioner of Customs, Mundra, 2025-VIL-745-CESTAT-AHM-CU** wherein the Hon'ble Tribunal has held as under:

*"2.15 Section 28DA of the Finance Act, 2020, dated 27.03.2020, (effective from July 2020) imposes an obligation on the importer to possess sufficient information on Regional Value Content (RVC) and Product-specific criteria specified in the rules of origin under the FTAs. In the present case, majority of the imports were made before June 2020 when there was no obligation on the importer to verify any additional details, apart from submitting the COO. Reliance is placed on the decision of Bullion and Jewellers Association v. UOI- 2016 (335) E.L.T. 639 (Del.) - 2016-VIL-214-DEL-CU, wherein it was held that if imports are made prior to the introduction of Section 28DA, in that case a valid COO at the time of import is sufficient and such import cannot be called into question at a later stage.*

*6.4 The Hon'ble High Court of Delhi has also held that prior to introduction of Section 28DA in the Customs Act holding of certificate of origin was sufficient to claim exemption benefit and such import cannot be called into question at a latter stage. This is as per the case law in Bullion and Jewellers Association Vs. Union of India-2016 (335) ELT 639 (Del.) - 2016-VIL-214-DEL-CU.*

Further, the Department has invoked Section 28DA (11) to deny preferential benefit to the Noticees. The relevant portion of the said provision is reproduced below:

*(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.*

The above provision states that the proper officer may reject preferential treatment to the imports of identical goods from the same supplier if verification under Section 28DA establishes non-compliance with the country of origin criteria, unless the importer furnishes sufficient information to show that the identical goods meet the country of origin criteria. Thus, placing reliance on the above provision, the Ld. Additional Commissioner issued the present SCN on the ground that the supplier was unable to satisfy the origin of goods in respect of the goods supplied by it to M/s. Gopinath Metals and that since, the Noticees are importing identical goods, the preferential treatment has been rejected.

13.5.3 The Noticee submitted that the Ld. Additional Commissioner has grossly erred in relying on the above provision when the subject goods were imported prior to the introduction of Section 28DA of the Customs Act, 1962. Thus, the entire basis on which the preferential treatment has been denied to the Noticees is erroneous and unsustainable. The Department cannot apply Section 28 AD of the Customs Act, 1962 retrospectively to create an additional responsibility on the Noticees that never existed on the day the Noticees imported the subject goods. The Ld. Additional Commissioner has overlooked the valid COO produced by the Noticees and issued the SCN on the presumption that the Noticees have not fulfilled the origin criteria. Thus, the entire proceedings get vitiated on this ground alone.

13.6.1 Without prejudice, the Noticees submit that the DRI as well as the Customs Authorities have not acted in accordance with the procedures set out in the Country-of-Origin Rules to verify the eligibility of the Noticees to claim exemption on the subject goods. The Country-of-Origin Rules itself provides for the steps to be undertaken by the Parties in the event that the Form A1s are being doubted by the importing country. The relevant portions of the Rules are reproduced herein as under:-

#### **“VERIFICATION**

16. (a) *The importing party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. **The Issuing Authority shall conduct a retroactive check on the producer/exporter’s cost statement based on the current cost and prices within a six-months timeframe prior to the date of exportation subject to the following procedures:***

(i) *the request for a retroactive check shall be accompanied **by the AIFTA Certificate of Origin concerned** and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;*

(ii) *the Issuing Authority shall respond to the request promptly and reply within three months after receipt of the request for retroactive check;*

(iii) *In case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and*

(iv) ***the retroactive check process, including the actual process and the determination of whether the subject good is originating or not, should be completed and the result communicated to the Issuing Authority within six months. While the process of the retroactive check is being undertaken, sub-paragraph (iii) shall be applied.***

(b) *The Customs Authority of the importing party may request an importer for information or documents relating to the origin of imported good in*

*accordance with its domestic laws and regulations before requesting the retroactive check pursuant to paragraph (a).”*

From a plain reading of the above, it can be seen that Rule 16 provides for a step-by-step verification process which should be undertaken in case there is any doubt about the authenticity of the Country of Origin Certificate. The Rule requires the following to be done –

- a. ***The Issuing Authority is to conduct a retroactive check on the producer/exporter’s cost statement based on the current cost and prices within a six-month timeframe prior to the date of exportation subject to the following procedures:*** The Noticees are not aware if the investigating authorities have initiated the check as per the said requirement. From the documents relied upon and provided to the Noticees in the instant proceeding, it has not been placed on record by the Department as to when the retroactive check was initiated;
- b. ***The request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate unless the retroactive check is requested on a random basis:*** The Noticees are not even aware if the retroactive check was undertaken in connection with the Form A1 which accompanied the goods imported by them. The Noticees have not been informed if the retroactive check was requested/undertaken on a random basis;
- c. ***The Issuing Authority shall respond to the request promptly and reply within three months after receipt of the request for retroactive check:*** The Noticees are not privy to the said information and the Department has not provided any information in this regard.
- d. ***The retroactive check process, including the actual process and the determination of whether the subject good is originating or not, should be completed and the result communicated to the Issuing Authority within six months:*** The same can be determined by the Noticees only if they are aware as to when the verification process was initiated.

In the case where the Issuing authority does not respond to the above, the Indian Authorities are required to undertake a verification visit of the factory of the exporter in Thailand in terms of Rule 17. The relevant portion of Rule 17 is reproduced herein as under:

*17. (a) If the importing party is not satisfied with the outcome of the retroactive check, it may, under exceptional circumstances, request verification visits to the exporting party. Prior to conducting a verification visit-*

*(i) the importing party shall deliver a written notification of its intention to conduct the verification visit, through the competent authority, simultaneously to,-*

- 1. the producer/exporter whose premises are to be visited;*
- 2. the Issuing Authority of the party in the territory of which the verification visit is to occur;*
- 3. the competent authority of the party in the territory of which the verification visit is to occur; and*
- 4. the importer of the goods subject to the verification visit;*

*(ii) the written notification mentioned in sub-paragraph (i) shall be as comprehensive as possible and include:*

- 1. the name of the competent authority issuing the notification;*
- 2. the name of the producer/exporter whose premises are to be visited;*
- 3. the proposed date of the verification visit;*
- 4. the coverage scope or purpose of the proposed verification visit, including reference to the goods subject to the verification; and*
- 5. the names and designation of the officials performing the verification visit;*

*(iii) an importing party shall obtain the written consent of the producer/exporter whose premises are to be visited;*

*(iv) when a written consent from the producer/exporter is not obtained within thirty days from the date of receipt of the notification pursuant to sub-paragraph (i), the notifying party may deny preferential tariff treatment to the goods referred to in the said AIFTA Certificate of Origin that would have been subject to the verification visit; and*

*(v) the Issuing Authority receiving the notification may postpone the proposed verification visit and notify the importing party of such intention within fifteen days from the date of receipt of the notification. Notwithstanding any postponement, any verification visit shall be carried out within sixty days from the date of such receipt, or for such longer period as the parties may agree.*

*(b) The importing party conducting the verification visit shall provide the producer/exporter whose goods are subject to the verification and the relevant Issuing Authority with a written determination of whether that goods qualify as originating goods.*

*(c) The determination of whether the goods qualify as originating goods shall be notified to the producer/exporter, and the relevant Issuing Authority. Any suspended preferential tariff treatment shall be reinstated upon a determination that the goods qualify as originating goods.*

*(d) If the goods are determined to be non-originating, the producer/exporter shall be given thirty days from the date of receipt of the written determination to provide any written comments or additional information regarding the eligibility of the goods for preferential tariff treatment. If the goods are still found to be non-originating, the final written determination issued by the importing party shall be communicated to the Issuing Authority within thirty days from the date of receipt of the comments/additional information from the producer/exporter.*

*(e) The verification visit process, including the actual visit and the determination whether or not the goods subject to verification is originating, shall be carried out and its results communicated to the Issuing Authority within a maximum period of six months from the date when the verification visit was conducted. While the process of verification is being undertaken, sub-paragraph a(iii) of paragraph 16 shall be applied.”*

The Department has failed to take any of the above actions in respect of the subject goods. Even if it is assumed that the Department has taken any action to ascertain the origin of the subject goods, no such evidence has been

relied upon by the Department in the SCN. Thus, the Department has failed to properly verify the correctness of the COO in terms of the procedure set out in the Country-of-Origin Rules.

13.6.2 Further, it is being submitted that Rule 18 casts a responsibility on the Issuing Authorities/Party to retain information pertaining to the issuance of Form A1/COO. Rule 2(j) of the Country-of-Origin Rules defines “**party**” as India or an ASEAN Member State specified in Annexure IV annexed to these rules and “**parties**” means India and ASEAN Member States collectively, as defined in the said Annexure annexed to these rules. Thus, the onus is on the issuing country and on the issuing agency to share the information, etc. No onus is cast on the importer to share any information with the Indian Authorities under the Country-of-Origin Rules. Further, as per Rule 18(2), the issuing authority is required to maintain the documents/information only for a period of two years. Therefore, the sharing of information as contemplated under the Country-of-Origin Rules is as between the Governmental agencies and not as between the importer and the Indian authorities.

It is submitted that the Noticees are not aware whether the verification visit has been undertaken in accordance with Rule 17 above. If it has been done, whether the same included the imports made by the Noticees from the supplier/exporter. No timeline has been shared by the Department in the instant proceeding. It further appears that the investigating authority is denying the benefit of Notification No.46/2011-Cus dated 01.06.2011 only based on an investigation done against M/s. Gopinath Metals. There is no evidence being adduced to show that requisite origin criteria have not been met with respect to the subject goods.

Therefore, it appears that proper verification process as provided for in the Country-of-Origin Rules has not been followed.

13.6.3 The Noticees submit that the benefit of preferential tariff treatment cannot be denied without following the procedures laid down as aforesaid. In this regard, reliance is placed on the recent Delhi High Court decision in the case of ***Bullion and Jewellers Association v. UoI, 2016-TIOL-833 -HC-DEL-CUS***; wherein in the very context of imports of jewelry by availing the benefit of Notification No. 46/2011-Cus, the court held that COOs issued should be honoured, and if the Customs authorities are doubting the veracity of the COO, they have to approach the exporting country’s government and solve the issue as per the procedure set in the Country of Origin Rules. The court held that without following the procedure in the Country-of-Origin Rules, the Indian Customs Department cannot refuse to honour the COOs issued.

In light of the fact that the verification procedure as laid down in the Country-of-Origin Rules has not been followed, the entire proceedings stand vitiated. For this reason, also, the proceedings initiated by the Department are liable to be dropped.

13.7. The Noticee submitted that the agreement signed between the Republic of India and the Association of South-East Asia Countries (ASEAN) (Treaty); Thailand provides in Appendix D to Annexure II for the certification procedure for the rules of origin of goods imported under the treaty. Article 24 of Appendix D provides for the dispute settlement procedure which is to be invoked by the Governmental Authority in exporting and importing countries. The relevant provision is extracted below for your reference:

**OPERATIONAL CERTIFICATION PROCEDURES**

**FOR THE RULES OF ORIGIN FOR  
THE ASEAN-INDIA FREE TRADE AREA (AIFTA)**

**Article 24**

*(a) In case of a dispute concerning origin determination, classification of products or other related matters, the Governmental authorities concerned in the importing and exporting Parties shall consult each other with a view to resolving the dispute, and the result communicated to the other Parties.*

*(b) Where no mutually satisfactory solution to the dispute is reached through consultations, the Party concerned may invoke the dispute settlement procedures under the ASEAN-India DSM Agreement.*

Clause (a) to Article 24 states that in case of dispute concerning origin determination the governmental authorities shall consult each other with a view to resolving the dispute. Further, clause (b) to Article 24 states that if the consultations as envisaged under clause (a) fail to provide any mutually satisfactory solution then the parties may invoke the dispute settlement procedures under the ASEAN-India DSM Agreement.

In the present case, the Department disputed the validity of COO certificate issued by DFT, Thailand in respect of Remelted Zinc Ingots manufactured by the supplier/exporter. The validity of the COO is the dispute between the governmental authority of importing and exporting parties. Therefore, in terms of Article 24 after the arising of such a dispute, the government authorities were required to enter into consultation with a view to resolving the dispute. The same view has been taken by the Hon'ble Supreme Court in the case of **Kothari Metals Limited v. Union of India & Ors reported in 2019 (12) TMI 74 – (SC)**. However, in the present case, no such consultations took place between the two government authorities. Instead, the Department has unilaterally decided to deny the exemption to the Noticees.

Therefore, when the dispute is not resolved in terms of Article 24, the COO certificates continue to be binding certificates. It is also pertinent to note that these COO certificates have also not been invalidated by the customs authorities in India. Therefore, the COO certificates continue to be binding and the benefit on the basis of such certificates cannot be denied to the Noticees.

13.8.1 The Noticee Submitted that the Form A-1/COO which has been issued is still valid and has not been cancelled by the DFT till date. From the same, it is evident that according to the issuing authority, there is no infirmity in Form A-1 which has been issued. In the Impugned Order the authenticity of Form A-1 in question has not been doubted. The only objection of the Department is that for identical goods imported by the some other importer, the COO has been revoked by the Thailand Authority on the ground that the supplier was unable to prove the origin of said goods within the stipulated time frame.

However, the COO provided by the supplier to the Noticees was never questioned or cancelled by the issuing authority even when the same pertained to a period prior to the COO issued in respect of the goods imported to M/s. Gopinath Metals.

Therefore, the imports undertaken against the said Form A1 are valid and thus, clearly entitled to the benefit of the Notification in question.

13.8.2 The Noticee submitted that without prejudice to the above, even if Form A1/COO is cancelled by the DFT now, the effect of such cancellation can

be only prospective. It cannot affect the imports undertaken under such Form A-1/COO, retrospectively. The same has been held so in a number of decisions in the context of imports undertaken against licenses.

In ***East India Commercial Co. Ltd. v. CC, 1983 (13) ELT 1342 (SC)***, the Hon'ble Supreme Court had occasion to deal with a situation where the person had obtained a license on misrepresentation of the facts before the licensing authority. In this case, the license was issued for the import of certain electrical instruments based on the representation made by the importer. On the basis of the license obtained, the importer made the imports. Subsequently, after the goods were imported, it was noted that the importer had imported the goods on the basis of a license which was obtained from the licensing authority on the basis of misrepresentation of facts. Hon'ble Supreme Court held in the matter that there is no legal basis for the contention that the license obtained by misrepresentation makes the license non-est. It was further clarified that assuming the principles of the law of contract apply to the issue of license under the Act, a license obtained by fraud is only voidable and it remains good till it is avoided in the manner prescribed by law. The relevant portion of the decision is extracted as under:

*"35. Nor is there any legal basis for the contention that licence obtained by misrepresentation makes the licence non est, with the result that the goods should be deemed to have been imported without licence in contravention of the order issued under Section 3 of the Act so as to bring the case within Clause. (8) of Section 167 of the Sea Customs Act. Assuming that the principles of law of contract apply to the issue of a licence under the Act, a licence obtained by fraud is only voidable: it is good till avoided in the manner prescribed by law....."*

*(Emphasis Supplied)*

In ***UOI Vs. Sampat Raj Dugar, 1992 (58) ELT 163 (SC)***, the issue for consideration before the Supreme Court was related to the import of goods under a valid license. The license was subsequently cancelled. Following the case of East India Commercial Co., it has been held as under:

*"21.....The subsequent cancellation of licence is of no relevance nor does it retrospectively render the import illegal. [East India Commercial Co. Ltd. v. The Collector of Customs, Calcutta -1963 (3) S.C.R. 338 at 372.]"*

In this regard, reliance is also placed on the decision in ***CC v. Sneha Sales Corporation., 2000 (121) ELT 577 (SC)***, wherein duty-free import licenses were obtained by an exporter, namely, Surjan Singh Balbir Singh and those licenses were subsequently transferred to M/s. Sneha Sales Corporation. M/s. Sneha Sales Corporation imported the goods on the strength of such licenses. Subsequently, after the imports were completed, it came to the notice of the department that the said licenses had been obtained fraudulently. Accordingly, licenses were cancelled *ab intio* by the licensing authority. It was held by the Supreme Court that the license obtained by misrepresentation or fraud is not *rendered non est* as a result of its cancellation. The relevant portion of the decision is reproduced below:

*"5. In the aforementioned decision of this Court it has been clearly laid*

*down that in a case where the licence is obtained by misrepresentation or fraud it is not rendered non est as a result of its cancellation so as to result in the goods that were imported on the basis of the said licences and being treated as goods imported without a licence in contravention of the order passed under Section 3 of the Import and Export Act that fraud or misrepresentation only renders a licence voidable and it becomes inoperative before it is cancelled. In the present case the licences were cancelled by order dated December 18, 1986 after the goods had been imported and cleared. The Tribunal was, therefore, right in holding that the import of the goods was not in contravention of the provisions of Import and Export Order, 1955 and Import and Export (Control) Act, 1947 and the goods were not liable to be confiscated on that basis under Section 111(d) of the Act.”*

The above legal position has also been consistently held by the Courts in the following decisions in the context of imports undertaken against licenses/Scripts: -

- a. ***Taparia Overseas Vs. Union of India – 2003 (161) ELT 47 (Bom.)***
- b. ***Commissioner Vs. Rajnarayan Jwala Prasad – 2014(306) ELT 592 (Guj.)***
- c. ***Ajay Kumar & Co Vs. CC – 2006 (205) ELT 747 upheld in 2009 (238) ELT 387***

13.8.3 The Noticees submit that the ratio in the above decisions is applicable to the present case where the imports are made under valid Form A1/COO the time of import. In the instant case, the Form A1/COO under which the imports have been undertaken are still valid. The same has not been cancelled by the issuing authority. The DRI or the customs officer does not have the power to cancel the same. Further, even if the same is cancelled now by the DGFT at the instance of the DRI, it cannot render the imports already taken as invalid. As on the date of importation, the COO/Form A1 were valid and therefore, the imports were undertaken against a valid claim for preferential duty treatment.

In light of the above, the entire proceedings become liable to be dropped.

13.9 The Noticee submitted that in the present case, the SCN is issued in 10.12.2024 for import made for the period of 27.12.2019. As per Section 28(1), the SCN can be issued within two years from the relevant date. However, in the instant case, the demand has been raised under Section 28(4) of the Customs Act, 1962. It is submitted that Section 28(4) is not invocable in this case as there was no suppression or collusion. The relevant part of Section 28 is extracted below for ease of reference-

**28. Recovery of duties not levied or not paid or short-levied or short-paid] or erroneously refunded-**

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

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not*

*been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

It is submitted that the Noticees are a regular importer and regularly claim relevant exemptions under the Customs law. Further, at no point in time, the extended period can be invoked merely because a document issued by the overseas authority becomes invalid subsequent to the goods being imported.

- A. 1. The reliance in this regard is placed on the case of **Collector of Central Excise, Hyderabad vs. Chemphar Drugs and Liniments, 1989 (40) ELT 276 (SC)**, wherein the Hon'ble Court held that *something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability*, beyond the period of limitation. The same reasoning has been followed in a series of cases thereafter, some of which are listed below:
- a. **Padmini Products vs. Collector of Central Excise, Bangalore 1989 (43) ELT 195 (SC);**
  - b. **Gopal Zarda Udyog vs. Commissioner of Central Excise, New Delhi 2005 (188) ELT 251 (SC);**
  - c. **Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut 2005 (188) ELT 149 (SC);**
  - d. **Lubri-Chem Industries Ltd. vs. Collector of Central Excise, Bombay 1994 (73) ELT 257 (SC); and**
  - e. **Cosmic Dye Chemical vs. Collector of Central Excise, Bombay 1995 (75) ELT 721 (SC).**

Similarly, in the case of **Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC)**, the Hon'ble Supreme Court held as under:

*“4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.”*

*(Emphasis supplied)*

Similarly, in the case of **Aban Loyd Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC)**, the Hon'ble Supreme held as under:

*“20. The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any wilful mis-statement or suppression of facts. So far as ‘mis-statement or suppression of facts’ are concerned, they are qualified by the word “wilful”. **The word “wilful” preceding the words “mis-statement or suppression of facts” clearly spells out that there has to be an intention on the part of the assessee to evade the duty.**”*

*(Emphasis supplied)*

In **Granite India Limited vs. Collector Central Excise, Coimbatore 1997 (92) ELT 84 (Tri.-Mad.)**, the Hon’ble Tribunal has held that in order to constitute a wilful suppression there must be material to show that the Appellants therein knowing fully well that they were required to furnish a particular fact to the department, failed to furnish the same with an intention to evade payment of duty.

13.9.2 The Noticee submitted that Section 28(4) provides for an extended period of five years for issuing the demand, in cases where the duty has not been levied or has been short levied, etc. by reason of collusion or any wilful misstatement or suppression of facts by the importer. Therefore, the extended period of five years can be invoked only if the non-levy or short levy of duty has arisen due to any **collusion, wilful misstatement, or suppression of facts by the importer.**

It is submitted that the BoE filed, and goods imported by the Noticees were assessed and cleared by the department after due verification of the documents and information available at the time of import. Therefore, there was no suppression or mis-declaration on the part of the Noticees. Reliance in this regard is placed on the case of **Continental Foundation JT. Venture vs. Commr. Of C. Ex., Chandigarh- I, 2007 (216) E.L.T. 177 (S.C.)**, has held that suppression means failure to disclose full information with the intent to evade the duty.

Also, in the instant case, Form A1 was issued by the designated Government Authority in Thailand. The Noticees had no role in getting the Form A1 issued by the governmental authority in Thailand. The Noticees had not submitted any details before the DFT for getting the form A1 issued. This fact is also not disputed by the Department.

13.9.3 It is submitted that the Noticees under *bona fide* belief that the documents provided by the overseas supplier and overseas government are proper. Thus, the Noticees had no intention to evade the duty. Reliance in this regard is placed on of **M/s. Aban Lloyd Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC)**, the Hon’ble Supreme Court held as under:

*“20. The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful mis-statement or suppression of facts. So far as ‘mis-statement or suppression of facts’ are concerned, they are qualified by the word “willful”. **The word “willful” preceding the words “mis-statement or suppression of facts” clearly spells out that there has to be an intention on the part of the Assessee to evade the duty.**”*

*(Emphasis Supplied)*

13.9.4 Further, the SCN at Para 10.1 alleges that the on the basis of the verification report, it appears that the Noticees have suppressed relevant facts and intentionally evaded Customs Duty on the subject goods. However, the Ld. Additional Commissioner failed to appreciate the fact that the Noticees have imported subject goods in December 2019 whereas the COO with the respect to the goods imported by M/s. Gopinath Metals was issued in the year 2020. Therefore, in any case, the Noticees could not have known that the goods did not originate in Thailand.

Moreover, as discussed above, the provisions of Section 28DA were not in existence at the time of importation of the subject goods. Thus, the only responsibility that was cast upon the Noticees to claim the benefit of exemption under Notification No. 46/2011-Cus was to produce a COO issued by the concerned authority of Thailand, before the Customs.

Thus, in view of the above, the allegations of suppression and misdeclaration cannot sustain against the Noticees. Hence, the extended period of limitation under Section 28(4) of the Customs Act, 1962 cannot be invoked in the present case and the demand is barred by limitation.

13.10 The Noticee submitted that the SCN proposes to confiscate the subject goods under Section 111 (o) and Section 111(q) of the Customs Act. The same has been reproduced below:

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

*...*

*o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.”*

Section 111 (o) can only be invoked when any condition subject to which the exempted goods have been imported, has been violated. In the instant case, the Noticees had satisfied all the conditions for availing exemption on the impugned goods imported as explained in detail in foregoing grounds. As submitted *supra*, the only condition for availing exemption on the impugned goods is to submit Certificate of Origin in terms of Rule 13 of the Country-of-Origin Rules. This condition has been fulfilled by the Noticees. Therefore, it cannot be said that any condition has been violated. Consequently, Section 111(o) is not attracted in the present case.

Further, Section 111(q) of the Customs Act, 1962 cannot be invoked in the present case as the Noticees have not violated any provision of Chapter VAA or rules made thereunder. The Department has alleged that the Noticees have contravened Section 28DA of the Customs Act which falls under Chapter VAA. As submitted, the said provision was not in existence at the time of importation of goods in question. Thus, the said Section cannot be invoked in present case. Moreover, Section 111(q) itself was not in existence at the time of importation of the subject goods. The aforesaid clause was inserted w.e.f. 27-03-2020 whereas the Noticees had imported the subject goods on 27.12.2019. Consequently, Section 111(q) is also not attracted in the present case.

13.10.2 Further, it is a settled position of law that the goods are not liable to confiscation in a case where only the classification of goods/availing exemption is in dispute. Reliance in this regard is placed on the following judgments:

- **CCE v. Jas International, 2011 (272) ELT 282 (Tri.-Del)**
- **In Re: Golden Peacock Overseas Ltd., 2012 (278) ELT 545 (GOI)**
- **CC v. Rajdhani Timbers Products P. Ltd., 2009 (239) ELT 188 (Tri.-Ahmd)**
- **Surbhit Impex P. Ltd. v. CC, 2012 (283) ELT 556 (Tri.-Mum), affirmed by the Hon'ble High Court of Bombay at, 2012 (286) ELT 500 (Bom.)**
- **Marque Impex v. CC, CESTAT Final Order No. A/831/WZB/25/C-I dated 19.05.2005**

Without prejudice to the above, it is respectfully submitted that Section 111 provides for liability for confiscation of improperly imported goods. It is, therefore, respectfully submitted that only imported goods can be confiscated under Section 111. Imported goods have been defined under Section 2(25) as:

*“imported goods means any goods brought into India from a place outside India **but does not include goods which have been cleared for home consumption**”*

*(Emphasis Supplied)*

In the case of **Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004(163) E.L.T. 304 (Bom.)**, the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act, 1962, and consequently are not liable to confiscation under Section 111 of the Customs Act, 1962. The Hon'ble High Court held as under:

*“7...The learned counsel urged that once the goods are cleared for home consumption, then the goods covered by the consignments cease to be imported goods in accordance with the definition of expression ‘imported goods’ under Section 2 of the Act and consequently such goods are not liable for confiscation. There is considerable merit in the submission of the learned counsel. **The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled...**”*

*(Emphasis Supplied)*

It is therefore submitted that the imported goods in question are not liable to confiscation under the provisions of Section 111 of the Customs Act, 1962.

13.11 For ease of reference, the relevant part of the provision is extracted below-

**28AA. Interest on delayed payment of duty.**

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

*voluntarily or after determination of the duty under that section.*

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

*(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-*

*(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*

*(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]*

It has been demonstrated in the above that the demand of Customs Duty is not maintainable. Since there is no liability to pay duty, no interest could be charged from the Noticees.

13.11.2 The Hon'ble Supreme Court of India in ***Prathibha Processors vs. Union of India, 1996 (88) E.L.T. 12 (S.C.)***, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest either. Relevant portions from the judgment are extracted below for ready reference:

***The goods are not eligible to duty at that time. Calculation of interest is always on the principal amount. The "interest" payable under Section 61(2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable/payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable.*** *The interest provided under Section 61(2) has no independent or separate existence. When the goods are wholly exempted from the payment of duty on removal from the warehouse, one cannot be saddled with the liability to pay interest on a non-existing duty. Payment of interest under Section 61(2) is solely dependent upon the eligibility or factual liability to pay the principal amount, that is, the duty on the warehoused goods at the time of delivery. At that time, the principal amount (duty) is not payable due to exemption. So, there is no occasion or basis to levy any interest, either. We hold accordingly.*

*(Emphasis Supplied)*

Thus, from the above referred to principal interest is necessarily linked to the duty payable. The Noticees humbly submit that once the duty itself cannot be demanded, the corresponding interest is also held to be not payable. The

above referred to case is followed by the Hon'ble Supreme Court in the case of **Commissioner of Customs, Chennai vs. Jayathi Krishna and Co., 2000 119 ELT 4 SC**. That interest cannot be demanded when duty demand is not sustainable has also been upheld in several High Court and Tribunal decisions.

13.12 Vide the SCN, the Ld. Additional Commissioner has proposed to impose penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962. The relevant portion of the same is as under:

**SECTION 112. Penalty for improper importation of goods, etc.**

—

*Any person, -*

- a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- b. *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,*

The Noticees submit that penalty under Section 112(a) of the Customs Act, 1962 can only be imposed when the importer does any act or omission which **renders the goods liable for confiscation under Section 111 of the Customs Act, 1962.**

Further, penalty under Section 112(a) of the Customs Act, 1962 can only be imposed when the importer acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing etc of any goods which **he knows or has reason to believe are liable to confiscation under section 111.**

In this regard, it is submitted that in the present case penalty cannot be imposed under Section 112 (a) of the Customs Act, 1962 because the goods imported by the Noticees are not liable for confiscation under Section 111 of the Act in light of the submissions made in the Ground B (supra).

In this regard, reliance is placed on the decision of **Pathange & Co. v. CC, Hyderabad, 2019 (12) TMI 736 - CESTAT HYDERABAD** wherein it was held that penalty imposed under section 112(a) of the Customs Act, 1962 is consequent to the goods being held liable for confiscation under section 111. The Hon'ble Tribunal set aside penalty imposed under section 112(a) of the Customs Act, 1962 on the ground that the goods are not liable for confiscation under section 111 of the Customs Act, 1962.

Reliance in this regard is also placed on the decision of the Hon'ble Tribunal of Chandigarh in the case of **M/s. Hindustan Distributors v. Commissioner of Customs, Ludhiana, 2024 (6) TMI 59- CESTAT CHANDIGARH.**

In light of the above, the proposal to impose penalty under Section 112(a) and 112(b) needs to be set aside.

13.13 The SCN proposes to impose penalty on the Noticees under Section 114A of the Customs Act, 1962. The relevant part of the Section is extracted below for ease of reference:

**SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. –**

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under <sup>1</sup>[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :.....*

It is clear penalty under Section 114A can only be imposed in cases where duty has not been paid or short/part paid because of **collusion or wilful mis-statement or suppression of facts**.

As laid down in **CC vs. Videomax Electronics, 2011 (264) ELT 0466 (Tri.-Bom)**, if the extended period of limitation under Section 28 is not invocable, a penalty under Section 114A of the Customs Act, 1962 cannot be imposed.

13.13.2 The Noticee submitted and clarified in the foregoing paras that the Noticees have committed no offense or made no omissions or commissions in the entire matter. Moreover, a penalty under Section 114A of the Customs Act, 1962 can be imposed only when the duty has not been paid by the importer due to suppression or misrepresentation of facts, etc. It has been narrated in the foregoing paras that no suppression has been made by the Noticees in the matter in order to evade payment of duty. No penalty, therefore, can be imposed on the Noticees under Section 114A of the Customs Act, 1962.

Further, the conduct of the Noticees was completely bona fide. The Noticees neither had any intention to evade payment of duty nor had any knowledge of the liability of the goods to confiscation. In the absence of any mala-fide on the part of the Noticees, no penalty is imposable. In the case of **Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (J159) (SC)**, the Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona-fide belief. It is submitted that the conduct of Noticees in the present case was totally bonafide and therefore no penalty is imposable.

As stated previously, the conduct of the Noticees was *bona fide*. Therefore, it cannot be said that the Noticees in any manner, abetted the doing or omission of an act and thereby rendered the goods liable to confiscation. In the case of **Trade Wings Vs. Commissioner of Customs, Mumbai, 2009 (243) ELT 439 (Tri.-Mumbai)**, Hon'ble Tribunal held that mere lack of care and diligence by the Noticees is not sufficient to pin them with the charge of abetment. Similarly, in the case of **Commissioner of Customs (EP) vs. P.D. Manjrekar, 2009 (244) ELT 51 (Bom.)**, the Hon'ble Bombay High Court held that, in case of abetment, Revenue has to prove knowledge on the part of the Assessee. However, in the present case, no such proof has been furnished by the Department. Therefore, the imposition of penalty on the Noticees is not sustainable in law.

13.14 The SCN proposes to impose penalty on the Noticees under Section 114AA of the Customs Act, 1962. The relevant portion of the provision reads as under:

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

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

The above provision was inserted w.e.f. 13.07.2006, vide Section 27 of the Taxation Laws (Amendment) Act, 2006. The legislative intent behind the insertion of this provision was explained in the twenty-seventh Report of the Standing Committee of Finance, as under:

*“Clause 24 (Insertion of new section 114AA)*

*62. Clause 24 of the Bill reads as follows:*

*After section 114A of the Customs Act, the following section shall be inserted, namely:—*

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

*63. The information furnished by the Ministry states as follows on the proposed provision:*

*“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.”*

*64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a ‘false statement’ etc. Questioned on these concerns, the Ministry in their reply stated as under:*

***“The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case.”***

*65. The Ministry also informed as under:*

***“The new Section 114AA has been proposed consequent to the***

***detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes.”***

***66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.”***

*(Emphasis supplied)*

From the above extract from the report of the Standing Committee, it is evident that the provisions of Section 114AA were intended to cover the cases of fraudulent exports to claim export incentives, without actually exporting the goods and by presenting forged documents. It is submitted that the SCN has failed to take into consideration the aforesaid legislative intent behind the insertion of Section 114AA of the Customs Act. The provisions of Section 114AA are, therefore, not applicable in the case of imports.

Without prejudice to the above, it is submitted that even as per the plain language of the provision, it envisages imposition of penalty only in those cases where a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, a statement of document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act.

Therefore, the knowledge or intention of the person is essential for invoking this provision. The act of using a false or incorrect document should be committed by the person concerned knowingly or intentionally, i.e. an element of *mens rea* should be present, in the transaction of any business for the purpose of the Customs Act.

In the present case, as already submitted, the Noticees filed the Bills of Entry and claimed the exemption from duty under the Customs Notification on the basis of the FORM A1 duly issued by the concerned authority in Thailand. The SCN merely makes bald allegations against the Noticees but, discloses no evidence to indicate any mala fide intent on the part of the Noticees

13.14.2 The Noticee submitted that the Noticees did not, knowingly or intentionally, make, sign or use any declaration, statement or document which was false or incorrect in any material particular. The Noticees also did not knowingly or intentionally cause anybody else to make, sign, or use any declaration, statement, or document that was false or incorrect in any material particular, hence, the provisions of Section 114AA are not invocable in the present case, and no liability under this provision is liable to be imposed upon the Noticees.

In this regard, reliance is placed on the decision of Hon'ble Tribunal in the case of ***Bosch Chassis Esystems India Ltd. v. Commissioner of Customs, New Delhi (ICD TKD), 2015 (325) ELT 372 (Tri.-Del.)***, where while

setting aside the penalties imposed under Section 114A and Section 114AA of the Act, the Hon'ble Tribunal held the imposition of penalty as unsustainable since there was no mala fide intention or wilful misrepresentation on the part of the importer.

Reliance in this regard is also placed on the decision of Hon'ble Tribunal in the case of **Commissioner of Customs (Import), Mumbai v. Tiong Woon Project & Contracting (I) P. Ltd., 2017 (356) ELT 138 (Tri.-Mumbai)**, wherein it was held that in view of the failure on part of the Revenue to bring put out any factual position that there was willful suppression of facts and misstatement by the importer, there can be no levy of penalty under Section 114AA of the Customs Act, 1962.

Reliance is also placed on the case of **Singh World v. Commissioner of Customs, New Delhi 2017 (353) ELT 243 (Tri.-Del.)**, wherein the Hon'ble Tribunal held that penalty under Section 114AA can be waived in the case where *bona fide* belief is available and no *mala fide* intention was there for committing the fraud. In the said case, the appellant therein had purchased a valid license issued by the DGFT from the market for the purchase of the goods. In such a scenario, the penalty imposed under Section 114AA was set aside.

In the light of the above, it is humbly submitted that no penalty is liable to be imposed upon the Noticees under Section 114AA of the Customs Act and the proposal for imposition of the same is unsustainable and is liable to be dropped.

### **Personal Hearing**

14. Advocate Raksha Bhandari appeared for personal hearing on 10.11.2025 in virtual mode on behalf M/s. Nahar Granties and reiterated her submission dated 10.11.2025. She submitted that the imports were made by the Noticee in December 2019 whereas the demand has been made under Section 28DA of the Customs which came into force on 27.03.2020. Therefore, at the relevant time, Section 28DA of the Customs Act, 1962 was not in force and the same cannot be a basis to deny preferential treatment. Reliance in this regard was placed on the decision of Hon'ble CESTAT Ahmedabad on the case of M/s. Kesar Spices. Prior to introduction of Section 28DA, the Noticee was not required to possess any other information except for a valid COO. The COO issued by the Issuing Authority of the exporting Country was duly submitted at the time of import and the same has not been cancelled by the Issuing Authority till date. Therefore, preferential treatment cannot be denied in presence of a valid COO. She submitted that the verification conducted in respect of other importer cannot be relied upon as revocation of COO is prospective in nature and cannot be applied retrospectively.

She further submitted prior to introduction of Section 28DA, if the Department doubted the genuineness of COO, it should have requested the Issuing Authority to conduct retroactive check. However, no such procedure was followed in respect of the goods imported by the Noticee.

## **Discussion and Findings**

15. I have carefully gone through the facts of the case, Show Cause Notice dated 10.12.2024 and the noticee submissions both, in written and in person. I find that in the present case principle of natural justice have been complied with and therefore, I proceed to decide the case on the basis of applicable laws/rules, written submissions and documentary evidences available on record.

16. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

( i ) Whether the duty exemption benefit claimed under Notification No. 46/2011-Cus dated 01.06.2011 be denied or otherwise.

(ii) Whether the impugned goods having total assessable value of Rs. 77,09,166/- (Rupees Seventy Seven Lakhs Nine Thousand One Hundred Sixty Six only) as mentioned in Table-B should be held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962 or otherwise.

(iii) Whether the differential Customs duty amounting to Rs. 5,00,325/- (Rupees Five Lakhs Three Hundred Twenty Five only) should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under section 28 AA of The Custom Act, 1962 in respect of Bill of Entry no. 6262540 dated 27.12.2019 or otherwise.

(iv) Whether the noticee is liable for penalty under Sections 112(a) and/or 112(b) and/or 114A and 114 AA of the Customs Act, 1962 or otherwise.

### **17. Duty exemption benefit claimed under Notification No. 46/2011-Cus dated 01.06.2011:-**

17.1 I observe that M/s. Nahar Granties Private Limited having address at Plot No. 16/1, GIDC, Kalol District, Gandhinagar, Gujarat-382721, were importing "Remelted Zinc Ingot" falling under tariff heading 79011200 of First Schedule to the Customs Tariff Act, 1975. The importer is engaged in import of "Remelted Zinc Ingot" from Thailand by availing benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011, as amended.

17.2 I find that investigation was initiated by DRI that various importer including M/s. Nahar Granites Pvt. Ltd. were engaged in import of "Remelted Zinc Ingot" from Thailand and availed benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011, as amended, though

the manufacturer/supplier does not meet the criteria of Rules of Origin under AIFTA.

I observe that importer had imported "Remelted Zinc Ingots" vide the Bill of Entry no. 6262540 dated 27.12.2019 detailed above in Table-B and wrongly claimed concessional duty of Nil BCD benefit under Sl. No. 1000(I) of Notification no. 46/2011- Customs dated 01.06.2011, as amended and paid the total duty of Rs. 13,87,650/- on the strength of duty structure of BCD (0%) + SWS (0%) + IGST (18%), whereas the actual duty required to be paid has been found to be as Rs. 18,87,975/- under duty structure of BCD (5%) + SWS (10% of BCD) + IGST(18%) (Effectively 24.49 %) Due to which there has been a short levy of duty to the tune of Rs. 5,00,325/- as worked out in the Table-B above.

17.3 I find that Importer had been importing "Remelted Zinc Ingots" from Thailand based manufacturer from 27.12.2019 and cleared the same through Mundra SEZ Port, Mundra. The goods imported were manufactured by M/s. AA Metal Scrap Company Ltd. Thailand. I find that in case of one of the importer of identical goods viz. M/s. Gopinath Metals, verification had been conducted under CAROTAR, 2020 and the verification reports was received from the Thailand authorities wherein they have stated that *"The exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame. We therefore, are not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, we have revoked the above mentioned Form AI issued for the company."* Thus, it is eviden that the imported goods do not meet the origin criteria and therefore, not eligible for benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.

17.4 Further, I find that OSD (FTA Cell) vide letter dated 09.07.2021 has forwarded the verification report No 0307.07/483 dated 29.06.2021 received from the Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand wherein they confirmed that:

*"(1) The above mentioned certificates of Origin Form AI was authentically issued by the Department of Foreign Trade.*

*(2) "The exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame. We therefore, are not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, we have*

*revoked the above mentioned Form AI issued for the company.”*

17.5 I further observe that Rule-5 read with Rule-3 of the said "Rules of Origin" for the products not wholly produced or obtained in the exporting party (of the Agreement), to qualify for the preferential tariff under the said Preferential Tariff Agreement, the goods must have at least 35% Regional Value Content (RVC) or Value Addition and non-originating materials must have undergone processing to warrant change in CTHS level (6 digit) with final process of manufacture within territory of export. Rule-3 and Rule-5 of the said "Rules of Origin" are reproduced below:

**“Rule 3. Origin criteria.-** *The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-*

*(a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or*

*(b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6*

**“Rule 5. Not wholly produced or obtained products.-** *(1) For the purpose of clause (b) a/ rule 3, a product shall be deemed to be originating, if-*

- (i) the AIFTA content is not less than 35 per cent. of the FOB value; and*
- (ii) the non-originating materials have undergone at least a change in tariff sub- heading (CTSH) level i.e. at six digit of the Harmonized System*

17.6 I further observe that Form AI is a 'Combined Declaration and Certificate' issued under the ASEAN-India Free Trade Agreement (AIFTA) for claiming preferential tariff treatment under Notification No. 46/2011-Cus. dated 01.06.2011, as amended wherein the declaration is made by the exporter which includes declaration of origin criteria and certificate is to be done by the issuing authority of the exporting country. I observe that each import of goods of Thailand origin eligible for concession in India and are exported from Thailand meeting the criteria laid down in the "Rules of Origin" was eligible for issuance of Form-AI by Thailand authorities to enable the importers in India to claim concessional rate of customs duty on the goods imported.

17.7 In view of the above, Remelted Zinc Ingots falling under Tariff item 79011200 imported from any ASIAN countries, including Thailand, would have to satisfy the condition of "deemed originating goods" to make it eligible for concessional rate of Customs duty.

In the instant case, importer has classified their imported goods i.e. Remelted Zinc Ingots under tariff heading 79011200 of the first schedule to the

Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended. I find that the verification of Origin criteria was conducted by DRI with the Thailand authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. In this case, authority of Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame and therefore they were not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, they revoked the above mentioned Form AI issued for the company.

17.8 In view of above, I find that the goods imported by the importer from M/s. AA Metal Scrap Company Ltd., Thailand were identical goods manufactured by same manufacturer and did not fulfill the criteria of origin in terms of Rule 5 of Origin of Rules. Thus, on the basis of the provisions of subsection 11 of Section 28DA of Customs Act, 1962, I find that non-compliance of the imported goods with the country of origin criteria apply to identical goods i.e Remelted Zinc Ingots manufactured by M/s. AA Metal Scrap Company Ltd. and exported to the importer during material period.

17.9 In this regard, I find that in the **5 Judge Bench Judgment in Dilip Kumar & Co. [2018] 9 SCC 1**, it was held that *Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.[Para 52].*

I find in the instant case competent authority of Department of Foreign Trade, Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd, Thailand, declared that the products shown on the Form AI were not qualified as originating goods in Thailand, thus they revoked those products on those Forms AI. As the Country of origin (COO) certificate had been revoked by the issuing authority of Thailand, the preferential tariff treatment to the imports of Remelted Zinc Ingots is liable to rejected. The noticee cannot be allowed to use such illegal COO Certificates in order to claim the benefits of the exemption notification.

17.10 I find that as per the provisions of Section 17 (1) of the Customs Act, 1962 read with Section 2 (2) of the Customs Act and CBIC Circular No. 17/2011-Customs dated 08.04.2011 lay down onus on the importer and the

CHAs to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.

Further, as per Section 46(4) of the Customs Act the importer at the time of filing the Bill of Entry has to declare the truth of the contents of such entry and the authenticity of the documents attached. Further, in terms of Section 46 (4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, shall ensure the authenticity and validity of any document supporting it and shall ensure compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. The importer is thus legally bound to ensure that the declared description, classification, country of origin, and applicable rate of duty are correct and in conformity with the law. In the present case, M/s Nahar Granites while filing the Bill of Entry, claimed Nil Basic Customs Duty under Notification No. 46/2011-Cus. dated 01.06.2011, as amended on the strength of Certificates of Origin that had been proved invalid as goods exported by the supplier M/s. AA Metal Scrap were not qualified as originated goods in Thailand, thus competent Authority revoked those products on those forms AI and accordingly preferential treatment given to the imports of remelted Zinc Ingots is liable for rejection. The importer failed to prove that the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame. By declaring the goods as of Thailand origin and availing an exemption not lawfully due, the importer misdeclared material particulars and incorrectly self-assessed the goods, in contravention of Sections 17, Section 46(4) and Section 46(4A) of the Customs Act, 1962. Such misdeclaration directly resulted in short-payment of duty and renders the importer liable to demand of duty under Section 28(4) and to consequential penal action under the provisions of the Act.

17.11 I find that the importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. AA Metal Scrap Company Ltd, Thailand, It is indicative of their *mens rea*. Furthermore, the importer have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra SEZ Port, Mundra and accordingly evaded the applicable Customs duty.

17.12 Accordingly, I find that it has been undisputedly established that that the Remelted Zinc Ingots exported by M/s. AA Metal Scrap and imported

by the noticee cannot be treated as originating goods of Thailand origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011, as amended is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nahar Granites is denied.

## **18 CONFISCATION OF GOODS:**

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**18.1** I find that it is alleged in the SCN that the goods are liable for confiscation under Section 111(o) and 111(q) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(o) and 111(q) of the Customs Act, 1962 are reproduced below: -

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*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*(q) any goods imported on a claim of preferential rate of duty which contravenes any provisions of Chapter VAA or any rule made there under;*

18.2 I find that in this case the importer has classified their imported goods i.e. Remelted Zinc Ingots under tariff heading 79011200 of the first schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended. The verification of Origin criteria was conducted by DRI with the Thailand authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. The competent authority of Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame and therefore they were not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, they revoked the above mentioned Form AI issued for the company. In this case the goods imported by the importer from M/s. AA Metal Scrap Company Ltd., Thailand were identical goods manufactured by same manufacturer and did not fulfill the criteria of origin in terms of Rule 5 of Origin of Rules. Thus, on the basis of the provisions of sub-section 11 of Section 28DA of Customs Act, 1962, it is evident that non-compliance of the imported goods with the country of origin criteria apply to identical goods i.e Remelted Zinc

Ingots manufactured by M/s. AA Metal Scrap Company Ltd. and exported to the importer during material period.

Further, as discussed in para no. 17 also, wherein it has been undisputedly established that the Remelted Zinc Ingots exported by M/s. AA Metal Scrap and imported by the noticee cannot be treated as originating goods of Thailand origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011, as amended is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nahar Granites is denied.

I find that the goods are also liable to confiscation under Section 111(o) as the benefit of exemption under Notification No. 46/2011-Cus. was availed subject to fulfilment of specified conditions — namely, that the goods must originate from an ASEAN member country in accordance with the prescribed Rules of Origin. Since the importer failed to fulfil these conditions and nevertheless availed the exemption, the goods have become liable to confiscation under Section 111(o) of the Act, which specifically covers goods imported in violation of a condition of exemption granted under Section 25 of the Act.

Further **Section 28DA. Procedure regarding claim of preferential rate of duty rule clause 11 is reproduced as under:-**

*“Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria”*

Further, the impugned goods were imported under claim of preferential rate of duty which was actually not available for the impugned goods as per rule 3 and 5 of Country of Origin rules read with Rule-7 of CAROTAR, 2020 and Sub-Section 11 of Section 28DA of the Finance Act, 1962, hence, I find that the confiscation of the imported goods invoking Section 111(q) is justified & sustainable.

18.3 I also find that the case is established on documentary evidences as detailed in Paras above in respect of past imports, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the **Hon’ble Supreme Courtin CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]**. Further in the case of **K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. – Chennai)** the

Hon'ble CESTAT, South Zonal Bench, Chennai has held as under:

*“Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means.”*

#### 18.4 **Imposition of Redemption Fine:**

As I have already held in previous paras, that the said imported goods are liable for confiscation under the provisions of Section 111(o) and 111(q) of the Customs Act, 1962, as proposed in the Show Cause Notice. I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

*“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.”*

In the instant case, I find that the subject goods imported are not available for confiscation, I find that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, I refrain from imposing redemption fine in respect of goods imported under subject Bill of Entry no. 6262540 dated 27.12.2019.

18.6 From the above discussions, I find that the goods imported by the Importer do not qualify the requirement as of Origin of Goods as laid out under Notification No. 189/2009-Cus (N.T.) dated 31.12.2009 and the importer had not correctly declared the facts before the Customs authorities, thereby wrongly

availing the benefits of concessional rate of customs duty under Notification No. 46/2011 dated 01.06.2011. Therefore, I find that the impugned goods declared as "Remelted Zinc Ingots" imported vide Bill of Entry no. 6262540 dated 27.12.2019 having total assessable value of Rs. 77,09,166/- is liable for confiscation under the provisions of Section 111(o) and 111(q) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts by the importer with regard to the description and Country of Origin of the import goods by way of submitting false and incorrect Country of Origin certificate as Thailand leading to unlawful, illegal and wrong availment of concessional Customs duty benefit under Notification No. 46/2011 dated 01.06.2011 by importer. Accordingly, I find that confiscation of goods is legal and proper in the subject case under the said provisions of Section 111 (o) and 111(q) of the Customs Act, 1962.

**19. Applicability of extended period under Section 28 (4) of the Customs Act, 1962.**

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19.1 The Impugned Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the Section 28(4) of the Customs Act, 1962 has been rightly invoked or not. I find that after introduction of self-assessment and consequent upon amendment to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is incumbent on the part of the Importer to declare the correct country of origin of impugned goods and make true and correct declaration in all aspects like classification, valuation, including calculation of duty and claim of benefit etc. Onus is on the noticee to comply with the various laws, determine his tax liability correctly and discharge the same. The Importers are required to declare the correct description, value, classification, notification number if any, on the imported goods. Self-Assessment is supported by section 17, 18 and 46 of the Customs Act 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Importer is squarely responsible for Self-Assessment of the duty on the imported goods and filing all declaration and related documents and confirming these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act 1962 or the allied acts.

19.2 From the facts and evidences placed before me, I find that that the Importer was wilfully indulged in availing the wrong benefit of Serial No. 1000(I) of Notification No. 046/2011 dated 01.06.2011 as amended, which was not actually available for the said goods at the time of their importation. The act of

suppression of facts was unearthed only after verification of the COO Certificate issued by M/s AA Metal Scrap in case of M/s. Gopinath Metals. The Importer had wrongly used non-authentic COO certificate of such goods covered under the said Bill of Entry. The Importer knowingly and deliberately had suppressed the material facts of the Country of Origin Certificate from the department and misused the same in the Bills of Entry with a clear intention to evade the differential Customs duty. Had the department not initiated investigation into the matter, the Importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed.

19.3 I find that the importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. AA Metal Scrap Company Ltd, Thailand, it is indicative of their mensrea. Furthermore, the importer has suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra SEZ Port, Mundra and accordingly evaded the applicable Customs duty.

19.4 Further, I find that as per section 17(1) of the Act, "An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods." However, in the present case, the Importer for the purpose of evasion of duty had knowingly suppressed the fact that the COO Certificate was not proper. Thus I find that they willfully and knowingly availed the COO benefit on the imported goods despite knowing very well the nature of documents that the same was not just and proper and not applicable for duty exemption for shipment under importation. Further, the Importer was indeed under statutory obligation for correct self-assessment. Therefore, the provision of section 28(4) of the Act, is found to be applicable in this case towards demand and recovery of the differential duty from the Importer. Hence, I strongly hold that the differential duty amount of Rs. 5,00,325/- is recoverable alongwith applicable interest from the importer under the provisions extended period of Section 28(4) of the Customs Act, 1962 read with Section 28AA of the Customs Act, 1962, for the reasons brought out in foregoing paras

**20. Demand of Differential duty and interest: -**

20.1 I observe that the Show Cause Notice proposed the demand and recovery of differential duty of amount Rs. 5,00,325/- based on ineligible Basic Customs Duty exemption benefit under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962.

The relevant legal provision is as under:

*SECTION 28(4) of the Customs Act 1962.*

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

20.2 As discussed in above paras, wherein it has been undisputedly established that the Remelted Zinc Ingots exported by M/s. AA Metal Scrap and imported by the noticee cannot be treated as originating goods of Thailand origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011 is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nahar Granites is denied.

In this case the importer has classified their imported goods i.e. Remelted Zinc Ingots under tariff heading 79011200 of the first schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended. The verification of Origin criteria was conducted by DRI with the Thailand authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. The competent authority of Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame and therefore they were not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, they revoked the above mentioned Form AI issued for the company. In this case the goods imported by the importer from M/s. AA Metal Scrap Company Ltd., Thailand were identical goods manufactured by same manufacturer and did not fulfill the criteria of origin in terms of Rule 5 of Origin of Rules. Thus, on the basis of the provisions of sub-section 11 of Section 28DA of Customs Act, 1962, it is evident that non-compliance of the imported goods with the country of origin criteria apply to identical goods i.e Remelted Zinc Ingots manufactured by M/s. AA Metal Scrap Company Ltd. and exported to the importer during material period.

20.3 In view of above, I find that notice has failed to discharge their burden of possessing sufficient information and ensuring reasonable care under Section

28DA. They have also failed to discharge their burden of making a true and correct declaration in terms of Section 28DA(1)(i) and Section 46(4). They also failed to correctly self assess the duty as required under Section 17(1). Since the noticee are the only beneficiary of the whole fraudulent arrangement, they cannot now claim that they are not responsible for the said defects and fraudulent nature of the subject COO. I find that consequent to non-fulfilment of obligations under Section 28DA, the preferential rate of duty claimed under the said notification becomes inadmissible, and the goods are liable to assessment at the normal rate of Basic Customs Duty. The short-payment of duty resulting therefrom has arisen on account of the importer's wilful misstatement and suppression of material facts relating to the true origin and value content of the goods. Therefore, the case squarely attracts the provisions of Section 28(4) and Section 28AA of the Customs Act, 1962, which provides for demand of duty and interest not levied or short-levied by reason of collusion, wilful misstatement, or suppression of facts.

Further, as per Section 28DA, the importer claiming preferential duty must ensure the authenticity of the Certificate of Origin. The importer failed to discharge these obligations, resulting in incorrect self-assessment and short-payment of customs duty.

In view of the above, I find that the differential customs duty amounting to Rs. 5,00,325/- is recoverable from M/s Nahar Granites under Section 28(4) of the Customs Act, 1962, being duty short-levied by reason of incorrect claim of exemption under Notification No. 46/2011-Cus. dated 01.06.2011 as amended.

20.4 Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

*Section 28AA.*

*Interest on delayed payment of duty—*

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

*(2) Interest at such rate not below ten per cent. And not exceeding thirty-six per cent. Per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month*

*succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.*

In this regard, the ratio laid down by Hon'ble Supreme Court in the case of **CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)]** wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that:-

*"...It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."*

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

20.5 In view of the facts and findings in above paras, I hold that total differential duty of Rs. 5,00,325/- should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from M/s Nahar Granites along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

**21. LIABILITY OF PENALTY ON IMPORTER UNDER SECTION 112 (a) & (b)/ 114A AND 114AA OF THE CUSTOMS ACT, 1962.**

21.1 As discussed in above paras, wherein it has been undisputedly established that the Remelted Zinc Ingots exported by M/s. AA Metal Scrap and imported by the noticee cannot be treated as originating goods of Thailand origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011, as amended is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nahar Granites is denied. The Goods imported by M/s. Nahar Granites are liable for confiscation under the provisions of Section 111 (o) and 111(q) of the Customs Act, 1962 and differential duty of Rs. 5,00,325/- should be demanded under Section 28 (4) of the Customs Act, 1962 and along with applicable interest in terms of section 28AA of the Customs Act, 1962. The penalty provisions under section 112, 114A and 114AA is reproduced as under:

**SECTION 112. Penalty for improper importation of goods, etc.-**

Any person, -

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

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

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

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :

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

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

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

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

**Section 114A of the Customs Act, 1962 read as :-****Penalty for short-levy or non-levy of duty in certain cases. -**

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the

case may be, as determined under sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

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

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

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

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

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

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

**Section 114 AA of the Customs Act, 1962 read as –**

**Penalty for use of false and incorrect material. -**

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

*of goods.*

I had already decided that the fact that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 for the reasons explained under foregoing paras. I already decided that the fact that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 for the reasons explained under foregoing paras. I find that the element of suppression of material facts and wilful mis-statement has been discussed in various para's above. It is apparently clear that Noticee's intent was to evade duty by suppression of material facts by way of incomplete declaration and keep the suppression. Hence, on the basis of the facts of the cases, I find that the penalty under section 114A of customs act, 1962 is applicable as the element of suppression of material facts and wilful mis-statement in this case has been found beyond doubt.

Now, I come to examine the penalty imposable on the Noticee under Section 112(a), 112(b) and 114A of the Customs Act, 1962. I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. I find that there is a mandatory provision of penalty under Section 114A of the Customs Act, 1962 where duty is determined under section 28 of the Customs act, 1962. Therefore, I find that when penalty under Section 114A is imposed then penalty under Section 112 of Customs Act, 1962 cannot be imposed.

21.2 I find that the importer was issued Summons (DIN 202301DDZ10000222DAA) dated 27.01.2023, Summons (DIN 20230971NN0000777F01) dated 01.09.2023 and letter DIN - 20230964WW000000EE00) dated 18.09.2023 for appearing in person to assist in the inquiry being made with reference to the ongoing investigation and also to pay up the differential duty alongwith interest / penalty, however, the importer did not appear on both the dates.

21.3 As regards the penalty on Importer 114AA of the Customs Act,

1962 is concerned, I find that penalty under Section 114AA is imposable for intentional usage of false and incorrect material. Further, I find that the importer had used fake and forged Country of Origin Certificate/documents to avail undue benefit to evade the legitimate Customs Duty. In view of the deliberate and intentional submission of fraudulently obtained unauthentic preferential Certificates of origin in 'Form-AI' for availing exemption under AIFTA, I hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962.

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

**ORDER**

(i) I order to reject/deny the benefit of Notification No. 46/2011-Cus. Dated 01.06.2011, as amended, availed by the importer against the import of goods under Bill of Entry no. 6262540 dated 27.12.2019 filed at Mundra Port, in terms of Section 28DA (11) of the Customs Act, 1962.

(ii) I order for confiscation of the impugned goods having total assessable value of Rs. 77,09,166/- (Rupees Seventy-Seven Lakhs Nine Thousand One Hundred Sixty-Six only) imported vide Bill of Entry no. 6262540 dated 27.12.2019 under Section 111(o) and 111(q) of the Customs Act, 1962. However, the goods covered under Bill of Entry no. 6262540 dated 27.12.2019 are not physically available for confiscation, I refrain from imposing redemption fine in respect of the subject goods under Section 125(1) of the Customs Act, 1962.

(iii) I order to confirm and recover the differential duty of **Rs. 5,00,325/-** (Rupees Five Lakhs Three Hundred Twenty-Five only) under Section 28(4) of Customs Act, 1962.

(iv) I confirm and order to recover applicable interest on the differential duty above under Section 28AA of Customs Act, 1962.

(v) I impose a penalty of **Rs. 5,00,325/-** (Rupees Five Lakhs Three Hundred Twenty-Five only) on the Importer M/s. Nahar Granites under Section 114A of Customs Act, 1962.

(vi) I impose a penalty of **Rs. 50,000/-** (Rupees Fifty Thousand only) on the Importer M/s. Nahar Granites under Section 114AA of Customs Act, 1962.

(vii) I do not impose penalty under Section 112(a) & 112(b) of the Customs Act, 1962 on the Importer M/s. Nahar Granites.

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

**26.** The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/2639/2024-Adjn. dated 10.12.2024 is hereby disposed off on above terms.

**Zala** **Dipakbhai**  
**Chimanbhai**  
**ADDITIONAL COMMISSIONER**  
**ADC/JC-III-O/o** **Pr**  
**Commissioner-customs-mundra**

To,

**M/s. Nahar Granites Pvt. Ltd.** (IEC: 1398001112)  
Plot No. 16/1, GIDC, Kalol District,  
Gandhinagar, Gujarat-382721.

**Copy to:**

1. The Deputy Director, Directorate of Revenue Intelligence, Jamnagar Regional Unit, 45, Jampuri Estate, Opp. Deep Bhawan, Jamnagar- (E-mail- drijamru@nic.in ).
2. The Dy. Commissioner of Customs, Group-4A, CH, Mundra.
3. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately)*.
5. Guard File.