8/C
85 to 88

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	

A. File No.	:	GEN/ADJ/COMM/44/2022-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	:	**MUN-CUSTM-000-COM-01-24-25**
C. Passed by	:	K.Engineer Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	02.04.2024 02.04.2024
E. SCN No. & Date	:	(i) SCN No. GEN/ADJ/COMM/44/2023-Adjn-O/o Pr. Commr- Cus-Mundra dated 12.04.2023. (ii) Supplementary SCN No. GEN/ADJ/COMM/44/2023-Adjn-O/o Pr. Commr- Cus-Mundra dated 02.02.2024.
F. Noticee(s) / Party / Importer	:	**1. M/s. Choice Cargo Agencies**, (IEC-0516505050) D-71, Flat No. 101, Vishwakarma Colony, Delhi-110044. **2. M/s. Choice Cargo Agencies Pvt. Ltd,** (IEC-AABFC9292K) D-71, 1st Floor, Vishwakarma Colony, Lal Kuan, Delhi-110044. **3. Sh. Atul Kishore Guglani**, Director of Choice Cargo Agencies Pvt. Ltd., R/o 318, Tarun Enclave, Pitampura, Delhi-110034. **4. Sh. Krishan Kumar Guglani**, Director of Choice Cargo Agencies Pvt. Ltd., R/o 303, Pocket-3, Paschim Puri, New Delhi-110063
G. DIN	**:**	**20240471MO000000C76C**

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

   Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd **फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट् ऑफिस, अहमदाबाद**-380 004" **"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."**

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

   Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज,दंड याशास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्तिया दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

   Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

   While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

   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.

BRIEF FACTS OF THE CASE

An information was received by the officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi (hereinafter referred to as "the DRI"), that **M/s. Choice Cargo Agencies (IEC-0516505050)**, a proprietorship firm of Shri Krishan Kumar Guglani located at D-71, Flat No. 101, Vishwakarma Colony, Delhi-110044 *(hereinafter referred to as **'M/s.CCA' or also as 'the noticee'** for the sake of brevity)* and **M/s. Choice Cargo Agencies Pvt. Ltd (IEC-AABFC9292K)** (Directors Shri Atul Kishore Guglani and Shri Krishan Kumar Guglani) D-71, 1st Floor, Vishwakarma Colony, Lal Kuan, Delhi-110044 *(hereinafter referred to as **'M/s. CCAPL' or also as 'the noticee'** for the sake of brevity)*, were wrongly availing the benefit of the preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 (Indo-ASEAN FTA), as the items imported by both firm CCA & CCAPL, i.e., Cold Rolled Stainless-Steel Coils & Circles from Malaysia and declared to be of Malaysian origin, were in fact of Chinese origin and were routed through Malaysia to wrongly avail the benefit of preferential duty.

2. For better appreciation, the relevant extracts of the Notification No. 46/2011-Cus dated 01.06.2011 [AIFTA – INDO - ASEAN FTA] are reproduced below:

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 153/2009-Customs dated the 31st December, 2009 [G.S.R. 944 (E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in,-column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II .

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

Table-A

S. No.	Chapter, Heading, Sub-heading and Tariff item	Description	Rate (in percentage unless otherwise specified)	
(1)	(2)	(3)	(4)	(5)
1	0101	All goods	20.0 (as amended from time to time)	26.0 (as amended from time to time)
..	...	...	....	...
967	72	All Goods	0.0	0.0

Appendix I

S.No.	Name of the Country
1.	Malaysia
2.	Singapore
3.	Thailand
4.	Vietnam
5.	Myanmar
6.	Indonesia
7.	Brunei Darussalam

2.2 The relevant 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, are reproduced as under:

3. Origin criteria:

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

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

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

4. Wholly produced or obtained products.-

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanation.- For the purpose of this clause, "article" means all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations;

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

5. Not wholly produced or obtained products.-

(1) For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if -

(i) the AIFTA content is not less than 35 percent of the FOB value; and

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

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

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

.....

6. Cumulative rule of origin-

Unless otherwise provided for, products which comply with origin requirements referred in rule 3 and which are used in a party as materials for a product which is eligible for preferential treatment under these rules shall be considered as products originating in that party where working or processing of the product has taken place.

13. Certificate of Origin-

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

3. Acting on the said information, searches at the residence and office premises of M/s.CCA and M/s.CCAPL were conducted, certain documents/electronic devices relevant to the investigation were resumed by the officers. All the proceedings were recorded under panchanama on the spot.

4. Statement of **Shri Atul Kishore Guglani**, Director of M/s. Choice Cargo Agencies Pvt. Ltd (i.e. CCAPL), was recorded under Section 108 of the Customs Act, 1962, on 10.12.2021. In his voluntary statement, Shri Atul Kishore Guglani, *inter alia*, stated that:

(i) CCAPL had imported Stainless Steel Cold Rolled Coils and Circles from Malaysia and the CCA had imported Stainless Steel Cold Rolled Coils & other items like Dolls, LCD panels etc. from China and Stainless-Steel Cold Rolled Coils and Circles from Malaysia. Both these firms had also imported Stainless Steel Cold Rolled Circles from Indonesia procured from PT Steel Industry, Batam.

(ii) He stated that CCA was mainly engaged in providing transportation services and around November, 2017, CCA started import of steel products from China and later all the imports of steel products by the CCA were from Malaysia and Indonesia. He was also a G-Card holder of SMG ICB Logistics and did Customs clearing work.

(iv) He submitted photocopies of the documents viz. commercial invoices, packing lists, bills of entry, Certificate of Origin of the goods imported by the CCAPL during 2018, 2019 and 2020. However, he could not submit a few Certificates of Origin (Form A-1), which were not readily available with him.

(v) He stated that the Stainless-Steel Cold Rolled products imported from Malaysia were procured under invoices of MH Megah Maju Enterprise, Jentayu Industry, Setica Industries (M) SDN BHD, Ben Trading & Services, YKP Global Trading, CEKAP Prima SDN BHD, etc. and they had availed

the benefit of the Notification No. 46/2011-Cus dated 01.06.2011, on the steel products imported from Malaysia and Indonesia.

(vi) He stated that there was no written contract/proforma invoice with any of the foreign suppliers. All the negotiations were done verbally on phone and the orders were also placed over phone. There were no email communications regarding negotiations or placing of orders. All the negotiations in respect of the goods imported from Malaysia into India from the above said suppliers were done either with Mr. Windson or Mr. Daichi, who were the agents. He had never communicated with the Proprietor, Director or any other employee of the above said suppliers. There was no supplier-wise distinction between Windson and Daichi, it could be possible that the consignment from a particular supplier was arranged on one occasion by Windson and on other occasion by Daichi.

(vii) Currently, the details viz. phone nos. etc. of Windson and Daichi were not available with him and he promised to provide the same in a few days. He stated that he did not pay any commission to Windson or Daichi as they used to get commission from the suppliers.

(viii) He was aware 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 notified under Notification No. 189/2009-Cus (NT). He stated that "*WO*" origin criterion in respect of the originating goods meant that the subject goods were wholly obtained or produced in the territory of the exporting country. He had also gone through the Notification No. 189/2009-Customs (NT). The Rule No. 4 of the said Rules provided that the items which would be considered as Wholly Obtained or produced by the party. He stated that in case the subject goods were not wholly obtained in the exporting country, the benefit of the Notification No. 46/2011-Cus was available to the goods in which Regional Value Content (RVC) was not less than 35% and there was change in HS classification at 6 digit level.

(ix) He had visited Malaysia around 3-4 times in 2018 and 2019. He had also visited Indonesia many times (every month). He had visited China once.

(x) He stated that all the suppliers of Malaysia were having manufacturing unit in Malaysia. He had visited the factory of MH Megah Maju Enterprise and Setica Industries (M) SDN BHD. He had not visited the factory of the remaining suppliers.

(xi) He had gone through the Certificates of Origin in respect of the goods imported through YKP Global Trading and as per the Certificate of Origin (i.e. COO), there was third party invoice, i.e., the shipper was Maly Matel Industry SDN BHD and the supplier was YKP Global Trading, Malaysia. He had also gone through the Certificate of Origin Ref. No. KL-2019-AI-21-025808 in respect of Cold Rolled Stainless Steel Coils supplied by Infinite

Exponent SDN BHD. He stated that as per the COO, the exporter was Maly Matel Industry SDN BHD and the supplier was Infinite Exponent SDN BHD, i.e., the COO was for third party invoice. On being pointed out that from the COOs of YKP Global Trading and Infinite Exponent SDN BHD, it appeared that the said two suppliers were not manufacturers and they had procured the exported goods from Maly Matel Industry SDN BHD, he stated that he was told by the agents that the said two suppliers were manufacturers. He accepted that the goods sold to him by YKP Global Trading were not manufactured/processed by YKP Global Trading and YKP Global Trading had done trading activity.

(xii) He had gone through all the COOs submitted by him in respect of MH Megah Maju Enterprise, Setica Industries (M) SDN BHD, Jentayu Industry, CEKAP Prima SDN BHD. In the COOs of all these suppliers, there was no third-party invoice.

(xiii) He stated that in the factory of MH Megah Maju Enterprise, 3-4 slitting machines were installed and in the factory of Setica Industries (M) SDN BHD (Setica in short), one slitting machine was available. On being asked, he stated that the slitting machine was used for slitting the coils (reducing the width of the coil). On being asked, he stated that no other machine was available in the factories of the said two suppliers. On being asked, he stated that the said two suppliers had only one factory and he had visited the said factory. On being asked, he stated that Windson had taken him to the factories of the said two suppliers.

(xiv) He stated that none of the suppliers of Malaysia (including MH Megah Maju and Setica) was having a furnace and therefore, none of them could manufacture the SS Cold Rolled or Hot Rolled Coils. He also stated that none of the suppliers had a rolling mill for rolling of coils. Neither MH Megah Maju nor Setica had facility to manufacture/cut Circles from the Coils or Sheets.

(xv) He had gone through page Nos. 203 & 177 of file No. 1, submitted by him. On being asked why no signatures of the issuing officers were available in the COOs available at the said pages, he stated that the same were draft COOs to be issued. He stated that draft Bills of Lading were also available with the CCOs. He stated that before issuance, the supplier used to send draft Bill of Lading and draft COOs for his approval on email and after going through the same, he used to return the same on email after doing any corrections, if required, for issuance. The draft documents were emailed to him by the agents, namely Windson, Daichi or the supplier. He promised to provide printouts of the said emails.

(xvi) He had gone through 59 COOs of Malaysia in respect of Setica, MH Megah Maju, Jentayu, YKP Global Trading (Maly Matel), Ben Trading & Services, the details of which were available in list-A attached with this statement. He stated that in all the said 59 COOs, the *Origin Criterion* was mentioned as "*WO*" which meant *Wholly Obtained.* He stated that none of the said

suppliers had manufactured the SS Cold Rolled Coils and Circles supplied by them to CCAPL. He accepted that all the said 59 COOs in which *Origin Criterion* was mentioned *WO,* were in fact prepared with incorrect information.

(xvii) On being asked about the *Origin Criterion*, for example 'RVC 36% + CTSH' mentioned in the COO in respect of Cold Rolled Stainless Steel Circles supplied by CEKAP Prima SDN BHD; *'RVC 35.13% + CTSH'* mentioned in the COO pertaining to Cold Rolled Coils supplied by Setica under invoice no. 19LRKT0318-9-10, he stated that he did not know the basis of the said *Origin Criterion.* He stated that all the Coils and Circles were of China origin but he did not know what processes were undertaken in Malaysia. He stated that he would provide the basis of the *origin criterion* in respect of all the goods imported from Malaysia.

(xviii) He stated that the payment of the amounts mentioned in the invoices were made through the bank account of his company to the bank account of the supplier. He stated that his cousin Krishan Kumar Guglani was the other Director of CCAPL, but he (Krishan) did not look after the work of the import and sale of the goods. He stated that he himself looked after all the work related to the import of the goods, payments and sale of the imported goods in the local market.

5. Shri Krishan Kumar Guglani, Proprietor of M/s.CCA, in his voluntary statement recorded on 31.12.2021, under Section 108 of the Customs Act, 1962, *inter alia,* stated that:

(i) He was the proprietor of Choice Cargo Agencies (CCA), which was engaged in transportation of goods. CCA was also engaged in the import of goods and trading the same. He stated that CCA had imported Stainless Steel Cold Rolled Products from China, Malaysia and Indonesia. CCA had also imported other goods like gift items from China but had not imported any goods since January, 2020.

(ii) He stated that he and his cousin Atul Kishore Guglani were the Directors of CCAPL which was mainly engaged in the transportation of goods in containers. CCAPL had also imported goods from Malaysia and China. He stated that he was looking after the transportation business of CCAPL and his cousin Atul Kishore Guglani looked after all the work related to the import of goods by the CCA and the CCAPL. Atul Kishore Guglani was a G Card Holder and handled the Custom clearance work in the CCAPL.

(iii) He had submitted documents, viz. commercial invoices, packing lists, mill test certificates, bills of entry of the stainless-steel products imported by the CCA. He stated that the CCA started import of goods in the month of November, 2017 and the CCA imported three consignments of Stainless-Steel Products from China and thereafter, all the consignments were either imported from Malaysia or from Indonesia.

(iv) He did not have much knowledge about the goods imported, the foreign suppliers and payments made to the foreign suppliers by the CCA and the CCAPL. He stated that the information about the goods imported by the CCA and the CCAPL were available with Atul Kishore Guglani and he had authorized him to appear before the Customs Department, tender evidence, statement and documents in respect of CCA and CCAPL and the facts stated by him (Atul) and documents submitted by him would be bound on him/his firm.

6. Statement of **Shri Atul Kishore Guglani**, Director of the M/s.CCAPL, was recorded under Section 108 of the Customs Act, 1962, on 22.02.2022. In his voluntary statement, Shri Atul Kishore Guglani, *inter alia*, stated that:

(i) He was a G-Card holder of CHA SMG ICB Logistics and doing Customs clearance work since last 20 years and he was well aware of all the provisions of the Customs Act, Notification, Rules etc. He was also aware of the Preferential Trade Agreement related Notifications and Rules.

(ii) He had submitted authority letter of his cousin Shri Krishan Kumar Guglani who was Proprietor of Choice Cargo Agencies (i.e. CCA) and Director of Choice Cargo Agencies Pvt. Ltd. (i.e. CCAPL). He stated that he looked after all the work related to the import of goods by CCA and CCAPL & sale of the said imported goods and Shri Krishan Kumar Guglani had authorized him to tender statement in respect of the CCA, on his behalf.

(iii) On being asked to provide the documents/details regarding the basis of the o*rigin criterion* mentioned in the Certificates of Origin of the goods imported from Malaysia, which he had submitted during his statement recorded on 10.12.2021, he stated that he had tried to contact the agents who had arranged the consignments, but he could not contact them as they had changed their mobile phones.

(iv) **He stated that CCA started import of goods in the month of November, 2017. CCA imported three consignments of Stainless-Steel Products from China and thereafter, all the consignments of stainless-steel products were imported either from Malaysia or from Indonesia. The Chinese suppliers were Tocean Industry Limited, Oak Steel Limited and Hong Kong Zhensang Trade Limited. CAA had not imported any goods since December, 2019.**

(v) He used to handle all the import related work, such as, interacting & negotiating with the overseas suppliers, Customs clearance etc. in respect of the goods imported by CCA as well as CCAPL. He had been shown two files containing photocopies of import invoices, bills of entry, Certificates Of Origin, etc. in respect of the goods imported by CCA which were submitted by Shri Krishan Kumar Guglani. He stated that the agent used to send the draft Certificates of origin of Malaysia in respect of all the consignments imported from Malaysia to him and he approved the

drafts and if required, instructed the agent for corrections. He also stated that similarly, the agents also used to send draft Bills of lading etc. to him for verification of correctness.

(vi) He was shown various Certificates of Origin of Malaysia pertaining to the goods imported by CCA. He stated that "WO" was mentioned in the column No. 8 of *Origin Criterion* of various Certificates of Origin of Malaysia. The details of the said Certificates were listed in the Chart-1 of his statement. As per the said details, in 61 Certificates of Origin, "WO" was mentioned as *origin criterion* which pertained to the SS coils and Circles. During his statement recorded on 10.12.2021, he was shown various Certificates submitted by the CCAPL in which the *origin criterion* was mentioned as "*WO*". **He stated that the Stainless Steel Coils and Circles mentioned in the said Certificates did not qualify to be "WO" as the said items were not wholly obtained or produced in Malaysia. In the few other Certificates of Origin of the same suppliers for similar Coils and Circles, the origin criterion was mentioned as *RVC 35.13%*CTSH* which meant that the Regional Value Content was 35.13% along with change in HSN code at 6 digit level. He accepted that the 61 Certificates of Origin mentioned in the Chart-1 of his statement, were not prepared with correct and true information and that the said 61 certificates mentioned in the list pertaining CCA were not correct.**

(vii) He had gone through all the Certificates of origin pertaining to the goods supplied to CCA and CCAPL by MH Megah Maju Enterprise, Setica Industries (M) SDN BHD and Jentayu Industry from Malaysia and he stated that in none of the Certificates of Origin pertaining to goods supplied by MH Megah Maju Enterprise, Setica Industries (M) SDN BHD and Jentayu Industry, there was "third party invoicing" or *back-to-back* invoice/supply, which meant that the said three suppliers had done some process/work on the coils and circles supplied by them to him.

(viii) He stated that in his presence, the website, namely, http:// www.mhmegahmaju.com was opened on the computer available in the DRI office. He was shown all the contents of the above said website. The said website was of MH Megah Maju Enterprise, 25-2 Lorong Batu Nilam, 5, Bukit Tinggi, 41200 Klang, Selangor, Malaysia. On being asked, he had compared the address of MH Megah Maju Enterprises mentioned in the photocopies of the commercial invoices and packing lists issued to the CCA and the CCAPL with the address mentioned in the website. He stated that the same address was mentioned in the invoices, packing list, etc. He accepted that the said website was of his supplier MH Megah Maju Enterprises.

(ix) On being asked, he stated that he had again gone through entire contents of the website and the printouts of matter/data, available on the above said website, taken in his presence. He stated that as per website, MH Megah Maju Enterprise was engaged in the production, sales and trading of Aluminum foils. He stated that nowhere in the website, MH Megah

Maju Enterprises had mentioned that they were engaged in the manufacture, processing or cutting or trading of Stainless-Steel Coils, Sheets and Circles.

(x) On being asked, he had gone through his statement recorded on 10.12.2021. On 10.12.2021, he had stated that in the factory of MH Megah Maju Enterprise, 3- slitting machines were available and in the factory of Setica Industries (M) SDN BHD, one slitting machine was available and there were no other machines available in their factories. He had also stated that the slitting machine was used to slit the coils (for making coils of smaller width). On being asked, he stated that he did not know how the said suppliers manufactured/obtained the Coils and Circles supplied to him.

(xi) He was shown email dated 19.04.2021, of Ms. Zurina Abd Rahim, Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, Ministry of International Trade and Industry **(MITI, in short)**. He had gone through the email and the email was in respect of AIFTA preferential Certificates of Origin COO No. KL-2020-AI-21-89737 and in the email, she had confirmed that the said COO was not authentic and it was not issued by MITI. She further informed that MITI has never received a COO application from MH Megah Maju Enterprise. MITI had also checked with their ePCO system service provider, which had confirmed that the company was not registered as a user of their ePCO system.

(xii) He had also gone through the email dated 14.04.2021, of Ms Zurina Abd Rahim. In the email, Ms. Zurina had informed that MITI had conducted retroactive check of the Certificates of Origin (COOs) and out of 143, they had found that 87 COOs were not authentic and they were not issued by MITI. MITI had never received any COO application from the respective companies via their system. He had also gone through the list of 87 COOs attached with the email. In the list, names of MH Megah Maju Enterprise, Setica Industries (M) SDN BHD, CEKAP Prima SDN BHD, Ezy Metal Enterprise, Jentayu Industries are mentioned and these suppliers had also supplied coils and circles to CCAPL and CCA.

(xiii) He had randomly compared the details (Ref. No.) of the Certificates of Origin mentioned in the list of 87 COOs. He stated that a few of the COOs mentioned in the list like Sr. Nos. 20,21,22,23,24,25,26,27,28,29 and 87 pertained to CCA and CCAPL and he had submitted the same to the Customs for availing the benefit of the Notification No. 189/2009-Customs.

(xiv) He had gone through the Certificates of Origin in respect of the goods procured from YKP Global Trading, Malaysia. He stated that as per the said certificates, the shipper was Maly Matel Industry SDN BHD and the third party invoice was of YKP Global Trading. He stated that in the list

of 87 COOs, the name of Maly Matel Industry SDN BHD was also available. He had signed on the emails and the list shown to him.

(xv) He stated that the said certificates of origin were arranged by the agents of the suppliers of China and the agents had told him that they would provide genuine Certificates of Origin of Malaysia. He further stated that since MITI had confirmed that the Certificates of Origin of the said suppliers were not authentic and the said certificates were not issued by MITI, he accepted that the Certificates of Origin submitted by him to the Customs were fake and therefore, the imported goods were not eligible for the benefit of Notification No. 189/2009-Cus.

(xvi) He stated that CCA had imported *Non-Magnetic S.S Cold Rolled Coil Grade J3* of different sizes from Malaysia on the invoice Nos. 2018EVG018A, 2018EVG018B and 2018EVG018C of DM Aluminium & Steel Manufacturing Malaysia, vide Bills of Entry (BE) Nos. 7231835, 7431836 & 74230403 respectively. He stated that in the BE Nos. 7431836 & 74230403, he had declared that DM Aluminium & Manufacturing was the manufacturer of the coils imported by him.

(xvii) He had gone through the printouts taken from the website, namely, http://www.aluminiumsteel.com. The website was accessed on the computer and printouts were also taken in his presence. The said website was of DM Aluminium & Steel Manufacturing and the contact address was mentioned in the website as No.16, Jalan PM3, Taman Perindustrian Merdeka, 75350, Meleka, Malaysia. He had compared the address mentioned on the website with the address declared by him in the BEs/ Invoices. He accepted that the said website pertained to DM Aluminium & Steel Manufacturing on whose invoice nos. 2018EVG018A, 2018EVG018B and 2018EVG018C, he had imported the above said coils.

(xviii) He stated that in the website, DM Aluminium & Steel Manufacturing had displayed that they were manufacturers of Ball Bearing and Rollers Bearing. No other product was mentioned in their website. Nowhere in the website was it mentioned that they were also engaged in the manufacturing or processing of any type of Stainless-Steel Cold Rolled Coils. He admitted that the coils imported from Malaysia on the invoices of DM Aluminium & Steel Manufacturing, were not of Malaysia origin.

7. The M/s.CCA and M/s.CCAPL had availed the benefit of the Notification No. 46/2011-Cus dated 01.06.2011, in respect of the Cold Rolled Stainless Steel Coils and Cold Rolled Stainless Steel Circles imported by them from Malaysia and procured from MH Megah Maju Enterprise, Jentayu Industry, Setica Industries (M) SDN BHD, YKP Global Trading, CEKAP Prima SDN BHD. For claiming duty exemption, M/s.CCA and M/s.CCAPL submitted the Certificates of Origin (COO) purported to have been issued by the Ministry of International Trade and Industry, Malaysia (MITI). Few of the Certificate of Origin (COOs) pertaining to the goods supplied by the above-mentioned suppliers purported to have been issued by MITI, were forwarded to MITI for verification. The Principal

Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI, vide email dated 14.04.2021, informed, *inter alia*, that based on their assessment, **87 out of 143 copies of the COO** are not authentic and they were not issued by the MITI. The email also mentioned that MITI had never received any COO application from the respective companies via their system. The list containing the details of the said 87 COOs was also attached with the email. The COOs pertaining to M/s.CCA and M/s.CCAPL were also included in the said list.

7.1 From the above, it is evident that:

- M/s.CCA and M/s. CCAPL had imported Stainless-Steel Cold Rolled products from Malaysia under the invoices of MH Megah Maju Enterprise, Jentayu Industry, Setica Industries (M) SDN BHD, YKP Global Trading, CEKAP Prima SDN BHD, etc. and availed the benefit of the Notification No. 46/2011-Customs dated 01.06.2011.

- Shri Atul Kishore Guglani who was handling all the import related work of CCA and CCAPL claimed that there was no written contract/proforma invoice and no email communications regarding negotiations or placing of orders with any of the foreign suppliers. All the negotiations were done verbally on phone and the orders were also placed on phone. All the negotiations were done with agents, namely, Mr. Windson and Mr. Daichi. He had never communicated with the Proprietor, Director or any other employee of the above said suppliers.

- Shri Atul Kishore Guglani had visited Malaysia around 3-4 times in 2018 and 2019. He had visited the factory of MH Megah Maju Enterprise and Setica Industries (M) SDN BHD only. Shri Atul Kishore Guglani stated that in the factory of MH Megah Maju Enterprise, 3-4 slitting machines were installed and in the factory of Setica, one slitting machine was available and no other machine was available in the factory these two suppliers. The slitting machine was used for slitting the coils (reducing the width of the coil). Shri Atul Kishore Guglani accepted that none of the Malaysian suppliers (including MH Megah Maju and Setica) was having a furnace and therefore, none of them could manufacture SS Cold Rolled or Hot Rolled Coils. None of the suppliers had rolling mill for rolling of coils. Neither MH Megah Maju nor Setica had the facility to manufacture/cut circles from the coils or sheets.

- In **120 Nos. of CCOs** submitted by the CCAPL and the CCA pertaining to Setica Industries (M) SDN BHD, MH Megah Maju, MZH Maju Industry, Jentayu Industry, YKP Global Trading (Maly Matel), the Origin Criterion of the Stainless Steel Coils and Circles was mentioned as "WO". In the other COOs of the same suppliers for similar goods, i.e., SS coils & circles, the *Origin Criterion* was mentioned as *RVC 35.13%*CTSH*. Atul Kishore Guglani admitted that the stainless steel coils and circles imported by him from Malaysia were of Chinese origin and the said items did not qualify to be originating goods of Malaysia.

- Shri Atul Kishor Guglani stated that the agents used to email him the draft COOs and in case any correction was required, he used to instruct the agents for correcting the same. This fact indicates that Atul Kishore Guglani, who was well aware of the provisions of the Customs Act, Notification, Rules, Preferential Trade Agreement related notifications and Rules, was always aware that wrong and incorrect origin criterion was mentioned in the COOs submitted by him to the Customs. He admitted that the COOs submitted by him were not prepared with correct information. He also admitted that the coils and circles imported from Malaysia were of Chinese origin and he did not know about the work/processes undertaken in Malaysia.

- In the COOs pertaining to MH Megah Maju Enterprises, there is no mention of third party invoicing, which meant that MH Megah Maju Enterprises was manufacturer of the coils and circles supplied by them or had conducted some process which fulfilled the origin criterion. Atul Kishore Guglani admitted that only three slitting machines which could be used for slitting of coils for reducing their width, were available. However, the contents available on the website http://www.mhmegahmaju.com of MH Megah Maju Enterprise, suggest that MH Megah Maju Enterprise was engaged in the production, sales and trading of Aluminium foils. Atul Kishore Guglani also accepted that nowhere in the website MH Megah Maju Enterprises, it was mentioned that they were engaged in the manufacture, processing or cutting or trading of Stainless-Steel Coils, Sheets and Circles.

- Similarly, the contents available on the website http://www.aluminiumsteel.com of DM Aluminium & Steel Manufacturing indicate that they are manufacturers of Ball Bearing and Rollers Bearing. No other product was mentioned in their website. Nowhere in the website, it was mentioned that they were also engaged in manufacturing or processing of any type of Stainless-Steel Cold Rolled Coils. **Atul Kishore Guglani accepted that the said website pertained to DM Aluminium & Steel Manufacturing on whose invoice nos. 2018EVG018A, 2018EVG018B and 2018EVG018C, he had imported stainless steel coils. He admitted that the coils imported from Malaysia on the invoices of DM Aluminium & Steel Manufacturing were not of Malaysia origin.**

- **The Email dated 19.04.2021 of Ms. Zurina Abd Rahim, Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, Ministry of International Trade and Industry (MITI in short), had confirmed that MITI had never received a COO application from MH Megah Maju Enterprise. MITI had also checked with their ePCO system service provider, which confirmed that the supplier was not registered as a user of their ePCO system.**

- **Vide email dated 14.04.2021, of Ms Zurina Abd Rahim, it had been informed that MITI had conducted retroactive check of the COOs and out of 143, they found that 87 COOs were not authentic and they**

were not issued by MITI. MITI had never received any COO application from the respective companies via their system. The list of 87 COOs attached with the email was shown to Atul Kishore Guglani. In the list, names of MH Megah Maju Enterprise, MZH Maju Industry, Setica Industries (M) SDN BHD, CEKAP Prima SDN BHD, Ezy Metal Enterprise, Jentayu Industries were mentioned and these suppliers had supplied coils and circles to the CCAPL and the CCA.

- In the list of 87 COOs which MITI had confirmed to be non-authentic, various COOs submitted by CCA and CCAPL to the Customs for availing benefit of Notification No. 46/2011-Cus. dated 01.06.2011, are available.

- In the Certificates of Origin in respect of goods procured from YKP Global Trading, Malaysia, the shipper was mentioned Maly Matel Industry SDN BHD and the third-party invoice was issued by YKP Global Trading. In the list of 87 COOs, name of Maly Matel Industry SDN BHD was also available.

- Atul Kishore Guglani admitted that the Certificates of Origin were arranged by the agents of the Chinese suppliers and the agents had told him that they would provide genuine Certificates of Origin of Malaysia. He admitted that the Certificates of Origin submitted by him to the Customs were fake and the imported goods were not eligible for the benefit of Notification No. 46/2011-Cus. dated 01.06.2011.

8. M/s.CCA and M/s. CCAPL had 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 Cold Rolled Stainless Steel Coils & Circles imported from Malaysia on the invoices of Setica Industries (M) SDN BHD, MH Megah Maju, MZH Maju Industry, Jentayu Industry & YKP Global Trading (Maly Matel).**The verification report received from MITI clearly mentions that Setica Industries (M) SDN BHD, MH Megah Maju, MZH Maju Industry, Jentayu Industry, YKP Global Trading (Maly Matel Industry SDN BHD) had never applied for COOs and were not even registered in their ePCO system through which a company applies for issuance of Certificate of Origin. This clearly establishes that the COOs submitted by M/s.CCA and M/s.CCAPL to claim duty exemption under Notification No. 46/2011-Cus, were not issued by MITI and the said COOs were fake.**

9. From the above, it is apparent that Shri Atul Kishore Guglani, in connivance with their China-based suppliers & their agents, submitted fake Certificates of Origin of Malaysia and the goods claimed to be of Malaysia origin were actually of Chinese origin and the said goods did not qualify to be goods of Malaysia origin in terms of Rules 3, 5 & 6 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, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. It also appears that CCA & CCAPL/Atul Kishore Guglani were aware of the Chinese origin of the said SS Cold Rolled Coils/Circles. Atul Kishore Guglani submitted fake Certificates of Origin of Malaysia, to wrongfully claim

ineligible benefits. It, therefore, appears that M/s.CCA & M/s.CCAPL had intentionally by misstatement and suppression of facts, 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 Stainless-Steel Cold Rolled Coils imported by them from Malaysia.

10. LEGAL PROVISIONS:

10.1. *SECTION 9 of the Customs Tariff Act, 1975 provides for Countervailing duty on subsidized articles:*

(1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if –

(a) there is financial contribution by a Government, or any public body in the exporting or producing country or territory, that is, where –

(i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;

(ii) Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);

(iii) a Government provides goods or services other than general infrastructure or purchases goods;

(iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or

(b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.

10.2. *Notification No. 1/2017-Customs (CVD)* *-Whereas, in the matter of "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" (hereinafter referred to as the subject goods) falling under tariff heading 7219 or 7220 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from, People's Republic of China (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 14/18/1015-DGAD, dated the 4th July, 2017 has come to the conclusion that-*

(i) the subject goods have been exported to India from subject country at subsidised value, thus resulting in subsidisation of the product;

(ii) the domestic industry has suffered material injury due to subsidisation of the subject goods;

(iii) the material injury has been caused by the subsidised imports of the subject goods originating in or exported from the subject country, and has recommended the imposition of definitive countervailing duty on imports of the subject goods originating in, or exported, from the subject country.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, countervailing duty of an amount equivalent to the difference between the quantum of countervailing duty calculated at the rate mentioned in column (8) and anti-dumping duty payable, if any, of the said Table, namely:-

Sl. No.	**Heading**	**Description of goods**	**Country of origin**	**Country of export**	**Producer**	**Exporter**	**Duty amount as % of landed value**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**
1	7219 or 7220	Flat-rolled products of stainless steel- (Note below)	China PR	China PR	Any	Any	18.95%
2	-do	-do-	China PR	Any Country	Any	Any	18.95%
3	-do	-do-	Any Country	China PR	Any	Any	18.95%

Note: - (i) Flat Rolled Products of Stainless Steel for the purpose of the present notification implies "Flat rolled products of stainless steel, whether hot rolled or cold rolled of all grades/series; whether or not in plates, sheets, or in coil form or in any shape, of any width, of thickness 1.2mm to 10.5mm in case of hot rolled coils; 3mm to 105mm in case of hot rolled plates & sheets; and up to 6.75 mm in case of cold rolled flat products. Product scope specifically excludes razor blade grade steel".

(ii) The Anti-Dumping Duty is already in place on –

(a) Hot Rolled austenitic stainless steel flat products; whether or not plates, sheets or coils (hot rolled Annealed and pickled or Black) of rectangular shape;

of grade either ASTM 304 or 304H or 304L or 304N or 304LN or EN 1.4311, EN 1.4301, EN1.4307 or X5CRNI1810 or X04Cr19Ni9, or equivalents thereof in any other standards such as UNS, DIN, JIS, BIS, EN, etc.; whether or not with number one or Black finish; whether or not of quality prime or non-prime; whether or not of edge condition with mill edge or trim edge; of thickness in the range of 1.2mm to 10.5mm in Coils and 3mm to 105mm in Plates and Sheets; of all widths up to 1650 mm (width tolerance of +20mm for mill edge and +5mm for trim edge). Custom Notification NO. 28/2015-Customs (ADD) dated 05.06.2015;

(b) Cold Rolled Flat Products of Stainless Steel of width of 600 mm up to 1250 mm of all series not further worked than Cold rolled (cold reduced) with a thickness of up to 4 mm (width tolerance of +30 mm for Mill Edged and +4 mm for Trimmed Edged), excluding the following: -

(i) the subject goods of width beyond 1250 mm (plus tolerances); (ii) Grades AISI 420 high carbon, 443, 441, EN 1.4835, 1.4547, 1.4539, 1.4438, 1.4318, 1.4833 and EN 1.4509;

(ii) Product supplied under Indian Patent No. 223848 in respect of goods comprising Low Nickel containing Chromium-Nickel Manganese-Copper Austenitic Stainless steel and representing Grades YU 1 and YU 4, produced and supplied by M/s Yieh United Steel Corp (Yusco) of Chinese Taipei (Taiwan)Custom Notification NO. 61/2015-Customs (ADD)dated 11.12.2015.

2. The countervailing duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, "landed value" shall be the assessable value as determined under the Customs Act 1962, (52 of 1962) and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act.

10.3. In terms of Section 2(2) of the Customs Act, 1962, *"assessment" means determination of the duty liability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force, with reference to —*

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;]
(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-

assessment, re-assessment and any assessment in which the duty assessed is nil;"

10.3.1. *Section 2(14) of the Customs Act, 1962: "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;*

10.3.2. *Section 2(16) of the Customs Act, 1962: "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under Section 84.*

10.3.3. *Section 11A(a) of the Customs Act, 1962: "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*

10.4. In terms of Section 17 of the Customs Act, 1962, relating to assessment of duty, it is mandatory for the importer to self-assess the duty, and in case it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under the Act, re-assess the duty leviable on such goods.

10.5. In terms of Section 46 of the Customs Act, 1962- (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.

(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.

10.6. In terms of Section 28(4) of the Customs Act, 1962: *"Where any duty has not been levied or has been short-levied 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 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.

10.7. In terms of Section 28AA (1) of the Customs Act, 1962– *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.

10.8. In terms of Section 111(m) of the Customs Act, 1962 - *any goods which do not correspond in respect of value or in any other particulars with the entry made under this Act are liable to confiscation.*

10.9. In terms of Section 112 of the Customs Act, 1962- *Any person, -*

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

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

10.10. In terms of Section 114A of the Customs Act, 1962 - *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

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

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

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

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

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

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

(i) .....;

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

10.11. In terms of Section 114AA of the Customs Act, 1962 - *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.*

11. As per Section 46(4) of the Customs Act, 1962, it is mandatory for the importer to make a truthful declaration regarding the contents of the Bill of Entry. Also, as per Section 46(4A) of the Customs Act, 1962, it is mandatory for the importer to ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. Further, in terms of section 17 of the Customs Act, 1962, read with the definition of assessment specified under Section 2(2) ibid, it is obligatory for the importer to correctly self-assess the duty on the imported goods, with reference to the classification of the goods. It is specified that an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Customs Act, 1962. It is apparent that goods not corresponding in respect of value or in any other particular with the entry made under the Act, 1962, are liable to confiscation in terms of Section 111(m) and the consequent penalty is imposable in terms of Section 112, in the case of dutiable goods. Further, in cases where duty has not been levied on account of wilful misstatement or suppression of facts, the person liable to pay the duty determined under the provisions of Section 28 of the Customs Act, 1962, is liable to pay a penalty under Section 114A equal to the duty short paid/not paid.

11.1. In terms of Section 111(m) of the Customs Act, 1962, the goods not corresponding in respect of value or in any other particular with the entry made under the Customs Act, 1962, are liable to confiscation. Further, in terms of Section 112 of the Customs Act, 1962, penalty is liable to be imposed on the persons in relation to the goods liable to confiscation under Section 111 of the Customs Act, 1962. In this regard, it appears that CCA & CCAPL by mentioning the Notification No. 46/2011-Cus. dated 01.06.2011, in the BEs filed for import of Stainless Steel Cold Rolled Coils/Circles from Malaysia, certified that the said items qualify as originating goods of Malaysia, in terms 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, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 and eligible for duty concessions. CCA & CCAPL submitted fake Certificate of Origin purported to have been issued by MITI in order to wrongly claim the ineligible benefit of the Notification No. 46/2011-Cus. dated 01.06.2011. The above-said wilful mis-declarations and suppression of material facts, made by CCA & CCAPL, had led to short-levy of duty and therefore, it appears that CCA & CCAPL have rendered the said imported goods as detailed **in Annexures-CCA-1/CCA-2/CCA-3/CCA-4/CCA-5 & CCAPL-1/CCAPL-2/ CCAPL-3/CCAPL-4/CCAPL-5** to this notice, liable to confiscation under Section 111(m) of the Customs Act, 1962 and rendered themselves liable to penalty in terms of the Sections 112(a) and/or 114A and 114A of the Customs Act, 1962.

11.2. Shri Atul Kishore Guglani had procured goods for CCA and he was aware that the goods imported from Malaysia were of Chinese origin and the same were only routed through Malaysia to wrongly avail the benefit of the Notification No. 46/2011-Cus. He was instrumental in arranging the fake Certificates of Origin and the consequent evasion of duty by CCA by declaration of wrong COO to the Customs. With an intent to evade payment of appropriate Customs duty, he knowingly and deliberately declared /got declared incorrect origin of the goods in the BEs of CCA. It, therefore, appears that Atul Kishore Guglani, by the above said acts or omission, has rendered himself liable to penal action under Sections 112(a) and Section 114 AA of the Customs Act, 1962.

11.3. From the facts discussed hereinabove, it appears that the CCA & CCAPL were aware that the goods imported by them from Malaysia were of Chinese origin. Shri Atul Kishore Guglani, Director of the CCAPL, who used to look after all the work related to the import of goods by the CCA and the CCAPL, was aware that the said goods were only routed through Malaysia for fraudulently showing their Malaysian origin. Shri Krishan Kumar Guglani stated in his statement recorded on 31.12.2021 that the facts stated by Shri Atul Kishore Guglani would be bound on him. Shri Atul Kishore Guglani connived with their Chinese suppliers & their agents, in routing the goods from China through Malaysia and submitted fake Certificates of Origin of Malaysia. Shri Atul Kishore Guglani was aware that the goods imported by them did not qualify to be of Malaysian origin, yet in order to evade payment of Customs duty, they suppressed the China origin of the said goods and mis-declared the country of origin on the basis of the fake Certificates of Origin. They have, by way of wilful misstatement and suppression of facts, availed the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, though such benefit was not available to the goods of China origin routed through Malaysia. Thus, CCA and CCAPL had wilfully and knowingly violated the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962 and failed to discharge the obligation of proper 'self-assessment of duty' in terms of Section 17 of the Customs Act, 1962. Such wilful misstatement of material facts in the bills of entry filed by them before Customs with an intent to evade duty, justifies invocation of Section 28(4) of the Customs Act, 1962, to demand duty along with interest under Section 28AA of the Customs Act, 1962. It, therefore, appears that Shri Atul Kishore Guglani and Shri Krishan Kumar Gulgani, Directors of the CCAPL, by the above said acts or omission, has rendered themselves liable to penal action under Section 112(a) and Section 114 AA of the Customs Act, 1962.

12. From the evidence discussed hereinabove, it was evident that M/s. CCA & M/s.CCAPL did not declare the actual origin of the imported goods to the Customs and thereby, evaded Customs duty by wrongly claiming the benefit of the Notification No. 46/2011-Customs dated 01.06.2011. The duty calculation worksheets enclosed with the notice as **Annexures-CCA-1/CCA-2/CCA-3/CCA-4/CCA-5 & CCAPL-1/CCAPL-2/CCAPL-3/ CCAPL-4/CCAPL-5 pertain to CCA and CCAPL respectively**. As discussed in the paras above, the goods covered under the said BEs did not appear to qualify to be originating goods of Malaysia in terms of the Rules notified under the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. The Certificates of Origin of Malaysia pertaining to the suppliers mentioned therein are found to be fake and the Certificates of Origin appear to have been fraudulently obtained. All the said goods imported from Malaysia were of China origin and therefore, the benefit of the preferential rate of duty in terms of the Notification No. 46/2011-Cus. dated 01.06.2011, appears

to be not available to the said goods. It, therefore, appears that appropriate duty equivalent to the duty applicable on the goods of China origin imported into India from China, is payable on the said goods.

12.1. The Port/ICD wise details of goods imported by M/s. Choice Cargo Agencies and M/s. Choice Cargo Agencies Pvt. Ltd along with assessable value and **differential duty demanded is as detailed below**:

Table-1

M/s. Choice Cargo Agencies:

Name of the Port/Customs Location Code	**Bills of Entry**	**Assessable Value (INR)**	**Differential Customs Duty(INR)**
INMUN1(Mundra)	Details as per Annexure-CCA-1	9,85,23,672/-	3,32,74,474/-
INSAA1(Nhava Shava)	Details as per Annexure-CCA-2	1,16,00,784/-	39,17,941/-
ICD Loni(INLON6)	Details as per Annexure-CCA-3	6,41,68,551/-	2,16,71,693/-
ICD Dadri(INDER6)	Details as per Annexure-CCA-4	1,17,77,731/-	39,77,702/-
ICD Dadri(INST)	Details as per Annexure-CCA-5	2,46,34,856/-	83,19,948/-
Total		**21,07,05,594/-**	**7,11,61,758/-**

Table-2

M/s. Choice Cargo Agencies Pvt. Ltd.

Name of the Port/Customs Location Code	**Bills of Entry**	**Assessable Value (INR)**	**Differential Customs Duty(INR)**
INMUN1(Mundra)	Details as per Annexure-CCAPL-1	15,66,49,646/-	5,29,05,402/-
INSAA1(Nhava Shava)	Details as per Annexure-CCAPL-2	1,74,82,712/-	59,04,449/-
ICD Loni(INLON6)	Details as per Annexure-CCAPL-3	1,51,64,247/-	51,21,432/-
ICD Dadri(INDER6)	Details as per Annexure-CCAPL-4	91,72,154/-	30,97,719/-
ICD Dadri(INSTT6)	Details as per Annexure-CCAPL-5	1,12,00,217/-	37,82,658/-
Total		**20,96,68,976/-**	**7,08,11,660/-**

12.2. This SCN pertains to demand of duty involved in the goods imported through multiple ports viz. Mundra port (INMUN1), Nhava Shava (INSAA1), ICD Loni(INLON6), ICD Dadri(INDER6) and ICD Dadri(INSTT6). The Show Cause Notice was issued by the competent authority at Customs Commissionerate Mundra as per Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi being the port i.e. Mundra port (INMUN1), where highest duty is involved.

13. Therefore, **SCN GEN/ADJ/COMM/44/2023-Adjn dated 12.04.2023** was issued to **M/s. Choice Cargo Agencies (IEC-0516505050),** by **the Commissioner of Customs**, Customs House, Mundra,as to why:

i. the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia under the bills of entry detailed in Annexures-CCA-1 to CCA-5 to this notice, should not be denied;

ii. the differential duty amounting to **Rs.7,11,61,758/- (Rupees Seven Crore Eleven Lakh Sixty One Thousand Seven Hundred Fifty Eight only)** short levied/short paid on the goods covered under bills of entry, as detailed in Annexures–CCA-1 to CCA-5 to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;

iii. the goods imported under the bills of entry, as detailed in Annexure-CCA-1 to CCA-5 to this notice, valued at **Rs.21,07,05,594/-(Rupees Twenty One Crore Seven Lakh Five Thousand Five Hundred Ninety Four only)** should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

iv. Penalty should not be imposed on them under Sections 112(a) and/or 114A and 114AA of the Customs, Act, 1962;

v. **Shri Atul Kishore Guglani**, was also called upon to show cause in writing to **the Commissioner of Customs**, Customs House, Mundra, as to why penalty should not be imposed on him under Sections 112(a) and 114 AA of the Customs Act, 1962.

14. Therefore, **M/s.Choice Cargo Agencies Pvt. Ltd (IEC-AABFC9292K)**, were also issued the **SCN No. GEN/ADJ/COMM/44/2023-Adjn dated 12.04.2023** by **the Commissioner of Customs**, Customs House, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat- 370421,as to why:

i. the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia under the bills of entry detailed in Annexures-CCAPL-1 to CCAPL-5 to this notice, should not be denied;

ii. the differential duty amounting to **Rs. 7,08,11,660/- (Rupees Seven Crore Eight Lakh Eleven Thousand Six Hundred Sixty only)** short levied/short paid on the goods covered under bills of entry, as detailed in Annexures–CCAPL-1 to CCAPL-5 to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;

iii. the goods imported under the bills of entry, as detailed in Annexure-CCAPL-1 to CCAPL-5 to this notice, valued at **Rs. 20,96,68,976/- ((Rupees Twenty Crore Ninety Six Lakh Sixty Eight Thousand Nine Hundred Seventy Six only)** should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

iv. Penalty should not be imposed on them under Sections 112(a) and/or 114A and 114AA of the Customs, Act, 1962;

v. **Shri Atul Kishore Guglani**, Director of Choice Cargo Agencies Pvt. Ltd, was also called upon to show cause in writing to **the Commissioner of Customs,** Customs House, Mundra, as to why penalty should not be imposed on him under Sections 112(a) and 114 AA of the Customs Act, 1962.

vi. **Shri Krishan Kumar Guglani**, Director of M/s.Choice Cargo Agencies Pvt. Ltd., was also called upon to show cause in writing to **the Commissioner of Customs**, Customs House, Mundra, as to why penalty should not be imposed on him under Sections 112(a) and 114 AA of the Customs Act, 1962.

15. Supplementary Show Cause Notice dared 02.02.2024:

15.1. I find that investigation carried out by the DRI also revealed that CCA and CCAPL both had evaded Customs duties by way of wrongly availing the benefits of the preferential rate of duty under Notification No. 46/2011-Cus dated 01.06.2011. Therefore, Show Cause Notice (SCN) dated 12.04.2023 for duty short paid/not paid by CCA and CCAPL had been issued. On examination of the goods imported by CCA and CCAPL, it also came forth that in certain Bills of Entry (Bs/E) filed by M/s.CCA and M/s.CCAPL, Anti-Dumping duty (ADD) is leviable in terms of Notification No. 61/2015-Cus (ADD) dated 11.12.2015 as amended vide Notification No. 52/2017-Customs (ADD) dated 24.10.2017 and Notification No. 44/2020-Cus (ADD) dated 03.12.2020.

15.2. In view of the above-mentioned ADD Notifications, Anti-dumping duty @ 57.39% is leviable on the import of Cold Rolled flat products of Stainless Steel of width 600mm to 1250 mm and above 1250 mm of non-bonafide usage falling under tariff heading 7219 of the first schedule to the Customs Tariff Act, 1975, originating in or exported from the People's Republic of China and others. Countervailing Duty (CVD) is also applicable in terms of Notification No. 1/2017-Customs (CVD) @ 38.44%, which is the difference of ADD @57.39% and CVD @18.95% on the landed value as provided in the Notification No. 1/2017-Customs (CVD). For better understanding, the relevant extracts of the Notification No. 1/2017 dated 07.09.2017 is reproduced as under:

> ***Notification No. 1/2017-Customs (CVD)*** *-Whereas, in the matter of "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" (hereinafter referred to as the subject goods) falling under tariff heading 7219 or 7220 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from, People's Republic of China (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 14/18/1015-DGAD, dated the 4th July, 2017 has come to the conclusion that-*
>
> *(i) the subject goods have been exported to India from subject country at subsidised value, thus resulting in subsidisation of the product;*
>
> *(ii) the domestic industry has suffered material injury due to subsidisation of the subject goods;*
>
> *(iii) the material injury has been caused by the subsidised imports of the subject goods originating in or exported from the subject country, and has recommended the imposition of definitive countervailing duty on imports of the subject goods originating in, or exported, from the subject country.*
>
> *Now, therefore, in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs*

Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, countervailing duty of an amount equivalent to the difference between the quantum of countervailing duty calculated at the rate mentioned in column (8) and anti-dumping duty payable, if any, of the said Table, namely:-

Sl. No.	***Heading***	***Description of goods***	***Country of origin***	***Country of export***	***Producer***	***Exporter***	***Duty amount as % of landed value***
1	***2***	***3***	***4***	***5***	***6***	***7***	***8***
1	*7219 or 7220*	*Flat-rolled products of stainless steel- (Note below)*	*China PR*	*China PR*	*Any*	*Any*	*18.95%*
2	*-do*	*-do-*	*China PR*	*Any Country*	*Any*	*Any*	*18.95%*
3	*-do*	*-do-*	*Any Country*	*China PR*	*Any*	*Any*	*18.95%*

Note: - (i) Flat Rolled Products of Stainless Steel for the purpose of the present notification implies "Flat rolled products of stainless steel, whether hot rolled or cold rolled of all grades/series; whether or not in plates, sheets, or in coil form or in any shape, of any width, of thickness 1.2mm to 10.5mm in case of hot rolled coils; 3mm to 105mm in case of hot rolled plates & sheets; and up to 6.75 mm in case of cold rolled flat products. Product scope specifically excludes razor blade grade steel".

(ii) The Anti-Dumping Duty is already in place on –

(a) Hot Rolled austenitic stainless steel flat products; whether or not plates, sheets or coils (hot rolled Annealed and pickled or Black) of rectangular shape; of grade either ASTM 304 or 304H or 304L or 304N or 304LN or EN 1.4311, EN 1.4301, EN1.4307 or X5CRNI1810 or X04Cr19Ni9, or equivalents thereof in any other standards such as UNS, DIN, JIS, BIS, EN, etc.; whether or not with number one or Black finish; whether or not of quality prime or non-prime; whether or not of edge condition with mill edge or trim edge; of thickness in the range of 1.2mm to 10.5mm in Coils and 3mm to 105mm in Plates and Sheets; of all widths up to 1650 mm (width tolerance of +20mm for mill edge and +5mm for trim edge). Custom Notification NO. 28/2015-Customs (ADD) dated 05.06.2015;

(b) Cold Rolled Flat Products of Stainless Steel of width of 600 mm up to 1250 mm of all series not further worked than Cold rolled (cold reduced) with a thickness of up to 4 mm (width tolerance of +30 mm for Mill Edged and +4 mm for Trimmed Edged), excluding the following: -

(i) the subject goods of width beyond 1250 mm (plus tolerances); (ii) Grades AISI 420 high carbon, 443, 441, EN 1.4835, 1.4547, 1.4539, 1.4438, 1.4318, 1.4833 and EN 1.4509;

(ii) Product supplied under Indian Patent No. 223848 in respect of goods comprising Low Nickel containing Chromium-Nickel Manganese-Copper Austenitic Stainless steel and representing Grades YU 1 and YU 4, produced and supplied by M/s Yieh United Steel Corp (Yusco) of Chinese Taipei (Taiwan)Custom Notification NO. 61/2015-Customs (ADD)dated 11.12.2015.

2. The countervailing duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, "landed value" shall be the assessable value as determined under the Customs Act 1962, (52 of 1962) and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act.

15.3. This supplementary Show Cause Notice was issued for the goods imported by M/s.CCA and M/s.CCAPL, for such Bills of Entry wherein the applicable Anti-Dumping duty and CVD were not demanded in the SCN dated 12.04.2023. The detailed facts of the case and investigation findings have already been discussed in the SCN dated 12.04.2023 and the same were not discussed again for the sake of brevity. In view of the above, the port/ICD wise differential duty has been calculated in respect of M/s.CCA and M/s.CCAPL and the extract of the duty chart is tabulated below:

TABLE-3

M/s Choice Cargo Agencies:

Sr. No.	**Port of Import**	**Duty Annexures**	**Differential Duty (INR)**
1	INMUN1	CCA-1(Mundra)	2,28,35,380/-
2	INNSA1	CCA-2(Nhava Sheva)	63,37,037/-
3	INDER6	CCA-4(Dadri)	25,75,664/-
		Total	**3,17,48,081/-**

TABLE-4

M/s Choice Cargo Agencies Pvt. Ltd:

Sr. No.	**Port of Import**	**Duty Annexures**	**Differential Duty (INR)**
1	INMUN1	CCAPL-1(Mundra)	1,49,50,712/-
2	INNSA1	CCAPL-2(Nhava Sheva)	37,39,857/-
3	INDER6	CCAPL-4(Dadri)	30,80,291/-
4	INSTT6	CCAPL-59(Dadri)	21,64,982/-
		Total	**2,39,35,842/-**

15.4. Therefore, in terms of CBIC Notification No. 28/2022-Customs (N.T) dated 31.03.2022, a **Supplementary Show Cause Notice bearing F.No. GEN/ADJ/COMM/44/2023-Adjn dated 02.02.2024** was issued by **the Commissioner of Customs** to **M/s.Choice Cargo Agencies (IEC-0516505050) (i.e. CCA)**, through its Proprietor **Shri Krishan Kumar Guglani**, as to why:

i. the differential duty amounting to **Rs. 3,17,48,081/- *(Rupees Three Crore Seventeen Lakh Forty-Eight Thousand Eighty-One only)*** short levied/short paid on the goods covered under bills of entry, as detailed in Annexures-CCA-1(Mundra)/CCA-2(Nhava Sheva)/CCA-4(Dadri) to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

ii. Penalty should not be imposed on **M/s.CCA** under Sections 112(a) and/or 114A and 114AA of the Customs, Act, 1962;

iii. Penalty should not be imposed on **Shri Atul Kishore Guglani** under Sections 112(a) and 114 AA of the Customs Act, 1962.

15.5. The said Supplementary Show Cause Notice dated 02.02.2024 was also issued the **Commissioner of Customs**, Customs Mundra, Mundra **to M/s.Choice Cargo Agencies Pvt. Ltd (IEC-AABFC9292K) (i.e. CCAPL)**, to as to why:

i. the differential duty amounting to **Rs. 2,39,35,842/-*(Rupees Two Crore Thirty-Nine Lakh Thirty-Five Thousand Eight Hundred Forty-Two only)*** short levied/short paid on the goods covered under bills of entry, as detailed in Annexure–CCAPL-1(Mundra)/CCAPL-2(Nhava Sheva)/CCAPL-4(Dadri)/CCAPL-5(Dadri) to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;

ii. Penalty should not be imposed on **M/s.CCAPL** under Sections 112(a) and/or114A and 114AA of the Customs, Act, 1962;

iii. Penalty should not be imposed on **Shri Atul Kishore Guglani**, Director of Choice Cargo Agencies Pvt. Ltd under Sections 112(a) and 114 AA of the Customs Act, 1962;

iv. penalty should not be imposed on **Shri Krishan Kumar Guglani**, Director of Choice Cargo Agencies Pvt. Ltd under Sections 112(a) and 114 AA of the Customs Act, 1962.

16. SUBMISSION OF THE NOTICEES AGAINST THE INSTANT SCN:

16.1. I find that the noticees i.e. M/s CCA, M/s. CCAPL, Shri Atul Kishore Guglani-Director of M/s.CCAPL and Shri Krishna Kumar Guglani-Director of M/s. CCAPL did not make any submission against the impugned Show Cause Notice (SCN in short).

17. PERSONAL HEARING:-

Following the principal of natural justice, Personal hearing in the matter was granted to all the noticees on 26.07.2023, 23.08.2023 and 28.02.2024. Details of the PH are as under:

(i) **1st Personal Hearing (P.H.) was granted on 26.07.2023:** All the noticees through their advocate submitted letter dated 26.07.2023 in email wherein they requested to provide all the Relied upon documents and requested to fix PH after four weeks of supply of said documents so as to file detailed reply in the matter.

(2) **2nd Personal Hearing (P.H.) was granted on 23.08.2023.** All the noticees through their advocate submitted letter dated 22.08.2023 in email wherein they requested for three months' time to file reply to the SCN since Noticee No. (3) i.e. Shri Atul Kishore Guglani had undergone medical surgery.

(3) **3rd Personal Hearing (P.H.) was granted on 28.02.2024.** All the noticees through their advocate submitted letter 27.02.2024 in email requesting for six weeks' time and stated that their counsel who was handling the matter had gone on leave and could not be contacted. Therefore, they requested to fix next PH after 6 weeks.

18. DISCUSSION AND FINDINGS:

18.1. I have carefully gone through both the impugned **Show Cause Notices dated 12.04.2023 and 02.02.2024 respectively and both bearing F. No.GEN/ADJ/COMM/44/2023-Adjn** issued by the Commissioner of Customs, Custom House, Mundra, relied upon documents, legal provisions and the records available before me. The main issues involved in the case which are to be decided in the present adjudication are as below:

i. Whether the benefit of the **Notification No. 46/2011-Cus. dated 01.06.2011**, as amended, on the goods of Chinese origin imported from Malaysia under the bills of entry detailed in Annexures to the impugned notice, should not be denied to M/s.CCA and M/s. CCAPL or otherwise;

ii. Whether the differential duty amounting to **Rs.10,29,09,839/-** ***(Rs.7,11,61,758/- + Rs. 3,17,48,081/-)*** *(Rupees Ten Crore Twenty Nine Lakh Nine Thousand Eight Hundred Thirty Nine only)* short levied/short paid on the goods covered under subject bills of entry filed by **M/s. CCA** should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest as proposed vide impugned SCN or otherwise;

iii. Whether the goods imported under subject bills of entry (as detailed in Annexure-CCA-1 to CCA-5 to impugned SCN) filed by **M/s. CCA**, valued at **Rs.21,07,05,594/-***(Rupees Twenty One Crore Seven Lakh Five Thousand Five Hundred Ninety Four only)* should be held liable to confiscation under Section 111(m) of the Customs Act, 1962, or otherwise;

iv. Whether the differential duty amounting to **Rs.9,47,47,502/-** ***(Rs.7,08,11,660/- + Rs. 2,39,35,842/-)*** *(Rupees Nine Crore Forty-Seven Lakh Forty Seven Thousand Five Hundred Two only)* short levied/short paid on the goods covered under bills of entry filed by **M/s. CCAPL**; should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest as proposed vide impugned SCN or otherwise;

v. Whether the goods imported under subject bills of entry (as detailed in Annexure-CCAPL-1 to CCAPL-5 to impugned SCN), filed by **M/s. CCAPL**, valued at **Rs. 20,96,68,976/-***(Rupees Twenty Crore Ninety Six Lakh Sixty Eight Thousand Nine Hundred Seventy Six only)* should be held liable to confiscation under Section 111(m) of the Customs Act, 1962, or otherwise;

vi. Whether Penalty should be imposed upon noticees as proposed in the impugned SCN or otherwise;

18.2. I observe that Personal Hearings in case of both the Show Cause Notices i.e. **SCN dated 12.04.2023** and **supplementary SCN dated 02.02.2024** both bearing F.No. GEN/ADJ/COMM/44/2023-Adjn; were scheduled on three occasions i.e. 26.07.2023, 23.08.2023 and 28.02.2024 in order to provide natural justice to all the noticees; however, no one appeared for PH on aforementioned dates. The noticees through their advocates requested for adjournment of PH for various reasons, which was granted to them. Nonetheless vide their last email dated 27.02.2024 they requested for adjournment for further six weeks' time, which is not feasible to grant since the adjudication is a time bound process which cannot be kept pending for long. Hence, I find that principles of natural justice have been duly followed since sufficient opportunities have been granted to all the noticees to defend their case. Therefore, the instant case is taken up for adjudication based on material facts, provisions of law and documents available on records.

I observe that the Section 122 A of the Customs Act, 1962 ('the Act' in short) provides that adjudicating authority shall not grant adjournment more than three time, to the noticees during the proceeding. Section 122A of the Act is reproduced hereunder:

> *122A. Adjudication procedure.*
>
> *(1)The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.*
>
> *(2)The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:*
>
> ***Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]***
>
> **Emphasis supplied**

18.3. I find that the importer M/s.CCA and M/s.CCAPL had imported Cold Rolled Stainless Steel Coils and Circles by availing the benefit of concessional/preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 (as amended from time to time), however, benefit of Notification No. 46/2011-Customs is available provided that the goods are of Malaysian Origin in accordance with provision 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 vide Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. As per the said Rules, the "Certificate of Origin" is required to be issued by the designated authority and in case of goods not wholly produced or obtained products in Malaysia, the AIFTA (ASEAN-India Free Trade Area) content should not be less than 35% of the content.

18.4. I find that that documentary evidences on records, and statements dated 10.12.2021 and 22.02.2022 of Shri Atul Kishore Guglani, Director of

M/s. CCAPL, statement dated 31.12.2021 of Shri Krishan Kumar Guglani, Proprietor of M/s. CCA revealed that:

(i) Shri Krishan Kumar Guglani was looking after the transportation business of M/s.CCAPL and his cousin Shri Atul Kishore Guglani looked after all the work related to the import of goods by M/s.CCA and M/s.CCAPL. Shri Atul Kishore Guglani was a G Card Holder and handled the Custom clearance work in CCAPL.

(ii) that for the Stainless-Steel Cold Rolled products imported from Malaysia and they had availed the benefit of the Notification No. 46/2011-Cus dated 01.06.2011, and that they were aware of the fact that in case the subject goods were not wholly obtained in the exporting country, the benefit of the Notification No. 46/2011-Cus was available to the goods in which Regional Value Content (RVC) was not less than 35% and there was change in HS classification at 6 digit level.

(iii) that none of the suppliers of Malaysia (including MH Megah Maju Enterprise and Setica Industries (M) SDN BHD) was having a furnace and therefore, none of them could manufacture the SS Cold Rolled or Hot Rolled Coils. They also accepted that none of the suppliers had a rolling mill for rolling of coils. Neither MH Megah Maju nor Setica had facility to manufacture/cut Circles from the Coils or Sheets.

(iv) that **59 COOs** of Malaysia in respect of Setica Industries (M) SDN BHD, MH Megah Maju, Jentayu, YKP Global Trading (Maly Matel), Ben Trading & Services, in which *Origin Criterion* was mentioned *WO,* were in fact prepared with incorrect information, since none of the said suppliers had manufactured the SS Cold Rolled Coils and Circles supplied by them to M/s.CCAPL.

(v) With regards the *Origin Criterion*, for example 'RVC 36% + CTSH' mentioned in the COO in respect of Cold Rolled Stainless Steel Circles supplied by CEKAP Prima SDN BHD; *'RVC 35.13% + CTSH'* mentioned in the COO pertaining to Cold Rolled Coils supplied by Setica under invoice no. 19LRKT0318-9-10, they stated that all the Coils and Circles were of China origin but they did not know what processes were undertaken in Malaysia.

(vi) It is accepted by **Shri Atul Kishore Guglani, Director of M/s.CCAPL in his statement dated 22.02.2022 that the 61 Certificates of Origin wherein Certificates of Origin, "WO" was mentioned as origin criterion pertained to SS Coils and Circles; as detailed in Chart-1 of his statement, were not prepared with correct and true information.**

(vii) That email dated 14.04.2021, of Ms Zurina Abd Rahim, the Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, Ministry of International Trade and Industry (MITI, in short), disclosed that MITI had conducted retroactive check of the Certificates of Origin (i.e. COOs) and **out of 143, they had found that 87 COOs were not authentic and they were not issued by MITI.** It was also unearthed that the MITI had never received any COO application from the respective companies via their system. He had also gone through the list of 87 COOs attached with the email wherein names of MH Megah Maju Enterprise, Setica Industries (M) SDN BHD, CEKAP

Prima SDN BHD, Ezy Metal Enterprise, Jentayu Industries are mentioned and these suppliers had also supplied coils and circles to M/s.CCAPL and M/s.CCA.

(viii) That the email dated 19.04.2021, of MITI confirmed that the COO No. KL-2020-AI-21-89737 was not authentic and it was not issued by MITI. Vide the said email it was also informed that MITI has never received a COO application from MH Megah Maju Enterprise, and that the company was not registered as a user of MITI ePCO system.

(ix) that in the website of his supplier MH Megah Maju Enterprise it was nowhere mentioned that they were engaged in the manufacture, processing or cutting or trading of Stainless-Steel Coils, Sheets and Circles

(x) **that Shri Atul Kishore Guglani, Director of M/s.CCAPL**, in his statement **dated 22.02.2022 stated that since MITI had confirmed that the Certificates of Origin of the said suppliers were not authentic and the said certificates were not issued by MITI, he accepted that the Certificates of Origin submitted by him to the Customs were fake and therefore, the imported goods were not eligible for the benefit of Notification No. 189/2009-Cus.**

(xi) that M/s.CCA had imported on the invoice Nos. 2018EVG018A, 2018EVG018B and 2018EVG018C of DM Aluminium & Steel Manufacturing Malaysia, vide Bills of Entry (BE) Nos. 7231835, 7431836 & 74230403 respectively. He stated that in the BE Nos. 7431836 & 74230403, vide they had imported the *Non-Magnetic S.S Cold Rolled Coil Grade J3* of different sizes from Malaysia and declared DM Aluminium & Manufacturing as the manufacturer of the coils imported by them. However, the website (http://www.aluminiumsteel.com) of DM Aluminium & Steel Manufacturing displayed to engage in manufacturing of Ball Bearing and Rollers Bearing and no other product. Nowhere in the website was it mentioned that they were also engaged in the manufacturing or processing of any type of Stainless-Steel Cold Rolled Coils. **He admitted that the coils imported from Malaysia on the invoices of DM Aluminium & Steel Manufacturing, were not of Malaysia origin.**

(xii) That 120 CCOs submitted by CCAPL and CCA pertaining to Setica Industries (M) SDN BHD, MH Megah Maju, MZH Maju Industry, Jentayu Industry, YKP Global Trading (Maly Matel), the Origin Criterion of the Stainless Steel Coils and Circles was mentioned as "WO". In the other COOs of the same suppliers for similar goods, i.e., SS coils & circles, the *Origin Criterion* was mentioned as *RVC 35.13%*CTSH*. Shri Atul Kishore Guglani admitted that the stainless steel coils and circles imported by him from Malaysia were of Chinese origin and the said items did not qualify to be originating goods of Malaysia.

(xiii) That Shri Atul Kishore Guglani admitted in his statement that the Certificates of Origin were arranged by the agents of the Chinese suppliers and the agents had told him that they would provide genuine Certificates of Origin of Malaysia. He admitted that the Certificates of Origin submitted by him to the Customs were fake and the imported goods were not eligible for the benefit of Notification No. 46/2011-Cus. dated 01.06.2011.

18.5. I find that the only core issue in the instant issue is of eligibility of benefit of Notification No.46/2011-Cus dated 01.06.2011 which depends upon the authenticity of Certificates of Origin. The benefit under Notification No. 46/2011-Customs dated 01.06.2011 is available provided that the goods are imported into the Republic of India from a country listed in Appendix I of the said Notification (Malaysia is one of countries falling under Appendix-I) in accordance with the provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 published in Notification No. 189/2009-Customs (N.T.), dated 31.12.2009. The Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the ASEAN and the Republic of India states that AIFTA Certificate of Origin shall be issued by the Government authorities (Issuing Authority) of the exporting party and in case of goods not wholly produced or obtained products in Member States of the ASEAN (in instant case Malaysia), the AIFTA content is not less than 35% of the FOB value.

18.6. I find that Rule 13 of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules,2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.) reads as under:

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

Therefore, Rule 13 of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009, clearly stipulates that for any product claiming benefit of preferential tariff, it should be supported by Certificate of origin as prescribed in the rules.

19. REJECTION OF CERTIFICATES OF ORIGIN OF THE IMPUGNED IMPORTS:

19.1. I find that in the instant case the importers have imported *'Cold Rolled Stainless-Steel Coils and Circles'* from Malaysia and declared to be of Malaysian origin, which were infact of Chinese origin and were routed through Malaysia to wrongly avail the benefit of preferential duty in terms of Notification No. 46/2011-Customs dated 01.06.2011. In order to avail such wrong benefit of the said notification the importers resorted to producing fake/ forged COOs. The key managerial persons of the importers in their respective statements have accepted that COOs submitted by them were fake, and the same fact has been corroborated by the emails of MITI as discussed in forgoing paras.

19.2. I find that importers have wrongly availed benefit of concessional rate of Customs duty by way of wrong claiming benefit of Notification No. 46/2011-Customs dated 01.06.2011. The importer have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had mis-declared Country of origin as 'Malaysia' in the declaration in the form of Bills of Entry filed under the provision of Section 46(4) of the Customs Act, 1962 and thereby wrongly availed country of origin benefit to evade the duties of Customs.

19.3. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer; and that the exemption notifications are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.

- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that palin language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.

- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.

- The constitutional bench dated July 30, 2018 of Hon'ble Supreme Court of India in the case of **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ...APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007)** held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation.

Relevant Para the said judgement is reproduced hereunder;

> *"41.After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statue including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."*

19.4. I observe that under a trade agreement, duty concessions are required to be extended only to such imported goods which are 'made in' the exporting country. Each Trade Agreement contains a set of rules of origin, which prescribe the criteria that must be fulfilled for goods to attain 'originating status' in the exporting country. Such criteria are generally based on factors such as domestic value addition and substantial transformation in the course of manufacturing/processing. The goods imported under a trade agreement are

required to be covered under a 'Certificate of Origin' (COO) issued by the designated authority of the exporting country. The COO contains details of goods covered and originating criterion fulfilled. Misuse of trade agreements not only causes loss to the exchequer but also places the domestic industry at an unfair disadvantage. In the instant case, I find that the importer has violated the basic requirement of a valid 'Certificate of Origin' in order to avail benefit of Notification No. 46/2011-Customs, dated 01.06.2011.

19.5. I find that the instant case is of wilful mis-statement and suppression of facts of correct qualifying Regional Value Content (RVC) of 35% to mis-state the country of origin and thus I hold that the importer is ineligible to avail exemption under Notification No. 46/2011-Customs dated 01.06.2011.

20. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962

20.1. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

> *"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*
>
> *(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*
>
> *(a) collusion; or*
>
> *(b) any wilful mis-statement; or*
>
> *(c) suppression of facts."*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."*

20.2. I observe that in terms of Section 28AA (1) of the Customs Act, 1962 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. Therefore, interest at the appropriate rate also recoverable from M/s. CCA and M/s. CCAPL.

20.3. I find it pertinent to discuss assessment of impugned Bills of Entry filed by the importer to import the impugned goods and wrongly availing the benefit of Notification No. 46/2011- Customs dated 01.06.2011 impugned goods by resorting to fake country of origin certificates and Regional Value Content (i.e. RVC). Further, in terms of section 17 of the Customs Act, 1962, read with the definition of assessment specified under Section 2(2) ibid, it is obligatory for the importer to correctly self-assess the duty on the imported goods, with reference to the classification of the goods. It is specified that an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Customs Act, 1962. I find that the importers have intentionally resorted to wilful mis-statement of actual country of origin and deliberately suppressed the facts of correct qualifying Regional Value Content (RVC). Therefore, it is not relevant whether the impugned goods were assessed by the assessing officer. I observe that Section 28 of the Customs Act, 1962 does

not differentiate or debar demand in case of deliberate suppression of the facts from the department. I find that the importer by way of such intentional misstatement and suppression of facts, 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 Cold Rolled Stainless Steel Coils imported by them under subject Bills of Entry. Further, the importer did not pay the anti-dumping duty under Notification No. 61/2015-Customs (ADD) dated 11.12.2015 and CVD under Notification No. 01/2017-Customs (CVD) dated 07.09.2017 on the imported goods, either.**

20.4. Therefore, total demand of differential duty recoverable in respect of SCN dated 12.04.2023 and SCN dated 02.02.2024, is as under:

Table-5

Sr. No.	**Demand of diff. Duty recoverable vide SCN dtd. 12.04.2023.**	**Demand of diff. Duty recoverable vide SCN dtd. 02.02.2024.**	**Total diff. Duty recoverable in respect to SCN 02.02.2024**
1	**Rs.7,11,61,758/-** proposed to be recovered from M/s. CCA.	**Rs. 3,17,48,081/-** proposed to be recovered from M/s. CCA.	**Rs. 10,29,09,839/-** recoverable from M/s.CCA.
2	**Rs. 7,08,11,660/-** proposed to be recovered from M/s. CCAPL.	**Rs. 2,39,35,842/-** proposed to be recovered from M/s. CCAPL.	**Rs. 9,47,47,502/-** *recoverable from* M/s. CCAPL.

20.5. I find that sufficient opportunities were provided by way of granting personal hearing to all the noticees to defend their case and produce evidences in their defense but none of the noticees appeared before me. Therefore, it is reasonable to believe that they did not have substantive evidence to rebut charges framed against them by the investigating agency. I find it pertinent to mention that the burden of proof with respect of rebuttal of the charges made by the Revenue lies on the person on whom the charges have been leveled. This principle has been aptly explained in the case of **M/s Satish Mohan Agarwal reported at 2016 (336) ELT 562 (T)** wherein it has been observed as under:

> *"Enactments like Customs Act, 1962 and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellant, was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained undischarged by appellant."*

21. I find that the statements of Key managerial persons of M/s. CCA and M/s. CCAPL recorded under Section 108 of the Customs Act, 1962 have merit of substantive evidence in proving the act of contravention. Reliance is placed on

the following judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

- The Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement- and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur {2000(117} E.L.T. 515(Tri)**}- wherein Hon'ble Tribunal held that— 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

22. In view of above discussion, I find that extended period under proviso to Section 28(4) of the Customs Act, 1962 is rightly invokable in the instant case. Accordingly; the total differential Customs duty of **Rs.10,29,09,839/-** ***(Rs.7,11,61,758/- + Rs. 3,17,48,081/-)*** is recoverable from **M/s. CCA** which is short levied/short paid on the goods covered under subject bills of entry filed by them; and differential duty amounting to **Rs.9,47,47,502/-** ***(Rs.7,08,11,660/- + Rs.2,39,35,842/-)*** is recoverable from **M/s. CCAPL** which is short levied/short paid on the goods covered under bills of entry filed by them; as detailed vide Annexures attached to the impugned SCNs, in terms of Section 28(4) of the Customs Act, 1962 along with the interest at the appropriate rate thereon under Section 28AA of the Customs Act, 1962 and applicable penalty and benefit of concessional rate of duty is denied based upon the country of origin of imported impugned goods.

23. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:

(i). I find that it is alleged in the subject SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The

relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

> *" (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;"*

(ii). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods, imported by way of misclassification, will be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately misclassified the imported goods with a malafide intention to evade duty. Further they also failed to submit the correct Country of Origin Certificates prerequisite to avail the benefit of Notification No. 46/2011-Customs dated 01.06.2011. In light of these acts of mis-classification of goods, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962. I hold so.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid reads as under:-

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

(iv) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

(v). As regards applicability of Section 111(m) of the Customs Act, I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330,** the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripa Ispat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any ground to hold.

(vi). In this regard, I find that the impugned goods were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A of the Customs Act covering recovery of redemption fine is available. **I, therefore, find that redemption fine cannot be imposed in respect of subject imported goods.**

24. NOW I PROCEED TO EXAMINE THE ROLES OF THE NOTICEES IN THIS ELABORATE SCHEME TO WRONGLY AVAIL THE BENEFIT OF SAID NOTIFICATION WITH INTENT TO DEFRAUD THE GOVERNMENT EXCHEQUER.

24.1. ROLE PLAYED BY M/s. CCA:

(i). M/s. CCA had procured 'Cold Rolled Stainless-Steel Coils and Circles', declared to be of Malaysian origin, were in facts, of Chinese origin and were routed through Malaysian to wrongly avail the benefit of preferential duty. The importer deliberately and with intent to evade the payment of duty wrongly availed the benefit of the Notification No. 46/2011-Customs dated 01.06.2011. **They did not pay applicable Anti-dumping duty and CVD as stated above.** They submitted fake Certificates of Origin (COO) and other import documents to the Customs. **Therefore, they have, by way of wilful misstatement and suppression of facts, availed the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, though such benefit was not available to the goods of Chinese origin routed through Malaysia.** Thus, M/s CCA had wilfully with intention to evade duties of Customs, violated the provisions of Sections 46(4) and Section 46(A) of the Customs Act, 1962 and failed to discharge the obligation of proper 'self-assessment of duty' in terms of Section 17 of the Customs Act, 1962.

(ii). M/s CCA had imported Cold Rolled Stainless Steel coils under the following Bills of entry. By way of submitted the fake Country of Origin Certificates, the importer has evaded the following duties in following Bills of entry:

- **For Bills of Entry as detailed vide Annexures-CCA-1(Mundra), CCA-2 (Nhava Sheva), CCA-3(Loni), CCA-4 (Dadri-INDER6) and CCA-5(Dadri-INST), to the impugned SCNs:**
  - Did not pay Basic Custom Duty by way of wrong availment of benefit of Notification No. 46/2011-Customs dated 01.06.2011;
  - Did not pay Anti-Dumping Duty as applicable vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 as amended and CVD as applicable vide Notification number 01/2017-Customs (CVD) dated 07.09.2017 as amended;

In terms of Notification No.1/2017-Customs (CVD) dated 07.09.2017 and Notification No. 61/2015-Cus (ADD) dated 11.12.2015, as amended, the Countervailing duty (CVD) at the rate i.e. 38.44%, which is the difference of Anti-dumping duty @ 57.39% and CVD @ 18.95%, on the 'landed values', as defined under the said notifications and Anti-dumping duty @ 57.39% are payable by M/s CCA. **Thus, in respect of subject Bills of Entry filed by M/s CCA differential duty recoverable from them to the tune of Rs.10,29,09,839/- *(Rs.7,11,61,758/- + Rs. 3,17,48,081/-)*** (as detailed vide Table-5 hereinabove, and calculated vide Annexures to impugned SCNs).

24.2. ROLE PLAYED BY M/s. CCAPL:

(i). M/s. CCAPL had also procured 'Cold Rolled Stainless-Steel Coils and Circles', declared to be of Malaysian origin, were in facts, of Chinese origin and were routed through Malaysian to wrongly avail the benefit of preferential duty. The importer deliberately and with intent to evade the payment of duty wrongly availed the benefit of the Notification No. 46/2011-Customs dated 01.06.2011. **They did not pay applicable Anti-dumping duty and CVD as stated above.** Thus, M/s. CCAPL had also wilfully with intention to evade duties of Customs, violated the provisions of Sections 46(4) and Section 46(A) of the Customs Act, 1962 and failed to discharge the obligation of proper 'self-assessment of duty' in terms of Section 17 of the Customs Act, 1962.

(ii). M/s CCAPL had imported Cold Rolled Stainless Steel coils under the following Bills of entry. By way of submitted the fake Country of Origin Certificates, the importer has evaded the following duties in following Bills of entry:

- **For Bills of Entry as detailed vide Annexures-CCAPL-1(Mundra), CCAPL-2 (Nhava Sheva), CCAPL-3 (INLON6), CCAPL-4 (Dadri-INDER6) and CCAPL-5 (Dadri-INSTT6), to the impugned SCNs:**
  - Did not pay Basic Custom Duty by way of wrong availment of benefit of Notification No. 46/2011-Customs dated 01.06.2011;
  - Did not pay Anti-Dumping Duty as applicable vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 as amended and CVD as applicable vide Notification number 01/2017-Customs (CVD) dated 07.09.2017 as amended;

In terms of Notification No.1/2017-Customs (CVD) dated 07.09.2017 and Notification No. 61/2015-Cus (ADD) dated 11.12.2015, as amended, the Countervailing duty (CVD) and CVD, as defined under the said notifications and Anti-dumping duty are payable by M/s CCAPL. **Thus, in respect of subject Bills of Entry filed by M/s CCAPL differential duty recoverable from them to the tune of Rs.9,47,47,502/- *(Rs.7,08,11,660/- + Rs. 2,39,35,842/-)*** (as detailed vide Table-5 hereinabove, and calculated vide Annexures to impugned SCNs).

25. In light of these acts of submitting fake Certificates of Origin to the Customs authorities, I find that M/s CCA and M/s. CCAPL had evaded duties of Customs by way of wrongly availing the benefit of Notification No. 46/2011 dated 01.06.2011 on the strength of fake COOs, thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the said duties of Customs were evaded by reason of wilful mis-statement and suppression of facts with a malafide intention. All the aforesaid acts of omission and commission on the part of M/s CCA have rendered the subject goods imported under the bills of entry, *as detailed in Annexure-CCA-1 to CCA-5 to impugned notices, valued at* **Rs.21,07,05,594/-** liable for confiscation under Section 111(m) of the Customs Act, 1962. Similarly, the aforesaid acts of omission and commission on the part of M/s. CCAPL have rendered the subject goods imported under the bills of entry, *as detailed in Annexure-CCAPL-1 to CCAPL-5 to impugned notices, valued at* **Rs.20,96,68,976/-** liable for confiscation under Section 111(m)of the Customs Act, 1962. M/s CCA and M/s. CCAPL are therefore liable to penalty under Section 112(a) and Section 114A of the Customs Act, 1962. In the present case, it is also evident that M/s CCA and M/s. CCAPL have knowingly and intentionally used fake Certificates of Origin, to the officers of the Customs. Therefore M/s. CCA and M/s. CCAPL have

rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 also.

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

(ii). I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable.

(iii). I observe that Section 112 (a) (ii) provides that penalty not exceeding ten percent of the duty or five thousand rupees, higher of either, is leviable in case of improper importation of dutiable goods

112. Penalty for improper importation of goods, etc.
- Any person,-

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

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

(iii) ...

(iv) ...

(v) ...

(iv) However, I find that there is a mandatory provision of penalty under Section 114A of customs act, 1962 where duty is determined under section 28 of customs act, 1962. **Therefore, I refrain from imposing penalty upon M/s. CCA and M/s. CCAPL under Section 112(a) of Customs Act, 1962. I hold so.**

25.1. ROLE PLAYED BY SHRI ATUL KISHORE GUGLANI AND SHRI KRISHAN KUMAR GUGLANI, BOTH THE DIRECTORS OF M/S. CCAPL:

(i) Shri Atul Kishore Guglani had procured goods for M/s.CCAPL and he was aware that the goods imported from Malaysia were of Chinese origin and the same were only routed through Malaysia to wrongly avail the benefit of the Notification No. 46/2011-Customs dated 01.06.2011. He was instrumental in arranging the fake Certificates of Origin and the consequent evasion of duty by M/s.CCAPL by declaration of wrong COO to the Customs. With an intent to evade payment of appropriate Customs duty, he knowingly and deliberately declared /got declared incorrect origin of the goods in the BEs of M/s.CCAPL. It, therefore,

appears that Atul Kishore Guglani, by the above said acts or omission, has rendered himself liable to penal action under Section 112(a) and Section 114 AA of the Customs Act, 1962.

(ii) Shri Krishan Kumar Guglani in his statement stated that hhe was the proprietor of M/s.CCAPL, which was engaged in transportation, import and trading of goods. He stated that he and his cousin Shri Atul Kishore Guglani were the Directors of M/s. CCAPL which was mainly engaged in the transportation of goods in containers. Therefore, the acts of omissions and commission on part of Shri Krishan Kumar Guglani in the instant scheme of evading the duties of Customs by way of wrong availment of the benefit of the Notification No. 46/2011-Customs dated 01.06.2011 on the strength of fake COOs, have rendered him liable to penal action under Section 112(a) and Section 114 AA of the Customs Act, 1962.

26. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

ORDER

i. I reject the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported by **M/s CCA** which were routed through Malaysia under bills of entry detailed in Annexures-CCA-1 to CCA-5 to impugned notices.

ii. I reject the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported by **M/s. CCAPL** which were routed through Malaysia under bills of entry as detailed in Annexures–CCAPL-1 to CCAPL-5 to impugned Notices.

iii. I order to confiscate the impugned imported goods valued at, valued at **Rs.21,07,05,594/- (Rupees Twenty One Crore Seven Lakhs Five Thousand Five Hundred Ninety Four only)** imported by M/s. CCA under Bills of Entry as detailed vide Annexure-CCA-1 to CCA-5 to impugned notices;under the provisions of Section 111(m) of the Customs Act, 1962; however the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.

iv. I order to confiscate the impugned imported goods valued at, valued at **Rs.20,96,68,976/- (Rupees Twenty Crore Ninety Six Lakhs Sixty Eight Thousand Nine Hundred Seventy Six only)**imported by **M/s. CCAPL** under Bills of Entry as detailed vide Annexure-CCAPL-1 to CCAPL-5 to impugned notices; under the provisions of Section 111(m) of the Customs Act, 1962; however the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.

v. I confirm the demand of differential duty amounting to **Rs.10,29,09,839/- (Rupees Ten Crore Twenty Nine Lakhs Nine Thousand Eight Hundred Thirty Nine only)** *(Rs.7,11,61,758/- vide SCN dated 12.04.2023+ Rs. 3,17,48,081/- vide SCN dated 02.02.2024)* (as detailed in Annexures to subject Notices) and order to recover the same from **M/s CCA** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962.

vi. I order to recover the interest from M/s CCA at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty as mentioned at (v) above;

vii. I confirm the demand of differential duty amounting to **Rs.9,47,47,502/- (Rupees Nine Crore Forty-Seven Lakhs Forty-Seven Thousand Five Hundred Two only)** *(Rs.7,08,11,660/- vide SCN dated 12.04.2023 + Rs. 2,39,35,842/- vide SCN dated 02.02.2024)* (as detailed in Annexures to impugned Notices) and order to recover the same from **M/s CCAPL** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962.

viii. I order to recover the interest from M/s CCAPL at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty as mentioned at (vii) above;

ix. I impose penalty **Rs.10,29,09,839/- (Rupees Ten Crore Twenty Nine Lakhs Nine Thousand Eight Hundred Thirty Nine only)** upon **M/s CCA** in terms of Section 114A of the Customs Act, 1962 plus penalty equal to the interest recoverable under Section 28AA of the Customs Act, 1962 payable on duty demanded and confirmed at (v) above;

x. I impose penalty **Rs.9,47,47,502/- (Rupees Nine Crore Forty-Seven Lakhs Forty-Seven Thousand Five Hundred Two only)** upon **M/s CCAPL** in terms of Section 114A of the Customs Act, 1962 plus penalty equal to the interest recoverable under Section 28AA of the Customs Act, 1962 payable on duty demanded and confirmed at (vii) above;

xi. I refrain from imposing penalty upon M/s CCA and M/s.CCAPL under Section of Section 112(a) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.

xii. I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** upon **M/s. CCA**, in terms of Section 114AA of the Customs Act, 1962 for providing fake CCOs to the Customs authorities.

xiii. I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** upon **M/s. CCAPL**, in terms of Section 114AA of the Customs Act, 1962 for providing fake CCOs to the Customs authorities.

xiv. I impose penalty of **Rs.75,00,000/- (Rupees Seventy Five Lakhs only)** upon **Shri Atul Kishore Guglani**, in terms of Section 112(a)(ii) of the Customs Act, 1962 **against his role in evasion of duty by M/s. CCA**.

xv. I impose penalty of **Rs 25,00,000/- (Rupees Twenty Five Lakhs only)** upon **Shri Atul Kishore Guglani** in terms of Section 114AA of the Customs Act, 1962 **against his role in evasion of duty by M/s. CCA**.

xvi. I impose penalty of **Rs 50,00,000/- (Rupees Fifty Lakhs only)** upon **Shri Atul Kishore Guglani- Director of M/s. CCAPL** in terms of Section 112(a)(ii) of the Customs Act, 1962 **against his role in evasion of duty by M/s. CCAPL.**

xvii. I impose penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)** upon **Shri Atul Kishore Guglani- Director of M/s. CCAPL** in terms of Section 114AA of the Customs Act, 1962 **against his role in evasion of duty by M/s. CCAPL.**

xviii. I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** upon **Shri Krishna Kumar Guglani, Director of M/s CCAPL** in terms of Section 112(a)(ii) of the Customs Act, 1962 **against his role in evasion of duty by M/s. CCAPL.**

xix. I impose penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)** upon **Shri Krishna Kumar Guglani, Director of M/s CCAPL** in terms of Section 114AA of the Customs Act, 1962 **against his role in evasion of duty by M/s. CCAPL.**

27. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(K. Engineer)
Commissioner of Customs
Custom House Mundra.
Date: 02.04.2024.

F.No. GEN/ADJ/COMM/44/2023-Adjn
By Speed Post & through proper/official channel

85 to 88

To,

1. **M/s. Choice Cargo Agencies**, D-71, Flat No. 101, Vishwakarma Colony, Delhi-110044.
2. **M/s. Choice Cargo Agencies Pvt. Ltd**, D-71, 1st Floor, Vishwakarma Colony, Lal Kuan, Delhi-110044.
3. **Sh. Atul Kishore Guglani**, Director of Choice Cargo Agencies Pvt. Ltd., R/o 318, Tarun Enclave, Pitampura, Delhi-110034.
4. **Sh. Krishan Kumar Guglani**, Director of Choice Cargo Agencies Pvt. Ltd., R/o 303, Pocket-3, Paschim Puri, New Delhi-110063.

Copy to:

1- The Chief Commissioner of Customs, CCO, Ahmedabad.

10. The Pr. Additional Director General, Directorate of Revenue Intelligence, Delhi Zonal Unit, B-3 &4, 6th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi–110003 (E-mail- dridzu@nic.in).
2. The Additional Director General, Central Intelligence Economic Bureau, 6th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001, for kind information.
3. The Deputy Commissioner (EDI), Custom House, Mundra.
4. Guard File.
5. Notice Board.