



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियों के बाजू में, नवरंगपुरा, अहमदाबाद 380009
दूर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE : (079) 2754 46 30 FAX (079) 2754 23 43

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

फा. सं./ F. No.: VIII/10-05/Commr./O&A/2023-24

DIN- 20240571MN0000222A2D

आदेशकीतारीख/Date of Order :24.05.2024
जारीकरनेकीतारीख/Date of Issue :24.05.2024

द्वारापारित :-
Passed by :-

शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR- 17-2024-25 dtd. 24.05.2024
in the case of **M/s. Shital Industries Private Limited**, Shital House, Behind ONGC, Sabarmati, Ahmedabad, Gujarat-380005

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
 - This copy is granted free of charge for private use of the person(s) to whom it is sent.
 - इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजू में, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
 - Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
 - उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से

कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. **VIII/10-05/Commr/O&A/2022-23 dated 19.09.2023** issued to **M/s. Shital Industries Private Limited, (IEC: 0889006946)**, Shital House, Behind ONGC, Sabarmati, Ahmedabad, Gujarat-380005

Brief facts of the case:

M/s. Shital Industries Private Limited, (IEC: 0889006946), Shital House, Behind ONGC, Sabarmati, Ahmedabad, Gujarat-380005 (hereinafter referred to as M/s. Shital or 'the Importer' or the 'the Noticee for the sake of brevity'), is engaged in import of Antimony Trioxide from Thailand falling under Tariff Heading No.28258000 of first Schedule to the Customs Tariff Act, 1975.

2. Intelligence gathered by Directorate of Revenue Intelligence, Surat Regional Unit, Surat (hereafter referred to as DRI) indicated that various importers including M/s. Shital Industries Private Limited were engaged in import of Antimony Trioxide from Thailand and availed benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011, as amended, though the manufacturer/supplier does not meet the criteria of Rules of Origin under AIFTA. "Antimony Trioxide" is classified under Customs Tariff Heading No.28258000 of first Schedule to the CTA and effective rate of duty on this product was 7.5% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017, as amended (Sr. No. 169).

3. Investigation was initiated by DRI against the Importer for Duty evasion on import of Antimony Trioxide from Thailand under Summon proceeding. Summons dated 04.10.2021 was issued to the importer for recording statement. In response, the importer vide letter dated 11.10.2021 submitted one file (page 1 to 191) containing documents relating to import of Antimony Trioxide from M/s. Youngsun Chemicals Co Ltd, China and M/s. Thai Unipet Industries Co Ltd.

4. Investigation in respect of past consignments imported by the Importer:

4.1 On scrutiny of documents submitted by the Importer, it appears that the Importer had been importing Antimony Trioxide from Thailand based manufacturer since 28.01.2019 and cleared the same through JNCH, Nhava Sheva & ICD Sabarmati. The goods were manufactured by M/s. Thai Unipet Industries Co. Ltd., Thailand. It is pertinent to mention that one of the Importers of identical goods viz. M/s. Polycab India Limited (IEC 0397003498) had filed Bill of Entry No. 9178366 dated 14.10.2020 and 2615213 dated 04.02.2021 at ICD Tumb for clearance of Antimony Trioxide. Verification had been conducted under CAROTAR, 2020 and the verification reports pertaining to both consignments were received from the Thailand authorities wherein they have stated that **"The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. .."**. Thus, it appears that the imported goods does not meet the origin criteria and therefore, not eligible for benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.

4.2 The Importer had imported a number of consignments of Thailand origin Antimony Trioxide from supplier M/s. Youngsun Chemicals Co Ltd, China and M/s. Thai Unipet Industries Co. Ltd., Thailand and availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended at JNCH, Nhava Sheva (INNSA1) & ICD Sabarmati (INSBI6). The importer had imported total 13 consignments of Antimony Trioxide through JNCH, Nhava Sheva & ICD Sabarmati. M/s. Thai Unipet Industries Co. Ltd., Thailand was the manufacturer of all the 13 consignments of Antimony Trioxide imported by the Importer. It appears that the Importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011 as amended and short paid the Customs Duties of Rs.1,00,80,307/- (details as per Annexure-A attached to this Show Cause Notice) at JNCH, Nhava Sheva & ICD Sabarmati, summarized as below:

SUMMARY OF ANNEXURE-A

Port of Import	Total no. of consignments	Value of goods (in Rs.)	Total differential Customs duty involved (in Rs.)
JNCH, NHAVA SHEVA (INNSA1)	3	2,89,18,473	28,15,214
ICD SABARMATI (INSBI6)	10	7,46,28,590	72,65,093
TOTAL		10,35,47,063	1,00,80,307

5. Statements recorded under Section 108 of the Customs Act, 1962:-

5.1 Statement of Shri Onilkumar Soni, Import Manager of Shital Industries Private Limited, was recorded on 22.10.2021 before SIO, DRI, Surat under Section 108 of the Customs Act, 1962 wherein he interalia stated the facts narrated below:

- He was working as Import Manager in M/s. Shital Industries Pvt. Ltd. and looked after Import related works; that manufacturing work in M/s. Shital Industries Pvt. Ltd. was started in 1989; that there were two manufacturing units of M/s. Shital Industries Pvt. Ltd. situated at (1) Shital House, Behind ONGC, Sabarmati, Ahmedabad, Gujarat-380005 (2) Plot No. 1/11, GIDC, Kalol, Near Saij Bridge, Tal. Kalol, Dist. Gandhinagar; that their Regd. Office was also situated at Shital House, Sabarmati, Ahmedabad; that there were 11 Directors in Shital Industries Pvt. Ltd; that Shri Shital Mansukhlal Jain, Director supervised all the works related to import, export and marketing; that Shri Ketan Bhagubhai Patel looked after marketing and manufacturing; that Shri Deepak Bhagubhai Patel also looked after marketing.
- They manufactured different types of Tin stabilisers and Epoxide Soyabean Oil; that Tin stabilisers were used to impart heat & thermal stability in Plastic industry viz. PVC film, PVC Jar/Bottle, PVC Cable, Footwear industries etc.; that Epoxydised Soyabean Oil used for imparting flexibility in Plastic industry.
- His Company used to import Antimony Trioxide classified under Customs Tariff Heading 28258000 from M/s. Thai Unipet Industries Co. Ltd., Thailand and M/s. Youngsun Chemicals Co. Ltd., China from Nhava Sheva port & ICD Sabarmati, but in case of M/s. Youngsun Chemicals Co. Ltd., China, name of manufacturer & shipper was M/s. Thai Unipet Industries Co. Ltd;
- The first consignment of Antimony Trioxide of Thailand origin was imported in 2019 and his company had imported total 13 consignments of Antimony Trioxide in which M/s. Thai Unipet Industries Co. Ltd. was manufacturer/producer; that all the work related to import of Antimony Trioxide was handled by director Shri Shital Mansukhlal Jain; that import of Antimony Trioxide from M/s. Thai Unipet Co. Ltd. were handled by CHAs viz. M/s. Om Seaways Cargo (P) Ltd., M/s. Shivam Logistics and M/s. Global Ocean Clearing Pvt. Ltd.; that other than M/s. Thai Unipet Co. Ltd., they had also imported Antimony Trioxide from M/s. Guizhou Provincial Metals and Minerals I/E Co. Ltd, China.
- On being asked whether his company 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(ii) of the Customs Act, 1962, he stated that they possess said details and submitted copy of the same.
- He has been shown CBIC's letter F.No.456/89/2020-CUS.V dated 01.07.2021 issued to The Pr. Commissioner of Customs, Ahmedabad by the OSD (FTA Cell-I) enclosing letter No.0307.07/487 dated 29.06.2021 issued to Shri Manoranjan Sahu, Embassy of India, Bangkok by the Director of Import Administration and Origin Certificate Division, Dept. of Foreign Trade, Thailand along with it's attachments. On perusal of both the letters, he stated that two COO's with reference Nos. A12020-0035331 dated 06.10.2020 and A12020-0035333 dated 06.10.2020, said to be issued in Thailand, for export of Antimony Trioxide under AIFTA, were forwarded by the Ahmedabad, Customs for verification. On verification, it had been informed by the issuing authority that the exporter M/s. Thai Unipet Industries Co. Ltd. had declared that the products in the COOs were not qualified as originating goods in Thailand. Hence, the issuing authority had revoked the products mentioned on the COOs.
- This verification report was also applicable in case of identical goods i.e. Antimony Trioxide imported by them from the same manufacturer/producer M/s. Thai Unipet Industries Co. Ltd. in terms of CAROTAR Rules prescribed under Section 28DA of the Customs Act, 1962.
- He agreed that his company was not eligible to avail the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, on the import of Antimony Trioxide from M/s. Thai Unipet Industries Co. Ltd.; that they had availed exemption of BCD amounting to approx. Rs.85 lakhs on imported Antimony Trioxide having value of approx. Rs.10.35 crores during the period from Jan-2019 to Sep-2021.

- He agreed that they had wrongly availed benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended and they voluntarily ready to repay the wrongly availed exemption of BCD with interest.

6. Information available with importer in terms of Section 28DA of Customs Act, 1962:

6.1 Shri Onilkumar Soni, Import Manager of M/s. Shital Industries Private Limited stated during his statement that they have a manufacturer's declaration by M/s. Thai Unipet Industries Co. Ltd and submitted the same before Customs. It appears that the manufacturer M/s. Thai Unipet Industries Co. Ltd declared that Antimony Concentrate (HS Code 2617.1000) was used for the manufacturer of Antimony Trioxide (H.S. code 2825.8000) which confirmed to the origin criterion by adding Regional Value Addition of over 40% and change in tariff head. The scanned image of Manufacturer's declaration is as below:

[SCANNED IMAGE OF MANUFACTURER'S DECLARATION]

THAI UNIPET INDUSTRIES CO., LTD

58/4 MOO 5, BANGBUATONG-SUPHANBURI RD.,
TAMBON SAM MUEANG, AMPHOE LAT BUA LUANG, PHRA NAKHON SI AYUTTHAYA
13230 THAILAND.
TEL: (66)35902764 FAX: (66)35902765

Description of goods	Production process	Originating adopted	Criterion
1. Antimony Trioxide (HS code: 2825.8000)	The production process includes the following steps: <div><div>1. Antimony concentrate (HS code 2617.1000, imported from Myanmar), together with anthracite and soda ash, is put through a reverberatory furnace to produce antimony metal as an intermediate product; this process requires diesel and electricity as energy source</div><div>2. Antimony metal is then turned into antimony trioxide through an antimony trioxide furnace; this process requires diesel and electricity as energy source</div><div>3. The antimony trioxide powder is then packed with flexible container bags, wooden pallets, and paper bags to become the final product ready for export; we consider packaging as forming a whole with the product</div></div>	RVC + CTSH	

Material used in manufacturing process

Description of the originating material or component	Whether manufactured by producer of final goods	Whether procured by producer locally from third party (Yes or no)	If these case procured from third party , did producer of final goods seek confirmation and documentary proof of origin of these goods
1. Anthracite	No	Yes	Yes, purchase order and invoice will prove.
2. Diesel	No	Yes	Yes, purchase order and invoice will prove.
3. Soda ash	No	Yes	Yes, purchase order and invoice will prove.

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24/10/21
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THAI UNIPET INDUSTRIES CO., LTD

58/4 MOO 5, BANGBUATONG-SUPHANBURI RD.,
TAMBON SAM MUEANG, AMPHOE LAT RUA LUANG, PHRA NAKHON SI AYUTTHAYA
13230 THAILAND.
TEL: (66) 35902764 FAX: (66) 35902765

Description of goods	Production process	Originating Criterion adopted
1. Antimony Trioxide (HS code: 2825.8000)	The production process includes the following steps: <ol style="list-style-type: none">1. Antimony concentrate (HS code 2617.1000; imported from Myanmar), together with anthracite and soda ash, is put through a reverberatory furnace to produce antimony metal as an intermediate product; this process requires diesel and electricity as energy source2. Antimony metal is then turned into antimony trioxide through an antimony trioxide furnace; this process requires diesel and electricity as energy source3. The antimony trioxide powder is then packed with flexible container bags, wooden pallets, and paper bags to become the final product ready for export; we consider packaging as forming a whole with the product	RVC + CTSH

Material used in manufacturing process

Description of the originating material or component	Whether manufactured by producer of final goods	Whether procured by producer locally from third party (Yes or no)	If these case procured from third party, did producer of final goods seek confirmation and documentary proof of origin of these goods
1. Anthracite	No	Yes	Yes, purchase order and invoice will prove.
2. Diesel	No	Yes	Yes, purchase order and invoice will prove.
3. Soda ash	No	Yes	Yes, purchase order and invoice will prove.

Pages 1, 2, 3 Produced by me
22/10/21
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THAI UNIPET INDUSTRIES CO., LTD.
58/4 MOO 5, BANGBUATONG-SUPHANBURI RD.,
TAMBON SAM MUEANG, AMPHOE LAT RUA LUANG, PHRA NAKHON SI AYUTTHAYA
13230 THAILAND.
TEL: (66) 35902764 FAX: (66) 35902765

g.	Has the CoO been issued retrospectively?	<input type="radio"/> Yes <input checked="" type="radio"/> No ✓ If yes, provide reasons for same:
h.	Has the consignment in question been directly shipped from country of origin?	<input checked="" type="radio"/> Yes ✓ <input type="radio"/> No If not, then has it been ascertained that same is as per provisions of the concerned agreement? How has it been ascertained that goods have met the prescribed conditions of Direct Shipment? - Bill of Lading and Export Declaration can be provided

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For and on behalf of
Thai Unipet Industries Co., Ltd.

Authorized Signature(s)

7. Origin Criteria in terms of Notification No. 189/2009-Cus. (N.T.) dated 31-12-2009:

7.1 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 [hereinafter referred to as "Rules of Origin"] were notified vide Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009, as amended.

7.2 In terms of Rule-5 read with Rule-3 of the said "Rules of Origin" for the products not wholly produced or obtained in the exporting party (of the Agreement), to qualify for the preferential Tariff under the said Preferential Tariff Agreement, the goods must have at least 35% RVC and non-originating materials must have undergone processing to warrant change in CTS level (6 digit) with final process of manufacture within territory of export. Rule-3 and Rule-5 of the said "Rules of Origin" read as follows:-

"Rule 3. Origin criteria.- The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-

- (a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or
- (b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6

"Rule 5. Not wholly produced or obtained products.-(1) For the purpose of clause (b) a / rule 3, a product shall be deemed to be originating, if-

- (i) the AFTA content is not less than 35 percent of the FOB value; and
- (ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTS) level i.e. at six digit of the Harmonized System

8. Verification under CAROTAR, 2020:

8.1 The Deputy Commissioner of Customs, ICD Tumb vide letter F.No. VIII/ICD-Tumb/32/CCO-Verification/2020-2021 dated 05.11.2020 has forwarded proposal for verification of COO NO. AI2020-0035331 & AI2020-0035333 under the provisions of Rule 6(2) of CAROTAR, 2020 in respect of COO certificates issued by Thailand authority under AFTA, details as under:

BE No & date	Name of Importer	Reference No of the Certificate of Origin	COO Certificate issuing authority	Name of exporting country	Name of Exporter/ Manufacturer	Benefit under Notification No.
9178364 dated 14.10.2020	M/s Polycab India Ltd. (IEC:- 0397003498)	AI2020-0035331	Department of Foreign Trade, Government of Thailand	Thailand	Thai Unipet Industries Co. Ltd	046/2011-Cus dated 01.06.2011
9178366 dated 14.10.2020	M/s Polycab India Ltd. (IEC:- 0397003498)	AI2020-0035333	Department of Foreign Trade, Government of Thailand	Thailand	Thai Unipet Industries Co. Ltd	046/2011-Cus dated 01.06.2011

8.2 The OSD (FTA Cell-1) vide letter dated 01.07.2021 (**RUD-3**) has forwarded the Verification Report No 0307.07/487 dated 29.06.2021 to the Principal Commissioner of Customs, Custom House, Ahmedabad enclosing letter dated 29.06.2021 received from the Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand wherein they confirmed that:

"(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed (Attachment)"

8.3 The scanned image of Verification Report No 0307.07/487 dated 29.06.2021 is as below:

[SCANNED IMAGE OF VERIFICATION REPORT NO 0307.07/487 DATED 29.06.2021]

No. 0307.07/ 487



Import Administration and
Origin Certification Division
Department of Foreign Trade
563 Nonthaburi Road
Nonthaburi 11000 Thailand
Tel. 662-547-4823 Fax 662-547-4807

19 June 2021

Dear Sir,

Subject: Response to Verification of the Certificates of Origin Form AI

Reference is made to your letter No. Ban/Com/206/01/2021 dated 25 January 2021, requesting verification genuineness and authenticity of the Form AI No. AI2020-0035331 dated 6 October 2020 and No. AI2020-0035333 dated 6 October 2020.

Having conducted an administrative cross-control, we hereby confirm that

1) The above-mentioned Certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

2) The exporter, THAI UNIPET INDUSTRIES CO., LTD. declared that the products shown on the above-mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed. (Attachment)

Please be assured of our full co-operation.

Yours sincerely,

(Miss Lilin Kovudhikulrungsri)
Director of Import Administration
and Origin Certification Division

Monoranjan Sahu
Embassy of India, Bangkok

Attachment: The questionnaires and relevant documents.

Seen Read and Explain

22/10/21

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Questionnaire

1. Certificate of Origin (COO No.) : AI2020-0035331 dated 6 October 2020

2. Issuing authority : Department of Foreign Trade, Government of Thailand

3. Exporter's name: Thai Unipet Industries Co., Ltd.

4. Brief Description of the Commercial activity of the Exporter.

The Company is a manufacturer of antimony trioxide products and have a manufacturing facility in Thailand. The Company sources raw materials from Myanmar, Vietnam and China and manufactures them into the final product in Thailand. The final product, antimony trioxide, will be exported to India.

5. Please provide the Certificate of Business Registration of the Exporter.

Please find Attachment 1 for the Certificate of Business Registration of the Exporter.

6. The country where the goods covered under the COO was produced.

The country where the goods covered under the COO was produced is Thailand.

7. Please provide the following information for each of the material/components used to produce the goods certified as originating:

SI No.	HS Code (at Six digit level)	Description of Component, Materials, Inputs, Parts	Supplier's Name and Address	Country of Origin of the Component, Materials, Inputs, Parts	Quantity	Value	%
1	270111	Anthracite 1-3mm	Thailand Anthracite Co., Ltd. Address: 149/96, Moo 2, Surasak, Sriracha, Chonburi, 20110	Thailand	0.1604	30.8012	0.5923%
2	271019	Fuel oil (FO)	Siam Oil Products Co., Ltd. Address: 121 R S Tower, 22 nd Floor, Room No. 121/071, Ratchadaphisek Rd., Dindaeng, Bangkok, 10400	Thailand	171.9060	37.3851	0.7189%
3	280920	Polyphosphoric Acid 105%	Youngsun Chemicals Co., Ltd. Address: No.950, Yinhai Rd, Liangqing District, Nanning, Guangxi, China, 530221	China	0.0825	81.5247	1.5678%
4	283620	Soda Ash - China	Tai-liang Chemical Corporation Limited Address: 59 Moo 2, Phuchao Saming Phray Rd., Bang Ya Phraek, Phra Pradaeng, Samut Prakan, 10130	China	0.1834	56.1653	1.0801%
5	282580	Antimony Oxide	Youngsun Chemicals Co., Ltd. Address: No.950, Yinhai Rd, Liangqing District, Nanning, Guangxi, China, 530221	Myanmar	1.1671	4,435.1261	85.2909%

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7(A) Where cumulation is being claimed, copies of supporting certificates or origin by other FTA member may please be provided.

Supporting certificate of origin (Form AI) is not available.

7(B) Where components/material are originating, the basis of origin of the components/material may be provided.

Please find column namely 'Country of Origin of the Component, Materials, Inputs, Parts' in question no.7's table for basis of origin of the components/materials.

7(C) A break-up of costs other than the raw material being incurred may also be provided.

No.	Description	Value (in USD)
1	Other cost	31.3334
2	Labor cost	52.4931
3	Utility cost	9.6914
4	Transportation cost	63.3282
Total value of other cost		156.8461

8. Please provide a brief description of the production processes carried out for the goods certified as originating.

- 1) Prepare the furnace by burning anthracite breeze for 12 days and increase the temperature by using a diesel burner for 3 days until the temperature reaches 900°C.
- 1) Put antimony oxide with soda ash, anthracite breeze, and Polyphosphoric Acid 105% respectively in the furnace. The semi-finished product will be antimony metal.
- 2) Put antimony metal in the blast furnace and use a root blower to compress the air/oxygen into the blast furnace, which will trigger a spontaneous combustion. The finished product will be antimony trioxide which will be processed for packing and cleaning for sales afterwards.

9. The value addition attributable to the above processes.

Profit per 1 unit of product: 402.1515 USD

10. Is the De-Minimis Rule used for determination of origin.

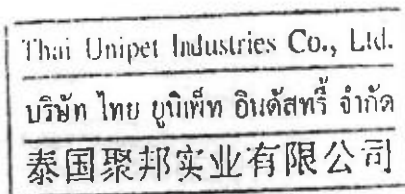
No.

11. Is the good being verified or any component/material used in its production a fungible goods? If so, details of the inventory management method may please be provided.

No.

12. Final outcome of the verification-whether the consignment covered under the COO meets the Rules of Origin under FTA to be considered as Origins.

No, the consignment covered under the COO does not meet the Rules of Origin under AIFTA to be considered as Origins.



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Questionnaire

1. Certificate of Origin (COO No.) : AI2020-0035333 dated 6 October 2020

2. Issuing authority : Department of Foreign Trade, Government of Thailand

3. Exporter's name: Thai Unipet Industries Co., Ltd.

4. Brief Description of the Commercial activity of the Exporter.

The Company is a manufacturer of antimony trioxide products and have a manufacturing facility in Thailand. The Company sources raw materials from Myanmar, Vietnam and China and manufactures them into the final product in Thailand. The final product, antimony trioxide, will be exported to India.

5. Please provide the Certificate of Business Registration of the Exporter.


Please find Attachment 1 for the Certificate of Business Registration of the Exporter.

6. The country where the goods covered under the COO was produced.

The country where the goods covered under the COO was produced is Thailand.

7. Please provide the following information for each of the material/components used to produce the goods certified as originating:

SI No.	HS Code (at Six digit level)	Description of Component, Materials, Inputs, Parts	Supplier's Name and Address	Country of Origin of the Component, Materials, Inputs, Parts	Quantity	Value	%
1	270111	Anthracite 1-3mm	Thailand Anthracite Co., Ltd. Address: 149/96, Moo 2, Surasak, Sriracha, Chonburi, 20110	Thailand	0.1604	30.8012	0.5923%
2	271019	Fuel oil (FO)	Siam Oil Products Co., Ltd. Address: 121 R S Tower, 22 nd Floor, Room No. 121/071, Ratchadaphisek Rd., Dindang, Bangkok, 10400	Thailand	171.9060	37.3851	0.7189%
3	280920	Polyphosphoric Acid 105%	Youngsun Chemicals Co., Ltd. Address: No.950, Yinbai Rd, Liangqing District, Nanning, Guangxi, China, 530221	China	0.0825	81.5247	1.5678%
4	283620	Soda Ash - China	Tai-liang Chemical Corporation Limited Address: 59 Moo 2, Phuchao Saming Phray Rd., Bang Ya Phraek, Phra Pradaeng, Samut Prakan, 10130	China	0.1834	56.1653	1.0801%
5	282580	Antimony Oxide	Youngsun Chemicals Co., Ltd. Address: No.950, Yinbai Rd, Liangqing District, Nanning, Guangxi, China, 530221	Myanmar	1.1671	4,435.1261	85.2909%


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7(A) Where cumulation is being claimed, copies of supporting certificates or origin by other FTA member may please be provided.

Supporting certificate of origin (Form A1) is not available.

7(B) Where components/material are originating, the basis of origin of the components/material may be provided.

Please find column namely 'Country of Origin of the Component, Materials, Inputs, Parts' in question no.7's table for basis of origin of the components/materials.

7(C) A break-up of costs other than the raw material being incurred may also be provided.

No.	Description	Value (In USD)
1	Other cost	31.3334
2	Labor cost	52.4931
3	Utility cost	9.6914
4	Transportation cost	62.2837
Total value of other cost		155.8016

8. Please provide a brief description of the production processes carried out for the goods certified as originating.

- 1) Prepare the furnace by burning anthracite breeze for 12 days and increase the temperature by using a diesel burner for 3 days until the temperature reaches 900°C.
- 1) Put antimony oxide with soda ash, anthracite breeze, and Polyphosphoric Acid 105% respectively in the furnace. The semi-finished product will be antimony metal.
- 2) Put antimony metal in the blast furnace and use a root blower to compress the air/oxygen into the blast furnace, which will trigger a spontaneous combustion. The finished product will be antimony trioxide which will be processed for packing and cleaning for sales afterwards.

9. The value addition attributable to the above processes.

Profit per 1 unit of product: 403.1960 USD

10. Is the De-Minimis Rule used for determination of origin.

No.

11. Is the good being verified or any component/material used in its production a fungible goods? If so, details of the inventory management method may please be provided.

No.


12. Final outcome of the verification-whether the consignment covered under the COO meets the Rules of Origin under FTA to be considered as Origins.

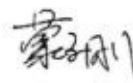
No, the consignment covered under the COO does not meet the Rules of Origin under AIFTA to be considered as Origins.

Thai Unipet Industries Co., Ltd.

บริษัท ไทย ยูนิเพท อินดัสทรี จำกัด

泰国聚邦实业有限公司


22/10/21
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บริษัท ไทย ยูนิเพ็ท อินดัสทรี จำกัด

THAI UNIPET INDUSTRIES CO., LTD.

58/4 หมู่ 5 ถ.บางบัวทอง-สุพรรณบุรี ต.สามเมือง อ.ลาดบัวหลวง จ.พระนครศรีอยุธยา

58/4 Moo 5, Bangbuatong-Supanburi Rd., TombonSammuang, Amphoe LatBua-Luang,
PhraNakhon Si Ayuthaya Province, Thailand. 13230

Tel: 035-902764 Fax: 035-902765

Date 10 May 2021

Subject: Post-clearance audit of production of finished products exported with FORM AI

To: Whom it may concern


Refer to: 1. Letter of Import Administration and Origin Certification Division, (most urgent) No. PorNor 0307.07/335 dated 27 April 2021

Attachment: 1. Clarification letter issued by Khun Brother International Co., Ltd., dated 7 May 2021

As per the referred letter, I, Thai Unipet Industries Co., Ltd. ("the Company") has prepared detail of production of goods on the Letter of Confirmation Concerning a Production of Goods under Certificate of Origin Form AI ("Letter of Confirmation") for the audit on the product origin referring to Form AI no. AI2020-0035331, dated 6 October 2020, with RVC at 51.03% and Form AI no. AI2020-0035333, dated 8 October 2020, with RVC at 51.03%, for ANTIMONY TRIOXIDE classified under HS code 2825.80 exported to India together with other relevant documents which were submitted for a consideration of the Import Administration and Origin Certification Division, Department of Foreign Trade ("DFT") on 30 March 2021 and 16 April 2021.

Referring to 1., the Import Administration and Origin Certification Division, Department of Foreign Trade ("DFT") has reviewed and found that the Company's product did not comply with the rule of origin under ASEAN-India Free Trade Agreement ("AIFTA"). As a result, the DFT will consider to impose a measurement on the Company according to the Notification of Department of Foreign Trade, Re: Measure and Procedure Relating to Issuance of Certificate of Origin to a Business Operator or Exporter Who Cause or May Cause Damage to International Trade B.E. 2562 (2019), in case the production of exported goods does not comply with the rule of origin.

In this regard, the Company accepts the consideration of the DFT and would like to provide some clarifications as follows:


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THAI UNIPET INDUSTRIES CO., LTD.

58/4 หมู่ 5 ต.บางบัวทอง-สุพรรณบุรี ต.สามเมือง อ.ลาดบัวหลวง จ.พระนครศรีอยุธยา

58/4 Moo 5, Bangbuatong-Supanburi Rd., ToimbonSammuang, Aniphoe LatBua-Luang,
PhraNakhon Si Ayuthaya Province, Thailand. 13230

Tel: 035-902764 Fax: 035-902765

1. The Antimony Oxide, which is the main raw material of the Company's product, is a mineral extracted from a mine in Myanmar which is a member country of AIFTA. Therefore, the raw material absolutely qualifies under the Wholly Produced or Obtained Products rule of origin. However, the Company's supplier, which has exported the raw materials from Myanmar to Thailand could not provide Form AI for Cumulative rule of origin to the Company. This is because the Myanmar authority which is authorized to issue a certificate of origin, agreed to issue only Form D under the ASEAN Trade in Goods Agreement ("ATIGA") for products exported from Myanmar to Thailand, but refused the exporter's request to issue a certificate of origin under other free trade agreements including Form AI. For your reference, please see Attachment 1. As a result, the Company had to classify the cost of Antimony Oxide as non-originating material under the rules of origin of AIFTA. This is a key factor that resulted in the significant change of RVC.

2. The Regional Value Content (RVC) calculation in No. (8) Regional Value Content (RVC) of No.3 Cost of production per 1 unit of product (In \$US) specified on the Letter of Confirmation was based on the actual production cost of the ANTIMONY TRIOXIDE for export with Form AI no. AI2020-0035331 and Form AI no. AI2020-0035333. The actual product cost has been fluctuated accordingly to the economy. For example, the total value of originating materials had been decreased from US\$ 155.6977 in 2018 to US\$ 68.1863 in 2020 for production per one unit of product. In addition, there were changes of some raw material usage amount and total value of raw materials. Nevertheless, the Company had not amended the RVC calculation based on the changes at the time of exportation.

As the clarification provided above, the RVC of ANTIMONY TRIOXIDE on the Letter of Confirmation and the RVC on the audited Form AI are not the same. Nevertheless, the Company has no intention to violate the rule of origin of AIFTA.

Thai Unipet Industries Co., Ltd.

บริษัท ไทย ยูนิเพ็ท อินดัสทรี จำกัด

泰国聚邦实业有限公司


Best regards,



(Meng Wengang)

Manager

Page 2 of 2


22/10/21
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8.4 The Additional Director, DRI, Ahmadabad Zonal Unit vide letter F.No DRI/AZU/SRU-31/2003/Pt.I dated 24.02.2022 has forwarded 6 COO certificates as a sample with a list of COO certificates issued by the Thailand authorities against the export of Antimony Trioxide to various Importers in India, as detailed below:

Sr. no.	B. E. No. & Date	Name of Importer	Name of exporter / seller	Invoice No & date	Bill of lading No. & date	COO No.
1	5953741 dated 12.04.2018	Havells India Ltd.	Guangxi Youngsun Chemicals Corp., Ltd., China	18T017 dated 06.03.2018	SSLBKMUN CZ8864 dated 13.03.2018	AI2018-0012721 dated 21.03.2018
2	8870581 dated 15.11.2018	Polycab India Ltd.	Youngsun Chemicals Co ltd, China	18T227 dated 22.10.2018	ABCBK1810 063 dated 28.10.2018	AI2018-0050990 dated 07.11.2018
3	4567038 dated 20.08.2019	Lok Chemicals Pvt Ltd	Youngsun Chemicals Co ltd, China	19T187 dated 24.07.2019	VASLKRNSA 000770 dated 07.08.2019	AI2019-0037008 dated 13.08.2019
4	7304852 dated 19.03.2020	Kalpana Industries India Limited	Youngsun Chemicals Co ltd, China	20T037 dated 18.02.2020	VSSIN19335 dated 26.02.2020	AI2020-0010624 dated 28.02.2020
5	2449664 dated 21.01.2021	Shital Industries Pvt Ltd	Thai Unipet Industries Co Ltd	TUP201200 6 dated 14.12.2020	COAU7228 517810 dated 23.12.2020	AI2020-0047765 dated 25.12.2020
6	3549988 dated 13.04.2021	Havells India Ltd.	Thai Unipet Industries Co Ltd	TUP210301 0 dated 11.03.2021	TALSLA026 56543 dated 17.03.2021	AI2021-0014857 dated 19.03.2021

8.5 The Verification Report was received through OSD(Cell-4), Directorate of International Customs (FTA Cell), CBIC, New Delhi vide letter dated 29.11.2022 which attached the Verification Report No 0307/3835 dated 09.11.2022 issued by the Deputy Director General, Department of Foreign Trade, Ministry of Commerce, 563 Nonthaburi, Thailand wherein they confirmed that:

"(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The word "Issued Retroactively" on the Certificate of Origin Form AI No.1)-3) were compliance with Article 10(b) of the Operational Certification Procedure (OCP) under ASEAN-India FTA.

(3) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed (Attachment)"

The Country of Origin Form AI2020-0047765 dated 25.12.2020 appeared at Serial No. 5 in the Verification Report No. 0307/3835 dated 09.11.2022 pertained to M/s. Shital Industries Private Limited, Shital House, Behind ONGC, Sabarmati, Ahmedabad. The scanned image of Verification Report No. 0307/3835 dated 09.11.2022 is as under:



No. 0307/ 3835

Department of Foreign Trade
Ministry of Commerce
563 Nonthaburi Road
Nonthaburi 11000 Thailand
Tel. 662-547-4823 Fax 662-547-4807

9 November 2022

Dear Sir,

Subject: Response to Verification of the Certificates of Origin Form AI

Reference is made to your letter No. Ban/Com/206/01/2022 dated 26 April 2022, requesting verification genuineness and authenticity of the following 6 Forms AI,

- 1) No. AI2018-0012721 dated 21 March 2018
- 2) No. AI2018-0050990 dated 7 November 2018
- 3) No. AI2019-0037008 dated 13 August 2019
- 4) No. AI2020-0010624 dated 28 February 2020
- 5) No. AI2020-0047765 dated 25 December 2020
- 6) No. AI2021-0014857 dated 19 March 2021

Having conducted an administrative cross-control, we hereby confirm that

1) The above-mentioned Certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

2) The word "Issued Retroactively" on the Certificates of Origin Form AI No. 1) - 3) were compliance with Article 10 (b) of the Operational Certification Procedures (OCP) under ASEAN-India FTA.

3) The exporter, THAI UNIPET INDUSTRIES CO., LTD. declared that the products shown on the above-mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed. (Attachment)

Please be assured of our full co-operation.

Yours sincerely,

(Mrs. Manatsanth Jirawat)
Deputy Director-General
For Director-General

Dharmendra Singh
Embassy of India, Bangkok

Attachment: The questionnaires and relevant documents.

8.6 From the Verification Report No.0307/3835 dated 09.11.2022, it appears from the questionnaire submitted by M/s. Thai Unipet Industries Co. Ltd that major raw material imported by them from Myanmar was 'Antimony Oxide' (HS code- 282580). Further, it appears that the Importer does not have sufficient information from M/s. Thai Unipet Industries Co. Ltd as warranted under Section 28DA.

8.7 From the Verification Report issued by the Competent Authority of Department of Foreign Trade, Ministry of Commerce that 'the product' i.e. 'Antimony Trioxide' exported by M/s. Thai Unipet Industries Co. Ltd was not qualified as originating goods in Thailand in terms of Determination of Origin of goods under the Preferential Trade Agreement between Government of ASEAN & India Rules, 2009 (Notification No. 189/2009-Customs (NT) dated 31.12.2009). Thus, on the basis of the provisions of

Sub-section 11 of Section 28DA of Customs Act, 1962, the non-compliance of the imported goods with the country of origin criteria is applicable to all the identical goods i.e. 'Antimony Trioxide' manufactured by M/s. Thai Unipet Industries Co. Ltd and exported to the Importer during material period.

9. Summary of the Investigation:

From the investigation conducted and from the foregoing discussions, it appears that:

- a. The Importer i.e. M/s. Shital Industries Private Limited had imported Antimony Trioxide of Thailand origin, manufactured by M/s. Thai Unipet Industries Co. Ltd, Thailand, during the period from 28.01.2019 to 18.03.2021. After March, 2021 they have not imported Thailand origin Antimony Trioxide. In addition to the manufacturer, the Importer imported identical goods from the supplier M/s. Youngsun Chemicals Corp. Ltd, China wherein manufacturer of said goods was M/s. Thai Unipet Industries Co. Ltd, Thailand. All the consignments were directly shipped from Thailand to India.
- b. The Importer has classified their imported goods i.e. Antimony Trioxide under Tariff Heading 28258000 of the First Schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended.
- c. The verification of Origin criteria was conducted in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020 by the Deputy Commissioner of Customs, ICD Tumb, in case of two consignments of Antimony Trioxide imported by M/s. Polycab India Ltd. In that case, the Competent Authority of Thailand reported that the exporter M/s. Thai Unipet Industries Co. Ltd. had declared that the products shown on the Form AI were not qualified as originating goods in Thailand, hence, revoked those products on those Forms AI.
- d. Further verification of Origin criteria was conducted by DRI with the Thailand authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. The Competent Authority of Department of Foreign Trade, Ministry of Commerce reported that the exporter M/s. Thai Unipet Industries Co. Ltd. declared that the products shown on the Form AI were not qualified as originating goods in Thailand, thus they revoked those products on those Forms AI.
- e. From the questionnaire submitted by the manufacturer M/s. Thai Unipet Industries Co. Ltd, Thailand, it appears that the Antimony Oxide, which was the main raw material of the Company's product, was a mineral extracted from a mine in Myanmar. The manufacturer imported the Antimony Oxide (CTSH-282580) from Myanmar through supplier M/s. Youngsun Chemicals Co. Ltd, China without cover of Certificate of Origin (Form AI).
- f. The manufacturer declared in the questionnaire that value content of Antimony Oxide imported by them from Myanmar was around 85.29% and the Customs Tariff Heading was 282580. However, the finished product i.e. Antimony Trioxide was classified under Customs Tariff Heading No.282580. **Thus, it appears that there was no change in classification of produced goods in six digit tariff sub- heading (CTSH) level.**
- g. The goods imported by the Importer from M/s. Youngsun Chemicals Corp Ltd, China and M/s. Thai Unipet Industries Co. Ltd, Thailand were identical goods manufactured by same manufacturer and did not fulfill the criteria of origin in terms of Rule 5 of Origin of Rules. Thus, on the basis of the provisions of Sub-section 11 of Section 28DA of Customs Act, 1962, it appears that non-compliance of the imported goods with the country of origin criteria apply to identical goods i.e. Antimony Trioxide manufactured by M/s. Thai Unipet Industries Co. Ltd and exported to the Importer during material period.
- h. The Importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and short paid the Customs Duties of

Rs.1,00,80,307/- (details as per Annexure-A attached to this Show Cause Notice) at JNCH, NHAVA SHEVA & ICD Sabarmati. During the investigation, the Importer had paid total Rs.1,00,80,307/- against his liability.

10. Main Legal Provisions relating to the case:

10.1 Sub-section (4) of Section 46 of the Customs Act, 1962, specifies that, 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.

10.2 Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

10.3 Section 28DA. Procedure regarding claim of preferential rate of duty.

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

(i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;

(ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;

(iii) furnish such information in such manner as may be provided by rules;

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

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

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

(4) Where importer fails to provide the requisite information for any reason, the proper officer may,-

(i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(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".

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Explanation-For the purposes of this Chapter,-

(a)"certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;

(b)"identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;

(c)"Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;

(d)"trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.

10.4 SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(a) ...

(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.

10.5 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 :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the

date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

10.6 Section 28 (4) of the Customs Act, 1962-Recovery of duties not levied or short-levied or erroneously refunded. –

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

(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.

10.7 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.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

10.8 Section 114A of the Customs Act, 1962 read as

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:

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

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

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

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

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

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

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

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

10.9 Section 114 AA of the Customs Act, 1962 read as –

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.

11. Obligations under self-assessment and demand invoking extended period:

11.1 The subject Bills of Entry as mentioned in Annexure-A to Show Cause Notice, filed by the Importer, wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per the Verification Report conducted under the provisions of CAROTAR, 2020 established that the manufacturer of goods in question had not fulfilled the origin criteria in terms of Rules of origin. Shri Onilkumar Soni, Import Manager of the Importer has accepted and admitted the same during his statement dated 22.10.2021 recorded under Section 108 of the Customs Act, 1962.

11.2 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 not self-assessing the subject goods properly, it appears that the Importer willfully evaded Customs duty on the impugned goods. In the present case, Importer has wrongly availed the benefit of exemption Notification wherein imported goods had not fulfilled the origin criteria by the manufacturer. The Importer has failed to possess sufficient information as regards the manner in which country of origin criteria are satisfied and also failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

11.3 From the Verification Report it appeared that the Competent Authority of Department of Foreign Trade, Ministry of Commerce reported that the Exporter M/s. Thai Unipet Industries Co. Ltd. declared that the products shown on the Form AI were not qualified as originating goods in Thailand, thus they revoked those products on those Forms AI. As the Country of Origin (COO) certificate had revoked by the issuing authority of Thailand, the preferential Tariff treatment to the imports of Antimony Trioxide by the Importer is liable for rejection in terms of Section 28DA (11) of the Customs Act, 1962.

11.4 Therefore, it appeared that the Importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. Thai Unipet Industries Co Ltd, Thailand. It appears 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 JNCH, Nhava Sheva & ICD Sabarmati and thereby caused evasion of Customs Duty. Therefore, provisions of Section 28(4) of the Customs Act, 1962 are invokable in this case. For the same reasons, the Importer also liable to penalty under **Section 114A** of the Customs Act, 1962.

12. Mis-declaration by the Importer – liability of goods to confiscation, demand of differential Duty and liability to Penalties:-

12.1 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 content of such Bill of Entry and shall, in support of such declaration, produced to the proper officer the invoice, if any, and such other documents relating to the imported goods. From the Verification Report discussed above, it appears that the Importer 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.

12.2 As mentioned in the foregoing paras, the imported goods under the subject Bill of Entry, as mentioned in Annexure-A to this Show Cause Notice, have been found to be not corresponding the condition for claiming the full exemption against Country of Origin (COO) Certificate in terms of Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported during the period from

28.01.2019 to 26.03.2020 (**BE at Sl. No. 1 to 8 of Annexure-A to SCN**) having assessable value of Rs.6,02,67,013/- (Rupees Six Crores Two Lakh Sixty Seven Thousand and Thirteen only) are liable for confiscation under Section 111(o) of the Customs Act, 1962. Further, the goods imported during the period from 27.03.2020 to 18.03.2021(**BE at Sl. No. 9 to 13 of Annexure-A to SCN**) having assessable value of Rs.4,32,80,050/- (Rupees Four Crores Thirty Two Lakh Eighty Thousand Fifty only) are liable for confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appeared that the Importer is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

12.3 As discussed above, it appeared that the Importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, specially failed to possess sufficient information as regards the manner in which country of origin criteria are satisfied and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/seller. The importer was aware that the Thailand based manufacturer of Antimony Trioxide did not fulfill the origin criteria of products and he was not eligible for exemption benefit as provided under Notification No.46/2011-Cus dated 01.06.2011, as amended. The Importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Therefore, it appeared that they are also liable for imposition of penalty under **Section 114AA** of the Customs Act, 1962.

13. PAYMENT DURING INVESTIGATION:

13.1 The Importer vide letter dated 27.10.2021 addressed to the Senior Intelligence Officer, DRI, Regional Unit Surat, submitted a Demand draft No. 001666 dated 27.10.2021 issued by HDFC Bank for Rs. 22,37,594/- in respect of BCD & SWS amount involved under 3 Bills of Entry as mentioned at Sr.No.11 to 13 of the Annexure-A. The said DD was deposited vide Challan No.23/2021-22 dated 06.11.2021.

13.2 The Importer vide letter dated 05.01.2022 addressed to the Senior Intelligence Officer, DRI, Regional Unit Surat submitted a Demand draft No. 001674 dated 05.01.2022 issued by HDFC Bank for Rs. 63,05,039/- in respect of BCD & SWS amount involved under 10 Bills of Entry as mentioned at Sr. No. 01 to 10 of the Annexure-A. The said DD was deposited vide Challan No. 55/2021-22 dated 17.01.2022. Further, the Importer vide letter dated 17.01.2022 addressed to the Senior Intelligence Officer, DRI, Regional Unit Surat submitted a Demand draft No. 001676 dated 17.01.2022 issued by HDFC Bank for Rs. 15,37,674/- in respect of IGST amount involved under 13 Bills of Entry as mentioned at Sr. No. 01 to 13 of the Annexure-A. The said DD was deposited vide Challan No. 56/2021-22 dated 25.01.2022. The original copies of challans have been forwarded to the Importer vide letter F.No. DRI/AZU/SRU/B/INV-08(INT)/2021, details as below:

Sr. No	DD No. & date	Challan no. & date	BCD Amount (in Rs.)	IGST (Rs.)	Challan Amt (Rs)	RUD No.
1	001666 dated 27.10.2021	23/2021-22 dated 06.11.2021	22,37,594	0	22,37,594	<u>RUD-9</u>
2	001674 dated 05.01.2022	55/2021-22 dated 17.01.2022	63,05,039	0	63,05,039	<u>RUD-10</u>
3	001676 dated 17.01.2022	56/2021-22 dated 25.01.2022	0	15,37,674	15,37,674	<u>RUD-11</u>
Total			85,42,633	15,37,674	1,00,80,307	

14. In view of above, it appeared that the Country of Origin Certificates (covered under B/Es as mentioned in Annexure-A) issued by the Department of Foreign Trade Thailand for the Antimony Trioxide manufactured by M/s. Thai Unipet Industries Co Ltd., Thailand were false and incorrect, as discussed above, in terms of Rules 5 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. The Competent

Authority of Thailand had revoked the Form AI (Certificate of Origin) issued in respect of said goods exported to India.

15. The Show Cause Notice pertains to demand of Duty involved in the goods imported through multiple ports viz. JNCH, Nhava Sheva (INNSA1) & ICD Sabarmati (INSBI6) and said Show Cause Notice is issued by the Competent Authority at Customs, Ahmedabad as per Notification No.28/2022-Customs(N.T.) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs(CBIC), New Delhi being the port where the highest Duty is involved.

16. In view of the above, Show Cause Notice No. VIII/10-01/Commr/O&A/2022-23 dated 19.09.2023 issued to M/s. Shital Industries Private Limited, (IEC: 0889006946), Shital House, Behind ONGC, Sabarmati, Ahmedabad, Gujarat-380005, calling upon to show cause to the Commissioner of Customs, Ahmedabad as to why:-

(i) The exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by them against the import of goods under various Bill of Entry at JNCH, Nhava Sheva & ICD Sabarmati, as mentioned in Annexure-A, should not be disallowed in terms of Section 28DA(11) of the Customs Act, 1962?

(ii) The impugned goods having total assessable value of **Rs.10,35,47,063/- (Rupees Ten Crore, Thirty Five Lakh, Forty Seven Thousand and Sixty Three only)** as mentioned in Annexure-A (appearing at Sr. no. 1 to 13) should not be held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. However, since the said goods are not physically available for confiscation, why fine should not be imposed in lieu of confiscation?

(iii) The differential Customs Duty amounting to **Rs.1,00,80,307/- (Rupees One Crore Eighty Thousand Three Hundred and Seven Only)** should not be demanded and recovered under section 28(4) of the Customs Act, 1962, as calculated in "Annexure-A" attached?

(iv) The Duty amount of **Rs.1,00,80,307/- (Rupees One Crore Eighty Thousand Three Hundred Seven Only)** already paid should not be appropriated and adjusted against the aforesaid demand;

(v) The Interest at the applicable rate should not be recovered from them on the said differential Customs Duty as mentioned at (iii) above under Section 28 AA of the Customs Act, 1962;

(vi) Penalty should not be imposed under Section 114A of the Customs Act, 1962;

(vii) Penalty should not be imposed under Section 112(a) & (b) of the Customs Act, 1962;

(viii) Penalty should not be imposed under Section 114AA of the Customs Act, 1962.

17. **Written submission filed by the Importer:** M/s. Shital Industries Private Limited submitted reply to the Show Cause Notice No.VIII/10-05/Commr/O&A/2023-24 dated 19.09.2023 vide their letter dated 12.03.2024 wherein they have interalia submitted as under:

17.1 Willful mis-declaration or suppression of facts or collusion is not invocable by any stretch of imagination; that no findings in the impugned notice on this bus Section 28(4) is invoked artificially to only extend period; that Company is a 3 Star Export House and doing export since years and earning foreign currency for the Country; that the exemption claimed by the Company was on the basis of the understanding of valid certificate of origin issued by the overseas country as part of exemption notification and there was no malafide on the part of Company in claiming the exemption by mis-declaration; that the bill of entry filed and goods imported by the Company was assessed and cleared by the department after due

verification of the documents, information available at the time of import and therefore, by no stretch of imagination, the same can be said to be willful mis-declaration at the time of import; that, the Company was under bonafide belief that all the documents provided by overseas customer and overseas government is proper document and thus this case cannot be eligible for invoking Section 28 (4) of the Customs Act, 1962; that they placed reliance on the case laws (i) Continental Foundation Jt. Venture Vs. Commr. of C.Ex., Chandigarh-1 2007 (216) E.L.T. 177 (S.C.), (ii) Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut 2005 (188) E.L.T. 149 (S.C.) (iii) Apex Electricals Pvt. Ltd Vs. Union of India (1992 (61) E.L.T. 413 (Guj.) (iv) Sterlite Telelink Ltd vs CCE Vapi 2014 (312) ELT 353 (Tri Ahmd) and (v) AbanLoyd Offshore Limited Vs. Commissioner of Customs 2006 (200) ELT 370 (SC).

17.2 That Section 28DA of the Customs Act, 1962 should not be made applicable for imports made before 21 September, 2020; that provisions of Section 28DA was brought by Finance Act, 2020. Section 28DA provides procedure to be followed by an importer for claiming preferential rate of duty in terms of any trade agreement; that as part of Section 28DA, Central Board of Indirect Taxes and Customs notified Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) which shall come into force from 21 September 2020; that circular dated 21 August 2020 issued by the department also clearly provides that the CAROTAR should be made applicable from 21 September 2020;

17.3 That The investigation has been done by the DRI on the basis of report undertaken in the case of Polycab Limited; that thereafter, department has sent sample Certificate of origin to overseas country to validate the same and in the present case, only 1 certificate has been sent for the verification (AI 2020-0047765); that SCN seek to disallow all import based upon single Certificate of origin is completely presumptive and without providing the evidence as to how all other imports are not valid; that the department has to provide legal documentary evidence as to all the certificate of origin issued by the Thailand were invalid; Moreover, had this been the case of all other certificates invalid, department would have sought verification of all these certificates at one go. In the present case, it is clear that only single certificate has been verified by the overseas country and held the same to be invalid; that considering the aforesaid fact, it is clear that all other certificates have been considered as valid by the overseas government and therefore import made under these certificates also held to be valid and department has simply presumed that all other imports from the same vendor is also not satisfied the criteria of Certificate of Origin which unwarranted and need to be set aside;

17.4 Show Cause Notice is vague, unclear and based on surmises & conjectures; that it is unclear as to how the investigation done on the other Importer (i.e. Polycab) can be the base for starting investigation on the Company. It is presumed by the DRI office that Company has also claimed unlawful exemption; that only sample bill of entry / Certificate of origin is covered as part of the investigation which is clearly vague and unclear as to how one single Certificate of Origin is the base for disallowing other certificate of origins. Department has presumed that all other certificate (without verification) to be invalid;

17.5 That the company has paid the amount of taxes alongwith interest on instruction received from DRI but reserves the right to claim refund of the same; that, the Company would like to submit that it has made payment of taxes along with interest on the basis of investigation letter issued by DRI as insisted by DRI officer. The total amount paid by the Company arrives to INR 1,00,80,307.00 (BCD 85,42,633/- IGST of Rs. 15,37,674/- and Interest of Rs. 28,37,806.00; that Para 13 of the captioned SCN also provides for the same; that the said amount was paid on the basis of instruction received from the DRI and to buy peace;

17.6 That goods imported cannot be held liable for confiscation under Section 111 of the Customs Act, 1962; that confiscation under the aforesaid provisions is not proper and legal since the exemption claimed by the Company was correct at the time of import and there was no violation of the conditions specified in the law; that Hon'ble Mumbai HC has also observed in the case of the Commissioner of Customs (Import) Mumbai-I Vs. Finessee Creation Inc [2009-TIOL-655-HC-MUM-CUS] that no redemption fine if goods are not available for confiscation;

17.7 That penalty under Section 112, 114A,114AA of the Customs Act, 1962 is not applicable in the present case; that the SCN seeks to recover the amount of penalty in lieu of confiscation under Section 112 of the Customs Act, 1962 for improper importation of goods wherein submitted that demand and recovery of penalty under the aforesaid provisions is not proper and legal since the exemption claimed by the Company was clearly valid at the time of import of goods and all the documents issued by the authorities were valid at the time of import; that the department has issued similar notices to various other importer and therefore, it is evident that across industry importer were doing the same practice to import the goods. Since the issue is an industry issue, there cannot be a mens rea or intention to evade the tax on part of the Company; that **Company has also paid the amount along with interest and therefore, imposition of penalty should not be the case in the present case;**that they relied on following case laws;

- *B.R. Sule vs. Union of India*, 1990 (48) ELT 34 (BOM).
- *M. Hariraju vs. Commissioner*, 1998 (100) ELT 203].
- *S.R. Jhunjhunwalavs .Collector* , 1999 (114) ELT 890].
- *Rungta Agencies vs . Commissioner*, 1999 (34) ELT 761 (T).
- ***Garg Inox Ltd. Vs. Commissioner of Customs , New Delhi (2017 (353) E.L.T. 242 (Tri. - Del.)***
- *Shree Nath Cement Industries vs. Collector*, 1994 (73) ELT 142
- *BhimrajRathore vs. Collector*, 1994 (74) ELT 81 (MP)
- *Standard Pencils Pvt. Ltd. vs. Collector*, 1996 (86) ELT 245
- *Corner Stone Brands Ltd. vs. Collector*, 1996 (86) ELT 257
- *Killick Nixon Ltd. vs. Collecto r*, 1998 (97) ELT 436
- *Ashok India Engineering Works vs. Collector*, 1988 (98) ELT 65

17.8 That there was no violation under Section 17, Section 46 and Section 50 of the Customs Act, 1962 and prayed for quash the Show Cause Notice.

18. Personal Hearing: The Personal Hearing was fixed for M/s. Shital Industries Private Limited on 12.03.2024. Shri Prakash U Soni, Export/GST Manager of M/s. Shital Industries Private Limited attended the Personal Hearing on 12.03.2024 on behalf M/s. Shital Industries Private Limited wherein he reiterated the submission as detailed in their written submission dated 12.03.2024.

19. Discussions and findings: I have carefully gone through the Show Cause Notice No.VIII/10-05/Commr/O&A/2023-24 dated 19.09.2023, written submission dated 12.03.2024 filed by M/s. Shital Industries Private Limited and records of personal hearing held on 12.03.2024. Issues for consideration before me in these proceedings are as under-

- i. Whether, the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the goods imported under various Bills of Entry at JNCH, Nhava Sheva & ICD Sabarmati, as mentioned in Annexure-A to the Show Cause Notice, should be disallowed in terms of Section 28DA(11) of the Customs Act, 1962 as the Competent authority of Thailand had revoked the Form A1 (Certificate of Origin) issued in respect of said goods exported to India?
- ii. Whether the impugned goods having total assessable value of **Rs.10,35,47,063/- (Rupees Ten Crore, Thirty Five Lakh, Forty Seven Thousand and Sixty Three only)** as mentioned in Annexure-A (appearing at Sr. no. 1 to 13) should be held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962?. However, as the said goods are not physically available for confiscation, whether fine should be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962?
- iii. Whether the differential Customs Duty amounting to **Rs.1,00,80,307/- (Rupees One Crore, Eighty Thousand, Three Hundred and Seven Only)** as mentioned in "Annexure-A" attached to this Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962?
- iv. Whether the Interest at the applicable rate should be recovered on the differential Customs Duty as mentioned at (iii) above under Section 28 AA of the Customs Act, 1962;
- v. Whether the Customs Duty amount of **Rs.1,00,80,307/- (Rupees One Crore, Eighty Thousand, Three Hundred and Seven Only)** already paid by them should be appropriated and adjusted against the aforesaid demand;
- vi. Whether Penalty should be imposed on the Importer under Section 114A of the Customs Act, 1962?
- vii. Whether penalty should be imposed on the Importer under Section 112(a) & (b) of the Customs Act, 1962?
- viii. Whether, Penalty should be imposed on the Importer under Section 114AA of the Customs Act, 1962?

21. The basic issue in the instant case is whether the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the goods imported under various Bills of Entry at JNCH, Nhava Sheva & ICD Sabarmati, as mentioned in Annexure-A to the Show Cause Notice, should be disallowed in terms of Section 28DA(11) of the Customs Act, 1962 as the Competent authority of Thailand had revoked the Form A1 (Certificate of Origin) issued in respect of said goods exported to India?

21.1 I find that the importer had imported "Antimony Trioxide" falling under Customs Tariff Item 28258000 of the Customs Tariff Act, 1975 by availing the benefit of Notification No. 46/2011-Cus dated 01.06.2011 (Indo-ASIAN FTA) as amended, however the benefit of said Notification No. 46/2011-Cus dated 01.06.2011 is available provided the goods are originating from any of the countries of ASEAN (which includes Thailand also) in accordance with the provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of South East Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009. It is worth to re produce the relevant extract of Notification No.46/2011-Cus dated 01.06.2011 and relevant provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of South East Asian Nations (ASEAN) and the Republic of India] Rule, 2009, published vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009

21.1.1 Relevant extracts of the Notification No. 46/2011-Cus dated 01.06.2011 [AIFTA – INDO - ASEAN FTA] are reproduced below:

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

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

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

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

21.1.2 The relevant provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the Notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009, are reproduced as under:

3. Origin criteria.-

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

- a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,*
- b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.*

4. Wholly produced or obtained products.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Not wholly produced or obtained products.-

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

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

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

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

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

6. Cumulative rule of origin-

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

13. Certificate of Origin-

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

21.2 I find that DRI, Regional Unit, Surat developed the intelligence that certain importers engaged in the import of Antimony Trioxide from Thailand from a Thailand based manufacturer namely M/s.Thai Unipet Industries Co. Ltd (hereinafter referred to as 'TUIC'), were wrongly availing the benefit of preferential rate of Duty under Notification No. 46/2011-Cus dated 01.06.2011 as amended, as the said items did not qualify as 'originating goods' from Thailand, in terms of Rule 3 read with Rules 5 & 6 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009.I find that importer had filed Bills of Entry as mentioned in Annexure-A to the Show Cause Notice for import of Antimony Trioxide" from Thailand from Supplier M/s. Youngsun Chemicals Co. Ltd, China and manufactured by M/s.Thai Unipet Industries Co. Ltd, Thailand by availing the benefit of Notification No. 46/2011-Cus dated 01.06.2011as amended.

21.3 I find that Certificates of Origin (COOs) submitted by the importer to the Customs, purported to have been issued by Manufacturer M/s.Thai Unipet Industries Co. Ltd, Thailand in respect of the goods exported by Youngsun Chemicals Co. Ltd, China from Thailand, were forwarded to Department of Foreign Trade, Ministry of Commerce, the Agency responsible for issuance and monitoring of Certificates of Origin in Thailand, for verification. The OSD (FTA Cell-1) vide letter dated 01.07.2021has forwarded the verification report No 0307.07/487 dated 29.06.2021 to the Principal Commissioner of Customs, Custom House, Ahmedabad enclosing letter

dated 29.06.2021 received from the Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand wherein they confirmed that:

"(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products

shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI. The questionnaires and relevant documents are herewith enclosed (Attachment)"

Further, in the Questionnaires attached to the said verification report No 0307.07/487 dated 29.06.2021 for the Certificate of Origin (COO No. AI2020-0035331 dated 06.10.2020 and COO No. AI2020-0035333 dated 06.10.2020 at Sr. No. 12 it has been specifically mentioned against the Question "Final outcome of the verification whether the consignment covered under the COO meet the Rules of Origin under FTA to be considered as Origins" that **"No, the consignment covered under the COO does not meet the Rules of Origin under AIFTA to be considered as Origins"**.

21.4 Further, the Additional Director, DRI, Ahmadabad Zonal Unit vide letter F.No DRI/AZU/SRU-31/2003/Pt.I dated 24.02.2022 had forwarded 6 Certificate of Origin (COO) certificates as a sample with a list of COO certificates issued by the Thailand authorities against the export of Antimony Trioxide to various importers in India. The verification report was received through OSD(Cell-4), Directorate of International Customs (FTA Cell), CBIC, New Delhi vide letter dated 29.11.2022 which attached the verification report No 0307/3835 dated 09.11.2022 issued by the Deputy Director General, Department of Foreign Trade, Ministry of Commerce, 563 Nonthaburi, Thailand wherein they confirmed that:

"(1) The above mentioned certificates of Origin Form AI were authentically issued by the Department of Foreign Trade.

(2) The word "Issued Retroactively" on the Certificate of Origin Form AI No. 1)-3) were compliance with Article 10(b) of the Operational Certification Procedure (OCP) under ASEAN-India FTA.

(3) The exporter, THAI UNIPET INDUSTRIES CO. LTD. declared that the products shown on the above mentioned Form AI were not qualified as originating goods in Thailand. We, hence, revoked those products on those Forms AI."

Thus, I find that importer had produced/declared the fake and forged Country of Origin Certificate of 'Thailand' with mala fide intention to avail the wrong benefit of preferential rate of Duty under Notification No. 46/2011-Cus dated 01.06.2011 to evade the Customs Duty.

21.5 I find that the manufacturer M/s.Thai Unipet Industries Co. Ltd, Thailand in their letter dated 10.05.2021 having subject of 'Post-clearance audit of production of finished product exported with FORM AI (Certificate of Origin)' addressed to 'whom it may concern', have specifically clarified as under:

"1. The antimony Oxide, which is the main raw material of the Company's product, is a mineral extract from a mine in Myanmar which is a member country of AIFTA. Therefore, the raw material absolutely qualifies under the Wholly Produced or Obtained Products rule of origin. However, the Company's supplier, which has exported the raw material from Myanmar to Thailand could not provide

Form AI for Cumulative rule of origin to the Company. This is because the Myanmar authority which is authorized to issue a certificate of origin, agreed to issue only Form D under the ASEAN Trade in Goods Agreement ("ATIGA") for products exported from Myanmar to Thailand, but refused the exporter's request to issue a certificate of origin under other free trade agreements including Form AI. For your reference, please see Attachment 1. As a result, **the Company had to classify the cost of Antimony Oxide as non-originating material under the rules of origin of AIFTA. This is a key factor that resulted in the significant change of RVC.**

2. The Regional Value Content (RVC) calculation in No.(8) Regional Value Content (RVC) of No.3 Cost of Production per 1 unit of product (in \$US) specified on the Letter of Confirmation was based on the actual production cost of the ANTIMONY TRIOXIDE for export with Form AI no. AI2020-0035331 and Form AI no. AI2020-0035333. The actual product cost has been fluctuated accordingly to the economy. For example, the total value of originating materials had been decreased from US\$155.6977 in 2018 to US\$ 68.1863 in 2020 for production per one unit of product. **In addition, there were changes of some raw material usage amount and total value of raw materials. Nevertheless, the Company had not amended the RVC calculation based on the changes at the time of exportation.**

As the clarification provide, the RVC of ANTIMONY TRIOXIDE on the Letter of Confirmation and the RVC on the audited Form are not the same. Nevertheless, the Company has no intention to violate the rule of origin of AIFTA."

Thus, I find that exporter/Manufacturer M/s.Thai Unipet Industries Co. Ltd, have also admitted the contravention of rule of origin of AIFTA. Further, I find that exporter M/s.Thai Unipet Industries Co. Ltd, Thailand has admitted that Regional Value Content (RVC) of ANTIMONY TRIOXIDE on the Letter of Confirmation and the RVC on the audited Form are not the same. Further, I find that Custom Tariff Item for "Antimony Oxide" is 28258000 and M/s.Thai Unipet Industries Co. Ltd has admitted that they had imported 'Antimony Oxide' which is main raw material was a mineral extracted from a mine in Myanmar. Thus, Antimony Oxide which was procured from Myanmar was also under same Customs Tariff Item No. 28258000 and when it was further exported to India as 'Antimony Trioxide' they have declared the CTH as 28258000 in their 'Certificate of Country of Origin'. Thus, this is clear violation of the Rule 5 (2) (ii) of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 notified vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009 which says that "the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System". Thus, I find that importer is not eligible for the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011.

21.6 I find that Sub-Section 11 of Section 28DA of the Customs Act, 1962 states that "Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria." The Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand have confirmed that goods exported by exporter THAI UNIPET INDUSTRIES CO. LTD. to India were not qualified as originating goods in Thailand and therefore, they revoked those products on those Forms AI. Thus, I find that impugned goods covered under the Bills of Entry as mentioned in Annexure-A to the Show Cause Notice are not eligible for the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011 by the importer.

21.7 I find that the importer has contended that provisions of Section 28DA of the Customs Act, 1962 is not applicable for the import made before September'2020. I find that Section 28 DA of the Customs Act, 1962 has been inserted vide Section 110 of the Finance Act, 2020 w.e.f. 27.03.2020. I find that the importer has claimed benefit of preferential rate of Duty under Notification No. 46/2011-Cus dated 01.06.2011 as amended, read with Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009. I find that there is clear contravention of Rule 3 read with Rules 5 & 6 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide Notification No.189/2009-Customs (N.T.) dated 31.12.2009 by as the supplier M/s.Thai Unipet Industries Co. Ltd as discussed above. Therefore, the importer is not eligible for the notification no. 46/2011-Cus dated 01.06.2011 in respect of import of Antimony Trioxide procured from overseas supplier/ manufacturer M/s.Thai Unipet Industries Co. Ltd.

Section 28DA of Customs Act, 1962 is "Procedure regarding claim of preferential rate of duty". Further, Sub Section 11 of Section 28DA of the Customs Act, 1962 states that " Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria." . Since the importer has imported the identical goods viz. 'Antimony Trioxide' from the same overseas supplier/ manufacturer M/s.Thai Unipet Industries Co. Ltd., provisions of Section 28DA is rightly invoked in the Show Cause Notice. Further, onus is always on the importer who wants to avail the benefit of exemption notification. Once the department has proved the wrong availment of benefit of Exemption Notification No. 46/20100 -Cus dated 01.06.2011, onus is on the importer to prove that they were eligible for said notification which they failed to prove.

21.8 Further, I find that ratio of decision of Hon'ble Tribunal Bangalore rendered in case of M/s. Surya Light Vs. Commissioner of Customs reported in 2008 (226) ELT 74 and M/s. Alfa Traders Vs. Commissioner of Customs, Cochin reported in 2007(217)ELT 437 (Tri. Bang) is squarely applicable in present case as in the said cases, Hon'ble Tribunal has held that if the certificate of origin (COO) is not correct on facts, it can be rejected and may be basis of disallowing the benefit of exemption notification.

Thus, in view of the above discussion and findings, I find that the importer is not eligible for the benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed for the goods imported under Bills of Entry filed at ICD Sabarmati & JNCH Nhava Sheva as mentioned in Annexure-A to the Show Cause Notice.

22. Whether the goods imported by M/s. Shital Industries Private Limited under 13 Bills of Entry having total assessable value of Rs.10,35,47,063/- (Rupees Ten Crore, Thirty Five Lakh, Forty Seven Thousand and Sixty Three only) as mentioned in Annexure-A to the Show Cause Notice are liable for confiscation ?

22.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) and 111 (q) of the Customs Act, 1962 having assessable value of Rs.10,35,47,063/- (Rupees Ten Crore, Thirty Five Lakh, Forty Seven Thousand and Sixty Three only) as mentioned in Annexure-A to the Show Cause Notice.

22.2 Section 111 (o) of the Customs Act, 1962 provides for confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in

respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. Section 111(q) of the Customs Act, 1962 inserted vide Section 113 of the Finance Act, 2020 provides for confiscation of any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder. Further, in terms of Section 46 (4) of the Customs Act, 1962, the importer was required to make declaration as regards the truth of content of the Bills of Entry submitted for assessment of Customs Duty but the importer contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they mis-declared the Country of Origin as Thailand in the declaration of Bills of Entry. The Importer thereby, has wrongly availed/taken the Country of Origin benefit knowingly and intentionally to evade Customs Duty. Accordingly, the importer made wilful mis-statement of actual Country of Origin by suppressing the facts of the correct Country of Origin of imported goods and therefore, I find that by wrong availment of Exemption Notification No. 46/2011-Cus dated 01.06.2011 & suppression of facts, the importer has contravened the provisions of Section 46(4) of the Customs Act, 1962, as they did not declare true particular pertaining to Country of Origin and wrongly claimed preferential rate of Duty. All these acts on the part of the importer have rendered the imported goods covered in the Show Cause Notice liable for confiscation under Section 111(o) and 111(q) of the Customs Act, 1962. It is to reiterate that in the present case it is an admitted fact that the particulars submitted by the importer with respect to Country of Origin certificate was false. The submission of invalid Country of Origin Certificate in respect of impugned goods was done with an intention to avoid higher rate of Customs Duty applicable to the imported goods viz. "Antimony Trioxide". M/s. Shital Industries Private Limited mis-declared the particulars with regard to the said goods imported by them thereby contravening the provisions of Section 47 of the Customs Act, 1962, since the Bills of Entry have not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, the said goods imported by them are liable for confiscation under Section 111(o) & 111 (q) of the Customs Act, 1962.

22.3 As the impugned imported goods are found to be liable for confiscation under Section 111 (o) and 111 (q) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods as detailed in Annexure-A to the Show Cause Notice. Section 125 (1) *ibid* reads as under:

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

I find that imported goods covered under Bills of Entry as appearing at Sr. No.1 to 13 of the Annexure-A to the Show Cause Notice involving total assessable value of Rs.10,35,47,063/- are not available for confiscation.

22.5 I find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed *inter alia* in Para 23 as under:

" 23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of

duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

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

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

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

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

22.7 Therefore, in view of the above, I find that though imported goods covered under Bills of Entry as appearing at Sr. No.1 to 13 of the Annexure-A to the Show Cause Notice involving total assessable value of Rs.10,35,47,063/- were not available for confiscation, however in such cases redemption fine is imposable in light of the

aforesaid judgments. Further ratio of the case law relied upon by the importer is not applicable in view of the aforesaid decisions.

23. Whether the differential Customs Duty amounting to Rs.1,00,80,307/- (Rupees One Crore, Eighty Thousand, Three Hundred and Seven Only) as mentioned in "Annexure-A" attached to the Show Cause Notice should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28 AA of the Customs Act, 1962?

23.1 I find that the imported goods viz. 'Antimony Trioxide' imported by the Importer do not meet the criterion of the "Originating Goods" as prescribed under Notification No. 189/2009-Cus (N.T.) dated 31.12.2009. The Importer has submitted invalid Certificates of Origin and declared incorrect and wrong facts to Customs and thereby fraudulently availed benefit of the Notification No.46/2011-Cus dated 01.06.2011 as amended, with clear intent to evade payment of due Customs Duty. Shri Onilkumar Soni, Import Manager of M/s. Shital Industries Private Limited. in his statement recorded on 22.10.2021 have admitted that they were not eligible for benefit of the Notification No.46/2011-Cus dated 01.06.2011. Thus, the Importer has intentionally and knowingly adopted the modus operandi by way of willful mis-statement and suppression of facts to intentionally evade payment of due Customs Duty by fraudulently availing the benefit of Notification No.46/2011-Cus dated 01.06.2011 as amended. Had the investigation in the matter not been initiated by the DRI, these acts/omissions done by them would never have come to the notice of the Department. These acts of omissions on the part of the importer tantamount to willful mis-statement and suppression of facts on their part and provides sufficient ground to invoke the proviso of Section 28(4) for **EXTENDED PERIOD** upto five years for issuance of Demand of Duty, for willful mis-statement and suppression with intent to evade payment of due Customs Duty. Thus, I find that the impugned goods does not qualify to be originating goods of Thailand and therefore, the benefit of the Notification No.46/2011-Cus dated 01.06.2011 as amended is not available to the Importer and consequently, the Duty amounting to **Rs.1,00,80,307/-** not paid on account of the above stated mis-statement/suppression, is recoverable under Section 28 (4) of the Customs Act, 1962.

23.2 From the observation made in the foregoing paras, I find that the importer availed the concessional rate of Customs Duty and had taken benefit of Notification No. 46/2011- Customs dated 01.06.2011. The importer had contravened the provisions of Section 46 (4) of the Customs Act, 1962 in as much as, they had mis declared the Country of Origin of the imported goods as 'Thailand' in the declaration in the form of Bills of Entry filed under the provisions of Section 46 (4) of the Customs Act, 1962. Also, it is a case of wilful mis-statement and suppression of facts of correct Country of Origin and thus the importer is ineligible for availing exemption under Notification No. 46/2011-Cus dated 01.06.2011.

23.3 I find that the importer have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have intentionally availed/taken a wrong Customs Duty benefit exemption based upon invalid document namely Country of Origin Certificate in terms of Notification No. 46/2011- Cus dated 01.06.2011 and thereby suppressed material facts from the Department and produced invalid Country of Origin Certificate as discussed supra for the imported goods, while filing the declaration at the time of importation of the imported goods. They suppressed the material fact that Antimony Oxide (which is a raw material for imported goods viz. Antimony Trioxide) was obtained from a mine in Myanmar.

23.4 In view of above discussion and judicial pronouncement, I find that the **EXTENDED PERIOD** stipulated under Section 28(4) of the Customs Act, 1962 is rightly invoked in the instant case. Accordingly the total Customs Duty leviable on the said imported goods amounting to **Rs.1,00,80,307/-** in respect of Bills of Entry as

mentioned in Annexure-A to the Show Cause Notice is recoverable in terms of Section 28 (4) of the Customs Act, 1962.

23.5 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid differential Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA *ibid* provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 *ibid*, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 *ibid*. I have already held that Customs Duty amounting to **Rs.1,00,80,307/-** is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) *ibid* to be recovered under Section 28AA of the Customs Act, 1962.

I find that importer have paid the differential duty of **Rs.1,00,80,307/-** as mentioned in **Para 13.1 and 13.2** of the Show Cause Notice as well as interest of **Rs. 28,37,806/-** as reported in their written submission dated 12.03.2024 vide Challan No. 870 & 871 both dated 04.10.2023. In view of the aforesaid discussion as the differential duty is confirmed under Section 28 (4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962, the said payment of differential duty and interest made by the importer is required to be appropriated against their duty liability.

24. Whether penalty should be imposed on M/s. Shital Industries Private Limited., under Section 114A of the Customs Act, 1962?

24.1 Penalty under Section 114A of the Customs Act, 1962: Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the importer. I find that demand of differential Custom Duty totally amounting to **Rs.1,00,80,307/-** has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in 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. In the instant case, the ingredient of wilful mis-statement and suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of penalty equal to the amount of Duty plus interest in terms of Section 114A *ibid*.

I find that in the present case, Shri Onilkumar Soni, Import Manager of M/s. Shital Industries Private Limited in his statement dated 22.10.2021 has admitted that they were not eligible for the benefit of exemption notification No. 46/2011-Cus dated 01.06.2011 as amended. I find the importer failed to ascertain that impugned goods manufactured from the raw material viz. 'Antimony Oxide' were not originated from Thailand. Importer, is one of leading companies in manufacture of PVC Stabilizers and Epoxy Plasticizers and therefore, they are well aware of the availability of the raw material required by them. However, they imported the 'Antimony Trioxide', the raw material of which viz. Antimony Oxide is extracted from the mine of Myanmar Country and produced the Certificate of Country of origin of Thailand with clear intent to evade the payment of customs duty by way of submitting the fraudulently obtained Certificate of Country of Origin by their supplier M/s. Thai Unipet Industries Co. Ltd. from the issuing authority of Thailand. I find that onus is on the importer to prove that they were eligible for the exemption notification. Said Certificate issuing authority revoked the said Certificate as well the supplier/Manufacturer M/s. Thai Unipet

Industries Co. Ltd. admitted that RVC of Antimony Trioxide on the Letter of Confirmation and the RVC on the audited Form were not the same. Thus I find that with the connivance of supplier M/s. Thai Unipet Industries Co. Ltd., the importer evaded the customs duty by way of submitting the fraudulently obtained COO Certificate from issuing authority and therefore, I find that importer has produced the Country of Origin Certificate in violation of the Notification No. 46/2011- Cus dated 01.06.2011 read with Notification No. 189/2009-Customs (NT) dated 31.12.2009. viz. Customs Tariff {Determination of origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association Trade Agreement (ASEAN) and the Republic of India} Rules, 2009. Hence, for the said act of contravention on their part, the importer is liable for penalty under Section 114A of the Customs Act, 1962. Thus, the ratio of the case laws cited by the Importer is not applicable to the case at hand and the argument of the importer fails to impress.

25. Whether penalty should be imposed on M/s. Shital Industries Private Limited., under Section 112(a) and 112(b) of the Customs Act, 1962?

25.1 I find that penalty has also been proposed on the importer under Section 112 (a) and 112 (b) of the Customs Act, 1962. In this regard, I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114/" Hence, I refrain from imposing penalty on the importer under Section 112 (a) and 112 (b) of the Customs Act, 1962.

26. Whether penalty should be imposed on M/s. Shital Industries Private Limited., under Section 114AA of the Customs Act, 1962?

26.1 I find that importer has produced the Country of Origin Certificate which was incorrect in as much as it falsely shows the Country of Origin as Thailand in violation of the Notification No. 46/2011-Cus dated 01.06.2011 read with Notification No. 189/2009- Customs (N.T.) dated 31.12.2009 viz. Customs Tariff {Determination of origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association Trade Agreement (ASEAN) and the Republic of India} Rules, 2009. The Country of origin certificates were obtained fraudulently by M/s. Thai Unipet Industries Co. Ltd. from the issuing authority by mis-stating the facts of RVC which is mandatory requirement. M/s. Thai Unipet Industries Co. Ltd in his letter dated 10.05.2021 has admitted that the 'Antimony Oxide' which is main raw material is extracted from a mine in Myanmar and therefore, company had to classify the cost of Antimony Oxide as non-originating material under the rules of origin of AIFTA which is key factor that resulted in the significant change of RVC. Further, overseas Manufacture-Supplier has admitted that RVC of Antimony Trioxide on the Letter of Confirmation and the RVC on the audited Form were not the same. Thus, it proves that M/s. Thai Unipet Industries Co. Ltd. has fraudulently obtained the Certificate of Country of Origin by mis-stating the facts before the Certificate issuing authority. I find that importer has availed the benefit of Notification No. 46/2011- Cus dated on the basis of said Certificate of Origin which is obtained fraudulently by their supplier from the issuing authority. I find the importer failed to ascertain that impugned goods manufactured from the raw material viz. 'Antimony Oxide' were not originated from Thailand. Importer, is one of leading companies in manufacture of PVC Stabilizers and Epoxy Plasticizers and therefore, they are well aware of the availability of the raw material required by them. However, they imported the 'Antimony Trioxide', the raw material of which viz. Antimony Oxide is extracted from the mine of Myanmar Country and produced the Certificate of Country of origin of Thailand with clear intent to evade the payment of customs duty by way of submitting the fraudulently obtained Certificate of Country of Origin by their supplier/ Manufacturer M/s. Thai Unipet Industries Co. Ltd. from the issuing authority of Thailand. I find that onus is on the importer to prove that they were eligible for the

exemption notification. Said Certificate issuing authority revoked the said Certificate as well the supplier/Manufacturer M/s. Thai Unipet Industries Co. Ltd. admitted that that RVC of Antimony Trioxide on the Letter of Confirmation and the RVC on the audited Form were not the same. Thus I find that with the connivance of supplier/manufacturer M/s. Thai Unipet Industries Co. Ltd., the importer evaded the customs duty by way of submitting the fraudulently obtained COO Certificate from issuing authority and therefore, I find that importer has produced the Country of Origin Certificate in violation of the Notification No. 46/2011- Cus dated 01.06.2011 read with Notification No. 189/2009-Customs (NT) dated 31.12.2009. viz. Customs Tariff {Determination of origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association Trade Agreement (ASEAN) and the Republic of India} Rules,2009. Hence, I find that the importer has knowingly and intentionally made, signed or caused to be made and presented to the Customs authorities such documents which they knew were obtained fraudulently based on incorrect/ false information supplied to issuing authority. Hence, for the said act of contravention on their part, the importer is liable for penalty under Section 114AA of the Customs Act, 1962 .

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

27. In view of the forgoing findings and discussions, I pass the following order:

:: ORDER ::

27.1 I disallow the benefit of Notification No.46/2011-Cus. dated 01.06.2011 as amended, claimed by M/s. Shital Industries Private Limited. against the goods imported under various Bills of Entry filed at ICD Sabarmati & JNCH Nhava Sheva as mentioned in Annexure-A to the Show Cause Notice.

27.2 I hold the impugned goods having total assessable value of **Rs.10,35,47,063/- (Rupees Ten Crore, Thirty Five Lakh, Forty Seven Thousand and Sixty Three only)** as mentioned in Annexure-A attached to Show Cause Notice liable for confiscation under Section 111(o) and 111 (q) of the Customs Act, 1962. However, I give M/s. Shital Industries Private Limited the option to redeem the goods on payment of Fine of **Rs.1,00,00,000/- (Rupees One Crore only)** under Section 125 of the Customs Act, 1962.

27.3 I confirm the differential Customs Duty amounting to **Rs. 1,00,80,307/- (Rupees One Crore, Eighty Thousand, Three Hundred and Seven Only)** as detailed in "Annexure-A" attached to Show Cause Notice and order to recovery of the same from M/s. Shital Industries Private Limited. in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

27.4 I order to appropriate the amount of differential duty of **Rs. 1,00,80,307/- and interest of Rs. 28,37,806/-** deposited/paid by M/s. Shital Industries Private Limited. as mentioned in Para 13.1 and 13.2 of the Show Cause Notice and their written submission dated 12.03.2024 against their Duty and Interest liability as confirmed in Para 27.3 above.

27.5 I impose a penalty of **Rs. 1,00,80,307/- (Rupees One Crore, Eighty Thousand, Three Hundred and Seven Only)** on M/s. Shital Industries Private Limited plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at Para 27.3 above under Section 114A

of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

27.6 I refrain from imposing penalty under Section 112(a) & 112(b) of the Customs Act, 1962 on M/s. Shital Industries Private Limited. for the reasons discussed in para 25.1 above.

27.7 I impose penalty of Rs. **25,00,000/- (Rupees Twenty Five Lakh only)** on M/s. Shital Industries Private Limited. under Section 114AA of the Customs Act, 1962.

28. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

29. The Show Cause Notice No. VIII/10-05/Commr./O&A/2023-24 dated 19.09.2023 is disposed off in above terms.


(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240571MN000022A2D

F.No. VIII/10-05/Commr/O&A/2023-24

Date : 24.05.2024

By Speed Post/E Mail/Notice Board

To,
✓ M/s Shital Industries Private Limited,
Shital House, Behind ONGC, Sabarmati,
Ahmedabad, Gujarat-380005.

Copy To:

- 1) The Pr. Chief Commissioner of Customs, Gujarat Zone, Ahmedabad for information please
- 2) The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, SG Highway, Thaltej, Ahmedabad 380054 for information please.
- 3) The Pr. Commissioner of Customs, Nhava Sheva, JNCH, Raigadh for information please.
- 4) The Deputy Commissioner of Customs, ICD Sabarmati, Ahmedabad
- 5) The Superintendent of Customs(Systems), Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
- 6) Guard file.