



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद  
**OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,**  
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road  
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DIN – 20250671MN0000515401

क	फ़ाइल संख्या FILE NO.	S/49-434/CUS/AHD/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	AHD-CUSTM-000-APP-099-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. 05/AR/ADC/TUMB/2023-24, dated 12.01.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	25.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Chandan Steel Limited, Plot No. 31 to 36, 45 to 49/2, 142 - EXP Area, GIDC Indl. Area, Umbergaon, Valsad – 396171





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





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





**ORDER-IN-APPEAL**

Appeal has been filed by M/s Chandan Steel Limited, Plot No. 31 to 36, 45 to 49/2, 142 - EXP Area, GIDC Indl. Area, Umbergaon, Valsad-396171, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 05/AR/ADC/TUMB/2023-24, dated 12.01.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, ICD – Tumb (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed a Bill of Entry No. 5538069, dated 22.09.2021 (hereinafter referred to as the said 'Bill of Entry') under Section 46 of the Customs Act, 1962 for importing below mentioned goods from M/s. Daehan Special Metal Co. Ltd., 15, Chuhwasangnam-Gil, Miryang-Si, Gyeongsangnam, Korea vide Bill of Lading No. PUSA01823200. The details of imported goods as declared by the importer in Bill of Entry are as follows: -

**TABLE - I**

Sr. No.	Container No.	Description of Goods as per Bill of Entry	Chapter Sub-Heading No.	Quantity (In Kgs.)	Invoice No. / Date	Assessable Valaue (In Rs.)
01.	TRHU2541657	Stainless Steel Melting Scrap Grade 316	72042190	25530	DH51-2021, dated 26.08.2021	25899384/-
02.	HDMU2582284			25170		
03.	TEMU1489910			25350		
04.	BSIU2802039			23410		
Total				99460		25899384/-

2.1 In order to ascertain and identify the nature of the above mentioned imported goods, the Faceless Assessment Group (FAG) had ordered to conduct examination of the said imported goods as per the examination order and RMS instructions attached with the said Bill of Entry. Accordingly, examination was conducted in the presence of Deputy Commissioner of Customs, ICD Tumb, Inspector of ICD, Tumb and authorized representative of the Appellant / Customs Broker. During the course of physical examination of the goods, it was noticed that the imported goods was not as per the description declared in the Bill of Entry as the goods appeared to be 'Stainless Steel Flat Sheet'. It was observed that there were uniform size of Stainless Steel Flat Sheet placed in all of the above said containers which appeared that it may not be declared as Stainless Steel Melting Scrap Grade-316. The goods were mentioned in the import documents as "Stainless Steel Melting Scrap Grade 316".

2.2 The goods imported vide above said Bill of Entry appeared to be misclassified as well as mis-declared as it appeared to be Stainless Steel Flat Sheet instead of Stainless Steel Melting Scrap Grad 316 as declared in Bill of Entry. On request of the Appellant vide letter dated 29.09.2021, the examination of the goods was again carried out in presence of Shri Kamlesh Dand, General Manager, M/s. Chandan Steel Limited on 04.10.2021. Later on, the Appellant vide letter dated 11.10.2021 requested for examination of the said goods by the authorized empaneled Chartered Engineer.






Accordingly, the goods were examined by the Chartered Engineer, empaneled by the Department under Public Notice No. 10/2017 dated 05.06.2017, issued by the Deputy Commissioner of Customs, Ahmedabad. Accordingly, M/s. B.G. Bhatt & Co. had been asked to depute Chartered Engineer for further examination and valuation of imported goods. Shri Bhasker G. Bhatt, Chartered Engineer (M-103975/4 w.e.f 30.05.1991) inspected and examined the imported goods and submitted Inspection Report vide Certificate Ref. BB/J-13.1/21/CSL/TUMB, dated 13.10.2021 for imported goods wherein he opined that: -

- the imported material is Stainless Steel Flats labelled as SS316L, 6MM113MM1219 MM which could be secondary production/defective / excess production of the previous buyer.*
- the item under import having size 113 MM width could have been for the specific application, however if it is to be used as an alternate purpose; it will be subjected to un-economical waste generation during its alternate usage as per the prevailing technology even after undergoing additional processes.*
- the rate of the item under import per kg sounds correct.*

He also opined that the consignment declared as Stainless Steel Melting Scrap Grade 316 is SS Flats have value of 348110 USD.

2.3 The imported goods were also subjected to PMI testing wherein M/s. Met-Heat Engineers Pvt. Ltd., Vadodara who vide Test Report No. V-294/PMI/2020-21 dated 29.09.2021 confirmed the goods as SS Grade-316 as per analysis report mentioned below: -

**TABLE – II**

Goods placed in Container No.	MAT Specs as per test	%Chromium (Range- 16.0 – 18.0)	Nickel (Range 10.0 – 14.0)	Molybdenum (Range 2.0 – 3.0)
BSIU2802039	AISI - 316	17.16	13.80	2.67
HDMU2582284	AISI - 316	17.51	12.10	2.59
TEMU1489910	AISI - 316	17.21	13.71	2.63
TRHU2541657	AISI - 316	17.14	13.39	2.59

2.4 Goods found during the course of examination were not as per declaration and description as mentioned in the Bill of Entry; accordingly, it appeared that it had been wrongly classified as "Stainless Steel Melting Scrap Grade 316" under CTH 72042190 wherein Basic Customs duty leviable @ NIL rate and it appeared to be classified as "Stainless Steel Flat Grade 316" under CTH 72201129 wherein Basic Customs duty leviable @ 7.5% of the value. The goods imported vide the above Bill of Entry appeared Stainless Steel Flat Grade-316 which cannot be classified as Stainless Steel Melting Scrap Grade-316. The effective rate of Basic Customs duty on goods imported under CTH 72201129 is 7.5% of the value of the goods whereas the rate of duty on import of goods under CTH 72042190 is 2.5% of the value. Further, BCD on import of goods under CTH 72042190 have been exempted vide Notification No. 50/2017-Customs dated 30.06.2017 (Sr. No. 369). Accordingly, it appeared that the importer had mis-classified the product to



avoid payment of BCD.

2.5 The Chartered Engineer reported that the consignment imported is Stainless Steel Flats of Grade- 316 L having uniform thickness of 6.5 MM, 113 MM Width and 1219 MM length accordingly the Flat product of stainless steel of width less than 600 MM and of thickness 4.75 MM or more is to be classified under 722011 of the Customs Tariff Act, 1975. In view of the above, the consignment of import appeared to be classified under 72201129 others instead of 72042190 of the Customs Tariff. Further, on verification of transaction value declared by the Appellant with National Import Data Base (NIDB data), it was found that the same is corresponding to Stainless Steel Flats (Similar goods) which had been imported at various ports from Korea Republic and not corresponding to Stainless Steel Scrap. It was noticed that in the said Bill of Entry, the importer had declared Assessable value of goods @ Rs. 260/- per kg for import of SS Scrap Grade-316 while the NIDB data for import of Stainless Steel Scrap Grade-316 of South Korea Origin at the nearest time is showing @ Rs. 156.56/- per Kg at INJJK6. Further the value declared by the Appellant was corresponding to the value of contemporaneous import of SS flats available in National Import Data Base (NIDB).

**A. Contemporaneous Data of Imported SS Scrap Grade 316 from Korea Republic (KR) taken from NIDB**

**TABLE – III**

BE Number	Bill of Entry date	Description	Country Code	Customs Tariff Heading	Quantity (In MT.)	Unit Ass. Value (In Rs./ Kg.)	Unit Decl. Value (In Rs./Kg)
4431050	24.06.2021	TURNING UNBLENDED STAINLESS STEEL SCRAP 316 GRADE (PO NO. 6700006833) (SIMS NO. STL283766)	KR	72042190	144,65	156.56	156.56

Further, checking data of SS Flats/Plates on NIDB, below mentioned contemporaneous value is observed: -

**B. Contemporaneous Data of Imported SS Flats/Plates Grade 316 from Korea Republic (KR) taken from NIDB**

**TABLE – IV**

BE Number	Bill of Entry date	Description	Country Code	Customs Tariff Heading	Quantity (In MT.)	Unit Ass. Value (In Rs./ Kg.)	Unit Decl. Value (In Rs./Kg)	Port of Import

*Handwritten signature/initials*





4465173	26.06.21	Stainless Steel Plates Type is 316L/316	KR	72192190	19.65	283.32	283.32	INNSA1
44660183	26.06.21	Stainless Steel Plates 316L	KR	72192121	17.425	272.11	272.11	INNSA1
4584071	06.07.21	Hot Rolled Stainless Steel Plate Grade 316L/316	KR	72192190	5.58	267.31	267.31	INNSA1
4683882	15.07.21	Hot Rolled Stainless Steel Plate Grade 316L/316	KR	72192122	26.02	280.87	280.87	INMUM1
4861801	29.07.21	Hot Rolled Stainless Steel Plate Grade 316L/316	KR	72192122	39.82	282.75	282.75	INNSA1

From the above, it appeared that the value of imported goods was corresponding to the goods SS FLAT hot rolled 316 and not to the SS Scrap 316, hence imported goods was nothing but SS Flats Hot rolled of Grade 316/316L.

2.6 Further, on verification of price of SS Scrap 316 with LME (London Metal Exchange) it was noticed that on the Bill of Lading date i.e. 30.08.2021, LME price of Grade-316 scrap materials of Stainless Steel was 2645.54 USD Per MT. However, in the instant case, the Appellant had declared value (CIF) @ 3500 USD per MT for import of Stainless Steel Scrap Grade 316 which is much higher than the LME of Stainless Scrap. It also sufficed that the material imported appeared to be SS FLAT and not the SS scrap as declared. Above evidences substantiate that the Appellant appeared to have intentionally mis-declared Stainless Steel Flat Grade-316 (CTH-72201129) as Stainless Steel Scrap Grade-316 (CTH - 72042190) in order to evade the Basic Customs duty leviable on import of SS Flats. Thus, the Appellant appeared to have evaded Customs duty amounting to Rs. 25,21,305/-.

2.7 In terms of section 46 (4) of Customs Act, 1962, the Appellant was required to make a declaration as regards to the truth of the contents of the Bill of Entry submitted for assessment of Customs Duty. In view of the discussions in the forgoing para, it was comprehensible that the Appellant appeared to have mis-declared their imported goods and also misclassified their imported goods under CTH 72042190 instead of 72201129, in order to evade the Basic Customs duty. Thus, it appeared that the Appellant had contravened the provisions of sub-section (4) of Section 46 of the Customs Act, 1962, inasmuch as they had mis-declared the imported goods in the declaration in the form of Bill of Entry filed under the provisions of Section 46 (4) of Customs Act, 1962.

2.8 Since the goods found during the course of examination appeared not as per declaration and description and appeared not to be classified under HS Code





72042190 as 'Stainless Steel Scrap Grade-316" and fall under the HS Code 72201129, the Appellant by way of mis-declaring the imported goods and by violating various provisions as discussed supra appeared to have rendered the said goods liable to confiscation under Section 111 (m) of the Customs Act, 1962. Accordingly, the goods imported vide Bill of Entry No. 5538069, dated 22.09.2021 having total value of Rs. 2,58,99,384/- were placed under seizure under reasonable belief that the same were liable to be confiscated under Section 111 (m) of the Customs Act, 1962.

2.9 The Appellant, during the earlier adjudication proceedings, vide its letter / written submission dated 10.11.2021 requested for waiver of Show Cause Notice and Personal Hearing in the matter under the provisions of Section 124 of the Customs Act, 1962 and also requested to adjudicate the same under Section 122 of the Customs Act, 1962. They informed that they were ready to pay the duty, interest, fine and penalties imposed on them. The adjudicating authority vide the OIO No 34/MK/JC/SRT/2021-22, dated 24.11.2021 adjudicated the matter by taking up the case for decision without issuance of Show Cause Notice and Personal Hearing. The adjudicating authority have determined the following issues vide OIO No. 34/MK/JC/SRT/2021-22, dated 24.11.2021:

- (1) whether the imported goods under question has been classified appropriately by the Appellant;
- (2) whether the goods seized is liable for confiscation under Section 111(m) of the Customs Act, 1962 and;
- (3) whether the importer is liable for penal action under Section 112(a) of the Customs Act, 1962 or otherwise.

2.10 Then after, the adjudicating authority passed the OIO No. 34/MK/JC/SRT/2021-22, dated 24.11.2021, ordering as follows:

- i. He rejected the declared classification of the imported goods as "Stainless Steel Melting Scrap Grade-316" under CTH 72042190 and reclassified the goods as "Stainless Steel Flat Grade-316" under the CTH 72201129;
- ii. He ordered for confiscation of the consignment of 99.460 MTs of Stainless Steel Flat Grade-316 having an Assessable Value of Rs. 2,58,99,384/- under Section 111 (m) of the Customs Act, 1962. However, he gave option to the Appellant to redeem the imported goods on payment of redemption fine of Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 125 of the Customs Act, 1962;
- iii. He imposed penalty of Rs. 1,00,000/- upon the Appellant under Section 112 (a) (ii) of the Customs Act, 1962;
- iv. He imposed penalty of Rs. 1,00,000/- upon the Appellant under Section 114AA of the Customs Act, 1962.

2.11 Being aggrieved with the order dated 24.11.2021 passed by the adjudicating authority, the Appellant had filed an appeal before the Commissioner (Appeal), Customs, Ahmedabad. The Commissioner (Appeals), Customs, Ahmedabad vide OIA No. AHD-CUSTM-000-APP-106-23-24, dated 20.07.2023 set aside the





impugned order and allow the Appellant's appeal by way of remand to the adjudicating authority for passing fresh order taking the submissions made by the Appellant in the appeal memorandum and letter dated 25.10.2021 on record.

2.12 In the remand proceedings, the adjudicating authority vide the impugned order has passed the order as detailed below: -

- i. He has ordered to reject the declared classification of the subject goods as "Stainless Steel Melting Scrap Grade -316" under CTH 72042190 and ordered to re-assess the Bill of Entry classifying the imported goods as "Stainless Steel Flat Grade - 316 defective/ secondary" under the CTH 72201129 having BCD @7.5%, SWS @10% of BCD and IGST @18%. The details of the duty calculation are attached as Annexure-A to this order. [The duty calculation sheet reflects the same calculation of the duties as already put to notice of the Appellant vide Annexure-A attached to the OIO No. 34/MK/JC/SRT/2021-22, dated 24.11.2021] Accordingly, he has ordered to confirm the demand of duty BCD of Rs. 19,42,454/-, SWS of Rs. 1,94,245/- and IGST of Rs. 50,46,495/-;
- ii. He has ordered confiscation of the subject goods having an Assessable Value of Rs. 2,58,99,384/- under Section 111 (m) of the Customs Act, 1962. However, he gave an option to the Appellant to redeem the imported goods on payment of redemption fine of Rs. 5,00,000/- under Section 125 of the Customs Act, 1962;
- iii. He has imposed penalty of Rs. 1,00,000/- on the Appellant under Section 112 (ii) of the Customs Act, 1962;
- iv. He has imposed penalty of Rs. 1,00,000/- upon the importer under Section 114AA of the Customs Act, 1962;
- v. He has ordered to appropriate the amount paid vide Challan No. 2036417932 & 2037209424 both dated 22.09.2021 towards the confirmed Customs duties, Redemption fine, penalties imposed vide this order.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. The Appellant have submitted grounds which are as under:-

3.1 It is submitted that the adjudicating authority in Para 21, 22 and 23 has grossly erred in misinterpreting the Chartered Engineer's Certificate and in holding that the imported goods are Stainless Steel Flats SS316 grade though the Appellant in their letter dated 25.10.2021, had clearly pointed out that the Chartered Engineer's report states that the goods are noticed with rust formation, the rust was prevailing on several pieces and certain flats were having deep rooted rust and stains and that the items under import are rejected flats and even on visual inspection Chartered Engineer stated that there were dents / bent / rust with burr marks that suggest uneven surface developed on the part of the consignment during cutting. He further stated that the import could have been for specific application and if it is to be put to use for an alternate purpose, it will be





subjected to uneconomical waste generation during its alternate usage as per the prevailing technology. Thus, in fact the Chartered Engineer has stated that it cannot be put to use for an alternate purpose other than the declared purpose of melting scrap and the Appellant being actual user had imported only for a specific purpose of melting. Further, the imported goods were within the norms of "Institute of Scrap Recycling Industries". The Appellant had requested for appointment of a second independent Chartered Engineer from approved panel, as there was contradiction in the report of Shri Bhaskar G. Bhatt, as his conclusion is contrary to his own finding about the nature of the goods.

3.2 The adjudicating authority in Para 24 has grossly erred in relying upon chemical composition as chemical composition of SS flats and scraps will be the same. The adjudicating authority has further erred in relying value of Turning Unblended Stainless Steel Scrap 316 grade and not Stainless Steel grade. Further he has referred to the price of all value of Stainless Steel Plates which is 283.32 where as in the Appellants case value of scraps of Rs 260.4/-. The adjudicating authority ought to have seen price range of SS flats. In any case this comparison is not well founded as Pre Inspection Certificate, Contract and Invoice of the subject consignment is only for Stainless Steel Scrap having number of defects, such as dents, bend, rust and burr marks.

3.3 The adjudicating authority in Para 24 has erred in discarding the ratio of number of judgements in Appellants own case and has mis-interpreted ratio of judgements in these cases. The Additional Commissioner (Appeals) in Order-in-Appeal No 1187(Gr.IV)/2013(JNCH)/IMP-936 dated 27.11.2013 in identical case of Appellants held that the purpose cannot be ignored that the imported goods were made for melting which has be substantiated with the evidence. In the case of Order No. A/87400/2019 dated 22.8.2019 passed by Hon'ble Tribunal the reliance was placed on overseas suppliers letter dated 25.2.2012. In the present case the Pre Inspection Certificate clearly describes the goods as SS melting scrap. The adjudicating authority has relied upon Charter Engineer's Certificate dated 13.10.2021, when the said Certificate clearly states that the goods cannot be put into use for an alternative purpose other than declared purpose of melting scrap. Further the Charter Engineers finding was contrary to his own finding in the report. Therefore, no reliance can be placed on such a report particularly when the Appellants had requested for appointment for the second independent Charter Engineer from the approved panel in view of the contradiction in the report.

3.4 The Jt. Commissioner has erred in overlooking the Pre-Shipment Inspection Certificate issued by M/s. SMV International Incorporation which was issued in terms of Para 2.4 of Handbook of Procedure for import of metallic waste and scrap. Therefore, the Jt. Commissioner ought to have accepted the Pre-Inspection Certificate. The Jt. Commissioner ought to have realized that the Appellant are regular importer of Stainless Steel item. The Nhava Sheva Commissioner has raised similar objection in the Appellants' own identical cases and the Hon'ble Tribunal has decided the case in favour





of the Appellant.

**(i) Order No. A/88214/18 dtd. 14.8.2018**

In this case, the Hon'ble Tribunal relied upon Certificate dated 17.09.2009 issued by Overseas supplier of goods. Further, it was held that nature of the goods cannot be ascertained by eye estimate and an expert opinion is required for ascertaining such facts. In the present case, report of Chartered Engineer itself supported that it was visual inspection, the nature of goods being melting scrap and cannot be used as flats.

**(ii) Order No. A/85867/2020 dtd. 24.1.2020**

In this case, it was held that the report of visual examination of the cargo does not offer sufficient evidence that the goods are to be used other than for the purposes claimed or that these had been mis-declared.

**(iii) Order No. A/87440/2019 dtd. 22.8.2019**

In this case, the Hon'ble Tribunal relied upon overseas supplier's letter dated 25.2.2012.

3.5 The Appellant further submitted that as per the norms of Institute of Scrap Recycling Industries in the category of Electric Furnace Casting and Foundry Grades at clause 231 Plate and Structural steel, 5 feet and under classified as scrap. These are clean open hearth steel plates, structural shapes, crop ends, shearings or broken steel tires. Dimensions not less than ¼ inch thickness, not over 5 feet in length and 18 inches in width. Phosphorus or sulphur not over 0.05 percent. As per Chartered Engineer's Report thickness of S.S. Plates is 0.5 mm thickness and width is 11.3 mm and length is 12.19 mm. As per Certificate of Analysis, there is no phosphorus content, converted into inch and feet, 0.5 mm is 0.19685 inch and 11.3 mm is 0.445 and 1219 mm is 3 feet. Thus, the specifications are within the standard prescribed by Institute of Scrap Recycling Industries. The Appellant had cited the specifications of Institute of Scrap Recycling Industries, but the Additional. Commissioner conveniently did not even dealt with the same.

3.6 The adjudicating authority has erred in imposing penalty and ordering confiscation of the subject goods, as there is no mis-declaration of description and the issue is only interpretation and in the Appellants' own case there are number of judgements holding that CR/HR Stainless Steel grade 304, Stainless Steel imported in the earlier consignment, are nothing but Steel Melting Scrap and therefore the adjudicating authority has erred in ordering confiscation and imposing penalty.

**PERSONAL HEARING:**

4. Personal hearing in the matter was held on 13.05.2025, following the principles of natural justice. Shri V.M Doiphode, Advocate appeared for the hearing on behalf of the Appellant and re-iterated the submission made at the time of filing the



*[Handwritten signature]*



appeal. He submitted a copy of [Section Note (Section XV) Note 8(a)] of the Tariff Act, 1975 during the course of personal hearing.

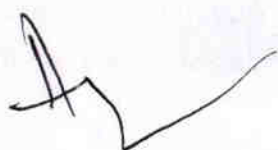
### **DISCUSSION AND FINDINGS:**

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

5.1 Being aggrieved, the Appellant has filed the present appeal on 01.02.2024. In the Form C.A.-1, the date of communication of the impugned Order-In-Original dated 12.01.2024 has been shown as 15.01.2024. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. Further, the Appellant have paid the entire duty, thereby fulfilling the requirement of pre-deposit for filing the appeal under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. This is a second-round appeal, meaning the matter was previously remanded for de novo adjudication with specific directions. The purpose of remand is to allow the adjudicating authority to rectify deficiencies and pass a fresh speaking order after considering all relevant facts and submissions. I note that the impugned order has addressed the points raised in the previous remand, such as obtaining a Chartered Engineer report, considering the Pre-Shipment Certificate (though rejecting its conclusiveness), and re-evaluating the valuation. The core dispute remains the factual determination of whether the goods are "scrap" or "flats."

6.1 Analysis of the Chartered Engineer's Report and Physical Characteristics: The Appellant's primary contention revolves around the "contradictory" nature of the Chartered Engineer report. While the report lists defects, its final conclusion clearly states "Stainless Steel Flats." It is a settled principle that an expert's opinion, when based on examination, is valuable evidence. The listed defects (rust, dents, bends, burr marks) might indicate that the goods are defective flats or secondary quality flats, which indeed they have been classified as ("defective strokes secondary"), rather than rendering them entirely "scrap" suitable only for remelting. The Customs Tariff Act, 1975, makes a clear distinction, and the definition of "scrap" is quite specific (e.g., usually goods resulting from the manufacture or working of metal, or worn-out goods of metal, incapable of being used for their original purpose or other similar purposes). If the goods, despite defects, retain the essential character of "flats" and are not merely "melting material," their classification as flats (albeit defective) is appropriate. The burden of proving that the goods are incapable of being used for any purpose other than melting rests squarely on the Appellant, which has not been conclusively discharged to override the Chartered Engineer's final conclusion and the physical appearance.






6.2 **Valuation and NIDB Data:** The adjudicating authority's reliance on NIDB data for comparison with contemporaneous imports of "Stainless Steel Flats" is a legitimate method for determining the correct value and hence, verifying the declaration. The significant disparity between the declared value of "Scrap" and the values of "Flats" from NIDB strongly supports the finding of mis-declaration and undervaluation. While the Appellant argues for comparison with "Turning Unblended Stainless Steel Scrap," the physical appearance and the Chartered Engineer's conclusion point to the goods being flats, rendering the Appellant's preferred comparison inappropriate. It is a well-established principle that transaction value can be rejected if there are doubts about its truth or accuracy, and comparison with contemporaneous imports of identical or similar goods is a valid method for re-determination of value.

6.3 **Rebuttal to Appellant's Contentions on Binding Precedents:** The Appellant's reliance on CESTAT judgments in their own previous cases is noted. However, each case is to be decided on its specific facts. While general principles from those judgments (e.g., requiring expert opinion for technical issues) are acknowledged, the current impugned order has specifically obtained and relied upon a Chartered Engineer's report. The adjudicating authority, in this de novo adjudication, has formed its own factual conclusion based on the specific facts and evidence of this consignment, including the Chartered Engineer's final opinion and physical verification. It is a factual finding that the goods are "Flats" despite defects. The previous CESTAT orders, while pertinent, do not mandate that every defective flat is always scrap, but rather emphasize the need for expert opinion in technical matters. Here, an expert opinion (Chartered Engineer's conclusion) has been considered, and the adjudicating authority has arrived at a reasoned finding. A distinction can be drawn between cases where there is no expert opinion versus where an expert's opinion, even if internally debated, is relied upon for its ultimate conclusion.

6.4 **Pre-shipment Inspection Certificate and ISRI Norms:** While a Pre-shipment Inspection Certificate and adherence to ISRI norms are relevant documents, they are not conclusive if contradicted by physical examination, expert opinion (Chartered Engineer's conclusion), and valuation analysis at the time of import. The Customs authorities are empowered to conduct their own assessment and verification. The mere presence of such certificates does not automatically grant the declared classification if other evidence suggests otherwise. The primary responsibility for classification lies with the Customs authorities based on the Customs Tariff Act, 1975.

6.5 **Mis-declaration and Penalties:** Given the finding that the goods were Stainless Steel Flats (albeit defective) and not scrap, the declaration of CTH 72042190 (for scrap) clearly amounts to mis-declaration. Such mis-declaration, especially when it leads to evasion of duty, renders the goods liable to confiscation under Section 111 (m) of the Customs Act, 1962. Consequently, the imposition of redemption fine under Section 125 and penalties under Section 112 (a) (for rendering goods liable to confiscation) and Section 114AA (for false declaration) is legally justifiable.





7. In view of the detailed discussions and findings above, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- i. I find that the adjudicating authority, in passing the impugned order has re-adjudicated the matter pursuant to the previous remand. The adjudicating authority has adequately considered the physical examination findings, the conclusive opinion of the Chartered Engineer Shri Bhaskar G. Bhatt (which identified the goods as "Stainless Steel Flats" despite noted defects), and the significant valuation disparity identified through NIDB data comparison and LME prices.
- ii. The classification of the imported goods as "Stainless Steel Flats Grade 316 defective strokes secondary" under CTH 72201129 is upheld. The evidence on record, particularly the physical characteristics and the Chartered Engineer's final opinion, supports this classification over the declared classification of "Stainless Steel Melting Scrap." Defects observed render the goods secondary quality but do not, in themselves, alter their fundamental character from "flats" to "scrap" suitable only for melting, unless unequivocally proven to be so.
- iii. The Appellant's arguments regarding the contradictory nature of the Chartered Engineer report, while noted, do not undermine the ultimate conclusion drawn by the expert, which the adjudicating authority relied upon. The burden of conclusively proving that the goods fall strictly within the definition of "Scrap" for duty purposes was on the Appellant, which has not been discharged to rebut the factual findings of the impugned order.
- iv. The contention regarding prior clearances and promissory estoppel is not legally tenable, as the doctrine of promissory estoppel cannot be invoked against a statute, and each import transaction is subject to independent assessment based on prevailing facts and law.
- v. The mis-declaration of the goods, leading to a lower duty liability, warrants confiscation under Section 111 (m) of the Customs Act, 1962, and consequently, the imposition of redemption fine under Section 125 and penalties under Section 112 (a) and Section 114AA are found to be legally justifiable.

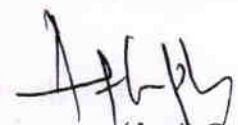
8. Therefore, the impugned order is found to be legally sustainable on its merits.

7. Accordingly, the appeal filed by the Appellant is rejected.



सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपील), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-434/CUS/AHD/2023-24

Date: 25.06.2025

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By Registered post A.D/E-Mail

To,  
M/s. Chandan Steel Ltd.  
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142-EXP Area, GIDC Indl. Area,  
Umbergaon,  
Valsad-396171.

M/s. V.M. Doiphode & Co.  
Advocate & Solicitors,  
Chamber Nos. 44 & 45, Sucheta Niwas,  
5<sup>th</sup> Floor, 285, S.B.S. Road,  
Fort,  
Mumbai – 400 001



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