

	कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in	
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A	FILE NO.	GEN/ADJ/ADC/2139/2023-ADJN.
B	ORDER-IN- ORIGINAL NO	MCH/ADC/MKM/169/2024-25
C	PASSED BY	AMIT KUMAR MISHRA, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	21.10.2024
E	DATE OF ISSUE	22.10.2024
F	SCN NO & DATE	CUS/APR/MISC/813/2023-Gr 4 dated 01.11.2023
G	NOTICEE / PARTY / IMPORTER	M/s. KRISHNA ENTERPRISES.
H	DIN NUMBER	20241071MO000000DD8B

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to

The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, Ahmedabad– 380009.

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.

7. 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 or Penalty are in dispute, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. KRISHNA ENTERPRISES, A-3/48,,SECTOR-8, DELHI - 110 085 (hereinafter referred to as 'the importer' for the sake of brevity), filed bill of entry No 3458971 dated 30.05.2019 (hereinafter referred to as "said bill of entries") through its Custom Broker, for import of goods declared as "STAINLESS STEEL COLD ROLL CIRCLE MI 1 GRADE 201" (hereinafter referred to as 'said goods') falling under CTH 7220 9090 of the Customs Tariff Act, 1975 availing the benefit of Sr. No. **967(I) of Notification No. 046/2011 dated 01.06.2011** on the basis of Certificate of Origin purportedly issued by the Ministry of International Trade and Industry, Malaysia. Details of the said bill of entry are as under:

Table - A

Sr. No.	Bill of Entry and Date	Description of Goods	Assessable Value (INR)	COO reference no.	Name of Supplier
1.	3458971 30.05.2019	STAINLESS STEEL COLD ROLL CIRCLE MI 1 GRADE 201	5585791/-	KL-2019-AI-21-028784 dated 21.05.2019	M/s. SETICA INDUSTRIES SDN BHD

2 . Letter F. No. DIC/FTA/70/2023-FTA Cell IV-O/o Pr COMMR-DIC-DELHI dated 11.10.2023 issued by Deputy Commissioner & OSD (Cell-4), FTA Cell, Directorate of International Customs, CBIC, indicated that the importer imported "STAINLESS STEEL CIRCLES" classifying the same under CTH 7220 9090 through Malaysia and violating the Rules meant for Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and India Rules, 2009 in order to avail exemption from payment of Basic Custom Duty. In view of the above mis-declaration by the importer, undue benefit on the basis of the preferential certificate of origin was availed which resulted into misuse of the FTA resulting in evasion of customs duty.

3. In view of above, it appeared that the COO No. KL-2019-AI-21-028784 dated 21.05.2019 issued in the name of supplier M/s. SETICA INDUSTRIES SDN BHD was fake and was never issued by MITI, Malaysia. Thus, the COO certificate submitted by the importer to avail the benefit of Sr. No. 967(I) of Notification No. 046/2011 – Customs dated 01.06.2011, is not authentic.

4 . The details of the consignment and the amount of differential duty as a result of producing the fake certificates of origin are as under:

Table - B

(In INR)							
Sr.	B/E No.		BCD @	SWS	IGST	Total	Diff.

No.	& Date	A.V.	7.5%	@10% of BCD	@18%	duty	Duty Paid	Duty
1	3458971 dt. 30.05.2019	5585791	418934	41893	1088391	1549218	1005442	543776

In view of the above, it appeared that the importer had evaded the customs duty to the tune of Rs. 543776/- by submission of fake & forged COO certificate.

5. Legal Provisions:

5 . 1 Proviso to Notification No. 046/2011 dated 01.06.2011 is re-produced hereinbelow:

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.

5.2 It appeared that in terms of Rule 13 of Notification No. 189/2009-Customs(N.T.) Dated 31.12.2009, the exemption from payment of duty vide Sl. No. 967(I) of 046/2011-Cus dated 01.06.2011 under ASEAN India Free Trade Agreement claimed by the importer in the subject B/E would be granted subject to the condition that the importer produces a valid certificate of Origin, in support of their claim that the product is eligible for preferential tariff treatment 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 the Annexure III annexed to 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. Text of the Rule 13 of Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 reads as follows:

“13. Certificate of Origin - Any claim that product shall be accepted was eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment CO 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.”

5.3 Further Rule - 1 of above referred Annexure-III requires that the AIFTA Certificate of Origin shall be issued by the Government authorities (Issuing Authority), of the exporting party. Text of the Rule -1 of the Annexure-III, reads as follows: -

1. The AIFTA Certificate of Origin shall be issued by the Government authorities (Issuing Authority) of the exporting party.

5.4 Section 28(4): Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of-

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

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

5.5 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.

5.6 SECTION 46. Entry of goods on importation. — (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed:

..

..

(4) 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 as may be prescribed].

(4A) The importer who presents a bill of entry shall ensure the following, namely: -

- (a) the accuracy and completeness of the information given

therein;

(b) the authenticity and validity of any document supporting it;
and

(c) 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.

...

5 . 7 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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(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

..

(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;

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5.8 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 [xxx] been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, 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:

5.9 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.*

6. Accordingly, vide Show Cause Notice F. No. CUS/APR/SCN/813/2023-Gr. 4 dated 01.11.2023, the Importer M/s. Krishna Enterprises was called upon to show cause with the proposals of:

- Rejection of certificate of country of origin used for availment of concessional rate of customs duty.
- Confiscation of total quantity of 54401 KGS of goods having total assessable value of Rs. 5585791/- (Rupees Fifty Five Lakhs Eighty Five Thousands Seven Hundred and Ninety One Only) declared as "STAINLESS STEEL COLD ROLL CIRCLE MI 1 GRADE 201" imported vide Bill of Entry no. 3458971 dated 30-05-2019 under Section 111 (m) and 111 (o) of the Customs Act, 1962.
- Demanding differential duty of Rs. 5,43,776/- under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962
- Imposition of penalty under Section 112(a)(ii) and/or 114A on the Importer.
- Imposition of penalty under Section 114AA on the Importer.

PERSONAL HEARING

7. Following the principles of Natural justice, personal hearing in the matter, was Fixed on Dated 05.03.2024, 23.04.2024 and 12.09.2024. Further, due to change in Adjudicating authority, one more personal hearing was fixed on 07.10.2024. However, the Noticee M/s. Krishna Enterprises neither submitted any defence submission nor appeared for the personal hearings on the scheduled date and time.

DISCUSSION AND FINDINGS:

8 . I have carefully gone through the facts of the case, Show Cause Notice dated 01.11.2023. I find that the condition of Principles of Natural Justice under Section 122A of the Customs Act, 1962 has been complied and proper opportunities have been given to the Noticee, however, no one has been appeared on behalf of the Noticee. I observed that that sufficient opportunity have been given to Noticee but they chose not to join adjudication proceedings. Considering the scenario, I find that there is no option but to proceed with the adjudication proceedings in terms of merit of the case ex-parte. Hence, I proceed to decide the case on the basis of

facts and documentary evidences available on records.

9. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject show Cause Notices and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the duty exemption benefit of the Notification No. 46/2011-Cus. dated 01.06.2011 (as amended) claimed at the time of assessment of bill of entry as mentioned in **Table-A** is liable to be rejected or otherwise.
- ii. Whether the total quantity of 54401 KGS of goods declared as "STAINLESS STEEL COLD ROLLED CIRCLE MI 1 GRADE 201" imported vide Bill of Entry No. 3458971 dated 30.05.2019 having assessable value of Rs. 5585791/- are liable for Confiscation under Section 111 (m) and 111 (o) of the Customs Act, 1962 or otherwise.
- iii. Whether differential duty amounting to Rs. 543776/- is required to be recoverable under Section 28(4) of the Customs Act, 1962.
- iv. Whether penalty under Section 112(a)(ii) and/or 114A of the Customs Act, 1962 is liable to be imposed or otherwise.
- v. Whether penalty under Section 114AA of the Customs Act, 1962 is liable to be imposed or otherwise.

10. I find that the Importer filed bill of entry No. 3458971 dated 30.05.2019 for import of "STAINLESS STEEL COLD ROLL CIRCLE MI 1 GRADE 201" falling under CTH 7220 9090 of the Customs Tariff Act, 1975 from supplier M/s. SETICA INDUSTRIES SDN BHD, availing the benefit of Sr. No. **967(I) of Notification No. 046/2011 dated 01.06.2011** on the basis of Certificate of Origin No. KL-2019-AI-21-028784 dated 21.05.2019 purportedly issued by the Ministry of International Trade and Industry, Malaysia.

11. I find that COO Certificate, as mentioned in **Table-A**, which was purported to be issued by the Ministry of International Trade and Industry, Malaysia, was found to be fake as per inquiry vide F. No. DIC/FTA/70/2023-FTA Cell IV-O/o Pr COMMR-DIC-DELHI dated 11.10.2023 issued by Deputy Commissioner & OSD (Cell-4), FTA Cell Directorate of International Customs, CBIC.

11.1 I observed that during the course of verification of COO with Malaysia and Thailand, The FTA cell of CBIC had detected 151 non authentic COO's as informed by the issuing authorities of these countries. Out of 151 COO, 148 COO's shown to be issued from Malaysia pertain to steel products. The Ministry of International trade and Industry, Malaysia (MITI) has informed that apart from EVG metal industries SDN, BHD, they never received any COO application from the companies mentioned in the subject COO. The same had been intimated vide letter F. No. 466/11/2021-FTA Cell2 dated 07.10.2021.

12. I find that a conspiracy was hatched by the Importer to defraud the Government of India's legitimate revenue by mis-use of the benefits of concessional rate of customs duty under Notification No. 46/2011-Cus.

dated 01.06.2011 as amended. Pursuant to the said conspiracy, the Importer availed the benefit of concessional rate of customs duty under Notification No. 46/2011-Cus. dated 01.06.2011 by submitting the fake Preferential Certificates of origin in 'Form-AI' obtained by misrepresentation and collusion in contravention of provisions of Rules of Origin for seeking the benefits of concessional rate of duty, with an intention to evade the payment of customs duty. The certificate produced by the Importer was found to be unauthentic during the process of verification.

13. I find that the Importer made wrong declarations for availing the undue benefit under the Notification No. 46/2011-Cus. dated 01.06.2011, therefore, the goods were imported by the importer in contravention of the provisions of Notification No. 46/2011-Cus. dated 01.06.2011(as amended) read with Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009. Further, due to deliberate and intentional submission of fraudulently obtained unauthentic preferential Certificates of origin in 'Form-AI' for availing exemption under FTA, the goods in the BE do not correspond to the documents submitted and declaration in the Bill of Entry.

14. CONFISCATION:

14.1 Now coming to the question as to whether the impugned goods are liable for confiscation. I find that in respect of goods covered under Bills of Entry as mentioned above, the Importer had availed undue benefit of preferential rate of duty which was actually not available for the impugned goods and the thus this act rendered the said goods liable for confiscation under section 111(m) & 111 (o) of the Customs Act, 1962. I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry made under this act. I have to restrict myself only to examine the words. "In respect any other particular with the entry made under this act" would also cover cases of suppression of facts of use of non-authentic COO Certificate resulting in short payment of applicable duty by the Importer. Hence, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable. However, I find the goods imported vide impugned bill of entry are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out

the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant the redemption fine is in fact to avoid such consequences flowing the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

14.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the Importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits imposition of Redemption Fine.

14.3 From the above discussions, I find that the goods imported by 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 "STAINLESS STEEL COLD ROLL CIRCLE MI 1 GRADE 201" imported vide Bill of Entry no. 3458971 dated 30.05.2019 and having total assessable value of Rs. 55,85,791/- is liable for confiscation under the provisions of Section 111(m) and 111(o) 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 of Malaysia 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 (m), 111 (o) of the Customs Act, 1962.

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

15.1 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.

15.2 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. 967(I) of Notification No. 046/2011 dated 01.06.2011 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 COO No. KL-2019-AI-21-028784 dated 21.05.2019. 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 Bill 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.

15.3 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 fake. 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. 5,43,776/- 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.

16. PENALTY UNDER SECTION 112 (A), 114A AND 114AA OF THE CUSTOMS ACT, 1962.

16.1 Now I decide the issue of penalty proposed under Section 112(a) and/ 114A of the Customs Act, 1962. 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. Consequently penalty under Section 114A is also found leviable on the Importer as the elements for penalty as per said Section 114A is *pari materia* with Section 28(4) of the Act. Further, fifth proviso to Section 114A provides that no penalty under Section 112(a) to be imposed if penalty under Section 114A is levied. Since I have already upheld the imposition of penalty under Section 114A, penalty under Section 112(a) is not liable to be imposed.

16.2 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 FTA, I hold the importer liable for penalty under Section 114AA of the Customs Act, 1962.

17. 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, under sr.no. 967(I) holding the COO Certificate No. KL-2019-AI-21-028784 dated 21.05.2019 as not genuine for the reasons stated in foregoing paras.
- ii. I order for confiscation of the goods declared as "STAINLESS STEEL COLD ROLL CIRCLE MI 1 GRADE 201" having total assessable value of Rs. 55,85,791/- (Rupees Fifty Lakhs Eighty Five Thousand Seven Hundred Ninety One Only) imported vide Bill of Entry No. 3458971 dated 30.05.2019 under Section 111(m) and 111(o) of the Customs Act, 1962. I impose redemption fine of **Rs. 5,50,000/- (Rupees five lakh Fifty Thousand only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

- iii. I order to confirm and recover the demand of differential duty of **Rs. 5,43,776/- (Rupees five lakh Forty Three Thousand Seven Hundred and Seventy Six only)** under Section 28(8) read with 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. 5,43,776/- (Rupees five lakh Forty Three Thousand Seven Hundred and Seventy Six only)** on the Importer under Section 114A of Customs Act, 1962.
- vi. I impose a penalty of **Rs. 50,000 (Rupees Fifty thousand only)** on the Importer under Section 114AA of Customs Act, 1962.
- vii. I do not impose penalty under Section 112(a) of the Customs Act, 1962 on the Importer M/s. Krishna Enterprises.

18. 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.

(AMIT KUMAR MISHRA)
Additional Commissioner
Customs House, Mundra.

F. No. GEN/ADJ/ADC/2139/2024-Adjn.
DIN: 20241071MO000000DD8B

Date : 22.10.2024

To,

M/s. Krishna Enterprises,
A-3/48,,SECTOR-8,
DELHI - 110085.

Copy to:

1. The Deputy Commissioner of Customs, Review Section, CH, Mundra
2. The Deputy Commissioner of Customs, TRC, CH, Mundra

3. The Deputy Commissioner of Customs, EDI, CH, Mundra.
4. The Deputy Commissioner of Customs, Group-4, CH, Mundra
5. Guard file