	<p style="text-align: center;">सीमा शुल्क के आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PR. COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj- <u>mundra@gov.in</u></p>
A. File No.	GEN/ADJ/COMM/214/2025-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	MUN-CUSTM-000-COM-59-25-26
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	03.03.2026 03.03.2026
E. SCN No. & Date	05/2025-26/COMM/KE/ADJ/MCH Dated 16.04.2025
F. Importer	M/s Harihar Enterprises (IEC: AAJPG8198A)
G. DIN	20260371M0000000FA55

1. यह अपील आदेश संबंधित को निःशुल्क 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 सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 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 पोस्ट 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 या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ 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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ 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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ 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

Intelligence developed by the Directorate of Revenue Intelligence; Surat Regional Unit ('DRI SRU' for the sake of brevity) indicated that Harihar Enterprises (Prop. Shri Hari Das Gupta), registered at Basement F-30, Mangolpuri Industrial Area, Phase-2, North West Delhi, Delhi-110034 (hereinafter referred to as 'Harihar' for the sake of brevity), having IEC: AAJPG8198A, was importing "Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc." falling under CTIs 60019200, 60063200 of the first Schedule to the Customs Tariff Act, 1975, at APSEZ viz *Adani Port and Special Economic Zone, Mundra* [INAJM6] and wrongly availing benefit of Notification No. 46/2011-Customs dated 01.06.2011, as amended, while clearing the said imports to their Domestic Tariff Area (DTA) unit by using unauthentic/fake Certificates of Origin (CoOs).

1.2 As per the intelligence, it was suspected that the Certificate of Origin used for availing the duty exemption benefit were either non-existent or unauthentic. Since Harihar had imported the said goods from Malaysia and then cleared them to Domestic Tariff Area while availing the benefit of BCD exemption on the said supplies, it appeared that they had claimed the preferential tariff benefit by way of using unauthentic/ non-existent CoO and hence, the effective rate of duty on their import/ DTA Sale of "Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics," classified under CTIs 60019200, 60063200 of the first Schedule to the CTA would be the merit rate of 20% ad-valorem.

2. Accordingly, investigation was initiated by DRI SRU against Harihar for duty evasion on import of "Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics" from Malaysia and two live consignments pending for DTA clearance at APSEZ Mundra were put on hold vide letter F. No. DRI/AZU/SRU/B/INT-04/2023 dated 19.04.2023.

SEARCH AND PANCHNAMA

3. A search was conducted on 19.04.2023 at the registered premises of Harihar at F-30, Mangolpuri Industrial Area, Phase-2, North West Delhi,

Delhi and panchnama dated 19.04.2023 was drawn in the presence of independent panchas and Shri Punit Mittal, owner as well as care taker of the said premises. During the search, Shri Punit Mittal informed that the basement at the said premises had been taken on rent by Harihar Enterprises since the last 6-7 months.

3.1 A search was conducted on 19.04.2023 at Hari Handloom House, 27-F, Kamla Nagar- 110007 and panchnama dated 19.04.2023 was drawn in the presence of independent panchas and Shri Hari Das Gupta, Proprietor of Harihar Enterprises and of Hari Handloom House, however, no documents in relation to import from Malaysia or from any country were found. During the search, Shri Hari Das Gupta informed that he was not aware of any imported goods as his firm viz. Hari Handloom House did not deal with any imported goods but that his son, Shri Mohit Gupta, dealt in imported goods from Malaysia. He also informed that office address of Shri Mohit Gupta was RU-10, Pitampura, Near Power House, Delhi and all documents related to import were kept there.

3.2 Thereafter, a search was conducted on 19.04.2023 at the office premises of Shri Mohit Gupta situated at Flat No. 10, Block RU, Pitampura, North West Delhi, Delhi - 110034 and panchnama dated 19.04.2023 was drawn in the presence of independent panchas and Shri Mohit Gupta. During the search Shri Mohit Gupta informed that he was controlling the activities of the said firm which was in the name of his father viz. Shri Hari Das Gupta; that the records of Harihar Enterprises were being maintained at that premises only; that his father Shri Hari Das Gupta was the proprietor of M/s Harihar Enterprises but the work related to the firm was being looked after by him; that the firm was engaged in import and trading of imported /local Polyester Knitted Pile Fabrics & other fabrics and the records were being maintained at that premises i.e. Flat No. 10, RU Block, Pitampura, Delhi. Thereafter, the officers systematically searched the said premises and segregated the relevant import documents pertaining to Harihar Enterprises for the imports made from Malaysia and kept them in made up files.

3.2.1. On being asked, Shri Mohit Gupta informed that for the import of fabrics from Malaysia, he used to communicate with one person named Shri Jeson, a Chinese citizen, and the said communication took place from the official e-mail ID of the firm. With the concurrence of Shri Mohit Gupta, the officers verified the documents/e-mails. Further, the officers scrutinized the communications done via the official e-mail IDs and took printouts of the relevant e-mail along with its attachment and other excel sheets, under the provisions of Section 138C Of Customs Act, 1962 and

65-B of The Indian Evidence Act, 1872 (Section 63 of Bhartiya Sakshya Adhiniyam, 2023) as the same seemed useful for further investigation pertaining to import of Polyester Knitted Pile Fabrics & other fabrics from Malaysia and availment of CoO benefit on the said imports. The officers placed the above said printouts in a two separate made up files and allotted serial number 1 to 73 & 1 to 157 and resumed them under the provisions of Customs Act, 1960 under reasonable belief that same are useful for further investigation.

STATEMENTS RECORDED AND ENQUIRY

4. STATEMENT OF CONCERNED PERSONS OF HARIHAR:

4.1. Summons dated 19.04.2023 were issued to **Shri Mohit Gupta** and his statement was recorded on 19.04.2023 under Section 108 of the Customs Act, 1962 wherein he *inter-alia* stated that he started one proprietorship firm in 2017 i.e. M/s Guru Kripa Textiles, Flat No. 10, Block RU, Pitampura, North West Delhi, Delhi-110034; that from July 2022, he started importing Polyester Knitted Pile Fabrics & other fabrics from Malaysia and started availing the benefit on Certificate of Origin under AIFTA and paying NIL customs duty.

4.1.1 On being asked, Shri Mohit Gupta stated that apart from his proprietorship firm i.e. M/s Guru Kripa Textiles, he was looking after the work of M/s Harihar Enterprises (Proprietor: Shri Haridass Gupta) as well; that M/s Harihar Enterprises (started in 2021) was engaged in import and trading of Polyester Knitted Pile Fabrics & other fabrics; that the overall day to day work of the firm was looked after by him; that his father did not have knowledge of the above said business; that he used to communicate with Shri Jeson Shen (0086-57388025899), a Chinese National for the import of Polyester Knitted Pile Fabrics & other fabrics from China & Malaysia; that he met Shri Jeson Shen in 2017 in Guangzhou, China in a Canton Fair where he (Shri Jeson Shen) was representing his firm M/s Zhejiang Huashen Silk Imp. & Exp. Co. Ltd; that in June 2022, Shri Jeson Shen contacted him and informed that they had started manufacturing Polyester Knitted Pile Fabrics & other fabrics in Malaysia also, besides China, and suggested that he could import the above said goods from Malaysia instead of China and could avail the benefit on Certificate of Origin of Malaysian Goods and avoid paying import Customs duties in India; that in view of the suggestion of Shri Jeson Shen, he started import of Polyester Knitted Pile Fabrics & other fabrics from Malaysia from July 2022 onwards and started availing the benefit of Certificate of Origin and paid NIL customs duty against the import of the said goods.

4.1.2 He was asked to peruse on sample basis-

- i. *one certificate of origin (CoO) Ref. No. KL-2023-AI-21-003307 dated 12.01.2023. The exporter in the said CoO was Hubking Resources and the Consignee in the said CoO was M/s Harihar Enterprises for the goods Polyester Knitted Pile bonded Fabrics & others. The said CoO was also submitted by him before the Customs Authority at the time of import.*
- ii. *one certificate of origin (CoO) Ref. No. KL-2023-AI-21-003307 (same reference number as above) issued by the Secretary General, Ministry of International Trade and Industry, Malaysia on 21.03.2023, downloaded from Malaysia Govt. Portal. The exporter in the said CoO was Press Metal Bintulu SDN BHD and the Consignee in the said CoO was Wanfeng Aluminium Wheel India Pvt Ltd for the goods Aluminium Foundry Alloy.*

On being asked to comment on the above said CoO, Shri Mohit Gupta stated that the latter CoO seemed genuine as the same was downloaded from the Govt. Portal of Malaysia; that the CoO produced by him before Indian Customs appeared to be fake and that he would have to verify the genuineness of the same from his supplier.

4.1.3 On being asked whether he possessed sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in Section 28DA(1)(ii) of the Customs Act, 1962, he stated that he did not have any such information of his supplier; that his supplier had forwarded only Certificate of Origin in support of Malaysia origin. He produced stock ledger of Polyester Knitted Pile Fabrics.

5. Summons dated 19.04.2023 were issued to Shri Hari Das Gupta, Proprietor of M/s Harihar Enterprises. Shri Hari Das Gupta vide letter dated 24.04.2023 sought for 15 days' time for arranging the desired information and to give statement. Further, Summons dated 24.04.2023 were issued to Shri Hari Das Gupta and his statement was recorded on 04.05.2023 under Section 108 of the Customs Act, 1962 wherein he *inter-alia* stated that Harihar Enterprises was engaged in the import and trading of various types of Polyester Knitted Fabrics; that all the day to day work of his firm was managed by his younger son Shri Mohit Gupta; that he did not have knowledge of import activities of Harihar Enterprises as his younger son Shri Mohit Gupta used to look after all day to day business activities of his firm.

5.1 On being asked, Shri Hari Das Gupta stated that Shri Mohit Gupta used to communicate with the overseas suppliers as he used to handle all business activities of Harihar Enterprises; that he had never received any call from supplier or Shipping Line or CHA regarding import in the name of Harihar Enterprises. He was asked to peruse the statement dated 19.04.2023 of Shri Mohit Gupta and the following documents:

- i. one certificate of origin (CoO) Ref. No. KL-2023-AI-21-003307 dated 12.01.2023. The exporter in the said CoO was Hubking Resources and the Consignee in the said CoO was M/s Harihar Enterprises for the goods Polyester Knitted Pile bonded Fabrics & others. The said CoO was also submitted by him before the Customs Authority at the time of import.*
- ii. one certificate of origin (CoO) Ref. No. KL-2023-AI-21-003307 (same reference number as above) issued by the Secretary General, Ministry of International Trade and Industry, Malaysia on 21.03.2023, downloaded from Malaysia Govt. Portal. The exporter in the said CoO was Press Metal Bintulu SDN BHD and the Consignee in the said CoO was Wanfeng Aluminium Wheel India Pvt Ltd for the goods Aluminium Foundry Alloy.*

On being asked regarding the different details in above said CoO having same number, he stated that as he did not have knowledge of the business activities of M/s Harihar Enterprises, Shri Mohit Gupta would be in better position to explain the same. He further stated that he had submitted a demand draft of Rs.20 Lakh on behalf of M/s Harihar Enterprises, under protest, towards the total customs duty liability of M/s Harihar Enterprises.

5.2 On being specifically asked, he stated that Shri Mohit Gupta had informed him that 2 import consignments of Harihar Enterprises were pending for clearance at Mundra SEZ.

6. Further, summons dated 02.05.2023 were issued to **Shri Mohit Gupta** and his statement was recorded on 04.05.2023 under Section 108 of the Customs Act, 1962. In his statement, Shri Mohit Gupta stated that he was the person dealing with the foreign supplier on behalf of Harihar Enterprises and that he had directed the CHA to file Bill of Entry for clearance of import consignment for the firm.

6.1 Shri Mohit Gupta was asked to peruse copies of Certificates of Origin submitted by him against clearance of import consignments pertaining to

M/s Harihar Enterprises and a printout of Certificates of Origin having the same reference number as the documents submitted by him but downloaded from the portal of Malaysian Government and his comment on the same are summarized in the table below:

Table 1: Details of CoOs verified on portal of Malaysian Government during statement of Shri Mohit Gupta

Sr. No.	B.E./ B.E. (SEZ To DTA) No.	COO No. submitted by M/s Harihar Enterprises	Consignee name as per CoO issued from the portal	Comment of Shri Mohit Gupta	Page no.
1	2001709	KL-2023-AI-21-003842	Hero Motocorp Ltd	CoO produced by them before Indian Customs appears to be fake and that he would have to verify the genuineness of the same from his supplier in China.	99, 100
2	2001603	KL-2023-AI-21-003307	Wanfeng Aluminum Wheel India Pvt Ltd	CoO produced by them before Indian Customs appears to be fake and that he would have to verify the genuineness of the same from his supplier in China.	101, 102
3	2001708	KL-2023-AI-21-003782	Galaxy Surfactants Ltd	CoO produced by them before Indian Customs appears to be fake and that he would have to verify the genuineness of the same from his supplier in China.	103, 104
4	2001111	KL-2022-AI-21-016893	Endorsement No. does not exist	CoO produced by them before Indian Customs appears to be fake and that he would have to verify the genuineness of the same from his supplier in China.	105, 106
5	2000280	KL-2022-AI-22-0101112	Endorsement No. does not exist	CoO produced by them before Indian Customs appears to be fake and that he would have to verify the genuineness of the same from his supplier in China.	107, 108
6	2021052	KL-2022-AI-22-0101083	Endorsement No. does not exist	CoO produced by them before Indian Customs appears to be fake and that he would have to verify	109, 110

				the genuineness of the same from his supplier in China.	
7	2019794	KL-2022-AI-22-0101040	Endorsement No. does not exist	CoO produced by them before Indian Customs appears to be fake and that he would have to verify the genuineness of the same from his supplier in China.	111, 112

6.2 On being asked regarding the manufacturer in Malaysia, he stated that Mr Jeson had informed him that their Chinese company had established their manufacturing unit in Malaysia; but that he (Shri Mohit Gupta) had not verified its existence in Malaysia; that he had made communication to his supplier regarding fake CoO provided by them and their reply was awaited; that he would try to pay the remaining amount after receiving a reply from his supplier.

6.3 On being asked regarding the consignments pending for clearance, Shri Mohit Gupta stated that some of consignments of Harihar were pending for clearance from APSEZ, Mundra, details of which are tabulated below:

Table 2: Details of Consignments put on hold

<i>Sr. No</i>	<i>BL No.</i>	<i>Name of Firm</i>	<i>No. of Containers</i>
1	CULVPKG2300679	Harihar Enterprises	1
2	HDMUKULA8962970 0	Harihar Enterprises	1

6.4 He further stated that he was ready to clear the above-mentioned consignments without availing the benefit of Certificate of Origin from Malaysia and requested that the said consignments may be allowed clearance on duty payment.

7. ENQUIRY WITH CHA

7.1. Summon dated 17.05.2023 were issued to Maa Shipping and Logistics and statement of Shri Krushnrajsinh Jadeja, Partner of Maa

Shipping and Logistics was recorded on 22.05.2023 under Section 108 of the Customs Act, 1962 wherein he *inter-alia* stated that he used to do the clearance of goods from Mundra SEZ for Harihar Enterprises from Fasttrack CFS Pvt Ltd; that for Customs clearance work related to the firm Harihar Enterprises, he used to talk with Shri Mohit Gupta; that whenever an import consignment arrived, he received Bill of Lading, CoO and Packing List by mail from Shri Mohit Gupta and later his company received BL, Invoice, PL and CoO by courier; that after completing all the customs clearance formalities and getting Out of Charge, his company informed Shri Mohit Gupta about the same after which he arranged the transportation of the goods.

7.1.1. Further, on being asked, Shri Krushnrajsinh Jadeja perused statement dated 04.05.2023 of Shri Mohit Gupta and on being asked regarding Certificate of Origin submitted by the firms against clearance of import/DTA consignment pertaining to Harihar Enterprises and printout of another Certificate of Origin having the same reference number but different details, downloaded from the portal of Malaysian Government he stated that CoO produced by the firm before Indian Customs appeared to be fake and that he had no knowledge regarding its origin. On being asked whether there was any involvement of Shri Mohit Gupta in creating these fake CoO, he stated that he had no knowledge about the same and till date he knew that the goods were being imported from Malaysia.

7.2 Maa Shipping and Logistics, CHA vide email dated 29.04.2023, 01.05.2023 and 04.05.2023 submitted copies of import documents in respect of Harihar Enterprises. Further, Maa Shipping and Logistics vide letter dated Nil (received on 31.07.2023) submitted copies of import documents namely Bill of Lading, Invoice, Packing List, Certificate of Origin, TP Bill of Entry, DTA Bill of Entry and Proforma Invoice in respect of Harihar.

RELEASE OF IMPORT CONSIGNMENT PUT ON HOLD

8. Harihar vide letter dated 04.05.2023, requested to release their shipments stating that they were ready to pay actual duty without availing benefit of Certificate of Origin.

8.1. DRI, Surat vide letter F. No. DRI/AZU/SRU/B/INV-04(INT-04)/2023 dated 12.05.2023 addressed to Specified Officer, Adani Port and Special Economic Zone, Mundra communicated that this office had no objection if the DTA Bills of Entry pertaining to Harihar are assessed without benefit under Notification No 46/2011-Cus dated 01.06.2011, as amended, and

the said DTA consignments are released as per the Customs and SEZ Act and Rules

SCRUTINY OF DOCUMENTS AND DUTY CALCULATION:

9. On scrutiny of documents, resumed from the premises of Shri Mohit Gupta and documents submitted by Maa Shipping and Logistic (CHA) it appeared that Harihar had imported goods at APSEZ, Mundra (INAJM6) and SEZ Entity M/s Fast Track CFS Private Limited had filed 'Bill of Entry for Home Consumption' on behalf of their client viz. DTA unit of Harihar while availing preferential tariff rate benefit of Certificate of Origin under the ASEA-India FTA as notified vide Notification No. 46/2011-Customs dated 01.06.2011, as amended. It appeared that Harihar had cleared a total of 7 consignments of imported Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics and Polyester Knitted Bonded Fabrics falling under CTIs 60019200 & 60063200 of the first Schedule to the Customs Tariff Act, 1975 from SEZ to DTA. On checking the CoO on Malaysian Government portal (<https://newepco.dagangnet.com.my/dnex/login/>), it is evident that either the CoO submitted by Harihar are fabricated as the original CoO pertains to a different importer or the CoO numbers were non-existent. The concerned persons of Harihar agreed that the CoO produced by them before Indian Customs were fake and that they would have to verify the genuineness of the same from their supplier. It appeared that Harihar had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, and had therefore not paid the applicable Customs duties of Rs. 2,60,69,841/- at APSEZ, Mundra during the period from 13.12.2022 to 28.01.2023, summarized in Table-3 below:

Table-3: Summary of DTA Clearance by Harihar during the period from 13.12.2022 to 28.01.2023


Port for DTA Clearance and Import	Total No. of Consignments	Value of goods (in Rs.)	Total differential Customs duty involved (in Rs.)
Adani Ports and Special Economic Zone (INAJM6)	07	11,28,56,453	2,60,69,841

10. The verification of genuineness of the CoOs used in the clearance of 07 consignments were verified from the official Malaysian govt. portal (<https://newepco.dagangnet.com.my/dnex/login/>) and found to be fake/unauthentic. On sample basis, a scan image of CoO Reference No. KL-2023-AI-21-003842 submitted by Harihar before Customs and scan

image of CoO found during verification from the official Malaysian govt. portal are attached below:



SCAN IMAGE OF COO PRODUCED BY HARIHAR BEFORE CUSTOMS

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) HUBKING RESOURCES A-9-1, 9TH FLOOR, BBT ONE THE TOWERS LEBUH BATU NILAM 1, BANDAR BUKIT TINGGI, 41200 KLANG, SELANGOR, MALAYSIA		Reference No. KL-2023-AI-21-003842 99 ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)			
2. Goods consigned to (Consignee's name, address, country) HARIHAR ENTERPRISES BASEMENT, F 30 MANGOLPURI INDUSTRIAL AREA PHASE-2 NORTH WEST DELHI, NORTH WEST DELHI, DELHI, 110034 INDIA GSTIN : 07AAJPG8198A2ZM IEC: AAJPG8198A PAN: AAJPG8198A		FORM AI MALAYSIA Issued in _____ (Country) (See Notes Overleaf)			
3. Means of transport and route (as far as known) Departure Date: 15 January 2023 by MARITIME TRANSPORT Vessel's Name/Aircraft, etc.: HAIAN MIND V. 23001W Port of Discharge: MUNDRA		4. For official use <input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s) _____ Signature of Authorised Signatory of the Importing Country			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1	N/M	759 ROLLS 1 X 40'HC CONTAINER STC:- POLYESTER KNITTED PILE FABRICS POLYESTER KNITTED PILE BONDED FABRICS IMPORTING COUNTRY HS CODE 600192 EXPORTING COUNTRY HS CODE 600192	RVC77.15% +CTSH	18,319.00 KGS USD 75,278.67	05622841 26/12/2022
		TOTAL:		18,319.00 KGS USD 75,278.67	04/02/2023
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in MALAYSIA _____ (Country) and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to INDIA _____ (Importing Country) SELANGOR, 12 January 2023 _____ Place and date, signature of authorised signatory		12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.  for Secretary General Ministry of International Trade and Industry Malaysia Kuala Lumpur, 16 January 2023 [FAL-FID-W-230112-KL-000047] SITI NADIRAH NASARUDIN _____ Place and date, signature and stamp of certifying authority			
13. Where appropriate please tick: <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation					

SCAN IMAGE OF COO VERIFIED FROM MALAYSIAN GOVT. PORTAL

PREVIEW

<p>1. Goods consigned from (Exporter's business name, address, country) PRESS METAL BINTULU SDN BHD SUITE 61 AND 62, SETIA AVENUE, NO. 2 JALAN SETIA PRIMA SU13/S, SETIA ALAM SEKSYEN U13, 40170 SHAH ALAM, SELANGOR DE, MALAYSIA</p>		<p>Reference No. KL-2023-AI-21-003842</p> <p style="text-align: center;">ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)</p> <p style="text-align: center;">FORM AI</p> <p style="text-align: center;">Issued in <u> </u> MALAYSIA (Country) (See Notes Overleaf)</p>			
<p>2. Goods consigned to (Consignee's name, address, country) HERO MOTOCORP LTD PLOT 3 SECT 10 IIE RANIPUR HARIDWAR-249403 INDIA</p>		<p>4. For official use ISSUED RETROACTIVELY</p> <p><input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff</p> <p><input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)</p> <p style="text-align: center;">_____ Signature of Authorised Signatory of the Importing Country</p>			
<p>3. Means of transport and route (as far as known)</p> <p>Departure Date: 29 March 2023 by MARITIME TRANSPORT</p> <p>Vessel's Name/Aircraft, etc.: EVER USEFUL 168W FEEDER VESSEL NAME : MTT SEMPORNA 23SP003W</p> <p>Port of Discharge: MUNDRA SEAPORT IN INDIA</p>		<p>5. Item number</p> <p>6. Marks and numbers on Packages</p> <p>7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)</p> <p>8. Origin criterion (see Notes overleaf)</p> <p>9. Gross weight or other quantity and value (FOB)</p> <p>10. Number and date of invoices</p>			
<p>1. 4 X 20'GP CONTAINERS</p>		<p>108 BUNDLE (9,612 PIECES) NET WEIGHT (MT): 98.2690 GROSS WEIGHT (MT): 98.3230 DOCUMENTARY CREDIT NUMBER: 6216IM011611/23 DATE OF ISSUE: 230315 A356 INGOT AS PER P.O NO: HWR/CMAT/2660003296 DATED: 02.03.2023 BASIS OF TERMS: CIF, MUNDRA SEAPORT IN INDIA (INCO TERMS 2020) BL NO: BT230300034 IMPORTING COUNTRY HS CODE 76012010</p>		<p>RVC 59.4% + CTSH</p> <p>98.323 TNE</p> <p>WH3 KL01/25269 27/03/2023</p> <p>TOTAL : 98.323 TNE</p> <p style="text-align: right;"><i>Handwritten signature and date: 09/03/2023</i></p>	
<p>11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in <u> </u> MALAYSIA (Country) and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to <u> </u> INDIA (Importing Country) <u> </u> SELANGOR DE , 30 March 2023 Place and date, signature of authorised signatory</p>		<p>12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> <p style="text-align: center;"></p> <p style="text-align: center;"></p> <p style="text-align: center;">for Secretary General Ministry of International Trade and Industry Malaysia Kuala Lumpur , 02 April 2023 [FAI-FIF-W-230330-KL-000071] MOHD. SHAM YUSOFF@JUSOH</p> <p style="text-align: center;">_____ Place and date, signature and stamp of certifying authority</p>			
<p>13. Where appropriate please tick:</p> <p><input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation</p>					

10.1 Scanned image of CoO Reference No. KL-2023-AI-21-003842 dated 16.01.2023 produced by Harihar before Customs Authority at the time of import shows the exporter as Hubking Resources and consignee as

Harihar for 'Polyester Knitted Pile fabrics and Polyester Knitted Pile bonded fabrics' while the Scanned Image of CoO reference no KL-2023-AI-21-003842 (same reference number as in CoO produced by Harihar during Import of its consignment into India) dated 02.04.2023 downloaded from Malaysian Govt. Portal by the statement recording officer in the presence of Shri Mohit Gupta, shows the exporter as 'Press Metal Bintulu SDN BHD' and consignee as 'Hero Motocorp Ltd' for goods 'A356 Ingot', implying that Harihar had used a CoO issued for a different consignment for clearance of their imported consignment by forging the supplier and importer details in the CoO. The same pattern was found in all the 07 consignments imported by Harihar.

PAYMENT DURING INVESTIGATION:

10. During the investigation, Harihar vide letter dated 03.05.2023 submitted a Demand Draft of Rs.20,00,000/- stating that *"Although I am making the payment, I want to emphasize that it is being made under protest and without prejudice to my right to challenge the demand in the appropriate legal forum. I am doing this to avoid any further interest or penalty charges that may be levied on the unpaid amount."*

10.1. Further, Harihar submitted various Demand Drafts amounting to Rs. 2,93,72,382/- in total from time to time against duty liability and interest to DRI, Surat. The said DDs were deposited under GAR/TR-6 challans details of which are below:

Table 4: Details of duty payment made by Harihar during investigation

Sl No	Letter dated / Recd. on	DD No & date	Challan No & date	Duty/ Interest	Amount (Rs.)
1	Nil/ 25.09.2023	689667 dt 01.05.2023	03/2023-24 dt 08.05.2023	Duty	20,00,000
2	Nil/ 25.09.2023	689774 dt 21.09.2023	18/2023-24 dt 29.09.2023	Duty	10,00,000
3	Nil/ 03.10.2023	689780 dt 26.09.2023	21/2023-24 dt 03.10.2023	Duty	20,00,000
4	Nil/ 07.10.2023	689784 dt 03.10.2023	24/2023-24 dt 10.10.2023	Duty	30,00,000
5	Nil/ 14.10.2024	689790 dt 10.10.2023	27/2023-24 dt 16.10.2023	Duty	30,00,000
6	01.11.2023	689803 dt 01.11.2023	34/2023-24 dt 13.11.2023	Duty	60,00,000
7	28.11.2023	689822 dt	43/2023-24 dt	Duty	25,00,000

		28.11.2023	01.12.2023		
8	30.11.2023	689824 dt 30.11.2023	45/2023-24 dt 05.12.2023	Duty	20,00,000
9	08.12.2023	689836 dt 08.12.2023	48/2023-24 dt.11.12.2023	Duty	15,00,000
10	13.12.2023	689846 dt 13.12.2023	52/2023-24 dt 18.12.2023	Duty	18,28,000
11	Nil/ 26.11.2023	690076 dt 25.11.2024	26/2024-25 dt 29.11.2024	Interest	29,01,673
12	05.12.2024	690082 dt. 05.12.2024	27/2024-25 dt 09.12.2024	Duty/ Interest	16,42,709
TOTAL					0

10.2 Harihar Enterprises vide letter dated Nil (received via email on 26.11.2024) stated that they had made full payment of duty Rs.2,47,98,179/- and interest of Rs.29,31,494/- and had requested waiver of Show Cause Notice. They further submitted that they fulfilled their obligation and requested to close the case. Harihar Enterprises vide letter dated 05.12.2024 stated that:

“we are writing to inform you that we have missed the item I bill of Entry No. 2000280 dated 05.01.2023. We will pay custom duty with interest of Rs. 16,42,709/- as required.

As per letter dated 03.05.2023, we have mentioned payment under protest. In the new letter mention that we are voluntarily submitting duty and interest and remove under protest, if anywhere mentioned before DRI and request for waiver of Show Cause Notice and conclude the proceeding..”

10.3. Harihar has admitted their duty liability and voluntarily discharged differential duty under various challans totally amounting to Rs. 2,60,69,841/- (Differential Duty including differential IGST), along with applicable Interest Rs. 33,02,541/- (Interest @15%) on delayed payment in respect of the ‘Bills of Entry for Home Consumption (SEZ to DTA)’.

SUMMARY OF THE INVESTIGATION:

11. From the investigation conducted and the foregoing discussions, it appeared that:

- a. Harihar had imported seven consignments of “Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics and Polyester Knitted Bonded Fabrics”, supplied by the various suppliers from Malaysia,

from 13.12.2022 to 28.01.2023 vide various Bills of Entry filed at APSEZ, Mundra and has wrongly availed the AIFTA (ASEAN India Free trade Agreement) duty benefit of preferential treatment notified vide Notification No. 46/2011-Customs dated 01.06.2011, while clearing the said goods to their DTA unit vide various 'Bills of Entry for Home Consumption (SEZ to DTA)' as mentioned in Annexure-A to the SCN.

- b. Further, CoO used in the clearance of 07 consignments in respect of "Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics and Polyester Knitted Bonded Fabrics" were verified from the official Malaysian govt. portal (<https://newepco.dagangnet.com.my/dnex/login/>) and found to be fake/unauthentic.*
- c. A search was conducted on 19.04.2023 at the registered premises of Harihar and premises of concerned persons and documents related to import from Malaysia were resumed for further investigation under the provisions of the Customs Act, 1962.*
- d. Statement of Shri Haridas Gupta, Proprietor of Harihar Enterprises was recorded under Section 108 of the Customs Act, 1962 wherein he stated that his younger son Shri Mohit Gupta used to look after all day to day business activities of his firm.*
- e. Statement of Shri Mohit Gupta was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he did not possess sufficient information as specified in Section 28DA(1)(ii) of the Customs Act, 1962. He also stated that the supplier had forwarded only Certificate of Origin in support of Malaysia Origin. Further, he stated that Mr Jeson, (person related to the foreign supplier companies) had informed him that their Chinese company had established their manufacturing units in Malaysia, but he had not verified its existence in Malaysia. Further, on being shown the online verification of the CoO on the official Malaysian government portal, he stated that CoO produced by him, pertaining to Harihar Enterprises before Indian Customs appeared to be fake.*
- f. Statement of Shri Krushnrahsinh Jadeja, partner of Maa Shipping and Logistics, the CHA firm involved in clearance of goods from SEZ, were recorded wherein he stated that he had no knowledge whether Shri Mohit Gupta was involved in creating those fake CoO and he knew that the goods were being imported from Malaysia.*

- g. At the time of clearance of goods, Harihar had availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011 based on these inauthentic CoO claimed to be issued by Malaysia Authority and paid only IGST @ 5%.*
- h. However, the Certificates-of-origin were verified from the portal of Malaysian Government and found to be fake/ un-authentic which confirms that the said Certificates-of-origin used for availing the benefit of preferential treatment of duty are fake/ un-authentic.*
- i. Harihar had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, and has now voluntarily paid the differential Customs duties of Rs.2,60,69,841/- and interest of Rs.33,02,541/.*
- j. Harihar has requested for waiver of Show Cause Notice and requested to issue a closure letter as they had paid the differential Customs duties and interest. In the instant case, analysis of the facts and evidences brought out that not only did the importer not exercise due diligence as mandated in Section 28DA of Customs Act, 1962 but also got imported goods cleared on the basis of fake/un-authentic Certificates of Origin. Hence the case is covered under section 28(4) and not section 28(2) of the Customs Act, 1962.*

12. Whereas, vide the Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any, in respect of the imported goods, while presenting Bill of Entry. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information with regard to the origin criteria. In view of the same, by submitting un-authentic Certificate of Origin, it appeared that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed benefit of exemption Notification on the basis of unauthentic CoO. The importer has failed to exercise reasonable care and precaution with regard to the accuracy and

truthfulness of the information provided by exporter/ seller to them, as was entrusted to them by the Act while providing benefit of the CoO.

12.1 The subject Bills of Entry for home consumption as summarized in Table-3 above, filed by Harihar, wherein they had declared the description, classification of goods and country of origin was self-assessed by them.

13. Whereas, sub-section (4) of Section 46 of the Customs Act, 1962, specifies that the importer while presenting a Bill of Entry shall at the foot thereof 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. From the verification report discussed above, it appeared that the importer knowingly and deliberately availed exemption Notification without authentic and valid of Certificate of Origin document supporting the import as prescribed under Section 46 of Customs Act, 1962 and has suppressed the relevant facts and intentionally evaded Customs duty on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962.

13.1. The imported goods under the Bills of Entry for Home Consumption, as summarized in Table-3 above, has been found to be imported under the cover of unauthentic Certificate of Origin (CoO) and hence does not satisfy the criteria for claiming exemption under Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods cleared to its DTA unit having assessable value of Rs.11,28,56,453/- (Rupees Eleven Crore Twenty Eight Lakh Fifty Six Thousand Four Hundred Fifty Three only) are liable to confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appeared that Harihar is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

13.2. That as per the discussion above, it appeared that Harihar knowingly availed exemption Notification which was not available to them. By the provisions of Section 28 DA of the Customs Act, it appeared that Harihar failed to exercise due diligence while availing benefit of exemption notification and by his act of willfully availing exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bills of Entry for Home Consumption at APSEZ, Mundra the importer has evaded applicable Customs duty. Accordingly, it appeared that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case. For the same reasons, the importer also appeared liable to penalty under Section 114A of the Customs Act, 1962.

13.3. That as per the discussion above, it appeared that Harihar had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and due diligence with regard to the authenticity of documents and truthfulness of the information provided by the manufacturer/supplier. The importer was not eligible for the exemption benefit as available under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted unauthentic documents for claiming the exemption benefit before the Customs Authorities. Therefore, it appeared that they are also liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

14. It appeared that Shri Mohit Gupta was looking after the import activities of Harihar and dealt with placing purchase order to overseas supplier and as well as import clearance at APSEZ Mundra. It also appeared that Shri Mohit Gupta dealt with CHA and directed him to file the Bills of Entry from time to time. It appeared that Shri Mohit Gupta abets Harihar to avail the exemption benefit on the strength of unauthentic CoOs. . It appeared that he was having culpable mental state and the act of omission and commission made on his part for evasion of Customs duties on the basis of unauthentic documents and clearance of goods which are liable to confiscation, have rendered himself liable for penalty under Section 112 (b) of the Customs Act, 1962.

15.1 Accordingly, M/s Harihar Enterprises (Prop. Shri Hari Das Gupta) was called upon to show cause as to why:-

- i. The certificates of Origin in respect of Bills of Entry for Home Consumption as summarized in Table-3 above, issued by Ministry of International Trade and Industry (MITI) for the "Polyester Knitted Pile Fabrics, Polyester Knitted Pile Bonded Fabrics, Polyester Knitted Bonded Fabrics, etc." supplied from Malaysia are un-authentic, as discussed above, in terms of proviso to Section 28DA(4) of the Customs Act, 1962. Thus, the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the import and DTA Clearance of goods under various Bills of Entry filed at APSEZ, Mundra, as per Annexure-A to the SCN, should not be disallowed in terms of Section 28DA of the Customs Act, 1962 and the Bills of Entry for Home Consumption should not be reassessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.*

- ii. *The impugned goods having total assessable value of **Rs.11,28,56,453/- (Rupees Eleven Crore Twenty Eight Lakh Fifty Six Thousand Four Hundred Fifty Three only)** as per Annexure-A attached should not be held liable to confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. However, the said goods are not physically available for confiscation.*
- iii. *The differential Customs duty amounting to **Rs. 2,60,69,841/- (Rupees Two Crores Sixty Lakh Sixty Nine Thousand Eight Hundred Forty One only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, as per Annexure-A attached. Since the differential duty amount of **Rs. 2,60,69,841/- (Rupees Two Crores Sixty Lakh Sixty Nine Thousand Eight Hundred Forty One only)** has already been paid by them, the same should not be appropriated and adjusted against the aforesaid demand of duty.*
- iv. *The Interest at the applicable rate should not be demanded and recovered from them on the said differential Customs Duty at (iii) under Section 28AA of the Customs Act, 1962. Since the interest amount of **Rs. 33,02,541/- (Rupees Thirty Three Lakh Two Thousand Five Hundred Forty One only)** has already been paid by them, the same should not be appropriated and adjusted against the aforesaid demand of interest.*
- v. *Penalty should not be imposed upon them separately under Section 112(a) and 112(b) of the Customs Act, 1962 for improper importation of goods which were liable to confiscation under Section 111 of Customs Act, 1962, as discussed above.*
- vi. *Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962 for non-levy of Customs duty and non-payment of interest thereon by using unauthentic certificates of origin, as discussed above.*
- vii. *Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962 for using fake/unauthentic certificate of origin for claiming the exemption benefit, as discussed above.*

15.2 Shri Mohit Gupta, Son of Shri Haridass Gupta, was called upon to show cause as to why Penalty should not be imposed upon them under

Sections 112 (b) of the Customs Act, 1962, for the reason as discussed above.

RECORD OF PERSONAL HEARING-

16. Following the principles of natural justice, opportunities of personal hearing were granted to the importer. During the personal hearing held on 05.02.2026 through virtual mode, Shri Rishabh Suman, Advocate, and Shri Vijay Prakash Shukla, Consultant, appeared on behalf of the noticees, namely M/s Saanvi Impex, M/s. Gurukripa Textile, M/s. Harihar Enterprises and Shri Mohit Gupta. They reiterated the written submissions dated 05.02.2026.

It was submitted that all three cases are of similar nature and that submissions made on behalf of Shri Mohit Gupta may be treated as applicable to all the cases. The noticees questioned the authenticity of the Malaysian Government portal relied upon by the department and, on that basis, sought cross-examination of the investigating officers who had verified the said portal.

The noticees pleaded ignorance regarding the alleged fake Certificates of Origin and contended that no money trail was established; therefore, *mens rea* was absent. It was further submitted that there was no deliberate misstatement or suppression of facts and, consequently, the extended period of limitation was not invocable.

17. DEFENCE SUBMISSION: The Noticees, vide their reply dated 05.02.2026, have submitted their response to the impugned Show Cause Notice. The submissions made by the Noticees are summarized hereunder:

(i) Challenge to Denial of AIFTA Benefit: The Noticee submitted that denial of preferential tariff benefit under AIFTA is legally unsustainable as the Department has not followed the mandatory verification procedure prescribed under the Operational Certification Procedures (OCP). It is contended that the Certificates of Origin (CoOs) were issued by the designated issuing authority in Malaysia and were duly submitted at the time of import. Mere comparison of CoOs with portal screenshots, without concluding verification through the issuing authority, is alleged to be insufficient in law. The Noticee further submits that no verification report from the Malaysian issuing authority has been produced and, therefore, the allegation that the CoOs are fake or not authentic is based only on assumptions.

(ii) Absence of Fraud, Knowledge or Mens Rea: It has been contended that the Noticee was not the issuing authority of the CoOs and had not fabricated or forged any document. According to the Noticee, there is no

evidence on record to establish that the CoOs were knowingly or intentionally used despite being false. At best, the dispute relates to alleged documentary discrepancies, which cannot automatically be equated with importer-side fraud or wilful misstatement.

(iii) Objection to Invocation of Extended Period: The Noticee submitted that all imports were made through regular channels on the basis of documents disclosed to Customs at the time of assessment. There was no suppression of facts or misdeclaration. Since the documents relied upon in the SCN were already available with the Department, invocation of the extended period under Section 28(4) of the Customs Act, 1962 is stated to be unjustified and the demand beyond the normal period is alleged to be time-barred.

(iv) Penalties and Confiscation Not Sustainable: The Noticee argued that penalties under Sections 112, 114A and 114AA of the Customs Act are not imposable in the absence of proof of fraud, collusion, wilful misstatement, suppression or knowledge. It has been submitted that mere submission of supplier-provided documents does not amount to abetment or intentional use of false documents. The proposal for confiscation and redemption fine is also contested on the ground that the goods are not prohibited and that the dispute relates only to eligibility of preferential duty.

(iv) Payments Made During Investigation: The Noticee submits that payments made during investigation were under protest and without prejudice, and were made to avoid business disruption. Such payments are stated not to constitute admission of liability or acceptance of allegations. The Noticee reserves the right to seek refund or adjustment in accordance with law if the demand is dropped wholly or partly.

(v) Retraction of Statements and Alleged Admissions: The Noticee has retracted statements recorded during investigation, alleging that the statements were obtained under coercion and that copies were not supplied at the time of recording. The Noticee also disputes reliance on correspondence marked as RUD-16 to RUD-26, contending that these documents do not constitute voluntary admissions or settlement. It is alleged that blank or partly blank letterheads were obtained and contents were filled subsequently without informed consent. The Noticee denies having waived issuance of SCN or settled the matter under Sections 28(5) or 28(6) of the Customs Act.

(vi) Request for Cross-Examination: The Noticee has sought cross-examination of the investigating officer who accessed the Malaysian Government portal, downloaded the screenshots and relied upon the same to allege forgery of CoOs. It is submitted that denial of such cross-

examination would violate principles of natural justice, as the portal screenshots constitute the primary evidence relied upon in the SCN. The Noticee has requested that the application for cross-examination be decided by a separate speaking order prior to final adjudication.

DISCUSSION AND FINDINGS

18. I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the importer is eligible for Notification benefit of Notification No. 46/2011-Cus dated 01.06.2011, in respect of the impugned goods.
- ii. Whether differential Customs duty amounting to Rs. 2,60,69,841/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA or otherwise.
- iii. Whether the impugned goods are liable to confiscation under Section 111(o) and 111(q) of the Customs Act, 1962 or otherwise.
- iv. Whether penalty is imposable upon the importer under Section 112(a) and/or 112(b) and/or 114A and 114AA of the Customs Act, 1962 or otherwise.
- v. Whether penalty is imposable upon Shri Mohit Gupta under Section 112(b) of the Customs Act, 1962 or otherwise.

18.1 I note that the present proceedings arise out of an investigation initiated by DRI on the basis of specific intelligence that certain importers were availing preferential tariff benefit under the ASEAN-India Free Trade Agreement (AIFTA) by using Certificates of Origin purportedly issued by the Malaysian authorities, which were suspected to be not authentic. I observe that **M/s Harihar Enterprises** was identified as one of the importers who had claimed benefit under Notification No. 46/2011-Cus dated 01.06.2011 in respect of imports of polyester woven/knitted fabrics. The Show Cause Notice alleges that M/s. **M/s Harihar Enterprises** imported 7 consignments of Polyester Woven/Knitted Fabrics and cleared the same from Mundra Port by claiming benefit under Notification No.

46/2011-Cus dated 01.06.2011 under the ASEAN-India Free Trade Agreement. It is alleged that such benefit was availed on the strength of fake or not authentic Certificates of Origin purportedly issued by the Malaysian authorities. Due to this modus, the importer evaded Customs Duty.

18.2 I find it on record that when the CoO reference numbers submitted by the importer were verified, it was found that in several instances the same reference numbers corresponded to entirely different exporters, different consignees and even different descriptions of goods. In certain other instances, endorsement numbers were found to be non-existent. The Certificates of Origin produced before Indian Customs did not match the data reflected in the official database of the issuing authority i.e. MITI, Malaysia. Such discrepancies were not minor clerical variations but fundamental inconsistencies relating to the identity of exporter, importer and goods.

18.3 The Show Cause Notice further relies upon the statements of Shri Hari Das Gupta, Proprietor of the firm (statement dated 04.05.2023), and Shri Mohit Gupta, who was handling the business operations of the firm (statements dated 19.04.2023 and 04.05.2023). The contents of the statements are not reproduced here for the sake of brevity; however, they are relied upon and discussed in the upcoming paras. From the record of these statements, it emerged that Shri Mohit Gupta had not verified the existence of the Malaysian manufacturing unit and that he did not possess sufficient information regarding the manner in which the origin criteria were satisfied. He further admitted that the Certificates of Origin produced before Indian Customs appeared to be fake when compared with the data downloaded from the Malaysian Government portal. Shri Hari Das Gupta stated that the day-to-day business activities were being handled by Mohit Gupta and that he did not have knowledge of such operational matters. During the statement, Shri Hari Das Gupta informed he had submitted a demand draft of Rs.20 Lakh on behalf of M/s Harihar Enterprises, under protest, towards the total customs duty liability of M/s Harihar Enterprises. He further acknowledged that Shri Mohit Gupta had informed him that 2 import consignments of Harihar Enterprises were pending for clearance at Mundra SEZ.


18.4 Upon careful consideration of the material on record, I find that the discrepancies in the Certificates of Origin are substantial and go to the root of the matter. The fact that the same CoO reference numbers corresponded to different importers and different goods as per the official Malaysian database clearly indicates that the documents produced before

Indian Customs were not genuine Certificates of Origin issued for the consignments imported by the Noticee. Therefore, I find that the Certificates of Origin were fake or not authentic. Detailed discussion to this point will also be discussed under upcoming paras. Certain screenshots taken from the Malaysian Government portal are reproduced here for reference. It is pertinent to note that the details available on the said portal are still verifiable, and the present status of the COO Certificates produced by the importer before Customs, as on the date of issuance of this order, is as per the Table-A below.

(I) COO copy produced by the Importer before Customs Authority:

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<p>1. Goods consigned from (Exporter's business name, address, country) HUBKING RESOURCES A-9-1, 9TH FLOOR, BBT ONE THE TOWERS LEBUH BATU NILAM 1, BANDAR BUKIT TINGGI, 41200 KLANG, SELANGOR, MALAYSIA</p>		<p>Reference No. KL-2023-AI-21-003782</p> <p>ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)</p>			
<p>2. Goods consigned to (Consignee's name, address, country) HARIHAR ENTERPRISES BASEMENT, F 30 MANGOLPURI INDUS TRIAL AREA PHASE-2 NORTH WEST DELHI, NORTH WEST DELHI, DELHI, 110034 INDIA GSTIN : 07AAJPG8198A2ZM IEC: AAJPG8198A PAN: AAJPG8198A</p>		<p>FORM AI MALAYSIA</p> <p>Issued in _____ (Country) (See Notes Overleaf)</p>			
<p>3. Means of transport and route (as far as known)</p> <p>Departure Date: 14 January 2023 by MARITIME TRANSPORT</p> <p>Vessel's Name/Aircraft, etc.: SHIMIN V. 22008W</p> <p>Port of Discharge: MUNDRA</p>		<p>4. For official use</p> <p><input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff</p> <p><input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)</p> <p>_____ Signature of Authorised Signatory of the Importing Country</p>			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1.	N/M	2572 ROLLS 4 X 40'HC CONTAINER STC:- POLYESTER KNITTED BONDED FABRICS IMPORTING COUNTRY HS CODE 600632 EXPORTING COUNTRY HS CODE 600632	RVC77.15% +CTSH	59,108.00 KGS USD 254,501.55	05622825 20/12/2022
2.		POLYESTER KNITTED PILE FABRICS IMPORTING COUNTRY HS CODE 600192 EXPORTING COUNTRY HS CODE 600192	RVC77.15% +CTSH		
3.		POLYESTER KNITTED PILE BONDED FABRICS IMPORTING COUNTRY HS CODE 600192 EXPORTING COUNTRY HS CODE 600192	RVC77.15% +CTSH		
TOTAL:				59,108.00 KGS USD 254,501.55	
Page 1 of 1					
<p>11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in MALAYSIA (Country)</p> <p>and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to INDIA (Importing Country)</p> <p>SELANGOR, 12 January 2023</p> <p>Place and date, signature of authorised signatory</p>			<p>12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> <p> for Secretary General Ministry of International Trade and Industry Malaysia Kuala Lumpur, 16 January 2023 [FAL-FIT-W-230112-KL-000033]</p> <p>SITI NADIRAH NASARUDIN Place and date, signature and stamp of certifying authority</p>		
<p>13. Where appropriate please tick:</p> <p><input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation</p>					

Genuine COO issued by Malaysian Government:

PREVIEW

<p>1. Goods consigned from (Exporter's business name, address, country)</p> <p>PALM-OLEO SDN. BHD. LOT 1245 KUNDANG INDUSTRIAL ESTATE 48020 RAWANG, SELANGOR, MALAYSIA</p>		<p>Reference No. KL-2023-AI-21-003782</p> <p style="text-align: center;">ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)</p> <p style="text-align: center;">FORM AI</p> <p style="text-align: center;">Issued in <u> MALAYSIA </u> (Country) (See Notes Overleaf)</p>			
<p>2. Goods consigned to (Consignee's name, address, country)</p> <p>GALAXY SURFACTANTS LTD C-49/2, TTC INDUSTRIAL AREA PAWNE NAVI MUMBAI -400703 INDIA</p>		<p>4. For official use</p> <p><input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff</p> <p><input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)</p> <p style="text-align: center;">_____ Signature of Authorised Signatory of the Importing Country</p>			
<p>3. Means of transport and route (as far as known)</p> <p>Departure Date: 30 March 2023 by MARITIME TRANSPORT</p> <p>Vessel's Name/Aircraft, etc.: HYUNDAI TOKYO V.0143W</p> <p>Port of Discharge: NHAVA SHEVA, INDIA</p>					
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1.	AS PER PACKING LIST	2 ISO CONTAINER PALMERA B1213 LOW IV DISTILLED COCONUT FATTY ACID (HCFA C818) PACKAGES : ISOTANK CUSTOMER'S CONTRACT NUMBER : 4600006278 IMPORTING COUNTRY HS CODE 38231900	WO	46.67 TNE USD 50432.79	9110125456 30/03/2023
TOTAL :				46.67 TNE USD 50432.79	
Page 1 of 1					
<p>11. Declaration by the exporter</p> <p>The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in</p> <p style="text-align: center;"><u> MALAYSIA </u> (Country)</p> <p>and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to</p> <p style="text-align: center;"><u> INDIA </u> (Importing Country)</p> <p style="text-align: center;"><u> SELANGOR , 30 March 2023 </u> Place and date, signature of authorised signatory</p>			<p>12. Certification</p> <p>It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> <div style="text-align: center;">   <p>for Secretary General Ministry of International Trade and Industry Malaysia Kuala Lumpur , 30 March 2023 [FAI-FIF-W-230330-KL-000054] KHALILAH HANUM MUHAMMUD</p> <p>_____ Place and date, signature and stamp of certifying authority</p> </div>		
<p>13. Where appropriate please tick:</p> <p><input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation</p>					

(II) COO copy produced by the Importer before Customs Authority:

1. Goods consigned from (Exporter's business name, address, country) HUBKING RESOURCES A-9-1, 9TH FLOOR, BBT ONE THE TOWERS LEBUH BATU NILAM 1, BANDAR BUKIT TINGGI, 41200 KLANG, SELANGOR, MALAYSIA		Reference No. KL-2022-AI-21-016893 ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate) FORM AI MALAYSIA Issued in _____ (Country) (See Notes Overleaf)			
2. Goods consigned to (Consignee's name, address, country) HARIHAR ENTERPRISES BASEMENT, F30 MANGOLPURI INDUS TRIAL AREA PHASE-2 NORTH WEST DELHI, NORTH WEST DELHI, DELHI, 110034 INDIA GSTIN : 07AAJPG819&A2ZM IEC: AAJPG819&A		3. Means of transport and route (as far as known) Departure Date: 31 December 2022 by MARITIME TRANSPORT Vessel's Name/Aircraft, etc.: HANSA ROTENBURG V. 920W Port of Discharge: MUNDRA			
4. For official use <input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)		Signature of Authorised Signatory of the Importing Country			
5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1.	N/M	2193 ROLLS 3X40'HC CONTAINER STC POLYESTER KNITTED PILE BONDED FABRICS POLYESTER KNITTED PILE FABRICS IMPORTING COUNTRY HS CODE 600192 EXPORTING COUNTRY HS CODE 600192	RVC77.15% +CTSH TOTAL:	47,017.000 KGS USD 193,417.96	05622773 03/12/2022
Page 1 of 1					
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in _____ MALAYSIA (Country) and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to _____ INDIA (Importing Country) SELANGOR, 27 December 2022 _____ Place and date, signature of authorised signatory			12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.  _____ SITI NADIRAH NASARUDIN Place and date, signature and stamp of certifying authority		
13. Where appropriate please tick: <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation					

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Handwritten signature and date: 04/05/2022

Screenshot from the Malaysian Government portal wherein the reference number used by M/s. Harihar Enterprises found not existed:

The screenshot shows the 'COO Verification System' interface. At the top, there is a red header with 'NSW' and 'ePCO COO Verification System'. Below this, a dark grey bar contains the text 'PLEASE CLICK HERE TO SEARCH' and a dropdown arrow. The main search area has a label 'Endorsement No' and a text input field containing 'KL-2022-AI-21-016893'. To the right of the input field are two buttons: 'RESET' and 'SEARCH'. Below the search area, a blue button displays the message 'Endorsement No does not exist.'

Endorsement No does not exist.

Table-A: Details of CoOs verified on portal of Malaysian Government

Sr. No	B.E./ B.E. (SEZ To DTA) No.	COO No. submitted by M/s Harihar Enterprises	Consignee name as per CoO issued from the portal	Remarks
1	2001709	KL-2023-AI-21-003842	Hero Motocorp Ltd	CoO produced by the Importer pertaining to the different Importer.
2	2001603	KL-2023-AI-21-003307	Wanfeng Aluminum Wheel India Pvt Ltd	CoO produced by the Importer pertaining to the different Importer.
3	2001708	KL-2023-AI-21-003782	Galaxy Surfactants Ltd	CoO produced by the Importer pertaining to the different Importer.
4	2001111	KL-2022-AI-21-016893	Endorsement No. does not exists	Endorsement No. does not exists

5	2000280	KL-2022-AI-22-0101112	Endorsement No. does not exist	Endorsement No. does not exist
6	2021052	KL-2022-AI-22-0101083	Endorsement No. does not exist	Endorsement No. does not exist
7	2019794	KL-2022-AI-22-0101040	Endorsement No. does not exist	Endorsement No. does not exist

19. Discussion on applicability of Section 28DA of the Customs Act, 1962:

19.1 The entire structure of the importer's claim for preferential tariff benefit under Notification No. 46/2011-Cus dated 01.06.2011 rests upon the Certificates of Origin purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia. Under the ASEAN-India Free Trade Agreement (AIFTA), the Certificate of Origin is not merely a procedural document but a substantive instrument certifying that the goods satisfy the prescribed origin criteria which includes regional value content and product specific rules. However, in the present case, verification undertaken from the official Malaysian Government portal revealed that all Certificates of Origin relied upon by M/s. Harihar were not authentic and fake. Four of the CoOs bore endorsement numbers that were non-existent in the official database, and in three cases the same reference numbers corresponded to entirely different exporters, consignees and descriptions of goods. For example, CoO No. KL-2023-AI-21-003307 submitted by the importer reflected "Hubking Resources" as exporter and the importer as consignee for **Polyester Knitted Pile Fabrics & others**, whereas the official portal reflected "Press Metal Bintulu SDN BHD" as exporter and "Wanfeng Aluminium Wheel India Pvt Ltd" as consignee for entirely unrelated goods i.e. **Aluminium Foundry Alloy**. Such discrepancies are not explainable as clerical irregularities; they strike at the authenticity of the document itself and establish fabrication. Once the foundational document evidencing origin is found to be forged or fake, the preferential claim collapses in entirety. In such circumstances, the Certificates of Origin become invalid for the purposes of AIFTA and attract the consequences contemplated under Section 28DA(10)(iii) of the Customs Act, 1962, which provides that preferential treatment may be refused where the certificate of origin is not authentic or contains not authenticated alterations.

19.2 At this stage, it becomes necessary to examine the statutory framework of Section 28DA of the Customs Act, 1962, which governs claims of preferential rate of duty under trade agreements. Section 28DA(1) imposes four cumulative obligations upon the importer: first, to make a declaration that the goods qualify as originating goods; second, to possess sufficient information regarding the manner in which origin criteria are satisfied; third, to furnish such information in the prescribed manner; and fourth, to exercise reasonable care as to the accuracy and truthfulness of the information furnished. These are not empty formalities; they constitute substantive statutory duties designed to prevent abuse of trade agreements. Section 28DA(2) further clarifies that submission of a Certificate of Origin issued by the designated authority does not absolve the importer from the responsibility to exercise reasonable care. The legislative intent is clear: the importer cannot act as a passive conduit merely forwarding whatever certificate is supplied by the exporter. The importer is statutorily obligated to ensure that the origin claim is supported by verifiable and sufficient information.

19.3 In the present case, the record reveals that Shri Mohit Gupta admitted that he did not possess any information regarding regional value content, manufacturing process, or product specific origin criteria. He admitted that he relied solely upon the Certificates of Origin forwarded by the supplier. Such admission demonstrates direct non-compliance with Section 28DA(1)(ii), which mandates possession of sufficient information regarding origin criteria. Equally, the failure to verify the authenticity of the issuing authority or the manufacturing activity reflects absence of “reasonable care” as contemplated under Section 28DA(1)(iv) of the Customs Act, 1962. The statutory standard of reasonable care is objective in nature; it requires conduct expected from a prudent importer engaged in international trade. When repeated consignments involving substantial revenue implication are cleared at nil Basic Customs Duty, elementary prudence would require verification of origin credentials, particularly when the supplier is primarily a Chinese entity claiming manufacturing shift to Malaysia. The importer’s omission to undertake even basic verification cannot be characterized as a minor lapse; it constitutes a clear breach of statutory obligation.

19.4 Section 28DA(3) empowers the proper officer, where he has reasons to believe that origin criteria have not been met, to require the importer to furnish further information. In the instant case, the proper officer had cogent reasons to doubt the origin claim, as portal verification revealed non-existent or mismatched CoO numbers. Once such prima facie doubt arose, the statutory burden shifted to the importer to substantiate the

origin claim by producing requisite supporting information. However, the importer failed to provide any documentary evidence regarding manufacturing, regional value addition, or product specific compliance. In such circumstances, Section 28DA(4) authorizes the proper officer to disallow the claim for preferential rate of duty. The proviso to Section 28DA(4) empowers the Principal Commissioner or Commissioner to disallow the preferential claim without further verification, on the basis of information available or where the importer fails to provide requisite information. Therefore, the argument that verification from the foreign issuing authority was mandatorily required is legally untenable. The statute itself provides that disallowance may be based on available evidence where the importer fails to discharge his burden.

19.5 Further, Section 28DA(10) permits refusal of preferential tariff treatment without verification in specified circumstances, including where the certificate of origin is not authentic, contains not authenticated alterations, or is otherwise invalid. In the present case, the Certificates of Origin have been found to bear non-existent endorsement numbers or mismatched exporter/consignee details, thereby rendering them inherently invalid and not authentic. Once the foundational document is fabricated, insistence on diplomatic or inter-governmental verification becomes unnecessary, as the document fails at the threshold of authenticity. The statutory framework thus clearly contemplates summary refusal of preferential benefit where the certificate itself is apparently false.

19.6 Thus, when Section 28DA is interpreted harmoniously, it becomes evident that the statutory scheme places primary responsibility upon the importer to ensure authenticity and origin compliance. The importer in the present case failed to possess requisite origin information, failed to exercise reasonable care, relied upon fabricated Certificates of Origin, and failed to rebut official verification evidence. Consequently, the claim for preferential benefit under Notification No. 46/2011-Cus is unsustainable in law. Further, during the entire investigation and adjudication proceedings, the importer has not disputed the fact that the COO Certificates were fake, forged or non-exist. The disallowance of the AIFTA benefit is therefore fully justified under Sections 28DA(1), 28DA(2), 28DA(4) and 28DA(10) of the Customs Act, 1962.

19.7 Accordingly, I find that the necessary conditions for rejection of claims of preferential rate of duty, without further verification, are applicable in the present case. These findings were corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in

respect of the impugned Bills of Entry, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of impugned Bills of Entry were found to be either fake or non-existent with the system displaying the remark "Endorsement No does not exist". This clearly established that the Certificates of Origin relied upon by the importer were not authentic and were not issued by the said authority.

19.8 I observed that the Noticees, through their written submission dated 05.02.2026, have submitted that denial of AIFTA benefit is unsustainable without verification through the prescribed Operational Certification Procedure and that portal-based verification cannot be the basis for concluding that the Certificates of Origin are fake. I am unable to accept this contention for the reasons recorded herein.

19.8.1 I find that the verification in the present case was conducted through the official CO Verification System (CVS) maintained by the MITI, Malaysia, which is the designated issuing authority under AIFTA. The said portal is an authentic platform meant exclusively for verification of Certificates of Origin by authorized focal points of importing countries. I note that access to this system is restricted and provided only to designated government officials due to the confidential and sensitive nature of the information contained therein. The portal is not a public website meant for general access or public proceedings. The confidentiality of the system, including user credentials and user guide, is required to be maintained and cannot be disseminated to unauthorized or unintended parties. I further note that only one authorized user ID has been provided by MITI, Malaysia to the Indian Customs administration for verification purposes. In view of the confidentiality attached to the said access credentials and the sensitive nature of inter-governmental verification mechanisms, the user guide and system access details cannot be treated as relied upon documents for disclosure in adjudication proceedings. However, I find that the status of the said COO Certificates are still verifiable from the said portal. Upon verification, status of the COO Certificates reference numbers were found either to be non-existent or not matching with the particulars declared in the Bills of Entry.

19.8.2 I also find that the dispute in the present case is not one relating to computation of regional value content or interpretation of origin criteria. The allegation is not that the goods failed to meet value addition norms; rather, the allegation is that the Certificates of Origin themselves are unauthentic. When the foundational document certifying origin is found to be non-existent or mismatched in core particulars such as

exporter, consignee and description of goods, the question of undertaking further retroactive check does not arise. A document which is itself not traceable or does not correspond with official records cannot be treated as a valid Certificate warranting further origin examination.

19.9 I further find that the Noticees have repeatedly asserted that they are not the issuing authority of the Certificates of Origin and that there is no evidence of fabrication by them. This defence, in my view, overlooks the statutory obligation under Section 28DA(1) which casts a positive duty upon the importer to possess sufficient information regarding origin criteria and to exercise reasonable care as to the accuracy and truthfulness of the claim. I note that the Noticees have not produced any documentary evidence such as regional value content calculation, manufacturing details, supplier declarations, back-to-back invoices, or confirmation from the issuing authority to establish that the goods satisfied AIFTA origin criteria. The defence has thus remained confined to questioning the investigation rather than substantiating the legitimacy of the exemption claim. It is settled law that the burden to prove eligibility to an exemption notification lies upon the claimant. In the absence of any supporting origin documentation, the preferential claim cannot be sustained merely on the basis of a disputed certificate.

20. Burden of Proof in Respect of Exemption Claim – Onus on the

Importer: I find it necessary to reiterate the settled legal position that the burden to prove eligibility to an exemption notification lies squarely upon the person who claims the benefit thereof. An exemption notification is in the nature of an exception to the general rule of levy of duty, and therefore its conditions must be strictly complied with. The claimant must establish, through cogent and affirmative evidence, that all statutory requirements and conditions prescribed therein are fully satisfied. In the present case, the Importer had claimed preferential tariff benefit under Notification No. 46/2011-Cus (AIFTA). Consequently, the burden was upon the importer to demonstrate that the goods qualified as originating goods under the applicable Rules of Origin and that valid Certificates of Origin were produced in compliance with Section 28DA of the Customs Act, 1962. Mere production of a document styled as a Certificate of Origin does not discharge this burden, particularly when serious discrepancies regarding its authenticity have been brought on record. In the absence of supporting origin-compliance documents or any evidence establishing fulfillment of origin criteria, the importer has failed to discharge the onus cast upon it. Therefore, the benefit of the notification cannot be granted to the Importer. The burden to prove the eligibility of exemption notification is on importer;

and the exemption notification 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 plain 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 statute 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.”

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

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

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

21. Invocation of Extended Period under Section 28(4) of the Customs Act, 1962:

21.1 I have discussed in detail that the importer has failed to comply with the statutory obligations under Section 28DA of the Customs Act, 1962 and that the Certificates of Origin relied upon were forged/not authentic/non-exist, it now becomes necessary to examine whether such violation attracts the extended period under Section 28(4) of the Customs Act, 1962. Section 28(4) of the Customs Act, 1962 provides that where duty has not been levied or has been short-levied by reason of collusion, wilful misstatement or suppression of facts, the proper officer may issue notice within five years from the relevant date. The provision requires existence of a positive act or omission attributable to the importer that results in non-payment or short-payment of duty. In the present case, the importer filed Bills of Entry claiming preferential benefit under AIFTA, thereby declaring that the goods qualified as originating goods and that valid Certificates of Origin were being furnished in support of such claim. This declaration is not a passive procedural formality but a substantive representation made under the self-assessment regime.

21.2 In the present case, the Importer had claimed preferential rate of duty by declaring the country of origin of the imported goods as Malaysia and by submitting Certificates of Origin purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia. The Importer has filed the subject Bills of Entry while claiming concessional rate of BCD on the basis of Importer's declaration in the subject Bills of Entry- ***“I/We declare that content of this Bill of entry imported against above mentioned Bill of Lading number are in accordance with the above mentioned invoice(s) No(s) and other documents presented herewith”***. The Importer have accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer have also declared that the said goods ***“I/We declared that these goods qualify as originating goods for preferential rate of duty under the Customs (Administration of***

Rules of Origin under Trade Agreements) Rules, 2020 notified vide Customs notification no. 81/2020-Customs (NT) date 21.08.2020".

21.3 I find that; the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Further, with the introduction of self-assessment by amendment to Section 17, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the country of origin while being presented to the Customs. However, In the present case, as discussed under foregoing paras, it is evident that the importer had deliberately evaded customs duty by producing fake/forged Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty under Customs Notification No. 46/2011 dated 01.06.2011. These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be fake or non-existent, with the system displaying the remark "Endorsement No does not exist". This verification clearly established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority.

21.4 A thorough examination of the above facts undoubtedly establishes that the Noticee deliberately suppressed material facts while importing the subject goods, with the intent to circumvent the provisions of the Customs Act, 1962 and the relevant exemption notifications, and to obtain undue benefits. I have no doubt that the origin of the imported goods was misrepresented in order to wrongfully avail benefits under the ASEAN-

India Free Trade Agreement. Such a modus operandi enabled the Noticee to misuse the Free Trade Agreement between India and Malaysia and thereby evade payment of the applicable customs duties on the imported goods. The Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic. On being confronted with the genuine COO Certificates and screenshot of the Malaysian Government portal, Shri Mohit Gupta stated that later COO (actual one) seems to be genuine as the same is downloaded from the Govt. Portal of Malaysia. He further acknowledged and stated that COO produced by him before Indian Customs appears to be fake and he had to verify the genuineness of the same from their supplier in China. However, the fact is here it that no such verification, if any, done by Shri Mohit Gupta and no such verification related information was ever provided by him. This raise serious doubt on the integrity of Shri Mohit Gutpa. Under Section 46(4A), the importer presenting a Bill of Entry is statutorily obligated to ensure the authenticity and validity of supporting documents. Read conjointly with Section 28DA(1)(iv), which mandates exercise of reasonable care as to the accuracy and truthfulness of information furnished, it is evident that the importer bears a statutory duty not merely to submit documents but to ensure their genuineness. In the present case, the importer submitted Certificates of Origin which have been established to be fabricated or not authentic. The verification conducted from the official Malaysian portal demonstrated that several CoO numbers were either non-existent or corresponded to entirely different exporters, consignees and goods. Such fundamental falsity could not have gone unnoticed had even minimal due diligence been exercised.

21.5 In the present case, the importer failed to disclose that no verification of manufacturing activity had been undertaken, that no origin compliance information was possessed, and that the supplier was primarily a Chinese entity routing goods through Malaysia. These facts were material to determination of eligibility under AIFTA. The non-disclosure of such material circumstances, coupled with submission of fabricated certificates, squarely attracts the ingredients of suppression and wilful misstatement. It is also relevant that the discrepancies were not discovered through routine scrutiny of documents furnished by the importer but were unearthed through independent verification by the investigating agency. The subsequent admission by the person handling the operations that the Certificates of Origin “appeared to be fake” further reinforces the conclusion that the importer was aware of the doubtful authenticity of the documents. Therefore, I find that the ingredients necessary for invocation of the extended period under Section 28(4) are

fully satisfied. I find that in the instant case, the Noticee had willfully mis-declared the Country of Origin as Malaysia the time of filing of the Bills of Entry to evade payment of correctly leviable duty. The Noticee deliberately chose to mis-declare the COO to take full duty exemption benefit, being fully aware that the CoO were not authentic. This willful and deliberate act clearly brings out their 'mens rea' in this case. Thus, demand has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of this finding of invoking extended period, I rely upon the following court decisions:

(a) 2013(294) E.L.T.222 (Tri. - LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

"In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified"

(b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

"Demand – Limitation – Fraud, collusion, willful misstatement, etc. – Extended period can be invoked up to five years anterior to date of service of notice – Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, willful misstatement, etc., rejected as it would lead to strange and anomalous results;"

(c) 2005 (191) E.L.T. 1051 (Tri. – Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19- 7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

"Demand – Limitation – Blind belief cannot be a substitute for bona fide belief – Section 11A of Central Excise Act, 1944. [para 5]"

(d) 2006 (198) E.L.T. 275 (Tri. Bom) –Interscape v. CCE, Mumbai-I: in the case, it has been held by the Hon'ble Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

21.6 I also find that the Noticee's plea against invocation of extended limitation under Section 28(4) is without merit. The Noticees contend that all documents were disclosed at the time of assessment and hence there was no suppression. However, I note that submission of a document subsequently found to be fabricated or not authentic cannot be equated with full and true disclosure. The declaration in the Bills of Entry that goods were eligible for preferential treatment was a positive assertion of fact. When such assertion is founded upon documents found to be false in material particulars, the ingredients of wilful misstatement stand attracted. The fact that the irregularity came to light only upon independent verification by the investigating agency further establishes that the true facts were not disclosed.

22. STATEMENTS RECORDED DURING THE INVESTIGATION: I find that Sh. Mohit Gupta, is the main person who looked after all the work of the said company. Thus, the statements tendered by him are the key evidences for confirmation of charges in the subject case and provide backings to the charges levelled against the exporter. However, the Noticee during the written submissions argued that the statement of Shri Mohit Gupta cannot be relied upon since the same has been taken under coercion. I, with respect to this claim, found that a mere allegation by the Noticee of duress or coercion is not sufficient to nullify the statement's value. The burden lies on the Noticee to prove that the statement was recorded under coercion, threat, or undue influence. It is undisputed fact that under Section 108 of the Customs Act, customs authorities have the power to summon and record statements. From the facts of the case, I noticed that no complaint was lodged before any higher authority or Court with respect to their claim, nor was any retraction made after the statement recorded by the investigating agency. On the contrary, the noticee continued to tender his statements in other similar type of cases of M/s. Gurukripa Textile, M/s. Saanvi Impex etc. I find that claim related to coercion during investigation is appears to be nothing but just a trick to absolve themselves from responsibility. Instead of acknowledging their obligation to prove that the benefit was claimed legitimately, they questioned the investigation. I find that confessional and corroborative statements recorded under Section 108 of the Customs Act, 1962, are one of the vital tools in the hands of the department to establish the role of the offenders. These statements are in the nature of substantive evidence and culpability of the concerned persons can be based on the same. The scope of these provisions of law has been examined in a large number of authoritative judgements of the Supreme Court and the High Courts, as under:

- *It has been held by the Hon'ble Supreme Court in the judgment in Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar - 1997 (96) E.L.T. 211 (S.C.):*

"7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940, and KI. Pavynny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 24] (S.C) = (1997) 3 SCC 721."

- *The Hon'ble Supreme Court has observed in the case of Naresh J. Sukhwani v. Union of India - 1995 Supp. (4) SCC 663 = AIR 1996 SC 5 = 1996 (83) E.L.T. 258:*

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

- *A Constitution Bench of Apex Court of India in the matter of Romesh Chandra & Mehta v. State of W.B. - (1999 (110) E.L.T. 327(S.C.) held that Customs Officer is not a Police Officer AND Statements made before him under Section 108 of Customs Act, 1962 are admissible in evidence and are not hit by Section 25 of Indian Evidence Act.*
- *Further the admitted facts need not to be proved as held by Hon'ble High Court of Madras in the case of **Govindasamy Raghupati reported in 1998 (98) ELT 50 (Mad.)**. In the said judgement the Hon'ble Court held that "Confessional statement made under Section 108 of Customs Act, 1962 before Customs Officers regarded as voluntary and not to be viewed with suspicion - Retraction of such confessional statement not affects its evidentiary value."*
- *Hon'ble Supreme Court in the case of **Surjeet Singh Chhabra v. Union of India & Others reported in 1997 (89) E.L.T. 646 (S.C.)**, has also pronounced that confessional statement made before Customs officer*

under Section 108 of the Customs Act, 1962, though retracted, is an admission and binding since Customs Officers are not Police Officers.

➤ *Further, in the case of Gulam Hussain Shaikh Chougule Vs S. Reynolds, Supdt. Of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC), relying on various judgments of Apex Court of reported at AIR 1972 SC 1224, 2000 (120) ELT 280 (S.C.); 1999 (110) ELT 324 (S.C.); 1992 (60) ELT 24 (S.C.); 1999 (110) ELT 309 (S.C.); 1983 (13) ELT 1443 (S.C.); 1983 (13) ELT 1590 (S.C), has further held that confessional statement recorded by Customs officer under Section 108 of Customs Act, 1962 are not required to follow safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.*

In view of the above, I have no doubt that the statements are legitimate and have legal authority. I do not find any infirmity in the statement tendered by him. Accordingly, the charges proposed in the Show Cause Notice regarding wrong availment of COO benefit are confirmed.

22.1 The Noticees have also alleged coercion in recording statements and have attempted retraction. I find that no contemporaneous complaint of coercion was made at the time of recording of statements. The retraction has been made only after issuance of the Show Cause Notice and consultation with legal counsel. As discussed above, it is well settled that a belated and bald allegation of coercion, unsupported by evidence, does not efface the evidentiary value of a statement recorded under Section 108. The statement of Shri Mohit Gupta, wherein he admitted lack of origin compliance information and acknowledged discrepancies in the Certificates of Origin, acceptance of the nature of the COO Certificates produced by him as fake, remains valid. I therefore find no merit in the plea that the statements were involuntary.

22.2 I further note that the Noticee has contended that the documents marked as RUD-16 to RUD-26 ought not to be treated as voluntary payments, admissions or settlement. It is an undisputed fact that payments were made during the course of investigation. The Noticee has not produced a single document/evidence to show that such payments were forged, extracted under threat, coercion or duress. No complaint was lodged before any superior authority, no representation was made alleging coercion at the relevant time, and no material has been placed on record to substantiate the bald allegation of force. On the contrary, the Show Cause Notice itself records at para 14 that M/s. Harihar vide letter dated 03.05.2023 submitted a demand draft of Rs. 20,00,000/- clearly stating that the payment was being made “under protest and without prejudice” to the right to challenge the demand before the appropriate legal forum. Such recording itself demonstrates that the Noticee was conscious of his legal

rights and expressly reserved the same while making payment. Therefore, it cannot now be contended that the payment was made under threat or coercion. As recorded under para 14.1 to 14.3 of the SCN, the Noticee made payment during the investigation of Rs. 2,93,72,382/- Customs duties of Rs.2,60,69,841/- and interest of Rs.33,02,541/

22.3 I further find that the Noticee has failed to explain through what mode or medium he communicated with the investigating agency while forwarding such payments. It is also relevant that in two other cases, namely M/s. Saanvi Impex and M/s. Gurukripa Textile, wherein Shri Mohit Gupta is the key person, payments were similarly made during investigation. This pattern indicates a consistent course of conduct rather than any isolated instance of alleged coercion. I also note that from the date of issuance of the Show Cause Notice, wherein all relevant documents including payment detailed were supplied, the Noticee did not immediately dispute the genuineness of the letters or signatures. It is only at the final stage of adjudication, nearly two and a half years after making the payments, that the Noticee has raised a plea that the letters were not signed by him and has sought forensic examination. I find this belated contention to be devoid of credibility and unsupported by any prima facie material. Such afterthought plea, raised at the end of proceedings, appears to be nothing but an attempt to delay adjudication and to disown documents already on record. Accordingly, I reject the contention that the payments or accompanying letters cannot be taken into consideration, and I find that the belated challenge to the authenticity of RUDs lacks merit. Even assuming such payments were made without admission of liability, the same do not detract from the substantive evidence on record regarding wrongful availment of exemption. The issue of liability must be decided on the basis of statutory provisions and evidentiary material, not on characterization of interim payments.

23. Liability of Interest under the provisions of Section 28AA of the Customs Act, 1962: I find that the Noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

Section 28AA. Interest on delayed payment of duty—

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the

rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. And not exceeding thirty-six per cent. Per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

Section 28AA of the Customs Act, 1962 provides that when a person is liable to pay duty under Section 28, such person is also required to pay interest at the notified rate, in addition to the duty, whether the duty is paid voluntarily or after its determination. The levy of interest follows automatically as a statutory consequence and the same is not optional in nature. Even though in the case wherein the bona fide conduct of the importer is visible, it does not by itself extinguish or reduce the statutory liability to pay interest under Section 28AA of the Customs Act, 1962. Thus, interest remains mandatorily payable.

24. Violation of the provisions of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020):

19.22 Further, it is observed that the Importer is required to possess information and knowledge as per Rule 4 read with Rule 5 of the CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. The said Provisions of Rule 4 and Rule 5 are reproduced below:

- Rule 4.

Origin related information to be possessed by importer. -

The importer claiming preferential rate of duty shall-

- (a) possess information, as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.
- (b) keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.
- (c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.

Rule 5.

Requisition of information from the importer. -

(1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.

(2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.

(3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.

(4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.

(5) Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:

(a) The importer relinquishes the claim; or

(b) The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

24.1 From the above, I observe that:

- In the instant case that there is no dispute about the fact that the Noticee has taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty, as prescribed in Rule 4 (c) of the CAROTAR, 2020.

- Further, Noticee has failed to provide the above said vital information along with supporting documents as prescribed in Rule 4 (b) of the CAROTAR, 2020 at any relevant point of time namely i) at the time of recording of his statement under section 108 of the Customs Act, 1962, or (ii) in its defence reply.
- Additionally, Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility. Therefore, I find that the Noticee has violated Rule 4 & 5 of CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. Further, as mandated by Section 28DA of the Customs Act, 1962 read with Rule 4 of CAROTAR, 2020, The Importer has failed to possess sufficient information as per Form I of the said rules along with supporting documents of the same.

Therefore, in terms of Section 28DA of the Customs Act, 1962, Noticee cannot avoid responsibility of ensuring accuracy and truthfulness of COO certificate, facing the consequences in terms of payment of related duty, interest, fine and penalties.

25. Confiscation of goods under Section 111(m) & 111(q) of the Customs Act, 1962:

25.1 I find that the Show Cause Notice proposes confiscation of the imported goods under the provisions of Section 111(m) and 111(q) of the Customs Act, 1962. Section 111(o) renders goods liable to confiscation if they are exempted from duty subject to any condition under the Act or any other law, and such condition is not observed, unless the non-observance

is sanctioned by the proper officer. In this case, the importer availed conditional exemption from Basic Customs Duty (BCD) under Notification No. 46/2011-Customs dated 01.06.2011, as amended, which provides preferential tariff treatment for goods originating from ASEAN countries under the AIFTA. Rule 13 of Notification No. 189/2009-Customs (Non-Tariff) is reproduced for better appreciation:

“Rule 13 Certificate of Origin- A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the other Parties in accordance with the Operational Certification Procedures as set out in Appendix D.”

From the above Rule 13, it is evident that the condition for this exemption is the production of a valid Certificate of Origin (CoO) certifying that the goods meet the origin criteria specified in the AIFTA Rules of Origin. As discussed under foregoing paras, the importer is not eligible for the AIFTA benefit as the CoOs submitted were not authentic and fake. This act on the part of the importer rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

25.2 Section 111(q), inserted vide Finance Act, 2020 (12 of 2020) dated 27.03.2020, specifically addresses goods imported on a claim of preferential rate of duty that contravene any provision of Chapter VAA (Special Provisions Relating to Preferential Rate of Duty under Trade Agreements) or rules thereunder. Chapter VAA, covering Sections 28DA to 28DC, mandates importers to declare origin qualification, possess and furnish information on origin criteria, and exercise reasonable care regarding the accuracy of such information. Importer by submitting forged CoOs violates Section 28DA, as they failed to ensure the authenticity of the documents and did not possess verifiable details. Consequently, the goods contravene Chapter VAA provisions, which makes them liable to confiscation under Section 111(q) of the Customs Act, 1962.

25.3 As the impugned goods are found to be liable for confiscation under Section 111 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. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs*,

Ahmedabad [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in **C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]**. Para 23 of the said Judgment is as follows:

“The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.”

25.4 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I note that the case involves avilment of exemption from Basic Customs Duty (BCD) under Notification No. 46/2011-Customs dated 01.06.2011, as amended, but does not involve prohibited goods or smuggled goods. I find it appropriate to maintain proportionality between the gravity of offence and the extent of revenue implication. Considering the nature of the violation and the principle that redemption fine should

not be excessive, the ends of justice would be met if the redemption fine is restricted to approx. 50% of the differential duty.

26. With regards to Cross Examination sought by the Noticees:

26.1 I have carefully considered the request of the Noticee seeking cross-examination of the investigating officers who accessed the Malaysian Government portal and downloaded the verification screenshots. I note that the Noticee has contended that denial of cross-examination would vitiate the proceedings and has relied upon various judicial precedents in support of such plea. In the present case, I find that the investigating officers whose cross-examination is sought is a Customs officer who accessed an official foreign government portal in discharge of official functions during investigation. The screenshots downloaded from the Malaysian portal are not personal statements of the officers but are electronic records obtained from an official source. The officers are not witnesses to any disputed private transaction; rather, they have merely placed on record the results of verification conducted from a recognized government portal. The authenticity or otherwise of the Certificates of Origin is established primarily through documentary comparison and portal data, not through any oral testimony of the investigating officers.

26.2 I further note that the Noticee has not demonstrated any specific prejudice that would arise in absence of cross-examination of the officer. The request is framed broadly to question methodology, date of access, and search parameters, but no material has been produced to show that the portal itself is unofficial or that the screenshots are fabricated. Therefore, I find that cross-examination of the officer would not alter the core documentary discrepancies already established on record. I further find that the Noticee, despite serious allegations regarding fabrication and not authenticity of the Certificates of Origin, has not produced a single documentary evidence to establish that the CoOs submitted at the time of import were genuine and validly issued. Instead of discharging the statutory burden cast upon the importer under Section 28DA to possess and furnish sufficient information regarding origin criteria, the Noticee has questioned the manner of investigation and the portal verification process. I find that such approach amounts to shifting the burden onto the Department without first establishing the legitimacy of the exemption claim. It is settled law that the burden to prove eligibility to an exemption notification lies upon the claimant. In the present case, without producing any affirmative evidence to demonstrate that the Certificates of Origin were genuine, the Noticee cannot seek to invalidate the investigation merely on procedural objections. I therefore hold that the Noticee has failed to discharge its primary responsibility of proving that the preferential benefit

availed was legitimate, and such failure further weakens the request for cross-examination and the defence raised in the written submissions.

26.3 I also find it appropriate to observe that even if, for the sake of argument, it is assumed that no portal verification had been conducted in the present case, the fundamental question would still remain as to what documentary evidence was available with the importer to substantiate the legitimacy of the Certificates of Origin and the corresponding preferential claim. If a simple query had been raised by an audit officer requiring the importer to furnish supporting documents evidencing compliance with origin criteria, the importer was duty bound under Section 28DA to produce such information. However, the Noticee has remained silent and has not produced any such documentary evidence either during investigation or in adjudication proceedings. This absence of supporting material clearly indicates that the preferential claim was made without possession of requisite origin-compliance information. Such conduct cannot be characterized as bona fide or as an instance of innocent reliance on supplier documents; rather, it reflects failure to discharge the statutory responsibility cast upon the importer claiming exemption.

26.4 I also note that the reliance placed by the Noticee on *Andaman Timber Industries* and *Mahek Glazes* is distinguishable on facts. In those cases, the adjudication was founded substantially on third-party statements, the veracity of which could be tested only through cross-examination. In the present case, the investigating officer's role is limited to retrieval of official electronic data; he is not the author of the portal content nor a private witness making inculpatory allegations.

26.5 Further, I find that the request for cross examination has been made at the final stage of the proceedings. This appears to be a delaying tactic intended to prolong the adjudication process without any substantive justification. Furthermore, the requesting noticees themselves have made incriminating admissions. Shri Mohit Gutpa in his statement clearly admitted that he was handling the entire import operations of M/s. Harihar, that he did not verify the manufacturing activity in Malaysia, and that he did not possess any documentary evidence relating to fulfillment of origin criteria under AIFTA. I also note that upon being confronted with the portal verification results, he acknowledged that the Certificates of Origin submitted before Customs appeared to be fake or required verification from the supplier. The statement, being voluntary and recorded under statutory authority, clearly demonstrates knowledge of the deficiencies in the origin claim and thus constitutes substantive self-incriminating evidence corroborating the documentary findings on record.

26.6 It is further noted that the applicants have not retracted his statements recorded under Section 108 of the Customs Act, 1962. The statements remain voluntary, consistent, and corroborated by independent documentary and scientific evidence. Even after issuance of the Show Cause Notice dated 16.04.2025, the applicants have not disputed the investigation or any of the connected statements. The present request for cross-examination, made only on 04.02.2025, at the last stage of adjudication proceedings, clearly appears to be an afterthought, devoid of any new or justifiable grounds. As the applicants have themselves accepted these facts and never retracted their statements, I find no necessity for cross-examination. Noticee's own uncontroverted confessional statements constitute direct and primary evidence of the conspiracy, mens rea, and duty evasion. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

a. SANJEEV MAGGU Vs. ADDITIONAL COMMISSIONER OF CUSTOMS [WP (C) No.5184/2019]: the Hon'ble High Court, Delhi I the said case pronouncing judgement on 26.12.2025 has held that:

"16. The aforesaid persons being Customs Officials, this Court is of the considered view that they were discharging their duties in an official capacity. Consequently, they cannot, as a matter of right, be subjected to cross-examination, particularly in view of the settled position of law laid down by this Court in W.P.(C) 4576/2026 titled M/s Vallabh Textiles vs. Additional Commissioner Central Tax GST, Delhi East and Ors. = 2025-TIOL-680-HC-DEL-GST, wherein the Court has held that the right to cross examination is not an unfettered and absolute right. Prejudice has to be shown which would lead to a conclusion that without cross examination substantial justice cannot be done. The relevant portion of the said decision in M/s Vallabh Textiles (Supra) reads as under:

"18. A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.

19. *The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. Persons seeking cross examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained. If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all."*

- b. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- c. **In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**
 "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]
- d. **In the case of Commissioner of Customs, Hyderabad v. Tallaja Impex reported in 2012 (279) ELT 433 (Tri.), it was held that—**
 "In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross-examination cannot be claimed as a matter of right."
- e. **Hon'ble Tribunal in the case of P. Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri) has held in Para 5 that:**

“The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable.”

From the above discussion, I find the request for cross-examination is devoid of merit. It is unnecessary in view of the admitted facts, corroborated evidence, noticees own admissions, and was also filed belatedly after accepting the material facts.

27. Penalty under Section 112(a), 112(b), 114A & 114AA of the Customs Act, 1962. I observe that the Show Cause Notice proposed penalties on M/s. Harihar Enterprises and Shri Mohit Gupta under Section 112(a) & (b)/ 114A & 114AA of The Customs Act, 1962. In order to examine the same, it is necessary to refer to the provisions of Section 112(a) & (b)/ 114A & 114AA of the Customs Act, 1962, which are reproduced as follows:

Section 112. Penalty for improper importation of goods, etc.-

Any person, -

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

Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

“Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any 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

Section 114AA. Penalty for use of false and incorrect material. –

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

27.1 The language of Section 114A is imperative: where duty has not been levied or has been short-levied by reason of collusion or wilful misstatement or suppression of facts, the person liable to pay such duty shall also be liable to penalty equal to the duty so determined. Since the duty has been short levied by reason of suppression and wilful mis-statement and the importer is liable to pay differential duty as determined under Section 28(8) of the Customs Act, 1962, the importer, M/s. Harihar Enterprises, is liable for penalty equal to the duty amount under the provisions of **Section 114A** of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, once penalty is imposed under Section 114A, no penalty under Section 112 is imposable.

27.2 Section 114AA of the Customs Act, 1962 provides for penalty where a person knowingly or intentionally makes, signs or uses any declaration or document which is false or incorrect in any material particular in the transaction of business under the Act. In the present case, M/s. Harihar Enterprises, while filing Bills of Entry and claiming preferential benefit under Notification No. 46/2011-Cus, used Certificates of Origin which have been found to be fake/not authentic. The COO reference numbers were either non-existent or corresponded to entirely different exporters, consignees and goods. The repeated use of such false Certificates of Origin for availing undue preferential tariff benefit clearly establishes intentional use of incorrect documents in customs transactions. Accordingly, the importer, M/s. Harihar Enterprises, is liable to penalty under **Section 114AA** of the Customs Act, 1962.

27.3 I find that Shri Mohit Gupta was the person who was actively handling and controlling the entire import operations of M/s. Harihar Enterprises, including communication with overseas suppliers, submission of import documents to the Customs Broker, and direction for filing of Bills of Entry claiming AIFTA benefit. He admitted that he did not possess requisite information regarding origin criteria and had not verified the manufacturing activity in Malaysia, however, he continued to use the Certificates of Origin for clearance of goods at preferential rate of duty. Being the person directly concerned with the import, clearance and subsequent dealing of the goods, and having consciously relied upon documents found to be false in material particulars, Shri Mohit Gupta had rendered the goods liable for confiscation. Accordingly, I hold that Shri Mohit Gupta is liable to penalty under Section **112(b)** of the Customs Act, 1962.

28. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

- i. I order to deny the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the Bills of Entry, as per Annexure-A to the SCN, and disallowed the benefit in terms of Section 28DA of the Customs Act, 1962 and order for re-assessment of subject Bills of Entry by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.
- ii. I order to confiscate the impugned goods having total assessable value of Rs. 11,28,56,453/- (Rupees Eleven Crore Twenty Eight Lakh Fifty Six Thousand Four Hundred Fifty Three only) as per Annexure-A to the SCN, under the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. I impose redemption fine of **Rs. 1,30,00,000/- (Rupees One Crores and Thirty Lakhs only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.
- iii. I confirm the demand of differential duty amounting to **Rs. 2,60,69,841/- (Rupees Two Crores Sixty Lakh Sixty Nine Thousand Eight Hundred Forty One only)** under Section 28(4) of the Customs Act, 1962 and order to recover the same from the importer.
- iv. I order to recover interest, as applicable, at the appropriate rate on the short-paid duty from the importer under Section 28AA of the Customs Act, 1962.

- v. Since the differential duty amount of Rs. 2,60,69,841/- (Rupees Two Crores Sixty Lakh Sixty Nine Thousand Eight Hundred Forty One only) has already been paid by them, I order to appropriate the said amount towards their duty liability against the aforesaid demand of duty.
- vi. Since the interest amount of Rs. 33,02,541/- (Rupees Thirty Three Lakh Two Thousand Five Hundred Forty One only) has already been paid by them, I order to appropriate the said amount towards their interest liability against the aforesaid demand of duty.
- vii. I impose a penalty of **Rs. 2,60,69,841/- (Rupees Two Crores Sixty Lakh Sixty Nine Thousand Eight Hundred Forty One only)** upon M/s. Harihar Enterprises under the provisions of Section 114A of the Customs Act, 1962. However, I do not impose any penalty under Section 112(a)/112(b) of the Customs Act, 1962.
- viii. I impose a penalty of **Rs. 50,00,00,000/- (Rupees Fifty Lakhs only)** upon M/s. Harihar Enterprises under the provisions of Section 114AA of the Customs Act, 1962.
- ix. I impose a **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)** upon Shri Mohit Gupta under Section **112(b)(ii)** of the Customs Act, 1962.

29. This order 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.

(NITIN SAINI)

Commissioner of Customs,
Custom House Mundra.

File No. GEN/ADJ/COMM/214/2025-Adjn

DIN: 20260371MO000000FA55

To,

- (i) M/s Harihar Enterprises (Prop. Shri Hari Das Gupta)
Basement F-30, Mangolpuri Industrial Area,
Phase-2, North West Delhi, Delhi- 110034..
- (ii) Shri Mohit Gupta,
K-1/25, 1st Floor, Model Town-II,
Delhi-110009.

Copy to:-

1. The Chief Commissioner of Customs, Custom Zone, Ahmedabad
2. The The Deputy/Asst. Commissioner (EDI/TRC/Legal/Prosecution),
Custom House, Mundra.
3. Guard File.