सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD, चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road** नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250871MN0000823511

क	फ़ाइल संख्या FILE NO.	S/49-116/CUS/MUN/24-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-152-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/53/24-25 dated 05.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Mahaveera Enterprises A-114/2 Ground floor Wazirpur Industrial area Delhi-110052

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

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	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.-**3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016

5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा **129 (ए)** के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- **(क)** रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा **(ख)** अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

Appeal has been filed by M/s Mahaveera Enterprises, A-114/2 Ground floor, Wazirpur Industrial area, Delhi-110052, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/53/24-25 dated 05.06.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed following Bill of Entry as per Table-A below for import of goods declared as "Cold Rolled Stainless Steel Coils Grade J3 Ex Stock" from their supplier M/s Foshan Lixin Stainless Steel Co. Ltd. at Mundra Port through their CB M/s Cargo Care.

TABLE-A

Exchange Rate: 1 USD = INR 84.10

Bill of Entry No. & Date	Description of Goods	CTH	Qty (Net Wt) Kgs	Declared Value in (INR)	Qty. (Net wt.) Kgs.	Declared Duty Payable (INR)
8700207 dated 09.11.2023	Cold Rolled Stainless Steel Coils Grade J3 Ex Stock	72199090	52783	4885858	52783	1355093

2.1 However, during physical examination of the imported goods, the goods were found to be of Grades J1 and J3 as per PMI (Positive Material Identification) Testing. Further, as per Circular dated 20.10.2023 issued by Ministry of Steel, it is mandatory for all the steel importers to apply and seek clarification for each and every consignment which is imported in the country without BIS license/certification. Further, vide CBIC letter F.No.401/88/2023-Cus.III dated 09.11.2023, it is further clarified that mandatory clarification is required only for steel products of those ITCHS codes which have been mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel. Accordingly, as declared CTH 72199090 was mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel, therefore, mandatory clarification/NOC from Ministry of Steel was required in the instant case before clearance of the said goods.

2.2 The Appellant submitted BIS NOC dated 15.01.2024 in Customs for clearance of the said goods, however, the same was submitted for Grade J2 and

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quantity of 58337 kgs. The Grade of the Steel Coils and Quantity were different in the said NOC/clarification, therefore, the same appeared as fake BIS NOC/clarification. RMS Cell, Dock Examination Section vide e-mail dated 19.01.2024 forwarded the said NOC for verification of genuineness. In reply, Ministry of Steel vide e-mail dated 19.01.2024 stated that 'the attached letter has not been issued by Ministry of Steel'. The Appellant vide letter dated 02.03.2024 submitted that no such NOC letter from Ministry of Steel was submitted by them to Customs either directly or through their authorised CHA. Further, they destuffed the goods into warehouse due to non-availability of BIS Certificate when they received license from DGFT, they found that no data against BE No. 8700207 dated 09.11.2023 had existed in EDI System, hence, they had to file new BE No. 2211093 dated 26.02.2024. The Appellant further requested to release the goods. From EDI System, it was observed that details in respect of BE No. 8700207 dated 09.11.2023 were not available in EDI System as it was purged due to non-regularization of Advance BE. Further, BE No. 2311093 dated 26.02.2024 was filed under Advance Authorization No. 0511023959 dated 14.02.2024 with following details:

TABLE-B

Exchange Rate: 1 USD = INR 83.90

Bill of Entry No. & Date	Description of Goods CTH	CTH	Net Qty. (Netl wt.) Kgs.	Declared Value (INR)	Declared Duty Payable (INR)	Total Duty foregone (INR)
2311093 dated 26.02.2024	Cold Rolled Stainless Steel Coils Grade J3 Ex Stock	72199090	52783	4871343.07	NIL (filed under Advance Authorization No. 0511023959 dated 14.02.2024)	1351067/-

2.3 The Appellant, vide letter dated 07.03.2024, submitted that no such BIS NOC was ever submitted either by them directly or through their CHA Cargo Care to Customs. The Appellant further submitted that they did not agree with the PMI Test result and requested to allow Chemical Testing of sample by competent laboratory to ascertain exact grade/composition of the goods imported by them against the said B/E. Further, the Competent Authority approved the request of the Appellant to send Representative Sealed Sample to CRCL Kandla for chemical testing thereof. Vide Test Report No. 133/05-04-24, it was reported that:

"The sample as received is in the form of a irregular cut piece of metallic

sheet having shiny, smooth surface on both side.
It is made of Stainless Steel having following composition.
Average Thickness of the Metallic Sheet (in mm) = 0.60 Percentage of Chromium Content (% by weight) = 14.39 Percentage of Nickel Content (% by weight) = 1.02 Percentage of Manganese Content (% by weight) = 10.60.
The above tested parameters agrees with Stainless Steel Grade ISS NI as mentioned in IS 6911. Sealed remnant sample returned herewith. "

As per Test Report No. 133/05-04-24, the imported goods were found to be of Stainless Steel Grade N1 which attract BIS as per Quality Control Order (QCO) issued by Ministry of Steel.

2.4 Valuation of imported goods for the purposes of calculation of Customs duties is governed by the provisions of Section 14 of the Customs Act, 1962. Further, the Customs Valuation (Determination of Price of imported goods) Rules, 2007 (here-in-after referred to as the 'CVR, 20-7'), having been framed under the provisions of Section 14, provide for determination of value in a variety of situations. More specifically, Rule 12 of Customs Valuation (Determination of Value of Imported goods) Rules, 2007 provides for rejection of the declared value when there is a doubt that the declared value does not represent the true transaction value. The declared value can also be rejected in case the parameters such as description, quantity, country of origin, brand, grade, specification etc., that have relevance to the value, are mis-declared. Further, Rule 3 of the CVR, 2007 provides that subject to Rule 12, value of the goods shall be the Transaction Value adjusted in accordance with Rule 10......". Rule 12 of the CVR, 2007, in turn, provides that when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the Appellant of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of the Appellant, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3. Further, as per Rule 3 (4). "If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9". 13. Thus, in terms of Rule 12 of the said CVR, 2007, value declared by an Appellant can be rejected in certain circumstances. Explanation (1) to the said Rule 12 ibid lists out certain reasons based upon which the proper officer has the powers to raise doubts on the accuracy of the declared value. Mis-declaration of the description of the goods is one such reason.

2.5 In the impugned imports, the description of the goods had been mis-declared inasmuch as that the "Cold Rolled Stainless Steel Coils Grade N1 Ex Stock" has been mis- declared as "Cold Rolled Stainless Steel Coils Grade J3 Ex Stock" as evident from the above mentioned Test Report of CRCL Kandla. It, therefore, appeared that the declared value of Rs. 4871343/- was liable to be rejected under the provisions of Rule 12 of the CVR, 2007 and liable to be re-determined by proceeding sequentially through Rules 4 to 9. 14. As per Rule 4 of the CVR, 2007, subject to the provisions of Rule 3, the value of imported goods shall be the Transaction Value of identical goods sold for export to India and imported at or about the same time as the goods being valued, subject to certain conditions and parameters. 'Identical goods' are defined as those imported goods which are same in all respects including physical characteristics, quality, reputation as the goods being valued except for minor differences in appearance that do not affect value of the goods. Scrutiny of import data available in the Customs database revealed following contemporaneous imports of consignments of "Cold Rolled Stainless Steel Coils Grade NI Ex Stock" from same supplier, same country of origin, same country of export, same port of shipment, having substantially same quantity and assessed on final basis & out of charged:

TABLE- C

Sr. No.	BE Number	BE Date	Name of Supplier	Description of Goods	Net Weight	Unit Price (CIF)
1	8871730	21.11.2023	M/s Foshan Lixin Stainless Steel Co. Ltd.	Cold Rolled Stainless Steel Coils Grade NI Ex Stock	55332 kgs	1.32 USD per kg
2	9495485	01.01.2024	M/s Foshan Lixin Stainless Steel Co. Ltd.	Cold Rolled Stainless Steel Coils Grade NI Ex Stock	47582 kgs	1.32 USD per kg

It therefore appeared that unit price of 1.32 USD per kg could be considered to be fair value. This appeared to be consistent with the provisions of Rule 4 of the CVR, 2007. Unit price of 1.32 USD per kg was accordingly proposed to be adopted for the purpose of assessment to duty. Further, the applicable Customs duty on the impugned goods is calculated as detailed below:

TABLE-D

Exchange Rate: 1 USD = INR 83.90

Bill of Entry No. and Date	Description of Goods	Weight (KGS)	Price per KG in USD (CIF)	Price per KG (INR) Exchange Rate: 1 USD = INR 83.90	Total Ass. Value (INR)	Total Duty Payable (INR)	Total Duty foregone (INR)
2311093 dated 26.02.2024	Cold Rolled Stainless Steel Coils Grade NI, Ex Stock	52783	1.32	110.748	58,45,611.684	NIL (filed under Advance Authorization No. 0511023959 dated 14.02.2024)	16,21,280
Total Duty foregone						Rs. 1621280	
Duty Declared as foregone						Rs. 1351067	
Differential Duty foregone						Rs. 2,70,213	

2.6 In view of the above, it appeared that the Appellant mis-declared the description of goods imported vide Bill of Entry as Cold Rolled Stainless Steel Coils Grade J3 Ex Stock instead of Cold Rolled Stainless Steel Coils Grade NI Ex Stock for evasion of duty foregone amounting to Rs. 2,70,213/-. Therefore, the imported goods having re-determined assessable value of Rs. 58,45,611.68 appeared liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, the impugned goods viz. Cold Rolled Stainless Steel Coils Grade N1 Ex Stock require mandatory BIS Registration for clearance as per provisions contained in the Steel and Steel Products (Quality Control) Order, 2024 dated 05.02.2024 issued by the Ministry of Steel, Government of India. With effect from 12.10.2017, Section 17 of the BIS Act, 2016 specifically prohibits the import of goods or articles notified vide an order under Section 16(1) of BS Act, 2016 without a Standard Mark, except under a valid licence. It appeared that the Appellant had imported the impugned goods without valid mandatory BIS license required as per the provisions of Steel and Steel Products (Quality Control) Order, 2024. In absence of valid BIS license, the above said goods appeared to become prohibited for import in India and appeared liable for confiscation under Section 111(d) of the Customs Act, 1962.

2.7 In addition, it also appeared that the Appellant submitted fake/forged Ministry of Steel NOC for clearance of the imported goods. Therefore, the imported goods appeared liable for confiscation under Section 111(m) of the Customs Act, 1962.

2.8 As the imported goods appeared liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962, the Appellant appeared liable for penal action under Section 112(a)(i) & 112(a)(ii) of the Customs Act, 1962.

2.9 Further, as the Appellant submitted fake/forged Ministry of Steel NOC for clearance of the imported goods, therefore, the Appellant also appeared to be liable for penalty under Section 114AA of the Customs Act, 1962.

2.10 Being Custom Broker (CB), M/s Cargo Care was bound to comply with Customs Brokers Licensing Regulations (CBLR), 2018. As per CBLR, 2018, it is the duty of a Customs Broker (CB) to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. However, M/s Cargo Care failed to advise their client M/s Mahaveera Enterprises regarding submission of genuine BIS NOC from Ministry of Steel. Further, M/s Cargo Care failed to discharge their duties properly as they did not bring the fact of submission of forged/counterfeit BIS NOC to the notice of the Customs. Therefore, it appeared that M/s Cargo Care has contravened Customs Brokers Licensing Regulations (CBLR), 2018 made under Section 146(2) of the Customs Act, 1962. From above, it appeared that M/s Cargo Care is liable for penal action under Section 117 of the Customs Act, 1962.

2.11 The Appellant vide letter dated 24.04.2024 submitted that they had obtained Advance License No. 0511024888 dated 05.04.2024 from DGFT and that they do not want any show cause notice and personal hearing and further requested to decide the case taking a lenient view.

2.12 Consequently, the Adjudicating Authority passed the following order:

i. He rejected the declared transaction value of Rs. 4871343/- of the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 (originally imported vide purged Bill of Entry No. 8700207 dated 09.11.2023) under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 read with Section 14 of the Customs Act, 1962. He ordered to re-determine the same at value of

Rs. 58,45,612/- under Rule 9 of the CVR, 2007 read with Section 14 of the Customs Act, 1962. He ordered re-assessment of the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 accordingly including amendment of description and value of the goods.

ii. He ordered confiscation of the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 (originally imported vide purged Bill of Entry No. 8700207 dated 09.11.2023) having re-determined assessable value of Rs. 58,45,612/- under Section 111(m) of the Customs Act, 1962. However, he gave an option to the Appellant M/s. Mahaveera Enterprises to re-deem the goods under provisions of Section 125 of Customs Act, 1962 on payment of Redemption Fine of Rs.8,00,000/- (Rs. Eight lakh Only)

iii. He ordered to impose a penalty of Rs. 15,000/- (Rs. Fifteen Thousand only) on the Appellant M/s Mahaveera Enterprises under Section 112(a)(ii) of Customs Act, 1962;

iv. He refrained from holding the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 having re-determined assessable value of Rs. 58,45,612/-, liable to confiscation under Section 111(d) of Customs Act, 1962.

v. He refrained from imposition of penalty under Section 112(a)(i) of Customs Act, 1962 on the Appellant M/s Mahaveera Enterprises.

vi. He ordered to impose a penalty of Rs. 8,00,000/- (Rs. Eight Lakh only) on the Appellant M/s Mahaveera Enterprises under Section 114AA of Customs Act, 1962.

vii. He ordered to impose a penalty of Rs. 1,00,000/- (Rs. One Lakh Only) under Section 117 of Customs Act, 1962 on the CB M/s Cargo Care.

viii. He ordered that the goods imported vide Bill of Entry No. 2311093 dated 26.02.2024 (originally imported vide purged Bill of Entry No. 8700207 dated 09.11.2023) were to be released only after payment of applicable duties, fine and Penalties as above.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that the enhancement of value from Rs. 48,71,343/- to Rs. 58,45,612/- is patently wrong and contrary to Customs Valuation Rules, 2007. Appellant has submitted that although the Department has relied on contemporaneous data of identical goods of N1 grade, however whether the prices were declared prices or enhanced prices is not clear besides copies of the aforesaid Bs/E were never provided and hence it is not clear as the prices were declared prices or enhanced prices. Hence there is violation of principle of natural justice and fair procedure.

3.2 Because order of the Adjudicating Authority holding that the goods are not J2 grade as declared in the B/E but N1 Grade is patently wrong as in the present case two tests were conducted by the Department and both showed different results. In the entire case even Department is not clear as to whether the goods were J1 and J3 grade as per report of PMI Testing, J2 grade as per declaration by the Appellant and/ or N1 grade opined by the CRCL. Because Adjudicating Authority has gravely erred in confirming confiscation of goods under Section 111(m) on the ground that Appellant had mis-declared the goods. Appellant has submitted that they had filed the B/E on the basis of documents provided by the supplier which states that the goods were 'Cold Rolled Stainless Steel Coils Grade J3 Ex-Stock'. In the present case, Department conducted physical examination and PMI testing, wherein it was found to be of J1 and J3 Grades. Later, on testing by CRCL, Kandla, the goods were found to be of N1 Grade and hence, in Appellant's submission, there was no misdeclaration on their part. Hon'ble Tribunal in the matter of Handtex as reported in 2008(226) ELT665(Tri Del) has held that "every change made by assessing officer during course of assessment whether relating to rate of duty or value need not lead to an inference of misdeclaration by importer - Fixation of value or enhancement of value for assessment purpose cannot in every case lead to an inference of misdeclaration of value in absence of any evidence to that effect - As no evidence has been adduced except conditional acceptance of higher contemporaneous import price, no justification for confiscation and imposition of penalty - Sections

111(d) and 112 of Customs Act, 1962." Reliance is also placed on the judgment of the Hon'ble Tribunal in the case of Kirti Sales Corpn as reported in 2008 (232) E.L.T. 151 (Tri.-Del), wherein Hon'ble Tribunal held that "to constitute mis-declaration, the declaration must be intentional - Misdeclaration cannot be understood as same as wrong declaration made bona fidly - Declaration made by appellant on basis of documents supplied by foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part so as to attract mischief of Section 111(m) of Customs Act, 1962 - Confiscation, fine and penalty set aside - Sections 111(m) and 112(a) ibid."

3.3 Because imposition of redemption fine is patently wrong and illegal. Appellant has submitted that they have made declaration in the B/E on the basis of their order placed with the supplier and the import documents provided by them. Even the reports / testing done by the Department is not concrete as in both Tests goods were found to be different. However, Appellant clear the consignment as same were incurring demurrage, detention and other incidental costs and also they required the goods urgently to fulfil business commitments.

3.4 Without prejudice to above contentions, Appellant also submit that Redemption fine of Rs. 8,00,000/- imposed vide the impugned Order is highly exorbitant and without any rhyme or reason. Appellant has submitted that in the present case difference in duty foregone was to the extent of Rs. 2,70,213/- and redemption fine is imposed more than 300% which is highly exorbitant more so when there is no finding much less any evidence in the entire order that Appellant intentionally mis-declared the grade of the Stainless Steel.

3.5 Because Adjudicating Authority has gravely erred in his finding that Appellant, during the course of his assessment, submitted fake/fraud NOC purported to be issued by Ministry of Steel for clearance of the impugned goods and did not follow due process/procedure by applying to the Ministry of Steel for BIS NOC. Appellant has submitted that during the course of assessment, on being pointed out by the Department vide letter dated 02.03.2024, Appellant duly filed Representation clearly stating that they have never filed any NOC from Ministry of Steel and neither their representative or CHA had adduced any such kind of NOC. Appellant further submits that on query raised by Department qua BIS Certificate, they could not obtain the same and therefore, destuffed the goods into warehouse and in the meanwhile, applied to DGFT for Advance License, which they got in April 2024 and thereafter, they approached the Department for clearance of the consignment. Hence, they have never submitted any NOC to the Customs Department.

3.6 Appellant's CHA intimated the Department and submitted that he had not filed any NOC from the Ministry of Steel and hence, it is clearly established that neither Appellant nor his CHA submitted any NOC and hence charge of the Department that during examination, fake NOC was submitted by Appellant is patently wrong.

3.7 The Adjudicating Authority has gravely erred in imposing penalty under Section 114AA which states that if a person knowingly or intentionally makes, signs or uses or caused to made, signed or used any declaration, statement or document which is factually incorrect in any particular material in the transaction of business for the purpose of this Act, shall be liable to penalty. Appellant has submitted that in the entire Order, there is no intentional misdeclaration by Appellant in the subject B/E. Goods were found to be of different grades by the mistake of the foreign supplier which Department found after testing by CRCL.

3.8 The imposition of penalty under Section 112(a) of the Customs Act, 1962 on Appellant for an act of omission and commission which renders the goods liable to confiscation under Section 111, is patently wrong and misconceived. Appellant has submitted that there is no omission or commission on the part of Appellant rendering the goods liable to confiscation under Section 111 of the Act and appellant in the present case become victim of circumstances. K. Because Appellant respectfully places reliance on the judgment of the Hon'ble Supreme Court in the matter of Hindustan Steels Ltd. vs. State of Orissa - 1978(2) E.L.T(J159) SC which clearly provides that every default which sans contumacious conduct does not entertain the imposition of penalty. The observation of their Lordships in the aforesaid judgment is reproduced for kind perusal: "...An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.

Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

3.9 The provisions of Section 114AA provide for imposition of penalty on a person who 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 transactions of any business under the Customs Act, while as submitted earlier, Appellant was in no way related to the alleged undervaluation of the goods and evasion of duty. Also, he had neither signed, made, used or caused to be signed, made or used any document, declaration or statement, knowingly or intentionally, which were false or incorrect.

3.10 The penalty under Section 114AA will be applicable only to those cases where export benefits are claimed without exporting the goods and presenting forged documents knowingly or intentionally while the instant one is not such a matter. It is pertinent to mention the intention of the legislature behind inserting Section 114AA. In twenty seventh report of the Standing Committee of Finance, insertion of Section 114AA was discussed in the report of the standing committee explains the purpose for which Section 114AA has been inserted in the Customs Act. The purpose is to punish only those people who avail export benefits without exporting anything. It is thus submitted that Section 114AA has been introduced to counter serious frauds, not every kind of violations under Customs Act. The perusal of the aforesaid extract makes it clear that Section 114A was inserted to penalize in circumstances where export benefits are availed without exporting any goods which is not the case here.

Hon'ble Supreme Court in case of Loka Shikshana Trust V. CIT reported in AIR 1976 SC 10, Indian Chamber of Commerce V. Commissioner of Income Tax reported in AIR 1976 SC 348, Additional Commissioner of Income Tax Vs. Surat Art Silk Cloth Manufacturers Association reported in AIR 1980 SC 387 and Novartis AG v Union of India (2013) 6 SCC 1 relied upon the speeches made by the Finance Minister for the purpose of ascertaining what was the reason for introducing a particular clause. Thus, in view of Parliamentary Standing

Commitee Report on introduction of Section 114AA, penalty cannot be imposed on Appellant under Section 114AA.

3.10 The penalty under Section 114AA of the Customs Act, 1962 is also not imposable as Section 114A stipulates that "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 equa to the duty or interest so determined" Appellant has submitted that in the present case as they are not importer is not liable to penalty under Section 114A of the Customs Act 1962 Besides, as enumerated under para 6 above since value declared in the instant Bills of Entry is true and correct being transaction values the doctrine of fraud, wilful statement or suppression of facts is not applicable in the instant case and therefore, no penalty under Section 114A of the Act is imposable on the Appellant.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 02.07.2025, following the principles of natural justice wherein Ms. Reena Rawat , Advocate appeared for the hearing and she re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

(i) Whether the rejection of the declared transaction value and its re-determination are legally sustainable.

(ii) Whether the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962, for mis-declaration of grade, and whether the requirement of BIS Certificate is exempted by the Advance License.

(iii) Whether the imposition of redemption fine is legally sustainable and proportionate.

(iv) Whether the imposition of penalties under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962, is legally sustainable and proportionate.

(v) Whether the submission of a "fake BIS NOC" by a third party impacts the Appellant's liability.

5.2 The adjudicating authority rejected the declared transaction value and re-determined it under Rule 9 of CVR, 2007, primarily due to the mis-declaration of the grade of stainless steel coils. The Appellant argues a violation of natural justice due to non-provision of full details of contemporaneous data. While it is true that full details of NIDB data should ideally be provided, the fundamental reason for rejection of the transaction value here is the mis-declaration of the goods themselves (grade J3 vs. N1), as confirmed by PMI testing and CRCL report. When the description of goods is found to be incorrect, the transaction value cannot be accepted under Rule 3 of CVR, 2007, as it does not relate to the goods actually imported. The subsequent re-determination under Rule 9 (residual method) is permissible when other methods (Rules 4-8) cannot be applied. The significant difference in value (₹48,71,343/- declared vs. ₹58,45,612/- re-determined) further supports the reason to doubt the declared value for the actual goods imported.

5.3 The cases cited by the Appellant regarding NIDB data (e.g., Agarwal Foundries (P) Ltd., Sai Exports) are distinguishable. They generally pertain to situations where the identity of the goods is not in dispute, and only the value is questioned based on NIDB data. Here, the very identity/grade of the goods is mis-declared. Therefore, the rejection of the declared transaction value and its re-determination are legally sustainable given the established mis-declaration of the goods.

5.4 Section 111(m) of the Customs Act, 1962, provides for confiscation of goods where any document furnished in relation to them is false or incorrect in any material particular. The Bill of Entry declared the goods as 'Grade J3 Ex-Stock', while testing revealed them to be 'Grade J1 and N1'. The grade of stainless steel coils is a material particular as it affects both classification and value, and potentially the applicability of quality control orders. The Appellant's argument that the supplier was responsible or that it was not "intentional mis-declaration" is not convincing.

5.5 Handtex (supra) and Kirti Sales Corpn (supra), cited by the Appellant, are distinguishable. While Handtex suggests that value changes don't always imply mis-declaration, here the mis-declaration is about the fundamental grade of the steel, not just a value adjustment. Kirti Sales Corpn emphasizes intentional mis-declaration. However, in the present case, the importer is ultimately responsible for the accuracy of declarations. The consistent finding of a different grade by official testing agencies (PMI, CRCL) strongly suggests that the declaration was false in a material particular. Even if the supplier made the mistake, the importer bears the responsibility for the accuracy of the import documents. The mens rea for Section 111(m) can be inferred from the knowledge that the goods were of a different grade, or at least a failure to exercise due diligence.

5.6 Despite the Advance License claim, the goods are still liable for confiscation under Section 111(m) of the Customs Act, 1962 due to the established mis-declaration of grade. Therefore, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 due to mis-declaration of grade.

5.7 Section 125 of the Customs Act, 1962, allows for the release of confiscated goods on payment of a redemption fine. Given that the confiscation of goods under Section 111(m) for mis-declaration of grade is upheld, the option to redeem them on payment of a fine is legally sustainable. The Appellant argues that the redemption fine of ₹8,00,000/- is exorbitant. The fine imposed is well within the statutory limits (which can be up to the market price of the goods). Considering the re-determined assessable value of ₹58,45,612/- and the nature of mis-declaration, a fine of ₹8,00,000/- is not disproportionate. The purpose of redemption fine is to deter such activities and ensure that the importer does not benefit from illegal imports. Therefore, the imposition of redemption fine of ₹8,00,000/- is legally sustainable and proportionate.

5.8 Section 112(a)(ii) provides for a penalty on any person 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. Since the goods are found liable for confiscation under Section 111(m) due to mis-declaration of grade, the Appellant, as the importer, is directly concerned with the improper importation. The knowledge or reason to believe about the confiscable nature of goods can be inferred from the deliberate act of mis-declaration to avoid proper assessment and compliance. The penalty of ₹15,000/- is well within statutory limits. Hindustan Steel Ltd. vs. State of Orissa (supra), cited by the Appellant, emphasizes that penalty should not be imposed for mere technical breaches without mens rea. However, mis-declaration of grade, especially when confirmed by scientific tests, goes beyond a mere technical breach and implies a deliberate attempt to circumvent regulations. The mens rea can be inferred from the circumstances.

5.9 Section 114AA imposes a penalty on any person who "knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to Customs, which is false or incorrect in any material particular, knowing or believing such declaration, statement or document to be false or incorrect, or not believing it to be true." The act of declaring the goods as 'Grade J3' when they were 'Grade N1' is a false declaration in a material particular. The finding of a "fake BIS NOC" further strengthens the case for mens rea under Section 114AA. Even if the Appellant claims they did not file it, the fact that such a document was submitted in relation to their consignment points to a deliberate attempt to mislead Customs. The importer is ultimately responsible for the declarations made on their behalf. The penalty of ₹8,00,000/- is justified given the seriousness of the mis-declaration and the attempt to circumvent regulations.

5.10 The Appellant's reliance on the legislative intent of Section 114AA (targeting serious frauds related to export benefits) does not limit its applicability to import mis-declarations. The plain language of the section covers any false or incorrect document in "any business relating to Customs." Therefore, the imposition of penalties under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962, is legally sustainable and proportionate.

5.11 The impugned order notes the submission of a "fake BIS NOC" for the clearance of goods, even though the Appellant denies filing it. While the Appellant's direct involvement in submitting the fake NOC is denied, the fact that such a document was presented in relation to their consignment, and the importer is ultimately responsible for the compliance of their imports, is a serious matter. This act, whether directly by the Appellant or through an agent, demonstrates an attempt to circumvent mandatory BIS requirements and supports the finding of mens rea for penalties. The adjudicating authority has rightly considered this aspect in imposing penalties. Therefore, the submission of a "fake BIS NOC" is a material fact that impacts the Appellant's liability, particularly concerning mens rea for penalties.

6. In view of the detailed discussions and findings above, this appellate authority concludes that the appeal filed by M/s Mahaveera Enterprises is not sustainable on merits. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The rejection of the declared transaction value and the re-determination of assessable value by the impugned Order-in-Original No. MCH/ADC/AK/53/24-25 dated 05.06.2024, are hereby upheld.

(ii) The confiscation of the goods under Section 111(m) of the Customs Act, 1962, due to mis-declaration of grade, as confirmed by the impugned order, is hereby upheld.

(iii) The imposition of redemption fine of ₹8,00,000/- under Section 125 of the Customs Act, 1962, as confirmed by the impugned order, is hereby upheld.

(iv) The imposition of penalty of ₹15,000/- on M/s Mahaveera Enterprises under Section 112(a)(ii) of the Customs Act, 1962, as confirmed by the impugned order, is hereby upheld.

(v) The imposition of penalty of ₹8,00,000/- on M/s Mahaveera Enterprises under Section 114AA of the Customs Act, 1962, as confirmed by the impugned order, is hereby upheld.

(vi) Any amount deposited by the Appellant towards the confirmed demand, fine or penalties shall be appropriated accordingly.

7. The appeal filed by M/s Mahaveera Enterprises is hereby rejected.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

सत्यापित/ATTESTED

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

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-116/CUS/MUN/2024-25 2854

Date:08.08.2025

By Registered post A.D/E-Mail

To,
M/s Mahaveera Enterprises,
A-114/2, Ground Floor,
Wazirpur Industrial Area, Delhi-110052.

Copy to:
1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House ,Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.