

VIII/10-233/ICD-SACHANA/O&A/HQ/2024-25  
OIO No. 221/ADC/SRV/O&A/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद  
“सीमा शुल्क भवन ,” पहली मंजिल ,पुराने हाई कोर्ट के सामने ,नवरंगपुरा,  
अहमदाबाद – 380 009.

दूरभाष : (079) 2754 4630      E-mail: [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in)      फैक्स : (079) 2754 2343

DIN: 20250171MN0000333DFF

**PREAMBLE**

A	फाइल संख्या / File No.	:	VIII/10-233/ICD-SACHANA/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	VIII/10-233/ICD-SACHANA/O&A/HQ/2024-25 dated 18.11.2024
C	मूल आदेश संख्या / Order-In-Original No.	:	<b>221/ADC/SRV/O&amp;A/2024-25</b>
D	आदेश तिथि / Date of Order-In-Original	:	<b>08.01.2025</b>
E	जारी करने की तारीख / Date of Issue	:	<b>08.01.2025</b>
F	द्वारा पारित / Passed By	:	<b>SHREE RAM VISHNOI,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	<b>M/S. MAHI INTERNATIONAL,</b> F/229, 2ND FLOOR, CITY CENTRE, IDGAH CIRCLE, AHMEDABAD, GUJARAT, 380016
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5      %(अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**BRIEF FACTS OF THE CASE**

M/S. MAHI INTERNATIONAL having its registered office at F/229, 2nd Floor, City Centre, Idgah Circle, Ahmedabad, Gujarat, 380016 and **IEC No. 1313019500**

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(hereinafter referred to as “importer” and “M/s. Mahi International” for the sake of brevity) have filed Bills of Entry at ICD, Sachana as mentioned in Table-I below for import of ‘**Cold rolled Stainless Steel Coils NSS 410 M4**’ of different thicknesses under CTH 72193591.

**TABLE – I**

Sl. No.	Bill of Entry No.	Date	Country of Origin (COO) certificate No.	Name of Supplier & Country
1.	5775857	21.11.2019	KL-2019-AI-21-030046	CEKAP PRIMA SDN BHD

**2.** Intelligence was gathered by the officers of Directorate of Revenue Intelligence, Jamnagar Regional Unit, received indicated that various fake ‘Certificates of Origin’ (forged AI form) had been issued in Malaysia to the supplier M/s. CEKAP PRIMA SDN BHD, so that importers in India could avoid paying Basic Customs Duty @7.5% availing Country of Origin benefit in view of ASEAN-India FTA (AIFTA) agreement.

**3.** The matter was examined and it was found that import of Stainless Steel products had been made by M/s. Mahi International at ICD Sachana (INJKA6) by availing duty exemption benefit of Customs Tariff Notification No.46/2011-Cus. dated 01.06.2011 under Sr.No.967(I) availing Country of Origin benefit on the basis of the Country of Origin Certificates issued by the above mentioned overseas suppliers. Details of Bills of Entry as mentioned in Table-I, filed by the M/s. Mahi International at ICD- Sachana are as per Table-II below:

**TABLE-II**

Sl. No	Bill of Entry No & Date	Description of goods	CTH	Declared Assessable Value (in Rs.)	Declared Duty (in Rs.) (BCD @0%, SWS @0% and IGST@18%)
01	5775857 dated 21.11.2019	Cold rolled Stainless Steel Coils NSS 410 M4’ of different size	72193591	22,27,924/-	4,01,026/-

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

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

***Principal Notification No. 46/2011 dated 1<sup>st</sup> June, 2011***

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

column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II .

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

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

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

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

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

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

**“Rule 13 Certificate of Origin-** A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the

*other Parties in accordance with the Operational Certification Procedures as set out in Appendix D.”*

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

**“Article 4:-**

*The exporter and/or the manufacturer of the products qualified for preferential tariff treatment shall apply in writing to the Issuing Authority of the exporting Party requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to products, the origin of which by their nature can be easily verified.*

**Article 5:-**

*At the time of carrying out the formalities for exporting the products under preferential tariff treatment, the exporter or his authorised representative shall submit a written application for the AIFTA Certificate of Origin together with appropriate supporting documents proving that the products to be exported qualify for the issuance of an AIFTA Certificate of Origin.”*

**Article 16:-**

*(a) The importing Party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on a producer/exporter's cost statement based on the current cost and prices within a six- month timeframe prior to the date of exportation subject to the following procedures:*

*(i) the request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;*

*(ii) the Issuing Authority shall respond to the request promptly and reply within three (3) months after receipt of the request for retroactive check;*

*(iii) In case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing Party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the good to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and...”*

**8.** In this regard, inquiry has been initiated and summons dated 25.01.2023 and 16.08.2023 under Section 108 of the Customs Act, 1962 were issued to the M/s Mahi

International directing them to appear for the subject inquiry and give statement. The importer did not appear before the authority to tender their statement, however, vide e-mail dated 25.08.2023 has informed that they had paid differential duty. Thereafter, the Assistant Commissioner, Customs, ICD Sachana vide letter F.No. VIII/48-05/Prev/ICD-SCH/21-22 dated 10.01.2024 as informed that the importer has paid penalty amount of Rs. 32,534/- vide Challan No. 149 dated 23.12.2023.

**9.1** Thereafter, from the documents with regard to retrospective verification of Country of Origin Certificates by the issuing authority i.e. Ministry of International Trade and Industry, Malaysia (MITI) in respect of Malaysia based Manufacturer/supplier, viz. M/s. CEKAP PRIMA SDN BHD, it was ascertained that MITI had never received a COO Application from M/s. CEKAP PRIMA SDN BHD for issuance of a COO. Therefore, it appeared that the certificates submitted by the importer at the time of imports were unauthentic / bogus. The scanned image of verification report in r/o above mentioned certificates of origin received from Ministry of Trade and Industry of Malaysia (MITI) are as per images under-

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

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
1	KL-2019-AI-21-085278	MH MEGAH MAJU ENTERPRISE	30.09.2019
2	KL-2019-AI-21-072695	MDH MAJU INDUSTRY	01.08.2019
3	KL-2019-AI-21-077386	MH MEGAH MAJU ENTERPRISE	19.08.2019
4	KL-2019-AI-21-081869	MH MEGAH MAJU ENTERPRISE	01.10.2019
5	KL-2019-AI-21-086871	MH MEGAH MAJU ENTERPRISE	09.10.2019
6	KL-2019-AI-21-088746	MH MEGAH MAJU ENTERPRISE	25.10.2019
7	KL-2019-AI-21-091327	MH MEGAH MAJU ENTERPRISE	12.11.2019
8	KL-2019-AI-21-091319	MH MEGAH MAJU ENTERPRISE	12.11.2019
9	KL-2019-AI-21-095563	MH MEGAH MAJU ENTERPRISE	26.11.2019
10	KL-2019-AI-21-095873	MH MEGAH MAJU ENTERPRISE	26.11.2019
11	KL-2019-AI-21-075801	MH MEGAH MAJU ENTERPRISE	15.08.2019
12	KL-2019-AI-21-077378	MH MEGAH MAJU ENTERPRISE	19.08.2019
13	KL-2019-AI-21-077411	MH MEGAH MAJU ENTERPRISE	19.08.2019
14	KL-2019-AI-21-080137	MH MEGAH MAJU ENTERPRISE	28.08.2019
15	KL-2019-AI-21-080172	MH MEGAH MAJU ENTERPRISE	28.08.2019
16	KL-2019-AI-21-081898	MH MEGAH MAJU ENTERPRISE	02.10.2019
17	KL-2019-AI-21-086855	MH MEGAH MAJU ENTERPRISE	09.10.2019
18	KL-2019-AI-21-086834	MH MEGAH MAJU ENTERPRISE	09.10.2019
19	KL-2019-AI-21-086829	MH MEGAH MAJU ENTERPRISE	09.10.2019
20	KL-2019-AI-21-06958	SETICA INDUSTRIES (M) SDN BHD	22.01.2019
21	KL-2019-AI-21-06591	SETICA INDUSTRIES (M) SDN BHD	07.02.2019
22	KL-2018-AI-21-139316	JENTAYU INDUSTRY	28.12.2018
23	KL-2019-AI-21-03293	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
24	KL-2019-AI-21-05483	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
25	KL-2019-AI-21-07132	SETICA INDUSTRIES (M) SDN BHD	15.02.2019
26	KL-2019-AI-21-099652	MH MEGAH MAJU ENTERPRISE	31.12.2019
27	KL-2020-AI-21-001958	MH MEGAH MAJU ENTERPRISE	22.01.2020
28	KL-2019-AI-21-02866	SETICA INDUSTRIES (M) SDN BHD	25.01.2019
29	KL-2020-AI-21-003235	MH MEGAH MAJU ENTERPRISE	04.02.2020
30	KL-2019-AI-21-091247	MH MEGAH MAJU ENTERPRISE	12.11.2019
31	KL-2020-AI-21-005078	CEKAP PRIMA SDN BHD	29.01.2020
32	KL-2019-AI-21-010992	ARTFRANSI INTERNATIONAL SDN BHD	24.09.2019
33	KL-2019-AI-21-010967	ARTFRANSI INTERNATIONAL SDN BHD	11.10.2019
34	KL-2019-AI-21-010979	ARTFRANSI INTERNATIONAL SDN BHD	31.10.2019
35	KL-2019-AI-21-010989	ARTFRANSI INTERNATIONAL SDN BHD	19.11.2019
36	KL-2019-AI-21-088361	MH MEGAH MAJU ENTERPRISE	21.10.2019
37	KL-2020-AI-21-000862	MH MEGAH MAJU ENTERPRISE	20.01.2020
38	KL-2019-AI-21-018819	HARD METAL TRADE SDN BHD	16.12.2019
39	KL-2019-AI-21-014873	SETICA INDUSTRIES (M) SDN BHD	09.04.2019
40	KL-2019-AI-21-015487	SETICA INDUSTRIES (M) SDN BHD	12.04.2019
41	KL-2019-AI-21-039871	MH MEGAH MAJU ENTERPRISE	23.04.2019
42	KL-2019-AI-21-043235	CEKAP PRIMA SDN BHD	12.12.2019
43	KL-2019-AI-21-038903	SETICA INDUSTRIES (M) SDN BHD	N/A
44	KL-2019-AI-21-072613	MDH MAJU INDUSTRY	01.08.2019

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

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
45	KL-2019-AI-21-093214	EZY METAL ENTERPRISE	15.11.2019
46	KL-2019-AI-21-095525	MH MEGAH MAJU ENTERPRISE	26.11.2019
47	KL-2019-AI-21-095473	MH MEGAH MAJU ENTERPRISE	26.11.2019
48	KL-2019-AI-21-027975	MALY METAL INDUSTRY SDN BHD	30.09.2019
49	KL-2019-AI-21-033688	MALY METAL INDUSTRY SDN BHD	13.11.2019
50	KL-2019-AI-21-039022	MALY METAL INDUSTRY SDN BHD	25.11.2019
51	KL-2019-AI-21-043662	MALY METAL INDUSTRY SDN BHD	16.12.2019
52	KL-2019-AI-21-088477	MH MEGAH MAJU ENTERPRISE	27.10.2019
53	KL-2019-AI-21-088408	CEKAP PRIMA SDN BHD	12.11.2019
54	KL-2019-AI-21-033027	MH MEGAH MAJU ENTERPRISE	22.10.2019
55	KL-2019-AI-21-038395	CEKAP PRIMA SDN BHD	27.11.2019
56	KL-2019-AI-21-0103023	ARTFRANSI INTERNATIONAL SDN BHD	02.12.2019
57	KL-2019-AI-21-043670	MALY METAL INDUSTRY SDN BHD	16.12.2019
58	KL-2019-AI-21-099382	EZY METAL ENTERPRISE	27.12.2019
59	KL-2019-AI-21-044172	MALY METAL INDUSTRY SDN BHD	31.12.2019
60	KL-2019-AI-21-091339	JENTAYU INDUSTRY	30.11.2019
61	KL-2019-AI-21-090139	JENTAYU INDUSTRY	11.11.2019
62	KL-2019-AI-21-093873	JENTAYU INDUSTRY	29.11.2019
63	KL-2019-AI-21-085293	MH MEGAH MAJU ENTERPRISE	30.09.2019
64	KL-2019-AI-21-086925	MH MEGAH MAJU ENTERPRISE	09.10.2019
65	KL-2019-AI-21-017946	PIONEER ULT ENTERPRISE	24.10.2019
66	KL-2019-AI-21-017945	PIONEER ULT ENTERPRISE	24.10.2019
67	KL-2019-AI-21-017896	PIONEER ULT ENTERPRISE	04.11.2019
68	KL-2019-AI-21-017895	PIONEER ULT ENTERPRISE	04.11.2019
69	KL-2019-AI-21-017912	PIONEER ULT ENTERPRISE	15.11.2019
70	KL-2019-AI-21-018082	PIONEER ULT ENTERPRISE	20.11.2019
71	KL-2019-AI-21-018251	PIONEER ULT ENTERPRISE	29.11.2019
72	KL-2019-AI-21-018250	PIONEER ULT ENTERPRISE	29.11.2019
73	KL-2019-AI-21-018252	PIONEER ULT ENTERPRISE	29.11.2019
74	KL-2019-AI-21-018796	PIONEER ULT ENTERPRISE	16.12.2019
75	KL-2019-AI-21-018809	PIONEER ULT ENTERPRISE	16.12.2019
76	KL-2019-AI-21-018800	PIONEER ULT ENTERPRISE	16.12.2019
77	KL-2019-AI-21-018848	PIONEER ULT ENTERPRISE	24.12.2019
78	KL-2019-AI-21-018845	PIONEER ULT ENTERPRISE	24.12.2019
79	KL-2019-AI-21-018843	PIONEER ULT ENTERPRISE	24.12.2019
80	KL-2019-AI-21-018898	PIONEER ULT ENTERPRISE	31.12.2019
81	KL-2020-AI-21-019358	PIONEER ULT ENTERPRISE	15.01.2020
82	KL-2020-AI-21-019428	PIONEER ULT ENTERPRISE	28.01.2020
83	KL-2020-AI-21-019484	PIONEER ULT ENTERPRISE	28.01.2020
84	KL-2020-AI-21-019482	PIONEER ULT ENTERPRISE	28.01.2020
85	KL-2020-AI-21-019480	PIONEER ULT ENTERPRISE	28.01.2020
86	KL-2020-AI-21-019511	PIONEER ULT ENTERPRISE	04.02.2020
87	KL-2019-AI-21-01095	SETICA INDUSTRIES (M) SDN BHD	07.01.2019

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In view of above, following certificates of origin claimed to be issued in Malaysia in respect of M/s. CEKAP PRIMA SDN BHD, Malaysia for the goods “Cold Rolled Stainless Steel Coils” were found to be unauthentic by the Ministry of Trade and Industry of Malaysia (MITI) as given in Table-III below:

TABLE – III

Sr. No.	COO Reference No.	Approved Date	Commodity
1	KL-2020-AI-21-005078	29.01.2020	Stainless Steel Cold Rolled Coils (HS Code 7219 & 7220)
2	KL-2019-AI-21-043235	12.12.2019	Stainless Steel Cold Rolled Coils (HS Code 7219 & 7220)
3	KL-2019-AI-21-088408	12.11.2019	Stainless Steel Cold Rolled Coils (HS Code 7219 & 7220)
4	KL-2019-AI-21-038395	27.11.2019	Stainless Steel Cold Rolled Coils (HS Code 7219 & 7220)

9.2 Thereafter, the verification report was received by DRI vide letter F.No.456/219/2021-Cus.V dated 27.04.2021 from FTA Cell, CBIC alongwith mail dated 18.05.2021 from MITI, Malaysia and DRI HQ letter F.No.DRI/HQ-CI/50D/Misc.30/2021 dated 09.09.2021 alongwith enclosure.

9.3 Further, Directorate of Revenue Intelligence, Hdqrs. vide Alert Circular No.02/2021-CI dated 09.09.2021 has informed that more than 150 COOs pertaining to import of Steel Products (Coil/Sheet) mainly from Malaysia and a few from Thailand from the suppliers as listed in Annexure-A to the circular have been reported to be non-authentic by the respective issuing authorities, thus rendering any consequential benefit availed under ASEAN-India preferential Trade Agreement and India-Malaysia Preferential Trade Agreement as ineligible. It was also informed in the said alert circular that it had been observed from the physical copy of COO that exports have been effected



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from Malaysia through third party invoicing, commercial invoices had been issued by third parties other than those listed in Annexure-A to the circular of Alert Circular dated 09.09.2021, even though the COO had been issued in the name of exporters as listed in the enclosed Annexure-A to the circular. Name of Supplier mentioned in Table-I M/s. CEKAP PRIMA SDN BHD is in the said Annexure-A of Alert Circular No. 02/2021-CI dated 09.09.2021.

**10.** In view of above un-authentic COOs issued in respect of identical goods supplied by M/s. CEKAP PRIMA SDN BHD, Bill of Entry under Table-I appeared to be squarely covered as identical goods for proceeding with action under Rule 7 of CAROTAR, 2020 which is reproduced below-

**Rule 7 of CAROTAR 2020- Identical goods**

*‘If it’s determined that goods originating from an exporter or producer do not meet prescribed origin criteria, this outcome will apply to identical goods from the same exporter or producer’*

In terms of above Rule-7 of CAROTAR Rules, 2020 read with Section 28DA of the Customs Act, 1962 and verification report which is also applicable in case of identical goods i.e. Cold Rolled Stainless Steel Coil imported from the same manufacturer/producer i.e. CEKAP PRIMA SDN BHD, COO certificates in respect of Bills of Entry filed by M/s. Mahi International appeared to be found as non-authentic.

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

**Table-IV**

Sr. No.	Bill of Entry No.	Date	Declared AV (in Rs.)	Declared Duty (in Rs.) [(BCD@0%), (SWS@0%) & (IGST@18%)]	Duty Payable (in Rs.) [(BCD@7.5%), (SWS@10%) & (IGST@18%)]	Differential Duty Payable (in Rs.)
1	5775857	21-11-2019	22,27,924/-	4,01,026/-	6,17,915/-	2,16,889/-
	<b>Total</b>			<b>4,01,026/-</b>	<b>6,17,915/-</b>	<b>2,16,889/-</b>

**12. Relevant legal provisions of the Customs Act, 1962:**

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

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting <sup>1</sup> [electronically] <sup>2</sup> [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.....

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such

*declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed*

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

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

**(B) Section 28(4) of the Customs Act, 1962:**

*“(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

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

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

**(C) Section 28AA: Interest on delayed payment of duty**

*(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

**(D) Section 28DA. Procedure regarding claim of preferential rate of duty. -**

*(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -*

- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*
- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
- (iii) furnish such information in such manner as may be provided by rules;*



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*(iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.*

*(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.*

*(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.*

*(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-*

*(i) the tariff item is not eligible for preferential tariff treatment;*

*(ii) complete description of goods is not contained in the certificate of origin;*

*(iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;*

*(iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".*

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

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

.....

*(a) ...*

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

*(n) ...*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*(p)...*

*(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.*

**(F) SECTION 112. "Penalty for improper importation of goods, etc.-**

*Any person, -*

....

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

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

**(G) SECTION 114A: "Penalty for short-levy or non-levy of duty in certain cases.** - *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 22[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:]"*

**(H) Section 114AA: Penalty for use of false and incorrect material. -**

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

**(I) Section 124: Issue of show cause notice before confiscation of goods, etc.-**

*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*

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

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

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

**13.** It appeared that M/s Mahi International filed Bill of Entry for import and clearance of 'Cold rolled Stainless Steel Coils NSS 410 M4 of different size' under CTH 72193590 imported from Malaysia as mentioned in Table-I. The importer had availed duty exemption benefit of Customs Tariff Notification No.46/2011 dated 01.06.2011 under Sr.No.967(I) availing Country of Origin benefit in view of ASEAN-India FTA (AIFTA) agreement. For claiming duty exemption, M/s. Mahi International had submitted the Country of Origin certificates purported to be issued by the Ministry of International Trade and Industry, Malaysia (MITI). Details of these Certificate of Origin is as per Table-I.

**13.1** It appeared that M/s. Mahi International wrongly availed duty exemption benefit of Customs Tariff Notification No.46/2011 dated 01.06.2011, as amended, in respect of the above referred goods imported from Malaysia on the invoices of said suppliers. The verification report received from the MITI clearly mentions that some suppliers never

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applied for Certificate of Origin. M/s. CEKAP PRIMA SDN BHD were suppliers in the verification list which was found as unauthentic. This clearly establish that the COO certificates issued by CEKAP PRIMA SDN BHD were fake in fact they were never issued by the Ministry of International Trade and Industry of Malaysia (MITI) and were submitted by M/s. Mahi International to fraudulently claim duty exemption under Notification No.46/2011 dated 01.06.2011.

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

**13.3** Vide 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/exported goods while presenting Bill of Entry or Shipping Bill. 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 as regards to origin criteria. Therefore, 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 the benefit of exemption Notification on the basis of unauthentic COO. The importer has failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

**13.4** Therefore, it appeared that the importer knowingly and deliberately availed the exemption Notification on the goods of Malaysia based origin. It appeared to be indicative of their mens rea. Moreover, the importer appeared to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at ICD Sachana and thereby caused evasion of Customs duty to the tune of **Rs.2,16,889/- (Rupees Two Lakh, Sixteen Thousand, Eight Hundred and Eighty**

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**Nine Only)** as calculated in Annexure-I attached and as such loss to the Government exchequer.

**13.5** As mentioned in the foregoing paras, the imported goods under the Bill of Entry, as mentioned in Table-II to this investigation report, have been found to be not corresponding the condition for claiming the exemption against Country of Origin (COO) Certificate in terms of Notification No. 46/2011-Cus dated 01.06.2011, as amended. Also, the declared goods were imported in contravention of provisions of the Customs Act, 1962 by way of submission of forged documents, hence, the goods imported having assessable value of **Rs. 22,27,924/- (Rupees Twenty Two Lakhs Twenty Seven Thousand Nine Hundred Twenty Four only)** are liable for confiscation under Section 111(m), 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appeared that the importer also rendered themselves liable for penal action under the provisions of Section 112 (a), 112(b) and/or 114A and 114AA of the Customs Act, 1962. Hence, the differential duty amount to **Rs.2,16,889/- (Rupees Two Lakh, Sixteen Thousand, Eight Hundred and Eighty Nine Only)** short levied is liable to be recovered from the importer under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

**13.6** It appeared that the importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and also failed to possess sufficient information as regards to authenticity of Certificate of Origin and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. Further, the importer has intentionally submitted fake Certificates of Origin of Malaysia, to fraudulently avail the benefit of concessional/preferential rate of duty under Notification No.46/2011 dated 01.06.2011 as amended, in respect of the goods imported from Malaysia on the invoices of suppliers listed in Table-I wrongfully, therefore he has rendered himself liable to be penalized under Section 114AA of the Customs Act, 1962.

**14. PAYMENT DURING INVESTIGATION:**

During the course of investigation, the importer has made following payments as given in Table-V:

**TABLE-V**

Sr. No.	Challan No. & Date	Total Amount (in Rs.)	Remarks
1	2038641781 dated 29.03.2022	2,17,335/-	Rs.2,16,889/- made towards duty payment and Rs.446/- towards interest
2	149 dated 23.12.2023	32,534/-	Made towards penalty payment

**15.** Thereafter, the Show Cause Natice F. No. VIII/10-233/ICD-SACHANA/O&A/HQ/2024-25 dated 18.11.2024 was issued to **M/s. Mahi International** having its registered office at F/229, 2nd Floor, City Centre, Idgah Circle, Ahmedabad, Gujarat, 380016 to show cause, to the Additional Commissioner of Customs, Customs House, Navrangpura, Ahmedabad-380009, as to why:

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- i. As the country of Origin certificate in respect of bill of entry as mentioned in Table – II above, purported to be issued by the Ministry of International Trade and Industry (MITI), Malaysia for the supplies made by M/s. CEKAP PRIMA SDN BHD are inauthentic, in terms of Rule 7 of CAROTAR 2020 as discussed in foregoing paras; the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by them against the import of goods under Bills of entry filed at ICD-Sachana as mentioned in Table - II, should not be disallowed in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 and the bill of entry should not be re-assessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011;
- ii. The impugned goods having total assessable value of **Rs. 22,27,924/- (Rupees Twenty Two Lakhs Twenty Seven Thousand Nine Hundred Twenty Four only)** as mentioned in Table – II above, should not be held liable for confiscation as per the provisions of Section 111(m), 111(o) & Section 111(q) of the Customs Act, 1962;
- iii. The differential Customs Duty amounting to **Rs.2,16,889/- (Rupees Two Lakh, Sixteen Thousand, Eight Hundred and Eighty Nine Only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962; and the differential duty amount paid by them as mentioned in Table – V should not be appropriated and adjusted against the aforesaid demand of duty;
- iv. The interest at the applicable rate may be recovered from them on the said differential Customs Duty as mentioned in Sr. No. iii above under Section 28AA of the Customs Act, 1962 and the interest amount paid by them as mentioned in Table – V, the same may be appropriated and adjusted against the aforesaid demand of interest.
- v. Penalty should not be imposed on the importer under Section 112/114A/114AA of the customs Act, 1962; and the penalty amount paid by them as mentioned in Table – V, the same may be appropriated and adjusted against the penalty.

**PERSONAL HEARING:-**

**16.** Accordingly, opportunity to be heard in person was given to M/s. Mahi International on 26.12.2024 which was attended by Shri Vijay Bhansali, Authorised Representative, M/s. Mahi International. During the course of personal hearing authorized representative of M/s. Mahi International accepted the allegations in the

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Show cause Notice and reiterated the fact that they have already made the payment of differential amount of Duty along with interest and 15 % penalty before issuance of the SCN as per proposed by the SCN and requested for closure in terms of Section 28(6) of the Customs Act, 1962.

### **DISCUSSION AND FINDINGS:-**

**17.** I have gone through the Show Cause Notice, the Submissions made by M/s. Mahi International during the course of personal hearing as well as available records of the case.

**17.1** I find from the records available that M/s. Mahi International has imported Stainless Steel products at ICD Sachana (INJKA6) by availing duty exemption benefit of Customs Tariff Notification No.46/2011-Cus. dated 01.06.2011 under Sr.No.967(I) availing Country of Origin benefit on the basis of the Country of Origin Certificates issued by the supplier mentioned in Table-I above and has paid Customs Duty at lower rates to evade the Customs Duties under section 28 (4) of the Customs Act, 1962. However, I find that the noticee has accepted their mistake and paid the differential duty along with interest and penalty @15% of the differential duty vide Challans 2038641781 dated 29.03.2022 and 149 dated 23.12.2023 before the issuance of the Show-cause Notice as per Table-V given in Para 14 above. Further the noticee has requested to conclude the proceedings as per Section 28(6) of the Customs Act, 1962 during the Personal hearing on 26.12.2024. I find that by paying duty along with Interest and 15% penalty, they have made themselves eligible for concluding the proceedings under Section 28 (6) of the Customs Act, 1962.

**17.2** Section 28 (5) and Section 28 (6) read as follow:-

***“Section 28(5)- Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.***

***“Section 28(6) - Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-***

***(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is***



***served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or***

*(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5)."*

**17.3** Also Section 125 reads as follow:-

***"125. Option to pay fine in lieu of confiscation.***

*(1)Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] [ Inserted by Act 80 of 1985, Section 9 (w.e.f. 27.12.1985).] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

***[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:]"***

**17.4** I find that M/s Mahi International, has accepted the violation of Section 28(4) of the Customs Act, 1962 and have discharged the differential duty along with interest under Section 28AA of the Customs Act, 1962 along with penalty at 15% as envisaged under Section 28(5) of the said Act. I also find that M/s Mahi International has requested that since they have discharged their liabilities, proceedings against them may please be concluded in terms of para 15 of the Show Cause Notice. As the differential duty liability along with applicable interest and penalty at 15% have been paid, I find that the proceedings against M/s Mahi International can be concluded under the provisions of Section 28(6) of the Customs Act, 1962. I also find that in view of first proviso to section 125(1) of the Customs Act, 1962 proceedings are deemed to be conclude under provision of sub-section (2) of section 28 or under clause (i) of subsection (6) of the section in respect of goods which are not prohibited or restricted, no such fine shall be imposed. As in present case, goods are not of prohibited or restricted nature, no fine in lieu of confiscation is to be imposed.

**18.** I view of above, I pass the following order:

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**ORDER**

I order to conclude the proceedings initiated vide Show Cause Notice F. No. VIII/10-233/ICD-SACHANA/O&A/HQ/2024-25 dated, 18.11.2024 issued by the Additional Commissioner of Customs, Ahmedabad under Section 28(6) of the Customs Act, 1962.

**(SHREE RAM VISHNOI)**  
ADDITIONAL COMMISSIONER

F. No. VIII/10-233/ICD-SACHANA/O&A/HQ/2024-25      Date: **08.01.2025**  
DIN: 20250171MN0000333DFF

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To,

**M/S. MAHI INTERNATIONAL,**  
F/229, 2ND FLOOR, CITY CENTRE,  
IDGAH CIRCLE, AHMEDABAD,  
GUJARAT, 380016

Copy to:

1. The Additional Director General, Ahmedabad Zonal Unit.
2. The Assistant Commissioner of Customs, ICD-Sachana, Ahmedabad.
3. The Superintendent of Customs (Systems), Customs HQ, Ahmedabad for uploading on official web-site.
4. The Superintendent (Task Force), Customs-Ahmedabad
5. Guard File.