**प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद**
**सीमा शुल्क भवन**, **आल इंडीया रेडियो के पास**, **नवरंगपुरा** ,**अह्मदाबाद** 380009
**दुर भाष** (079) 2754 46 30 **फैक्स** (079) 2754 23 43
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD**
**CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009**
**PHONE: (079) 2754 46 30 FAX (079) 2754 23 43**

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**निबन्धित पावती डाक द्वारा / By SPEED POST A.D.**

फा. सं./ **F. No.: VIII/10-19/Pr. Commr./O&A/2024-25**
DIN- 20250771MN0000444DA5

आदेश की तारीख/Date of Order : 31.07.2025

जारी करने की तारीख/Date of Issue : 31.07.2025

द्वारा पारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**
**Passed by :-** **Shiv Kumar Sharma, Principal Commissioner**

मूल आदेश संख्या **:**

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-20-2025-26 dtd. 31.07.2025** in the case of M/s. Keshav Industries (IEC No. AMQPP9275J), Plot No. 13, Yashoda Bhuvan, Pipaliya Hall Road, Rameshwar Nagar Main Road, Rajkot Gujarat-360004.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

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

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

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Sub: Show Cause Notice No. VIII/10-19/Pr.Commr./O&A/2024-25 dated 06.11.2024 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Keshav Industries (IEC No. AMQPP9275J), Plot No. 13, Yashoda Bhuvan, Pipaliya Hall Road, Rameshwar Nagar Main Road, Rajkot Gujarat-360004.

**Brief Facts of the Case:**

M/s. Keshav Industries (IEC No. AMQPP9275J) having its registered office at Plot No. 13, Pipaliya Hall Road, Yashoda Bhuvan, Rameshwar Nagar Main Road, Rajkot Gujarat-360004 (hereinafter referred to as the importer or the noticee) have filed Bills of Entry at ICD, Sabarmati as mentioned in Table-I below for import of 'Cold Rolled Stainless Steel Coils Grade J3' of different thicknesses under CTH 72202090.

**TABLE-I**

| Sl. No. | Bill of Entry No. | Date | Country of Origin (COO) Certificate No. | Name of Supplier & Country |
|---|---|---|---|---|
| 1. | 5590245 | 07.11.2019 | KL-2019-AI-21-017987 | HARD METAL TRADE SDN BHD, MALAYSIA |
| 2 | 6354649 | 04.01.2020 | KL-2019-AI-21-099089 | EZY METAL ENTERPRISE, MALAYSIA |
| 3 | 6354601 | 04.01.2020 | KL-2019-AI-21-099058 | EZY METAL ENTERPRISE, MALAYSIA |

**2.** Intelligence received indicated that various fake Certificates of Origin (forged AI form) had been issued in Malaysia to the suppliers namely as (i) HARD METAL TRADE SDN BHD, MALAYSIA & (ii) EZY METAL ENTERPRISE, MALAYSIA, so that importers in India could avoid paying Basic Customs Duty @7.5% availing Country of Origin ('COO' in short) benefit in view of ASEAN-India FTA (AIFTA) agreement. Further, verification report was received by DRI vide letter F.No.456/219/2021-Cus.V dated 27.04.2021 from FTA Cell, CBIC alongwith mail dated 18.05.2021 from MITI, Malaysia and DRI HQ letter F.No. DRI/HQ-CI/50D/Misc.30/ 2021 dated 09.09.2021 alongwith enclosure.

**3.** Directorate of Revenue Intelligence, Hdqrs. vide Alert Circular No. 02/2021-CI dated 09.09.2021 has informed that more than 150 COOs pertaining to import of Steel Products (Coil/Sheet) mainly from Malaysia and a few from Thailand from the suppliers as listed in Annexure-A attached have been reported to be non-authentic by the respective issuing authorities, thus rendering any consequential benefit availed under ASEAN-India preferential Trade Agreement and India-Malaysia Preferential Trade Agreement as ineligible. It was also informed in the said alert circular that it had been observed from the physical copy of COO that exports have been effected from Malaysia through third party invoicing, commercial invoices had been issued by third parties other than those listed in Annexure-A of Alert Circular dated 09.09.2021, even though the COO had been issued in the name of exporters as listed in the enclosed annexure. Name of Supplier mentioned in Table-I i.e (i) Hard Metal Trade SDN BHD, Malaysia & (ii) EZY Metal Enterprise, Malaysia figure in the said Annexure-A of the Alert Circular No. 02/2021-CI dated 09.09.2021.

**4.** The matter was examined and it was found that some imports of Stainless Steel products had been made by M/s. Keshav Industries at ICD Sabarmati (INSBI6) by availing duty exemption benefit of Customs Tariff Notification No. 46/2011-Cus. dated 01.06.2011 under Sr.No.967 (I) availing Country of Origin benefit on the basis of the Country of Origin Certificates

issued by the above mentioned overseas suppliers. Details of Bills of Entry as mentioned in Table-I, filed by M/s. Keshav Industries at ICD-Sabarmati are as per Table-2 below:

**Table-2**

| **Sl. No** | **Bill of Entry No & Date** | **CTH** ( Cold Rolled Stainless Steel Coils Grade J3 ) | **Declared Assessable Value (in Rs.)** | **Declared Duty (in Rs.)** (BCD@0%, SWS@0% and IGST@18%) |
|---|---|---|---|---|
| 01 | 5590245 dated 07.11.2019 | 72209090 | 4999120 | 899842 |
| 02 | 6354649 dated 04.01.2020 | 72202090 | 5221095 | 939797 |
| 03 | 6354601 dated 04.01.2020 | 72202090 | 5103112 | 918560 |

**5.** The importer had availed duty exemption benefit of Customs Tariff Notification No.46/2011-Customs dated 01.06.2011 under Sr.No.967(I) availing Country of Origin benefit in view of ASEAN-India FTA (AIFTA) agreement. The Country of Origin of the imported goods was declared as Malaysia. For claiming duty exemption for the import made vide aforesaid Bills of Entry, M/s. Keshav Industries had submitted the Country of Origin Certificates as mentioned in Table-I issued by the Ministry of International Trade and Industry, Malaysia (MITI) in the name of (consigned from) Suppliers mentioned in Table-I.

**6.** The Tariff Notification No.046/2011-Cus.Dated 01.06.2011 is applicable for giving duty exemption benefits to specific goods when imported into India from Philippines and other ASEAN countries in view of ASEAN-India Free Trade Agreement (AIFTA). The Notification No.046/2011-Cus.Dated 01.06.2011 was further amended from time to time. In this case, relevant provisions of the applicable Notification are as below:

- ***Principal Notification No. 46/2011 dated 1st June, 2011-***

  "G.S.R. *(E).- 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 of1975) 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.*

| *Sr. No.* | *Chapter or heading or subheading or tariff item* | *Description* | *Rate* |
|---|---|---|---|
| *955* | *72* | *All goods* | *5.0* |

- ***Amended Notification No. 82/2018-Customs dated 31st December, 2018-***

*G.S.R.(E).—In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2011-Customs, dated the 1st June, 2011,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R. 423 (E), dated the 1stJune, 2011, namely:-In the said notification, for the Table, the following Table shall be substituted, namely:-*

| *Sr.No.* | *Chapter or heading or subheading or tariff item* | *Description* | *Rate* |
|---|---|---|---|
| *967* | *72* | *All goods* | *0* |

**7.** In determining the origin of products eligible for the preferential tariff treatment under ASEAN-India FTA (AIFTA), amongst others, rules of Article 13 shall be applied:

*"**Rule 13 Certificate of Origin**- A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin 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 Appendix D."*

**8.** For the purposes of implementing the Rules of Origin for the AIFTA, amongst others, in the instant case, the following Articles notified in the Operational Certification Procedures for the Rules of Origin under ASEAN-INDIA FREE TRADE AREA (AIFTA) as set out in Appendix D may be referred:

*"**Article 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.*

***Article 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."*

***Article 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 goods in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on a 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:*

*(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 (3) 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 good 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…"*

**9.** In this regard, inquiry had been initiated and summons dated 25.01.2023, 16.02.2023, 27.02.2023, 19.09.2023, & 12.10.2023 under Section 108 of the Customs Act, 1962 were issued to M/s Keshav Industries directing them to appear for the subject inquiry and to give statement. In response to the summons, Shri Paresh Patel, Proprietor of M/s. Keshav Industries appeared on 25.10.2023 and his statement was recorded under Section 108 of Customs Act 1962. Brief of the same are as under:

- On being asked, he stated that he was the Proprietor of the firm M/s. Keshav Industries and looked after all the activity of the firm; that they were engaged in trading of Stainless Steel Coil; that at present he is doing business of trading of agricultural commodities in the name of Satguru Agro Industries at Rajkot;

- On being asked, he stated that their firm used to import Stainless Steel Coil from Malaysia under CTH 72209090 during the period from July-2019 to July-2020 from HARD METAL TRADE SDN & EZY METAL ENTERPRISE at ICD Sabarmati (Ahmedabad). On being asked, he stated that they traded and sold imported Stainless Steel Coil at Rajkot; that the first consignment of Stainless Steel Coil was imported in August-2019 from MZH MAJU INDUSTRY, Malaysia.

- On being asked he stated that his firm had imported 30 consignments of Cold Rolled Stainless Steel Coil/Strips from Malaysia under CTH 72209090 during the period from July-2019 to July-2020 from MZH MAJU INDUSTRY, MH MEGAH MAJU ENTERPRISE, HARD METAL TRADE SDN, EZY METAL ENTERPRISE, at ICD Sabarmati (Ahmedabad) and Nhava Sheva Port. On being asked, he stated that import of Cold Rolled Stainless Steel Coil/Strips were handled by their CHAs viz. I.M. Logistics at Nhava Sheva Port and Elga Shipping at ICD, Sabarmati.

- On being asked whether his firm possesses sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in Section 28DA(ii) of the Customs Act, 1962, he stated that they have received Country of Origin Certificate issued by respective supplier/manufacturer and the same have been submitted at the time of clearance of the consignments.

- On being shown copy of email dated 15.04.2021 of High Commission of India, Malaysia and e-mail dated 14.04.2021 received from Zurina Abd Rahim (Ms), Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, Ministry of International Trade and Industry (MITI), Malaysia regarding verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless Steel Cold Rolled Coil and Circles (HS Code 7219 & 7220) under AIFTA, under which list of 87 Country of Origin Certificates was attached mentioning that **"List of unauthentic certificates of origin which were not issued by the Ministry of International Trade and Industry Malaysia (MITI)",**

| Sl. No. | Reference No. | Supplier company name | Approved date |
|---|---|---|---|
| 38 | KL-2019-AI-21-018819 | Hard Metal Trade SDM BHD | 16.12.2019 |
| 45 | KL-2019-AI-21-093214 | EZY Metal Enterprise | 15.11.2019 |

and on being asked to peruse Rule-7 of CAROTAR Rules, 2020 and Section 28DA of the Customs Act, 1962 and that this verification report is also applicable in case of identical goods i.e. Cold Rolled Stainless Steel Coil/Strips imported by them from the same manufacturer/producer i.e. (1) Hard Metal Trade SDN BHD and (2) EZY Metal Enterprise, in terms of CAROTAR Rules prescribed under Section 28DA of the Customs Act, 1962; he perused the same and replied that he agreed that their firm was not eligible to avail the benefit of Notification No.46/2011-Cus. dated 01.06.2011, as amended, on the import of Cold Rolled Stainless Steel Coil/Strips of Malaysian Origin from (1) Hard Metal Trade SDN BHD and (2) EZY Metal Enterprise; that they had availed exemption of BCD amounting to approx. Rs. One crore on Cold Rolled Stainless Steel Coil/Strips imported during the period from August-2019 to July-2020.

- On being asked, he further stated that he had submitted COOs which were supplied by their supplier to them and that they did not know whether COO provided by their supplier was genuine or not; that they had no intention to avail wrongful benefit of duty on the basis of COO provided by overseas supplier; that they agree that they have wrongly availed benefit of Notification No.46/2011-Cus dated 01.06.2011.

**10.** As per the letter issued from F.No. DRI/DZU/23/ENQ-15/2022/1501 dated 11.05.2023 addressed to Pr. Commissioner of Customs (Import), Nhava Sheva-I, JNCH issued by the Additional Director, DRI, New Delhi that Shri Sanjay Jain, one of the Chinese/Malaysian Suppliers, in his statement dated 02.02.2023, 04.02.2023 & 20.02.2023 admitted to have supplied Chinese origin goods via Malaysia to a number of importers in India. Exhibit-II comprising of page 01 to 23 showing contents of import details enclosed with the said letter. In his statement, Shri Sanjay Jain mentioned that he established company EVG Metals and in detail explained, how Chinese origin goods were routed through Malaysia to India. Among the companies where COO was found unauthentic, EVG Metal is one of those which tried to take benefit of FTA and avoided BCD and CVD on Chinese origin goods.

**11.** From the above, it is clearly established that companies namely M/s. Hard Metal Trade SDN BHD, Malaysia and M/s. EZY Metal Enterprise, Malaysia etc. were created only to re-route Chinese origin goods through

Malaysia to India for the purpose of non-payment of Countervailing Duty (CVD) imposed vide Notification No.01/2017-Customs (CVD) dated 07.09.2017 on Stainless Sheet Coils supplied/originated from China and imported into India and wrongly avail the benefit of concessional/preferential rate of duty under Notification No.46/2011-Cus.Dated 01.06.2011 as amended, in respect of the goods imported from Malaysia.

**12.** It clearly established that the country of origin certificate of the goods was fake and hence, the goods were not originated from Malaysia. Further, the Countervailing Duty (CVD) was imposed vide Notification No.01/2017-Customs (CVD) dated 07.09.2017 on Stainless Sheet Coils supplied/originated from China. However, as discussed in para supra, the modus adopted by different supplier / importer, various entities were created at Malaysia only to re-route Chinese origin goods through Malaysia to India. Hence, it appeared that M/s. Keshav Industries in connivance with their Chinese and Malaysian based supplier submitted fake COO of Malaysia and claimed goods to be of Malaysia Origin only to re-route Chinese origin goods through Malaysia to India for the purpose of non-payment of Countervailing Duty (CVD) and also to avail the benefit of concessional/preferential rate of duty under Notification No.46/2011-Cus.dated 01.06.2011 as amended. It, therefore, appeared that M/s. Keshav Industries had by suppression of facts, wilfully and intentionally wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 as amended, in respect of the goods imported by them from Malaysia on the basis of invoice and COO certificate of suppliers mentioned in above table.

**13.** In terms of Rule-7 of CAROTAR Rules, 2020 read with Section 28DA of the Customs Act, 1962 and verification report which is also applicable in case of identical goods i.e. Cold Rolled Stainless Steel Coil/Strips imported by from the same manufacturer/producer i.e. (1) Hard Metal Trade SDN BHD and (2) EZY Metal Enterprise, COO certificates in respect of Bills of Entry filed by M/s. Keshav Industries had been verified and found as non-authentic. It appeared that the said goods covered under the aforesaid Bill of Entry had not been originated from Malaysia. It therefore appeared that the said goods have originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty i.e. BCD (@7.5%) by availing Customs Tariff Notification No.46/2011 dated 01.06.2011 as well as to circumvent CVD (@18.95%) on landed value as it was applicable on goods under heading 7219 or 7220 originated from China and exported from China or any country as per Notification No.1/2017-Customs (CVD) dated 07.09.2017.

**14.** Therefore, it appeared that they were wilfully and intentionally involved in this case of undue availment of duty exemption benefit by availing Customs Tariff Notification No.46/2011-Cus. dated 01.06.2011 and evading applicable higher duties in terms of Notification No.01/2017-Customs (CVD) dated 07.09.2017 and thus the said importer appeared to be liable for evading government revenue on account of submission of fake Country of Origin Certificates in respect of the said Bill of Entry as mentioned in Table above.

**15.** It further appeared that the goods declared in the subject Bills of Entry attracts higher rate of duty i.e. BCD @7.5%, CVD @18.95% on Landed value

and IGST@18% as applicable for CTH 72202090, as it appeared that the said goods have been originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty.

**16.** The duty re-determined and the details of differential duty payable were calculated as per Annexure-I attached and summarized here under in Table-III:

**Table-3**

| Sr. No. | Bill of Entry No | Date | Declared AV (in Rs.) | Declared Duty (in Rs.) | Duty Payable (in Rs) | Differential Duty Payable (in Rs) |
|---|---|---|---|---|---|---|
| 1 | 5590245 | 07-11-2019 | 4999120 | 899842 | 2588198 | 1688356 |
| 2 | 6354649 | 04-01-2020 | 5221095 | 939797 | 2703121 | 1763324 |
| 3 | 6354601 | 04-01-2020 | 5103112 | 918560 | 2642038 | 1723478 |
| | | **Total** | **1,53,23,327** | **27,58,199** | **79,33,357** | **51,75,159** |

## 17. Relevant legal provisions of the Customs Act, 1962:

### *(A) Section 46: Entry of goods on importation. -*

*(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting [1] [electronically] [2] [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.*

### *(B) Section 28 of the Customs Act, 1962:*

*"(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"*

### *(C) 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.*

***(D) 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.*

*(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".*

***(E) Section 111: Confiscation of improperly imported goods, etc.-***

*The following goods brought from a place outside India shall be liable to confiscation: - ……..*

*(a) …*

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

*(n) …*

*(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.*

***(F) 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,.."*

(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, .....

***(G) 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 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 22[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:]"*

***(H) 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.*

***(I) Section 114AB: Penalty for obtaining instrument by fraud, etc.-*** *Where any person has obtained any instrument by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.*

***(J) Section 124: Issue of show cause notice before confiscation of goods, etc.*** *-*
*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*

*(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

*(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

*(c) is given a reasonable opportunity of being heard in the matter :*

## 18. Findings of the Investigation:

**(a)** M/s Keshav Industries filed Bill of Entry for import and clearance of 'Cold Rolled Stainless Steel Coils Grade J3' under CTH 72202090 imported from Malaysia as mentioned in Table-I. The importer had availed duty exemption benefit of Customs Tariff Notification No.46/2011 dated 01.06.2011 under Sr.No.967(I) availing Country of Origin benefit in view of ASEAN-India FTA (AIFTA) agreement. For claiming duty exemption, M/s. Keshav Industries had submitted the Country of Origin certificates purported to be issued by the Ministry of International Trade and Industry, Malaysia (MITI). Details of these Certificate of Origin is as per Table-I.

**(b)** It appeared that M/s. Keshav Industries wrongly availed duty exemption benefit of Customs Tariff Notification No.46/2011 dated 01.06.2011, as amended, in respect of the above referred goods imported from Malaysia on the invoices of said suppliers. The verification report received from the MITI clearly mentions that some suppliers never applied for Certificate of Origin. M/s. EZY Metal Enterprise, Malaysia and (ii) Hard Metal Trade SDN BHD, Malaysia was suppliers in the verification list which was found as unauthentic. This clearly establish that the COO certificates issued by (i) Ezy Metal Enterprise and (ii) Hard Metal Trade SDN BHD were fake in fact they were never issued by the

Ministry of International Trade and Industry of Malaysia (MITI) and were submitted by M/s. Keshav Industries to fraudulently claim duty exemption under Notification No.46/2011 dated 01.06.2011.

**(c)** It is further substantiated by Directorate of Revenue Intelligence's Alert Circular No.02/2021-CI dated 09.09.2021,wherein it was informed that more than 150 COOs pertaining to import of Steel Products (Coil/Sheet) mainly from Malaysia and a few from Thailand from the suppliers as listed in Annexure-A had been reported to be non-authentic by the respective issuing authorities, thus rendering any consequential benefit availed under ASEAN-India preferential Trade Agreement and India- Malaysia Preferential Trade Agreement ineligible. It was also informed in the said alert circular that it had been observed from the physical copy of COO that exports have been effected from Malaysia through third party invoicing, commercial invoices had been issued by third parties other than those listed in Annexure-A, even though the COO had been issued in the name of exporters as listed in the enclosed annexure. Further, name of suppliers i.e.(i) EZY Metal Enterprise&(ii) Hard Metal Trade SDN BHD figures in the said Annexure-A of Alert Circular No.02/2021-CI dated 09.09.2021.

**(d)** It therefore appeared that the said goods had been originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty i.e. BCD (@7.5%) by availing Customs Tariff Notification No.46/2011 dated 01.06.2011 as well as to circumvent CVD (@18.95%) on landed value as it was applicable on imported goods under heading 7219 or 7220 originated from China and exported from China or any country as per Notification No.1/2017-Customs (CVD) dated 07.09.2017. This has resulted into non-levy or short levy of duty amounting to **Rs.51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty Nine only)** as calculated in Annexure-I attached and as such loss to the Government exchequer.

**(e)** It further appeared that the declared goods were imported in contravention of provisions of the Customs Act, 1962 by way of submission of forged documents and for this acts of omission and commission, the said importer has rendered the goods covered under Bills of entry mentioned in Table-I liable for confiscation under Section 111(m), 111(o) and 111(q) of the Customs Act, 1962 and also rendered themselves liable for penal action under the provisions of Section 112 (a), 112(b) and/or 114A and 114AA of the Customs Act, 1962. Hence, the differential duty amount to **Rs.51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty Nine only)** short levied is liable to be recovered from the importer under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

**(f)** It appeared that the importer intentionally submitted fake Certificates of Origin of Malaysia, to fraudulently avail the benefit of concessional/preferential rate of duty under Notification No.46/2011 dated 01.06.2011 as amended, in respect of the goods imported from Malaysia on the invoices of suppliers listed in Table-I wrongfully and also evaded CVD on the said goods, therefore he had rendered himself liable to be penalized under Section 114AA and Section 114AB of the Customs Act, 1962.

**19.** In view of the above Show Cause Notice No. VIII/10-19/Pr. Commr./O&A/ 2024-25 dated 06.11.2024 was issued to M/s Keshav Industries (IEC No. AMQPP9275J), Plot No. 13, Yashoda Bhuvan, Pipaliya Hall Road, Rameshwar Nagar Main Road, Rajkot Gujarat-360004 calling upon to show cause in writing to the Principal Commissioner of Customs, Ahmedabad within 30 days of the receipt of Notice as to why:-

(a) All the goods imported vide Bills of Entry mentioned in **Table-3 above**, which were self-assessed and have already been cleared, having assessable value of **Rs.1,53,23,327/- (Rupees One Crore, Fifty Three Lakhs, Twenty Three Thousand, Three Hundred and Twenty Seven Only)** should not be held liable to confiscation under Section 111 (m), Section 111(o) and Section 111(q) of the Customs Act, 1962. Since the said goods are already cleared and are not available for confiscation, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962;

(b) The differential Customs duty and IGST amounting to **Rs. 51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty Nine Only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

(c) Appropriate Interest on above said amount should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962;

(d) Penalty should not be imposed upon them under Section 112(a) & 112 (b), 114A and 114AA of the Customs Act, 1962;

**DEFENCE SUBMISSIONS**

**20.** The Show Cause Notice No. VIII/10-19/Pr. Commr./O&A/ 2024-25 dated 06.11.2024 was sent on the available address of the importer. Further, the importer has submitted copy of acknowledgement dated 06.11.2024 regarding receipt of the said show cause notice. However, no reply to the Show Cause Notice has been filed by the importer till date.

**PERSONAL HEARING:**

**21.** The importer was granted opportunity of personal hearing on 27.06.2025, 08.07.2025, and 17.07.2025 in compliance with the Principles of Natural Justice and the letter for personal hearing was sent to the addresses available, however, the Noticee did not attend the Personal Hearing. Further, letters of Personal Hearing were pasted on the Notice Board of the Office of Principal Commissioner of Customs, Ahmedabad-380009. Details of letter for Personal Hearing issued are mentioned below.

**Table-4**

| Name of Noticee | Address of the Noticees | Date of issue of Personal Hearing letter | Date of Personal Hearing Fixed |
|---|---|---|---|
| M/s. Keshav Industries | Plot No. 13, Yashoda Bhuvan, Pipaliya Hall Road, Rameshwar Nagar Main Road, Rajkot Gujarat-360004 | 20.06.2025<br>30.06.2025<br>09.07.2025 | 27.06.2025<br>08.07.2025<br>17.07.2025 |

From the aforesaid facts, I note that sufficient opportunity has been granted to the importer to represent their case but they chose not to join the personal hearing. It is observed that the letters of Personal hearing were sent on the addresses of the noticee as well as residential address of the proprietor as mentioned in the Show Cause Notice.

**DISCUSSION AND FINDINGS:**

**22.** I have carefully gone through the facts of the case, the relevant records available in the case file as well as compilation of statutory provisions.

**22.1** I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of personal hearing to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to the importer but they did not attend the adjudication proceedings in spite of the fact that the personal hearing letters were sent at the available address of the noticee including residential address of Shri Paresh Patel, Proprietor of M/s Keshav Industries, 302, Atlantia Garden, Nota Nova, Rajkot, 360005 and service of letters for personal hearings were done in terms of Section 153 of the Customs Act, 1962.

**Section 153 of the Customs Act** reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

a) *by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;*

b) *by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*

c) *by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;*

d) *by making it available on the common portal;*

*e) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;*

*f) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.*

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticee, but they did not respond as if they did not have anything to submit in their defence.

**22.2** I find that the importer has failed to appear for Personal Hearing, in spite of being given opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

**22.3** With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws:

**22.3.1** Hon'ble High Court of Kerala in the case of **United Oil Mills Vs. Collector of Customs & C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.)** has held that:

> 19. No doubt hearing includes written submissions and personal hearing as well but the principle of *Audi Alteram Partem* does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another* v. *M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

**22.3.2** Hon'ble Tribunal of Mumbai in the case of **Sumit Wool Processors v. CC, Nhava Sheva reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai)** has observed as under:

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an *alibi* to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

**22.3.3** Hon'ble High Court of Delhi in the case of **Saketh India Ltd Vs. Union of India reported in 2002 (143) ELT 274 (Del)**, has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant inspite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

**22.3.4** The Hon'ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner of Central Excise, Ahmedabad-II reported in 2004 (171) ELT 412 (Tri. Mumbai) has held that:

> "Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated."

**22.3.5** The Hon'ble Supreme Court in the case of **Jethmal Vs. Union of India reported in 1999 (110) ELT 379 (S.C.)** has held as under:

> 7. Our attention was also drawn to a recent decision of this Court in *A.K. Kripak* v. *Union of India* - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of *audi alteram partem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.

**22.3.6** Hon'ble Delhi Tribunal in the case of Commissioner of C.Ex. Vs. Pee Iron & Steel Co. (P) Ltd. reported in as 2012 (286) E.L.T. 79 (Tri. – Del) [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)]** has observed that:

> "9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed *ex parte* order against the respondent."

**23.** In view of the discussion held in Para 22 to 22.3.6 above, I proceed to adjudicate the Show Cause Notice No. VIII/10-19/Pr. Commr/O&A/2024-25 dated 06.11.2024 ex parte. The issues for consideration before me are as under:

(a) Whether all the goods imported vide Bills of Entry mentioned in **Table-3 above**, which were self-assessed and have already been cleared, having assessable value of **Rs.1,53,23,327/- (Rupees One Crore, Fifty Three Lakh, Twenty Three Thousand, Three Hundred and Twenty Seven Only)** are liable to confiscation under Section 111 (m), Section 111(o) and Section 111(q) of the Customs Act, 1962?

(b) Whether the differential Customs duty and IGST amounting to **Rs. 51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty Nine Only)** is liable to be demanded and

recovered from the importer under Section 28(4) of the Customs Act, 1962?

(c) Whether interest on above said differential customs duty is liable to be demanded and recovered from the importer under Section 28AA of the Customs Act, 1962?

(d) Whether the importer is liable for penalty under Section 112(a) & 112 (b), 114A and 114AA of the Customs Act, 1962?

**24.1** I find that as per the provisions made in 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 31st December 2009, the Certificate of Country of Origin was to constitute the principal basis for the purposes of extension of preferential treatment. Rule 13, which governs Certificate of Origin, reads as under:

**Rule 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 are set out in Annexure III annexed to these rules.*

**24.2** Further, in extension of the FTA, CBIC proceeded to issue exemption Notification No. 46/2011 dated 01.06.2011 granting benefit of "Nil" rate of Basic Custom Duty on goods falling in Customs Tariff Head "7219" when imported into India from a country listed in Appendix I of the said Exemption Notifications. For better understanding, I reproduce the relevant provisions of Notification No. 46/2011-Customs dated 01.06.2011, as amended, from time to time as under:

***"Notification No. 46/2011-Customs***

*New Delhi dated the 1st June, 2011*

*- 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 of1975) 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*

*….*

| *Sr. No.* | *Chapter, Heading, Sub-heading and Tariff item* | *Description* | *Rate (in percentage unless otherwise specified* | |
|---|---|---|---|---|
| | *…* | | | |
| *967* | *72* | *All goods* | *0.0* | *2.0* |
| | *…* | | | |

***Appendix I***

| *Sr. No.* | *Name of the Country* |
|---|---|
| *1* | ***Malaysia*** |
| *…* | |

**24.3** I further find that the benefits of exemption under Notification No. 46/2011-Customs dated 01.06.2011 is available to an importer when goods mentioned therein are imported into the Republic of India from a country listed in Appendix I, which includes Malaysia, Singapore, Thailand, and other countries, 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.

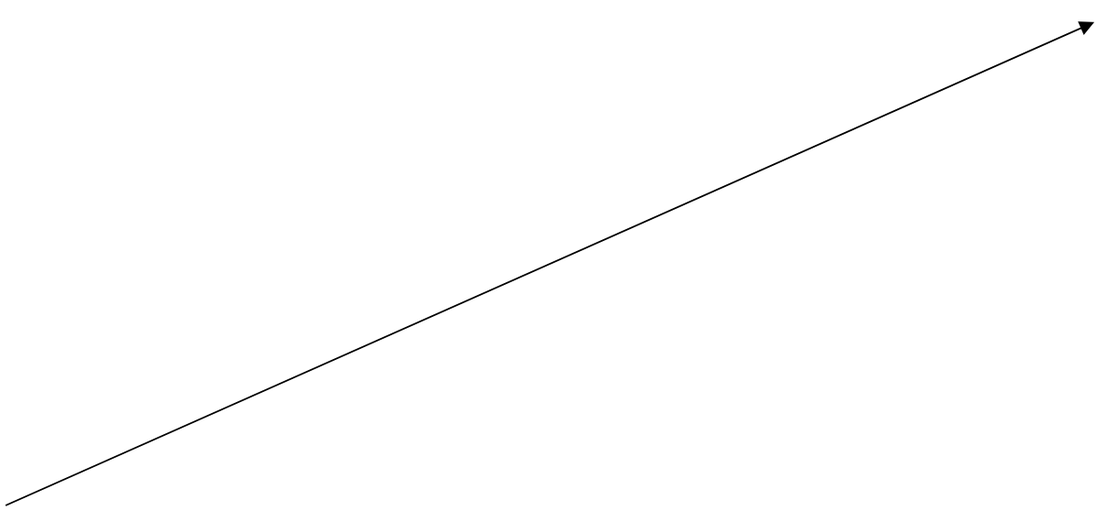
**24.4** I find that the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (in short, CAROTAR, 2020), were issued vide Notification No. 81/2020-Cus. (N.T.), dated 21.08.2020, governing imports into India where the importer claims a preferential rate of duty under a trade agreement. I further find that Articles 16 notified in the Operational Certification Procedures for the Rules of Origin under (AIFTA) as set out in Appendix D mentions that "***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 goods in question or of certain parts thereof.....".*** Further, Rule 6 of the CAROTAR Rules, 2020, provides for retroactive verification of the certificates of country of origin. Further, sub-rule 7(c) of Rule 6 of the CAROTAR Rules, 2020 states that if the information and documents furnished by the Verification Authority, alongwith available records, provide sufficient evidence to prove that the goods do not meet the origin criteria prescribed in Rules of Origin, the proper officer may deny the claim of preferential duty treatment.

**24.5** I further find that various correspondences have been forwarded by DRI, HQ, regarding retroactive verification of Country-of-Origin Certificates by the issuing authority i.e. Ministry of International Trade and Industry, Malaysia (hereinafter referred to as MITI). These communications also included an e-mail dated 14.04.2021 received from Zurina Abd Rahim (Ms), Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI, Malaysia, regarding verification of Country of Origin Certificates allegedly issued in Malaysia for the export of Stainless Steel Cold Rolled Coil and Circles (HS Code 7219 & 7220) under AIFTA. A list of 87 Country of Origin Certificates was attached to the said e-mail. It was further reported that MITI had never issued COO Certificate to the mentioned suppliers and further confirmed that these suppliers had never applied for any such certificate. On perusal of the said list of non-authentic suppliers, the names of the supplier of M/s Keshav Industries were found at following serial numbers.

| Sl. No. | Reference No. | Supplier company name | Approved date |
|---|---|---|---|
| 38 | KL-2019-AI-21-018819 | Hard Metal Trade SDM BHD | 16.12.2019 |
| 45 | KL-2019-AI-21-093214 | EZY Metal Enterprise | 15.11.2019 |

For better clarity, I would like to reproduce the screenshot of the said email dated 14.04.2021 with the list of 87 un authentic suppliers:



(22) 456

**Sent:** Wednesday, 14 April, 2021 11:08 AM
**To:** com.kl@mea.gov.in
**Cc:** Jamilah Haji Hassan <jamilah.hassan@miti.gov.my>; fscom.kl@mea.gov.in; ftaroo-cbic@gov.in; Muhammad Arif Wahab Udin <arif.wahab@miti.gov.my>; Mohd Hatta Bin Yousof <hatta@miti.gov.my>
**Subject:** Fw: Re: FW: Verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless steel Cold Rolled Coils and Circles (HS Code 7219 & 7220) under AIFTA-Reg

Dear Mr. Kipgen,

Greetings from the Ministry of International Trade and Industry Malaysia (MITI).

Your previous email below dated 31 December 2020 is referred to.

With reference to your verification request pertaining to the authenticity of 143 copies of Preferential Certificates of Origin (COO) as can be viewed from the following link, we wish to inform you that a retroactive check has been conducted on part of the COOs submitted to MITI.

https://drive.google.com/file/d/1Od6f4UHHUgyplHLztY2LSdsmBl90Fgpv/view?usp=sharing

Based on our assessment, **87** out of 143 copies of the COO are **not authentic** and they were **not issued by** the **Ministry of International Trade and Industry of Malaysia (MITI)**. For your information, **MITI has never received any COO applications from the respective companies via our system.** Please find the list of 87 COOs attached to this email.

On a separate note, MITI would like to request for an extension of time from the Government of India in confirming whether the balance of 53 COOs and 3 Non-Preferential COOs are authentic as we have to provide the additional documents/ information as requested in the previous email. We wish to provide our response on the balance of 53 COOs and 3 Non-Preferential COOs latest by 14 May 2021.

Your attention and consideration with regard to above matter are greatly appreciated.

Thank you.

Warm regards,

**Zurina Abd Rahim (Ms)**| Principal Assistant Director
Trade and Industry Cooperation Section
Trade and Industry Support Division
Ministry of International Trade and Industry
Tel: +603.6208.4751|Fax: +603.6206.3074
Email: zurina@miti.gov.my

----- Forwarded Message -----



**LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)**

(23) 457

| NO. | REFERENCE NO. | COMPANY NAME | APPROVED DATE |
|---|---|---|---|
| 1 | KL-2019-AI-21-085278 | MH MEGAH MAJU ENTERPRISE | 30.09.2019 |
| 2 | KL-2019-AI-21-072695 | MZH MAJU INDUSTRY | 01.08.2019 |
| 3 | KL-2019-AI-21-077386 | MH MEGAH MAJU ENTERPRISE | 19.08.2019 |
| 4 | KL-2019-AI-21-085859 | MH MEGAH MAJU ENTERPRISE | 01.10.2019 |
| 5 | KL-2019-AI-21-086871 | MH MEGAH MAJU ENTERPRISE | 09.10.2019 |
| 6 | KL-2019-AI-21-088746 | MH MEGAH MAJU ENTERPRISE | 25.10.2019 |
| 7 | KL-2019-AI-21-091327 | MH MEGAH MAJU ENTERPRISE | 12.11.2019 |
| 8 | KL-2019-AI-21-091319 | MH MEGAH MAJU ENTERPRISE | 12.11.2019 |
| 9 | KL-2019-AI-21-095563 | MH MEGAH MAJU ENTERPRISE | 26.11.2019 |
| 10 | KL-2019-AI-21-095873 | MH MEGAH MAJU ENTERPRISE | 27.11.2019 |
| 11 | KL-2019-AI-21-075801 | MH MEGAH MAJU ENTERPRISE | 15.08.2019 |
| 12 | KL-2019-AI-21-077378 | MH MEGAH MAJU ENTERPRISE | 19.08.2019 |
| 13 | KL-2019-AI-21-077411 | MH MEGAH MAJU ENTERPRISE | 19.08.2019 |
| 14 | KL-2019-AI-21-080137 | MH MEGAH MAJU ENTERPRISE | 28.08.2019 |
| 15 | KL-2019-AI-21-080172 | MH MEGAH MAJU ENTERPRISE | 28.08.2019 |
| 16 | KL-2019-AI-21-085898 | MH MEGAH MAJU ENTERPRISE | 02.10.2019 |
| 17 | KL-2019-AI-21-086855 | MH MEGAH MAJU ENTERPRISE | 09.10.2019 |
| 18 | KL-2019-AI-21-086834 | MH MEGAH MAJU ENTERPRISE | 09.10.2019 |
| 19 | KL-2019-AI-21-086829 | MH MEGAH MAJU ENTERPRISE | 09.10.2019 |
| 20 | KL-2019-AI-21-06958 | SETICA INDUSTRIES (M) SDN BHD | 22.01.2019 |
| 21 | KL-2019-AI-21-06591 | SETICA INDUSTRIES (M) SDN BHD | 07.02.2019 |
| 22 | KL-2018-AI-21-139316 | JENTAYU INDUSTRY | 28.12.2018 |
| 23 | KL-2019-AI-21-03293 | SETICA INDUSTRIES (M) SDN BHD | 18.02.2019 |
| 24 | KL-2019-AI-21-05483 | SETICA INDUSTRIES (M) SDN BHD | 18.02.2019 |
| 25 | KL-2019-AI-21-07132 | SETICA INDUSTRIES (M) SDN BHD | 15.02.2019 |
| 26 | KL-2019-AI-21-099652 | MH MEGAH MAJU ENTERPRISE | 31.12.2019 |
| 27 | KL-2020-AI-21-001958 | MH MEGAH MAJU ENTERPRISE | 22.01.2020 |
| 28 | KL-2019-AI-21-02866 | SETICA INDUSTRIES (M) SDN BHD | 25.01.2019 |
| 29 | KL-2020-AI-21-003235 | MH MEGAH MAJU ENTERPRISE | 04.02.2020 |
| 30 | KL-2019-AI-21-091247 | MH MEGAH MAJU ENTERPRISE | 12.11.2019 |
| 31 | KL-2020-AI-21-005078 | CEKAP PRIMA SDN BHD | 29.01.2020 |
| 32 | KL-2019-AI-21-010992 | ARTFRANSI INTERNATIONAL SDN BHD | 24.09.2019 |
| 33 | KL-2019-AI-21-010967 | ARTFRANSI INTERNATIONAL SDN BHD | 11.10.2019 |
| 34 | KL-2019-AI-21-010979 | ARTFRANSI INTERNATIONAL SDN BHD | 31.10.2019 |
| 35 | KL-2019-AI-21-010989 | ARTFRANSI INTERNATIONAL SDN BHD | 19.11.2019 |
| 36 | KL-2019-AI-21-088361 | MH MEGAH MAJU ENTERPRISE | 21.10.2019 |
| 37 | KL-2020-AI-21-000862 | MH MEGAH MAJU ENTERPRISE | 20.01.2020 |
| 38 | KL-2019-AI-21-018819 | HARD METAL TRADE SDN BHD | 16.12.2019 |
| 39 | KL-2019-AI-21-014873 | SETICA INDUSTRIES (M) SDN BHD | 09.04.2019 |
| 40 | KL-2019-AI-21-015487 | SETICA INDUSTRIES (M) SDN BHD | 12.04.2019 |
| 41 | KL-2019-AI-21-039871 | MH MEGAH MAJU ENTERPRISE | 23.04.2019 |
| 42 | KL-2019-AI-21-043235 | CEKAP PRIMA SDN BHD | 12.12.2019 |
| 43 | KL-2019-AI-21-038903 | SETICA INDUSTRIES (M) SDN BHD | N/A |
| 44 | KL-2019-AI-21-072613 | MZH MAJU INDUSTRY | 01.08.2019 |

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**LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)**

| NO. | REFERENCE NO. | COMPANY NAME | APPROVED DATE |
|---|---|---|---|
| 45 | KL-2019-AI-21-093214 | EZY METAL ENTERPRISE | 15.11.2019 |
| 46 | KL-2019-AI-21-095525 | MH MEGAH MAJU ENTERPRISE | 26.11.2019 |
| 47 | KL-2019-AI-21-095473 | MH MEGAH MAJU ENTERPRISE | 26.11.2019 |
| 48 | KL-2019-AI-21-027975 | MALY METAL INDUSTRY SDN BHD | 30.09.2019 |
| 49 | KL-2019-AI-21-033688 | MALY METAL INDUSTRY SDN BHD | 13.11.2019 |
| 50 | KL-2019-AI-21-039022 | MALY METAL INDUSTRY SDN BHD | 25.11.2019 |
| 51 | KL-2019-AI-21-043662 | MALY METAL INDUSTRY SDN BHD | 16.12.2019 |
| 52 | KL-2019-AI-21-088477 | MH MEGAH MAJU ENTERPRISE | 22.10.2019 |
| 53 | KL-2019-AI-21-088408 | CEKAP PRIMA SDN BHD | 12.11.2019 |
| 54 | KL-2019-AI-21-033027 | MH MEGAH MAJU ENTERPRISE | 22.10.2019 |
| 55 | KL-2019-AI-21-038395 | CEKAP PRIMA SDN BHD | 27.11.2019 |
| 56 | KL-2019-AI-21-0101023 | ARTFRANSI INTERNATIONAL SDN BHD | 02.12.2019 |
| 57 | KL-2019-AI-21-043670 | MALY METAL INDUSTRY SDN BHD | 16.12.2019 |
| 58 | KL-2019-AI-21-099382 | EZY METAL ENTERPRISE | 27.12.2019 |
| 59 | KL-2019-AI-21-044172 | MALY METAL INDUSTRY SDN BHD | 31.12.2019 |
| 60 | KL-2019-AI-21-091339 | JENTAYU INDUSTRY | 30.11.2019 |
| 61 | KL-2019-AI-21-090139 | JENTAYU INDUSTRY | 11.11.2019 |
| 62 | KL-2019-AI-21-093873 | JENTAYU INDUSTRY | 29.11.2019 |
| 63 | KL-2019-AI-21-085293 | MH MEGAH MAJU ENTERPRISE | 30.09.2019 |
| 64 | KL-2019-AI-21-086925 | MH MEGAH MAJU ENTERPRISE | 09.10.2019 |
| 65 | KL-2019-AI-21-017946 | PIONEER ULT ENTERPRISE | 24.10.2019 |
| 66 | KL-2019-AI-21-017945 | PIONEER ULT ENTERPRISE | 24.10.2019 |
| 67 | KL-2019-AI-21-017896 | PIONEER ULT ENTERPRISE | 04.11.2019 |
| 68 | KL-2019-AI-21-017895 | PIONEER ULT ENTERPRISE | 04.11.2019 |
| 69 | KL-2019-AI-21-017912 | PIONEER ULT ENTERPRISE | 15.11.2019 |
| 70 | KL-2019-AI-21-018082 | PIONEER ULT ENTERPRISE | 20.11.2019 |
| 71 | KL-2019-AI-21-018251 | PIONEER ULT ENTERPRISE | 29.11.2019 |
| 72 | KL-2019-AI-21-018250 | PIONEER ULT ENTERPRISE | 29.11.2019 |
| 73 | KL-2019-AI-21-018252 | PIONEER ULT ENTERPRISE | 29.11.2019 |
| 74 | KL-2019-AI-21-018796 | PIONEER ULT ENTERPRISE | 16.12.2019 |
| 75 | KL-2019-AI-21-018809 | PIONEER ULT ENTERPRISE | 16.12.2019 |
| 76 | KL-2019-AI-21-018800 | PIONEER ULT ENTERPRISE | 16.12.2019 |
| 77 | KL-2019-AI-21-018848 | PIONEER ULT ENTERPRISE | 24.12.2019 |
| 78 | KL-2019-AI-21-018845 | PIONEER ULT ENTERPRISE | 24.12.2019 |
| 79 | KL-2019-AI-21-018843 | PIONEER ULT ENTERPRISE | 24.12.2019 |
| 80 | KL-2019-AI-21-018898 | PIONEER ULT ENTERPRISE | 31.12.2019 |
| 81 | KL-2020-AI-21-019358 | PIONEER ULT ENTERPRISE | 15.01.2020 |
| 82 | KL-2020-AI-21-019428 | PIONEER ULT ENTERPRISE | 28.01.2020 |
| 83 | KL-2020-AI-21-019484 | PIONEER ULT ENTERPRISE | 28.01.2020 |
| 84 | KL-2020-AI-21-019482 | PIONEER ULT ENTERPRISE | 28.01.2020 |
| 85 | KL-2020-AI-21-019480 | PIONEER ULT ENTERPRISE | 28.01.2020 |
| 86 | KL-2020-AI-21-019511 | PIONEER ULT ENTERPRISE | 04.02.2020 |
| 87 | KL-2019-AI-21-01095 | SETICA INDUSTRIES (M) SDN BHD | 07.01.2019 |

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**24.6** I further find that during the course of investigation, various summons dated 25.01.2023, 16.02.2023, 27.02.2023, 19.09.2023, and 12.10.2023 were issued to the Noticee to appear for statement. Statement of Shri Paresh Patel, Proprietor of M/s. Keshav Industries, was recorded on 25.10.2023 under Section 108 of the Customs Act, 1962. I also note that a statement recorded under Section 108 of the Customs Act before a Customs Officer is distinct from the statement given before a police officer and carries evidentiary value. I also find that Shri Paresh Patel, in his voluntary statement, on being shown the copy of email dated 14.04.2021 received from Ms. Zurina Abd Rahim, Principal Assistant Director, Trade and Industry Support Division, MITI, Malaysia, regarding verification of the Country of Origin Certificates, and after perusing Rule 7 of the CAROTAR Rules, 2020 and Section 28DA of the Customs Act, 1962, agreed that his firm was not eligible to avail the benefit of Notification No. 46/2011-Customs dated 01.06.2011, as amended, on the import of Cold Rolled Stainless Steel Coils/Strips of Malaysian origin from (1) M/s Hard Metal Trade SDN BHD and (2) M/s EZY Metal Enterprise. He further stated that the Certificates of Origin had been submitted as received from their supplier, and that they were not aware of the genuineness of the COOs provided by their foreign supplier. He categorically admitted that they had wrongly availed the benefit of Notification No. 46/2011-Customs dated 01.06.2011. He further confirmed that his firm had incurred financial losses and, due to the financial crunch, requested some time to arrange funds for payment of the differential duty.

**24.7.** I observed from the letter F. No. DRI/DZU/23/ENQ-15/2022/1501 dated 11.05.2023, issued by the Additional Director, DRI, New Delhi and addressed to the Principal Commissioner of Customs (Import), Nhava Sheva-I, JNCH, that Shri Sanjay Jain, one of the Chinese/Malaysian suppliers, in his statements dated 02.02.2023, 04.02.2023, and 20.02.2023, admitted to having supplied Chinese-origin goods i.e. **Cold Rolled SS Coils** via Malaysia to several importers in India. In his statement, Shri Sanjay Jain disclosed that he had established the company EVG Metals and explained in detail how Chinese-origin goods were routed through Malaysia to India. Among the companies for which Certificates of Origin were found to be unauthentic, **EVG Metals** was one of those that attempted to claim the benefit of the Free Trade Agreement and thereby evaded Basic Customs Duty and Countervailing Duty on Chinese-origin goods.

**24.8.** In view of the above, I find that it is conclusively established that MITI had not issued any country of origin certificate to either (1) M/s Hard Metal Trade SDN BHD or (2) M/s EZY Metal Enterprise in respect of the export of Cold Rolled Stainless Steel Coil/Strips. I further find that the list provided by MITI, Malaysia reflects the names of the said suppliers of M/s Keshav Industries at Sr. No. 38 and 45 respectively, which explicitly indicates that any COO purportedly issued in their favour is unauthentic and not recognized by MITI. Further, it is also evident from the records that both the above-mentioned suppliers had not applied for any COO Certificate in accordance with the prescribed procedures under the ASEAN-India Free Trade Agreement framework. Further, Shri Paresh Patel, Proprietor of M/s Keshav Industries, in his voluntary statement dated 25.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that the COOs furnished by his suppliers were not authentic and that the benefit of Notification No. 46/2011-Cus was wrongly availed by them. He also requested some time to deposit the differential duty liability voluntarily. Further, in view of the modus operandi disclosed/explained by Shri Sanjay Jain in his statements, I find that the firms M/s Hard Metal Trade SDN BHD, Malaysia and M/s EZY Metal Enterprise, Malaysia, were ostensibly created as front entities to facilitate re-routing of Chinese origin goods through Malaysia in order to circumvent Countervailing Duty (CVD) imposed vide Notification No. 01/2017-Customs (CVD) dated 07.09.2017, which applies to Cold Rolled Stainless Steel products originating from or exported by China. I also find that, the primary condition for exemption from Customs duties under Notification. No. 46/2011-Cus dated 01.06.2011 (as amended) stipulates that the claimant Indian importer must present valid Certificates of Origin to the Indian Customs authorities, which have been

issued by a designated Government authority (Issuing Authority) of the exporting party. In the present case, the exemption from Customs duties was claimed by the importer on the strength of COOs certificates which were later found to be non-authentic. The Ministry of International Trade and Industry, Malaysia, confirmed that these COOs, that are alleged to be issued by the Malaysian authorities, were not issued by their Customs department, and therefore, are invalid. Additionally, the Ministry indicated that they have not received any applications from any such suppliers regarding these COOs. Consequently, I find that these impugned COOs were ab initio invalid and were not eligible for the purpose of exemption from Customs duties under Notification. No. 46/2011-Cus dated 01.06.2011 (as amended). Therefore, I hold that the preferential rate of duty claimed against the non-authentic and invalid COOs is liable for rejection as per the provisions of Rule 7 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) as notified under Notification No. 81/2020-Customs (N.T.) dated 21st August 2020 in conjunction with the provisions of clause 11 of Section 28DA of the Customs Act, 1962.

**24.9.** In this connection, I would like to rely on the judgment of Hon'ble Supreme Court in the matter of ***M/S. NOVOPAN INDIA LTD. REPORTED AT 1994 (73) ELT 769 (SC)***, wherein the Hon'ble SC held interalia as under:

> *"18. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) E.L.T. (J 350) (SC) = 1969 (2) S.C.R. 253) that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*

**24.10** Further, I would like to rely on the judgment of the Constitutional Bench in Hon'ble Supreme Court in the matter of ***M/S. DILIP KUMAR & COMPANY. REPORTED AT 2018 (361) ELT 577 (SC)***, wherein the Hon'ble SC has held that:

*"48. The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.*

*49. The ratio in Mangalore Chemicals case (supra) was approved by a three-Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :*

> *"We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State...."*

*50. In Tata Iron & Steel Co. Ltd. v. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -*

*"The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd. v. CCE and Customs)."*

*...*

*52. To sum up, we answer the reference holding as under -*

*(1) 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.*

*(2) 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.*

*(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."*

**24.11** Further, in case of ***COLLECTOR OF CUSTOMS, BANGALORE & ANR. VS. M/S. MAESTRO MOTORS LTD. & ANR. 2004 (10) SCALE 253***, the Court held:

*"It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language."*

**24.12** The Hon'ble Gujarat High Court in ***Trafigura India Private*** **Limited vs Union Of India** [2023-TIOL-737-HC-AHM-CUS], held as under;

> "17. The extended period of five years under sub- section (4) of Section 28 could indeed be invoked by the authorities since the petitioners were found guilty of suppression of facts regarding RVC [Regional or Domestic Value Content] content in the Origin Certificate. The suppression is not always concealment of facts. **The suppression can take form of suggesting wrong facts and to obtain some advantage, which may not be available upon the disclosure of correct and genuine facts. Suppression may manifest itself in misrepresentation also.** In the present case, the misrepresentation became suppression, as the exemption benefit or preferential duty benefit was obtained by putting forth wrong facts, which did not constitute eligibility to earn the exemption from the Basic Customs Duty. By suggesting wrong details and by subscribing untruth, essential conditions regarding RVC was not fulfilled. It partook suppression in eye of law and within the meaning of sub-section (4) of Section 28."
>
> (Emphasis supplied)

**24.13** I further find that the CESTAT, Bangalore in case of **M/s. Alfa Trader Vs. Commissioner of Customs, Cochin reported at 2007(217) ELT 437(Tri. - Bang.)**, held that if the certificate of origin (COO) is not correct on facts, it can be rejected and may be basis for disallowing the duty exemption. Moreover, in the present case, I find that the Certificate of Origin issuing authority has clearly confirmed that the suppliers had never approached them for issuance of any such certificate and therefore, the certificates of origin submitted by M/s Keshav Industries are not genuine.

**24.14** In view of the above findings, the voluntary statement recorded during the investigation, and judicial pronouncements on similar matters, it is clearly and conclusively established that the Certificates of Origin submitted by M/s Keshav Industries in respect of the subject consignments are not genuine, and that the goods imported under the cover of these COOs did not originate from Malaysia. As per the provisions of Rule 4 of the CAROTAR Rules, 2020 read with Section 28DA of the Customs Act, 1962, it is the responsibility of the importer to exercise reasonable care to ensure the accuracy and authenticity of the origin documents submitted for availing preferential tariff benefits under a trade agreement. I find that in the present case, M/s Keshav Industries failed to fulfill this obligation. Further, as per Article 16 of the Operational Certification Procedures under the AIFTA Rules of Origin (Appendix D), the importer had the option to request retroactive verification of the authenticity of the COOs from the issuing authority. However, it is on record that M/s Keshav Industries did not exercise this option, which further strengthens the inference

that the importer was aware of the non-authenticity of the documents and was complicit in the act of submitting forged COOs to Customs authorities. I further note that if the goods in question had genuinely originated from Malaysia, the suppliers would have had no reason to submit forged or fabricated COOs. On the contrary, they would have duly applied to the Ministry of International Trade and Industry, Malaysia, for issuance of valid Certificates of Origin as per the standard procedure laid down under the ASEAN-India Free Trade Agreement framework. The act of submitting unauthenticated certificates clearly established their deliberate intent to mis-represent the origin of goods for evasion of customs duty. I further find that the goods in question were, in fact, of Chinese origin, and were merely routed through Malaysia with the intention of evading the levy of Countervailing Duty and to wrongly claim preferential exemption under Notification No. 46/2011-Cus dated 01.06.2011, as amended. My above view is further corroborated by the voluntary statement of Shri Paresh Patel, proprietor of M/s Keshav Industries, recorded on 25.10.2023, wherein he admitted that the Certificates of Origin submitted were not genuine and that his firm had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011. Hence, I find and hold that the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, was wrongly claimed, and the importer is not entitled to the concessional rate of duty under the said notification. From the above facts, I find that the Noticee has knowingly and deliberately submitted fake Certificates of Origin before the Customs Authorities with intent to evade customs duties. I further observe that this conduct on the part of the Noticee, including the use of forged documents and mis-declaration of the origin of goods to unlawfully claim ineligible customs duty benefits, clearly amounts to willful misstatement and suppression of material facts. In view of the above discussion, I find and hold that Section 28 (4) has been rightly invoked in present case, as the facts & evidences clearly establish willful mis-declaration and suppression of material facts on the part of the Noticee. In view of the above, I find and hold that the differential customs duty amounting to Rs. 51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty-Nine only) is recoverable from M/s Keshav Industries under the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

**25. <u>Whether the goods valued at Rs. 1,53,23,327/- imported by M/s. Keshav Industries are liable for confiscation under Section 111(m), 111(o) & 111(q) of the Customs Act, 1962?</u>**

**25.1** The present Show Cause Notice also proposes for the confiscation of the imported goods valued at Rs. 1,53,23,327/- under the provisions of Section 111(m), 111(o) & 111(q) of the Customs Act, 1962.

**25.2** As discussed in paras supra, it is clearly established that M/s. Keshav Industries imported the impugned goods i.e. "Cold Rolled Stainless Steel Coils Grade J3" by wrongly availing the benefit of Sr. No. 967(I) of Notification No. 46/2011-Cus. dated 01.06.2011, as amended, which provides for Nil rate of Basic Customs Duty under the ASEAN-India Free Trade Agreement. Instead of paying Customs Duty at the rate of 7.5% BCD, 10% SWS and CVD 18.95%, the importer mis-declared the origin of the goods as Malaysia to claim ineligible benefits under the said notification. By way of adopting this modus in respect of impugned goods, they got cleared goods valued at **Rs. 1,53,23,327/-** from ICD, Sabarmati without paying Customs Duty at applicable rate. I further note that the importer claimed preferential duty benefits by declaring the origin of goods as Malaysia, whereas it has been conclusively established that the goods were actually of Chinese origin, routed through Malaysia to circumvent the CVD imposed vide Notification No. 01/2017-Customs (CVD) dated 07.09.2017 on stainless steel sheet/coil products falling under HSN 7219 or 7220 originating from China. Verification with these COO issuing authority i.e. MITI, Malaysia, revealed that the Certificates of Origin submitted by M/s Keshav Industries were not authentic, and the concerned Malaysian suppliers had never approached MITI for issuance of such certificates. This fact was also admitted by the Noticee in his voluntary statement dated 25.10.2023, wherein he accepted that the COOs were not authentic and requested some time to pay the differential Customs duty. Thus M/s. Keshav Industries has deliberately and knowingly indulged in suppression of facts regarding the origin of their imported goods and has wilfully and wrongly availed the benefit of aforementioned Notification which was not available to them, with an intent to evade payment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for *confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry made under this Act.* Section 111 (o) of the Customs Act, 1962 provides for confiscation of "*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*". Further, as per Section 111(q) of the Customs Act, 1962, "*any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder*", will also be liable for confiscation. I find that the Bills of Entry filed by the Noticee were self-assessed, and the country of origin was declared as

Malaysia. However, the verification report confirmed that the Certificates of Origin relied upon for availing the benefit under the ASEAN-India Free Trade Agreement were not authentic. Further, during investigation, it was found that the impugned goods did not originate from Malaysia. Therefore, I note that the importer wrongly claimed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 on the basis of forged or fabricated documents. I further find that by failing to exercise reasonable care and not verifying the accuracy and authenticity of the information provided by the exporter, M/s Keshav Industries violated the obligations imposed under Section 28DA of the Customs Act, 1962, as well as Rule 4 and Rule 7 of CAROTAR, 2020. I also find that the importer has knowingly and willingly misused the Preferential Trade Agreement by claiming the benefit of Notification No. 46/2011-Cus, as mentioned in the Bills of Entry filed by them, with an intention to avoid Customs Duty liability that would have otherwise accrued to them. Thus, provisions of Section 111(m), 111(o) & 111(q) of the Customs Act, 1962 would come into picture. I thus find that wilful and wrong availment of the benefit of the aforementioned Notification by M/s. Keshav Industries on the basis of improper documents has rendered the impugned goods liable for confiscation under Sections 111(m), 111(o) & 111(q) of the Customs Act, 1962. I, therefore, hold the goods valued at **Rs. 1,53,23,327/- (Rupees One Crore, Fifty Three Lakhs, Twenty Three Thousand, Three Hundred and Twenty Seven only)** liable to confiscation under the provisions of Sections 111(m) 111(m), 111(o) & 111(q) ibid. Further, since the aforementioned imported goods, are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras** has observed as under:

> *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 regularised, 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 authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only.*

*Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

**25.3** Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held interalia as under:-

**"** .
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***174. .....*** *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

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

***175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."***

## 26 Whether M/s. Keshav Industries is liable for penalty under Section 114A of the Customs Act, 1962 ?

The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on the noticee. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, M/s. Keshav Industries has deliberately and knowingly indulged in wilful mis-statement and suppression of facts in respect of their imported goods

and has wilfully misused the Preferential Trade Agreement by claiming the benefit of Notification No. 46/2011-Cus dated 01.06.2011 (by submitting improper certificates of origin, not paying CVD and by paying NIL BCD) which was not available to them with an intention to avoid the Customs Duty liability that would have otherwise accrued to them. I have already held that the differential Customs Duty of **Rs. 51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty-Nine only)** is to be demanded and recovered from M/s. Keshav Industries under the provisions of Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. Keshav Industries.

**27. Whether M/s. Keshav Industries is liable for penalty under Section 112 of the Customs Act, 1962:**

I find that fifth proviso to Section 114A stipulates that "*where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114*." Thus, I am inclined to hold that the penalty under Section 114A ibid has already been imposed upon the noticee, simultaneously the penalty under Section 112 of the Customs Act, 1962, is not imposable in terms of the fifth proviso to Section 114A *ibid* in the instant case. Hence, I refrain from imposing penalty on the importer under Section 112 of the Customs Act, 1962.

**28. Whether M/s. Keshav Industries is liable for penalty under Section 114AA of the Customs Act, 1962?**

**28.1** The Show Cause Notice also proposes Penalty under Section 114AA of the Customs Act, 1962 on M/s. Keshav Industries. I find that the noticee had failed to follow the procedure as prescribed under Section 28DA (1) of the Customs Act, 1962, and also failed to possess sufficient information as regards to authenticity of Certificate of Origin and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. Further, as discussed in the foregoing paras, it is evident that despite knowing the actual facts of the imported goods, the noticee had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented them to the Customs Authorities which were found incorrect in as much as the certificates of origin of goods was not genuine and the goods were not originated from Malaysia and thus the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended was not available to the imported goods. I therefore find and hold that for this act

on the part of M/s. Keshav Industries, they are liable for penalty in terms of the provisions of Section 114AA of the Customs Act, 1962.

**28.2** Further, I rely on the decision of Principal Bench, New Delhi in case of **Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi)** wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".*

**29.** In view of my findings in paras supra, I pass the following order:

**:ORDER:**

**a)** I confirm the demand of differential Duty amounting to **Rs. 51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty Nine Only**), as discussed above in foregoing paras for wrong availment of exemption Notification no. 46/2011-Cus dated 01.06.2011 (Sr. No. 967 (I)) as detailed in Annexure-I to the Notice with respect to the impugned goods imported through ICD Sabarmati and order recovery of the same from M/s Keshav Industries under Section 28(4) of the Customs Act, 1962.

**b)** I order to recover the interest on the aforesaid demand of Duty confirmed at para 29 (a) above as applicable in terms of Section 28AA of the Customs Act, 1962;

**c)** I hold the goods imported during the period under consideration valued at **Rs.1,53,23,327/- (Rupees One Crore, Fifty Three Lakhs, Twenty Three Thousand, Three Hundred and Twenty Seven Only)** liable to confiscation under the provisions of Section 111(m), 111(o) & 111(q) of the Customs Act, 1962. However, I impose redemption fine of Rs. 15,00,000/-/- (Rupees Fifteen Lakh only) in lieu of confiscation under Section 125 of the Customs Act, 1962;

**d)** I impose a penalty of **Rs. 51,75,159/- (Rupees Fifty One Lakh, Seventy Five Thousand, One Hundred and Fifty Nine Only**) on M/s. Keshav Industries plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at 29 (a) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

**e)** I refrain from imposing any penalty on M/s. Keshav Industries under Section 112 of the Customs Act, 1962;

**f)** I impose a penalty of Rs. 10,00,000/- (Rs Ten Lakh Only) on M/s. Keshav Industries under Section 114AA of the Customs Act, 1962;

**30.** This order is issued without prejudice to any other action that may be taken under the 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.

**31.** The Show Cause Notice VIII/10-19/Pr. Commr./O&A/ 2024-25 dated 06.11.2024 is disposed off in above terms.

31.07.2025

**(Shiv Kumar Sharma)**
Principal Commissioner,
Customs, Ahmedabad

F. No. VIII/10-19/Pr.Commr/O&A/2024-25

Date: 31.07.2025

**DIN: 20250771MN0000444DA5**

**BY SPEED POST A.D.**

RECEIVED
CUSTOMS (HQ), A'BAD.
DATE : 01/08/25
SIGN. :
NAME :

To,
(1) M/s Keshav Industries,
Pipaliya Hall Road, Plot No. 13,
Yashoda Bhuvan, Rameshwar Nagar Main Road,
Rajkot Gujarat-360004

(2) Shri Paresh Patel, proprietor of M/s Keshav Industries,
302, Atlantia Garden, Nota Nova,
Rajkot, 360005

**Copy to:**

(1) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
(2) The Additional Director, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, 15, Magnet Corporate Park, Off. Sola Over Bridge, Thaltej, Ahmedabad-380054.
(3) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
(4) The Deputy Commissioner of Customs, ICD Sabarmati, Ahmedabad
(5) The Superintendent of Customs (Systems) in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
(6) Guard File.