
	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	
A. File No.	: GEN/ADJ/COMM/42/2023-Adjn-O/o Pr. Commr- Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-08-24-25	
C. Passed by	: K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of passing of Order	: 06.05.2024, 06.05.2024	
E. SCN No. & Date	: SCN NO. GEN/ADJ/COMM/42/2023-Adjn, dated 08.05.2023.	
F. Noticee(s) / Party / Importer	: M/s.Mukesh Steel (IEC 0513087818), C-45, Wazirpur Industrial Area, Delhi, and Others.	
G. DIN	: 20240571MO0000004E3C	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मिल कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

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

4. उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

FACTS OF THE CASE IN BRIEF:

1.1. The officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi (hereinafter referred to as "the DRI"), received information that **M/s.Mukesh Steel** (IEC 0513087818), C-45, Wazirpur Industrial Area, Delhi (hereinafter also referred to as 'M/s.MS' also for the sake of brevity), proprietorship firm of Shri Mukesh Mittal and **M/s.Mukesh Steel Trading** (IEC 0508066573), C-18/2, Wazirpur Industrial Area, Delhi (hereinafter also referred to as 'M/s.MST' for the sake of brevity), a proprietorship firm of Shri Amit Mittal (uncle of Mukesh Mittal), were indulging in the evasion of the Customs duty by way of undervaluation of the Cold Rolled Stainless Steel Coils and Circles falling under tariff item 7220 or 7219 of the First Schedule of the Customs Tariff Act, 1975 (hereinafter referred to as "the CTA"), imported from China. The information also indicated that the MS was wrongly availing the benefit of the preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 (Indo-ASEAN FTA), as the Cold Rolled Stainless Steel Coils & Circles imported by MS from Malaysia and declared to be of Malaysian origin, were, in fact, of Chinese origin and were routed through Malaysia to wrongly avail the benefit of preferential duty.

2. Investigation carried out by the DRI, Delhi:

2.1. During investigation, it was found that Shri Amit Mittal (Proprietor of M/s.MST) had procured stainless steel products of Chinese origin from his suppliers for importers, namely, **M/s.Gulshan Exim Pvt. Ltd.** (IEC 0516002061), C-18/3, Wazirpur Industrial Area, Delhi (hereinafter referred to as M/s.GEPL also for the sake of brevity) and **M/s.Dharam Impex** (IEC 0514049693), A-30 Wazirpur Industrial Area, Delhi (hereinafter referred to as M/s.Dharam also for the sake of brevity), a proprietorship firm of Shri Puneet Jain and therefore, investigation was extended to these importers also.

2.2. A search operation dated 11.02.2020 conducted at the office-cum-godown of **M/s.MS** located at C-45, Wazirpur Industrial Area, Delhi, and certain documents and electronic devices considered relevant to the investigation were resumed under Panchanama dated 11.02.2020. The officers also took the physical stock of the stainless steel coils/circles/sheets available in the said premises. The said goods were detained vide Detention Memo dated 11.02.2020, for further investigation. The detained goods were handed over to Shri Mukesh Mittal for safe custody.

2.3. The officers of the DRI visited the office-cum-godown premises of Mukesh Steel located at C-45, Wazirpur Industrial Area, Delhi, on 23.07.2020 for conducting verification of the stock lying therein. The physical stock verification of the goods lying in the said premises was conducted in the presence of Shri Mukesh Mittal, Proprietor of Mukesh Steel. During stock verification it was observed that both domestically procured goods as well as imported goods were found available in the said premises. The entire examination proceedings were recorded under Panchnama dated 23.07.2020. During investigation, further evidence indicating undervaluation of the imported goods detained under Detention Memo dated 11.02.2020, were found and the said detained goods totally valued at **Rs. 1,91,91,322/-** were placed under seizure, vide Seizure Memo/Order dated 13.10.2020 & its corrigendum dated 26.10.2020. The details of the seized goods are as under:

Sr. No. of Table	Description of goods	Qty. (Kgs)
A of Seizure Memo dated 13.10.2020		
1	2	3
1	8	S.S. COIL (IMPORT) (90-100)
2	11	S.S. CIRCLE (95-110)
3	13	S.S. COIL (80-90)
4	14	S.S. COIL (JOB)
		6750.30
		53742.95
		42266.63
		119004.00

2.4. On request made by M/s. Mukesh Steel, vide their letter dated 29.05.2020, the Deputy Commissioner (Gr.IV), Customs House, Mundra, vide F. No. VIII/48-1322/Mukesh Steel/Gr.IV/MCH/2020-21/6433 dated 31.12.2020, ordered for the provisional release of the seized goods, subject to fulfilment of the conditions stipulated therein.

2.5. In view of the spread of pandemic COVID-19, The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020 was promulgated by the President of the Republic of India to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto and Customs Act, 1962 finds mention in Section 2(2) of Chapter-I of the Ordinance *ibid*. Further, vide Section 6 falling under Chapter V of the Ordinance *ibid*, time limit specified for completion or compliance of certain actions under the Customs Act, 1962 which fell during the period from 20th March 2020 to 29th June 2020, stood extended to 30th June, 2020 or any other such date that the Central Government may notify. Further, the said time limit specified for completion or compliance of certain actions under the Customs Act, 1962 as detailed above, was extended till 30th September, 2020. The said time limit specified for completion or compliance of certain actions under the Customs Act, 1962 as detailed above, was extended till 31st December, 2020 and Seizure Memo dated 13.10.2020, its corrigendum dated 26.10.2020, and Provisional release Order dated 31.12.2020, were accordingly issued in terms of Section 6(a) of the Ordinance *ibid*.

2.6. During the investigation, the process of cloning/data retrieval process of the electronic devices (mobile phones & hard disc), was conducted in the presence of Shri Mukesh Mittal under panchnamas dated 26.06.2020 & 29.06.2020. During investigation, the officers took printouts of the relevant data from the cloned/recovered data of the resumed electronic devices in the presence of Shri Mukesh Mittal & Sh. Amit Mittal. The said printouts are discussed at relevant places in the Show Cause Notice. The panchnamas dated 26.06.2020 & 29.06.2020 and the certificates under Section 138C of the Customs Act, 1962 are **RUD-5** collectively.

2.7. Voluntary Statements of **Shri Mukesh Mittal, Proprietor of Mukesh Steel**, were recorded on 19.08.2020 and 11.09.2020 under Section 108 of the Customs Act, 1962 wherein he, *inter alia*, stated that:

- (i) He had not completed his graduation as he started assisting his father in his business of stainless steel. He did not remember the name of his father's firm. He started Mukesh Steel in 2013. He did not remember the name of the firm in which he was working prior to Mukesh Steel. He dealt in Stainless Steel Coils, Circles & Scrap. He procured Stainless Steel Coils & Circles from Indian manufacturing mills, local traders and overseas

suppliers. He had imported Stainless Steel Coils from China & Malaysia and stainless-steel Circles from Indonesia. He further stated that his uncle, Amit Mittal, also assisted him in his business and all the dealings with the foreign suppliers were done under Amit Mittal's supervision and Amit Mittal knew about everything about his business.

- (ii) His local suppliers were Anmol Stainless Pvt. Ltd., Arhat Wood Pvt. Ltd., Kwaliti Expolink (I) Pvt. Ltd., Gaurav Udyog, Radha Krishna Traders, Mudit Impex Pvt. Ltd., Choice Cargo Agencies Pvt. Ltd & Dharma Impex and his China based suppliers were MCH Steel Industry Co. Ltd., Sinosteel Shenzhen Co Ltd., Guizhou Zhongruexianlge, Tocean Industry Ltd. etc., the Indonesia based suppliers were PT Bintang Asia Usaha & PT Steel Industry Batam and the Malaysia based supplier was Jentayu Industry.
- (iii) He stated that till 2018, he was importing goods from China only and thereafter, he started importing from other countries like Malaysia and Indonesia.
- (iv) He stated that after purchasing stainless-steel coils from local traders/overseas suppliers, he either sell the coils as it is or sell the circles cut from the coils to the customers. He had purchased circles from local market and had also imported Circles from Indonesia. He was also engaged in doing job work of cutting of circles from the stainless-steel Coils for other traders for which he charged Rs. 2/Kg of the stainless-steel coils.
- (v) On being asked about BE No. 6316465 dated 01.01.2020 filed by M/s.MS, he stated that in the said BE, the description of the goods was declared as *Stainless Steel Cold Rolled Coils Grade J3 Stock Lot (Mixed Sizes)*. On being asked, he stated the *Stock Lot* goods were those goods which were readily available with the suppliers in mix sizes and the supplier provided the same (*Stock Lot*) at cheaper price. They did not have many choices in the *Stock Lot* goods regarding sizes/thickness. He also stated that they used the Certificate of Origin of China to claim BCD benefit under SAPTA.

2.8. Voluntary Statement of Shri Amit Mittal, Proprietor of M/s.MST, was recorded on 15.09.2020 under Section 108 of the Customs Act, 1962 under Section 108 of the Customs Act, 1962, wherein he *inter alia*, stated that:

- (i) He was proprietor of M/s.MST, which was engaged in trading of Stainless Steel Patta Patti, Circles, Coils, Utensils and Scarp. M/s. MST had also imported stainless steel products. On being asked, he stated that he had also got the job work of cutting of Circles from Coils done from his nephew Mukesh Mittal.
- (ii) He was shown the panchamas dated 11.02.2020 and 23.02.2020 drawn at the premises of their firms at C-45 Wazirpur Industrial Area, Delhi and he had signed on the same. On being asked, he stated that he was using the Apple iPhone 6S mobile phone which was resumed during search at the said premises and the resumed Apple iPhone 7 mobile phone belonged to his nephew Mukesh Mittal.
- (iii) He stated that he was shown the panchnama dated 26.06.2020 drawn for the cloning and data retrieval process of his Apple iPhone 6S mobile phone. He stated that in his presence the external hard disc containing the cloned/ retrieved data of his said phone was attached with the computer of the DRI and printouts of the WhatsApp messages were taken in his presence. He had serially numbered the printouts from Sr. No. 1 to 22 and

had signed on all the 22 pages. He also stated that he was using mobile number 8595094183 in the Apple iPhone 6S mobile phone and in the WhatsApp messages available in the said 22 pages contained messages, files, images etc. sent/received on his WhatsApp No. 8595094183. On being asked about the WhatsApp profile name 'Vidit Mittal' in the said mobile phone, he stated that his son's name was Vidit Mittal.

- (iv) On being asked about the contact's name 'Xmas' available in the page No. 1 of the printouts of the WhatsApp messages, he stated that the mobile No. 9810580640 of 'Xmas' was his other mobile phone number in other phone & he was using WhatsApp on his both mobile phones (9810580640 & 8595094183). He also stated in the mobile phone (apple mobile phone with number 8595094183) resumed by the DRI, he had saved his other mobile number 9810580640 in the name of 'Xmas'.
- (v) On being asked about page Nos. 1, 2 and 3 of the printouts, he stated that the xls, pdf, pictures & other files were shared through the WhatsApp messages with 'Xmas' from his mobile No. 9810580640 to his mobile number 8595094183.
- (vi) He stated that in his presence the files (xls, pdf, etc.) available in the WhatsApp messages were opened on the computer of the DRI and printouts of the said files were taken. He had serially numbered the said printouts from Sr. No. A1 to A90 and he had signed on all the 90 pages.
- (vii) On being asked, he stated that he (MST) had imported Stainless Steel Coils from MCH Steel Trading Co. Ltd (MCH Steel, in short) and the page Nos. A1 to A20 were printouts of the Commercial Invoices and Packing Lists of MCH Steel (excel format), which were sent to him on WhatsApp by Vick (an employee of MCH Steel) to check the same. He also stated that the Commercial Invoices available in page Nos. A1 to A20 contained actual price at which he had purchased coils from MCH Steel.
- (viii) On being asked, he stated that he came in contact with Vick in July-August 2019. Vick knew that he (Amit) was importing Stainless Steel Coils from China and Vick offered to send Stainless Steel Coils to him from China and issue invoices at lesser than actual value, so that he (Amit) could pay less Customs duty.
- (ix) On being asked, he stated that they were getting Letter of Credit (LC) from their Bank and Vick was sending the documents, viz. commercial invoices, packing list, Certificate of Origin etc. to their bank for payment. On being asked, he stated that 'they' meant M/s. MST and M/s.MS. On being asked, he stated that Vick used to send the Commercial Invoice with actual value of the Stainless Steel Coils to him on WhatsApp, so that he could know about the differential amount (actual value minus invoiced value) to be paid to Vick/MCH Steel. On being asked, he stated that the differential amount was paid through TT to MCH Steel.
- (x) He stated that the Commercial Invoices and Packing Lists available at page Nos. A21 to A28 pertained to the Stainless Steel Coils imported by M/s.MS and M/s.Dharam Impex. Puneet was the owner of M/s.Dharam Impex and he had introduced Puneet with Vick and therefore, Vick had sent the invoice of the Stainless Steel Coils imported by Dharam Impex to him. He also stated that the page No. A23 was the Commercial Invoice of the Stainless Steel Coils imported by M/s.MS.

- (xi) On being asked, he stated that the details of the goods viz. description, size, quantity, etc. mentioned in the actual commercial invoice with actual rates were identical to the commercial invoice submitted to the Customs, with the only difference in the rates of goods.
- (xii) On being asked, he stated that the phone number of Puneet was 8368584732 and his business address was A- 92 Wazirpur Industrial Area.
- (xiii) He stated that page Nos. A30 to A35 were the LC documents of M/s.MS in respect of USD 81491.09 paid by M/s.MS to MCH Steel. The page No. A36 was a snapshot of the swift slip of USD 40709.78 paid by Dharam Impex to MCH Steel, the page No. A37 was the freight invoice of the coils imported by Dharam Impex and the page Nos. A38 to A39 were the swift slips of the payments made by M/s. MST and Gulshan Exim Pvt. Ltd (GEPL) to MCH Steel.
- (xiv) He stated that the page Nos. A42 to A61 were the Sales Contract & other documents of GEPL which he had forwarded on WhatsApp to CHA Deepak for Customs clearance.

2.9. Shri Amit Mittal, Proprietor of M/s.MST in his voluntary statement recorded on 18.09.2020 under Section 108 of the Customs Act, 1962, *inter alia*, stated that:

- (i) He was shown his statement recorded on 15.09.2020 and he had signed on the all the pages of the said statement.
- (ii) He was shown the page Nos. 1 to 22 of the printouts of the WhatsApp messages and the printouts (Sr. No. A1 to A90) of the attachments (excel, pdf, files etc.) of the said WhatsApp messages, taken during his statement recorded on 15.09.2020.
- (iii) After going through the page No. 14 to 18, he stated that the said pages contained the chats (messages) between him and Kapil. On being asked, he stated that he did not know about the residential or business address of Kapil. After going through the printouts of the attachments, he stated that the attachments (pdf, word, picture files etc.) of the WhatsApp messages between him and Kapil were available at page No. A-64 to A71. He also stated that in the word file posted by him in the message on 13.01.2020, he had conveyed the bank account details (account number, swift, etc.) of MCH Steel to Kapil. The bank account details of MCH Steel were given to him by Vick. He further stated that in the next message posted by Kapil, he repeated the same bank account details of MCH Steel and at the bottom of the message "95000 USD" was mentioned. On being asked about "95000 USD" he stated that it meant that he (Amit) had to pay USD 95000 to Vick/MCH Steel through Kapil. He also stated Kapil was a person of Vick in India and Kapil used to collect the differential amount of the actual value and the value mentioned in the invoice submitted to the Customs, from him (Amit). On being asked, he stated that the page Nos. A64 to A-71 were the slips of the payments sent by Kapil to Vick.
- (iv) On being asked, he stated that the page Nos. A72 to A81 were the printouts of the commercial invoices, packing lists pertaining to the goods imported through him by MS, M/S. MST and GEPL.

- (v) On being asked about the message sent by him on 16.01.2020 (at 10:01:51 hrs) available in page No. 19 of the printouts of the WhatsApp messages, he stated that he had sent the said message to the mobile phone of his daughter Sanya and the said message contained the actual values of the Stainless Steel Coils purchased from MCH Steel. He also stated that the invoice Nos. mentioned in the said message were not complete, e.g., "1125-2" mentioned in the message denoted invoice No. MCHA191125-2 and "61681" mentioned in front of "1125-2" was the actual value (in USD) of the goods purchased under the said invoice. He stated that rest five entries of the message were in similar manner.
- (vi) On being asked, he stated that the page No. A82 was the registration certificate of MCH Steel and he had sent the same to Virender Rai and the page No. 83 was the slip of the USD 75000 remitted by Bansal Overseas Ltd of Virender Rai to MCH Steel. On being asked, he stated that the said payment of USD 75000 was made to MCH Steel towards the differential value of the actual value of the goods imported by MST, MS & GEPL and the value mentioned in the invoices of MCH Steel submitted to the Customs.
- (vii) He stated that the page Nos. A84 to A90 were sent to him on WhatsApp by Deepak. Deepak used to get the imported goods cleared from the Customs, on his instructions.

2.10. Shri Mukesh Mittal, Proprietor of M/s MS, in his statement recorded on 21.09.2020, under Section 108 of the Customs Act, 1962, *inter alia*, voluntarily stated that:

- (i) He was shown statements of Amit Mittal, recorded on 15.09.2020 & 18.09.2020 and he agreed with his statement.

He was also shown the printouts of the WhatsApp messages (01 to 22 pages) and the WhatsApp attachments (A1 to A90) taken from the mobile phone of Amit Mittal. He was also shown the "1125-3-65701" mentioned in the message dated 16.01.2020 sent by Amit Mittal to his daughter Sanya and the page No. A72 of the WhatsApp attachment printouts. He stated that the page No. 72 was the Commercial Invoice issued by MCH Steel to MS and he had submitted the said commercial invoice to the Customs with BE. He stated that in the said invoice, the value of the goods was mentioned as USD 40832.25 whereas the actual value of the goods which he paid to MCH Steel through bank and to Vick's person in India was USD 65701 (mentioned in the said message). On being asked, he stated that usually different persons of MCH Steel used to come to him to collect the payments and he did not know about the said persons.

He admitted that to save Customs duty, he had submitted commercial invoices with less than actual value to the Customs and he would deposit the differential duty liability.

- (iv) On being asked, he stated that he was aware of the stock of stainless-steel products detained by the DRI at his premises. He was shown the panchnama dated 11.02.2020 at his business premises located at C-45, Wazirpur Industrial Area, Delhi. On being asked, he stated that he had imported the Stainless Steel Circles weighing 27,588 Kg and Stainless Steel Coils weighing 42,266 Kg, lying at his premises. The Stainless Steel Coils weighing 42,266 Kg were purchased from MCH Steel and he had filed

BE No. 6498934 dated 16.01.2020 and BE No. 6316465 dated 01.01.2020 for import of the said coils. He also stated that the value declared by him in the BE No. 6498934 was not the actual value of the coils as instead of the correct value of USD 65701, he declared value of USD 40832 in the said BE. He also stated that the rate of coils imported by him under BE No. 6498934 was around USD 1200/MT.

- (v) On being asked, he stated that in the BE No. BE No. 6316465 dated 01.01.2020 also, he had declared less than actual value of the coils. He stated that the actual rate of the said coils was around USD 1100/MT but he had declared rate of USD 750/MT to the Customs. He stated that he had done wrong by declaring less than actual value in the BE and he was ready to deposit the duty liability which may arise on the said issue. On being asked he stated that he started undervaluation of the imported goods from July/August, 2019.

2.11. Shri Mukesh Mittal, Proprietor of M/s.MS, in his statement recorded on 29.09.2020 under Section 108 of the Customs Act, 1962, *inter alia*, voluntarily stated that:

- He had gone through his statement recorded on 21.09.2020 and he agreed with the said statement.
- He was shown the panchanama dated 23.07.2020, drawn at his factory premises located at C-45, Wazirpur Industrial Area, Delhi. On being asked about the SS Coil (Import) 90-100 mentioned at Sr. No. 8 of the table available at page No. 2 of the panchanama, he stated that the "Import" mentioned in the said entry did not mean that the coils mentioned therein were imported. He stated that the said coils were purchased by him from Mudit Impex and Dharam Impex. On being asked about SS Circle (95-110) weighing 27588.951 Kg mentioned at Sr. No. 11 were imported Circles. The SS Coil (80-90) weighing 42266.63 Kg mentioned at Sr. No. 13 were also imported Coils. He tendered the Stock Ledger of Coils and stated that the SS Circle (95-110) were the domestically procured SS Circles weighing 26154 Kg. The SS Coil (Job) weighing 119004 Kg mentioned at Sr. No. 14 were the SS coils received for job work from MST. He also stated that he did not have details of MST.

2.12. Shri Amit Mittal in his voluntary statement recorded on 30.09.2020, under Section 108 of the Customs Act, 1962, *inter alia*, stated that:

- (i) He was shown the panchanama dated 11.02.2020 under which goods were detained by the DRI at the premises of MS. On being asked about the 119004.00 Kg mentioned against SS Coil (Job) at Sr. No. 14, he stated that the said entry pertained to the Stainless Steel Circles of MST. He stated that he (MST) used to purchase SS Coils and send the same to MS for job work of cutting circles from the coils. On being asked, he stated that the scrap generated during job work was returned to MST. On being asked, he stated that he used to maintain separate ledgers for the Coils, Circles and Scrap. He submitted photocopies of the SS Coil Local ledger of the period 01.04.2018 to 31.03.2020 and photocopies of the Tax Invoices mentioned in the said ledger. On being asked about the Mtls mentioned in the column of Type in the entry dated 31.12.2019 of Mukesh Steel-Delhi, he stated that "Mtls" was mentioned in the entries of coils sent for job work, the "Purc" and "Sale" mentioned in the said column in other entries denoted Purchase and Sales respectively. On

being asked, he stated that though from the entries of the said ledger it appeared that he had not sent any coil for job work during 01.04.2019 to 31.12.2019, but the same was not correct. He tendered the *Job Register (Outside)* and stated that in the entry in which "Mtls" was mentioned denoted that the coils mentioned in the said entry were sent for job work to MS. He also stated that it was possible that a few out of the total coils sent for job work to MS, were imported and rest coils were locally purchased. He stated that he would submit the purchase invoices of locally procured coils. He stated that the invoices submitted by him pertained to the locally purchased and he would submit the invoices of the imported coils sent by him for job work.

2.13. Statement of Shri Amit Mittal, Proprietor of M/s.MST, was recorded on 16.08.2021, under Section 108 of the Customs Act, 1962. In his voluntary statement Amit Mittal, *inter alia*, stated that:

- (i) He had imported Stainless Steel Cold Rolled Coils on the IEC of M/s. MST and M/s. MS. On being asked whether the rate of all sizes of the stainless-steel coils was the same, he stated that the rate of the Coils depended upon its thickness and width and the thinner Coils were costlier, e.g., the Coils of thickness 0.19 mm were costlier as compared to the Coils of 0.26 mm thickness.
- (ii) On being asked, he stated that at the time of search of the premises of M/s. MS, the Vivo 1818 mobile phone resumed under panchnama dated 11.02.2020 was available with him. He stated that he was informed that the cloning/data retrieval of the data available in the Vivo 1818 mobile phone was conducted under panchnama dated 29.06.2020. He stated that in his presence, the external hard disc containing data cloned/retrieved from the Vivo 1818 mobile phone & the other resumed devices, was attached with the computer of the DRI and certain printouts were taken from the cloned/retrieved data of Vivo 1818 mobile phone. The printouts were serially numbered from 1 to 13 and he, after going through the same, had signed on all the 13 pages.
- (iii) On being asked, he stated that the page No. 1 of the printouts was the letter dated 16.08.2019 of Guizhou Zhongruixiang Supply Chain Co. Ltd to the Bank of Baroda, Singapore, in respect of discounting request for LC of USD 70333.74.
- (iv) On being asked, he stated that the page Nos. 7 and 8 were printouts of the excel file namely 'Vick' and it contained details of the different sizes of Coils available with Vick Jiang.
- (vi) On being asked, he stated that the page Nos. 9, 10 and 11 were printouts of the excel file namely "Statement 20190831(I)". On being asked, he stated that the said pages were *account statement* containing invoice nos., value of the goods, name of the importer and the details of the payments made to Vick Jiang for the Stainless Steel Cold Rolled Coils supplied by him from China. On being asked, he stated that "MS" mentioned in the *account statement* denoted Mukesh Steel, M/S. MST denoted Mukesh Steel Trading, GEPL denoted Gulshan Exim Pvt. Ltd and AFPL denoted Ashish Foil Pvt Ltd.
- (vii) On being asked about the worksheets available in page Nos. 10 and 11, he stated that the said two pages were printouts of one excel sheet. He stated

that three worksheets were available in the two pages. The left side portion of each worksheet was of payment and right-side portion of the worksheet was for the details viz., number of containers, name of the importer, invoice no. amount, etc.

- (viii) On being asked about the heading "**AMIT MONEY DEPOSITS LIST**", of the left-side portion of the second account statement/worksheet, he stated that the entries in the left-side portion of the worksheet were of the payments made by him and the payments mentioned therein were made through the bank account of the importer and through hawala channel.

For better appreciation of facts, the image of the second worksheet is reproduced below:

AMIT MONEY DEPOSITS LIST				VICKI MATERIAL INVOICE LIST			
			no. of co.				
BALANCE FORWARD (298430-249395)	49395						
MEGPIE 2 CON.	2224	(73623-71356)		3 GEPL	MCHA190224	18431 LC	103224-84793
weight difference 3315-3356=359kg	325			2 GEPL	MCHA190223	14886 LC	73159-56272
MEGPIE 1 CON.	571	35013-35584	MCHA190306-1	2 GEPL	MCHA190322	16039 LC	70695-54556
RMB BY AGENT	29850	05.04.19	MCHA190301	2 GEPL to ashish	MCHA190323	22193 LC	73100-95293
ASHISH FOILS	46818	25.04.2019		3 GEPL	MCHA190329	22226 LC	104843-824172
ASHISH FOILS	52321	9.05.2019		2 MEGPIE	MCHA190304	72103	
MEGPIE	40000	09.05.2019		3 GEPL	MCHA190408	25016 LC	117610-82594
MEGPIE	48517	14.05.2019		1 ASHISH	MCHA190306-1	35526	
NEPAL 72683-75436	2756		MCHA190412	2 ASHISH	MCHA190306-2	73388	
GEPL-MY	68077	16.05.2019		2 GEPL	MCHA190306-3	80637	1310
				3 GEPL	MCHA190416	21595 LC	104441-82446
							1255
TOTAL	381284			TOTAL	358064		

- (ix) On being asked about the heading "**VICKI MATERIAL INVOICE LIST**" of the right-side portion of the worksheet, he stated that the goods covered under the invoices mentioned in the said portion of the worksheet were purchased from Vick Jiang. He also stated that the 1st column of heading "no. of co." contained the number of the containers in which the goods covered under the invoice No. mentioned in the 3rd column were imported by the importer mentioned in the 2nd column. On being asked, he stated that GEPL mentioned in the 2nd column denoted Gulshan Exim Pvt. Ltd. He stated that in the 4th column, the difference of the actual value of the goods and the invoiced value was mentioned. On being asked about 'LC 103224-84793' mentioned in the next columns, he stated that LC denoted Letter of Credit and the said entry meant that the value mentioned in the Invoice No. MCHA190224 issued to GEPL was USD 84793 (Bank issued LC for USD 84793) and the actual value of the goods covered under the invoice No. MCHA190224 was USD 103224. He also stated that 18431 mentioned in the 4th column denoted USD 18431, which was the difference of the actual value of the goods minus invoiced value (USD 103224- USD 84793).

- (x) After going through the BEs filed by GEPL, he stated that the Invoice No. MCHA190224 was issued by Guizhou Zhongruixianghe Supply Chain Co. Ltd to GEPL for sale of "**STAINLESS STEEL (CR) STRIPS & COILS EX-STOCK G(3) MFG.OF PIPES & TUBES IN STRIP FORM**" weighing 81532 Kg at total value of USD 84793 and GEPL had filed the BE 2709384 dated 04.04.2019 for import of the said goods. On being asked, he stated that the said goods were arranged by him from Vick Jiang and the actual value of the said goods was USD 103224. On being asked, he stated that Ashok and Suresh Goel of GEPL used to deal with him

for import of goods on the IEC of GEPL and their number was saved with the name of 'Gulshan' in his mobile phone.

- (xi) On being asked, he stated that the said second worksheet pertained to the goods imported by him for other parties (other than his firm M/s. MST and his nephew's firm M/s. MS). He had prepared said worksheet to keep the record of the payments made to the supplier Vick Jiang. He also stated that the payment for the value mentioned in the invoice was made by GEPL to the supplier through their bank account and the payment for the amount over and above the invoice value was made through him to Vick Jiang by using hawala channel.

- (xii) On being asked about the 10th entry of the right side portion of the said worksheet (reproduced below for better appreciation):

2/GEPL	MCHA190306-3	80637		MLY	1310
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- He stated that the said entry pertained to the goods imported by GEPL under invoice No. MCHA190306-3 and the actual value of the imported goods was USD 80637. On being asked about "MLY" mentioned in the next column, he stated that "MLY" referred to Malaysia. After going through the details of the BEs filed by GEPL, he stated that the consignment of STAINLESS STEEL COLD ROLLED COILS GRADE J3(200) MIX SIZE weighing 55.356 MT was imported by GEPL from Malaysia which were purchased from Setica Industries (M) Sdn Bhd, Malaysia and in the BE 3323552 dated 21.05.2019 filed for the import of said coils, GEPL had declared the value of the said coils as USD 68088. On being asked, he stated that the said Stainless Steel Coils weighing 55.356 MT were supplied by Vick Jiang from China. He admitted that the said Stainless Steel Cold Rolled Coils were fully manufactured in China and from China, the said coils were first shipped to Malaysia and then from Malaysia, same Coils were shipped to India. He admitted that no work/process on the Coils was undertaken in Malaysia and from China, the completely finished Stainless Steel Cold Rolled Coils were routed through Malaysia to India to save Customs duty and CVD.

- (xiii) On being asked, he stated that Vick Jiang had told him that he would arrange the Certificate of Origin of Malaysia for the SS Cold Rolled Coils/Strips supplied by him from China and it would save Customs duty. On being asked, he stated that the actual value of the Stainless Steel Cold Roll Coils weighing 55.356 MT supplied by Vick Jiang from China through Malaysia to India was USD 80637 and invoice of less value i.e., USD 68088 was issued. He also stated that GEPL declared the less than actual value in the BE.

- (xiv) On being asked about the 11th entry of the right portion of the worksheet (reproduced below)

3/GEPL	MCHA190416	21995 LC	104441-82445	1255
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(xv) On being asked about the third worksheet available in page No. 10 (for better appreciation of facts, the worksheet is reproduced below)

BALANCE FORWARD 381264-358064		29200 GLD							
NST		57288 23.05.19			2 NST	MCHA190412F-1	68798		1260
AGENT 500000		77158 25.05.19			2 MST	MCHA190316-4	68077		1260
AGENT 206400/6.88		30009 31.05.20			2 MS	MCHA190425	43381 ML		1256
MS BANK		67120 14.06.19			2 MS	MCHA190305-5	78063 OS ML		1255
AGENT 414000/5.9		60000 15.06.19			NST	MCHA190620	13283 LC	70093-56810	
AGENT 412800/6.88		80000 26.06.19				MCHA190429	64738		
		374756					338297.1		
BALANCE FORWARD 374756-321297-65453 USD									
PLUS BANK CHARGE AND APTA USC9661 TOTAL BALANCE USD55143						MCHA181105-1			
						MCHA181105-2	1266	BANK CH	

(xvi) After going through the details of the BEs filed by M/s.MST, he stated that he had filed BE No. 3402867 dated 27.05.2019 for import of *Stainless Steel Cold Rolled Coils Ex-Stock Grade J3(200) 2b mix size*, weighing 54.624 MT purchased from Guizhou Zhongruixianghe Supply Co Ltd., vide their Commercial Invoice No. MCHA190422-1 and in the BE No. 3402867, he had declared the value of the said Coils as USD 56809. He admitted that the correct and true value of the Coils weighing 54.624 MT was USD 68798 and he had declared incorrect value in the said BE to pay less Customs duty.

Page 13 of 108

1	MS	MCHA190425	43381	ML		1255
2	MS	MCHA190306-5	75053.08	ML		1255

(xviii) After going through the details of BEs of MS, he stated that invoice No. MCHA190306-5 was issued by Jentayu Industry, Malaysia, for sale of the **STAINLESS STEEL COLD ROLLED COILS GRADE J3(200) MIX SIZE** to MS and the invoice No. MCHA190425 was issued by the same supplier for sale of the **STAINLESS STEEL COLD ROLLED CIRCLES GRADE J3** to MS. On being asked, he stated that the said SS Circles and Coils imported by MS from Malaysia were of China origin. He also stated that fully finished Circles and Coils were first shipped from China to Malaysia and then from Malaysia the same were shipped to India, on the invoices & other documents of Jentayu Industry.

(xix) On being asked about the entry of '57286' dated '23.05.2019' of M/S. MST available on the left-side portion of the worksheet (*reproduced below for better appreciation*), he stated that the said entry meant that USD 57286 were paid to Vick Jiang/his company through the bank account of M/s.MST. After going through the details of the payments made by M/S. MST to the suppliers, which he had submitted to the DRI, he stated that the amount of USD 57286 was paid to Guizhou Zhongruixianghe Supply Co. for the value of goods mentioned in their invoice No. MCHA190306-4. On being asked about entry of "MS BANK" of 67120, he stated that the said entry was of USD 67120 paid through the bank account of M/s.MS.

BALANCE FORWARD	381264-358064	23200	OLD
MST		57286	23.05.19
AGENT (500000)		77150	25.05.19
AGENT 206400/6.88		30000	31.05.20
MS BANK		67120	14.06.19
AGENT 414000/6.9		60000	15.06.19
AGENT 412800/6.88		60000	26.06.19

(xx) On being asked about the entries of "Agent", he stated that "Agent" referred to the hawala agent through whom the amount mentioned in the corresponding columns were sent to Vick Jiang.

(xxi) On being asked, he stated that the narration "AGENT 206400/6.88" of the entry dated 31.05.20(19) meant that RMB 206400 were transferred to Vick Jiang through hawala channel. The exchange rate was one dollar equal to RMB 6.88 and therefore, RMB 206400 were equal to USD 30000, as mentioned in the corresponding column of the entry.

(xxii) He admitted that he had got transferred RMB 500000 (equivalent USD 77150) on 25.05.2019, RMB 206400 (equivalent to USD 30000) on 31.05.2019, RMB 414000 (equivalent to USD 60000) on 15.06.2019 and RMB 412800 (equivalent to USD 60000) on 26.06.2019 to Vick Jiang through hawala channel and all the said payments were made to Vick Jiang towards the amount payable to him for the actual value of the imported goods minus invoiced value of the invoices issued to M/s.MS and M/s.MST. On being asked, he

stated that he did not remember the name of the hawala agent through whom the said amounts were transferred to Vick Jiang.

- (xxiii) On being asked about the page No. 9 of the printouts, he stated that the worksheet available in the page No. 9 was similar to the worksheets available in page No. 10 and the said worksheet also pertained to the goods imported from China. He stated that the details viz. invoice No. name of importer, value etc. were in the similar manner as explained by him in respect of worksheets available in page No. 10. For better appreciation, extract of the worksheet of page No. 9, is reproduced below:

BALANCE FORWARD AFTER ADJUSTMENT ALL			CCN	PARTY NAME						
BALANCE		14875		GE.P.L	MCHA180818-1	34795	DAMAGES CORRS		1	
TRANSFER BY AGENT		30000	21.12.19		NEPAL BALANCE	17581	NEPAL DIFFERENCE (MCHA180801, MCHA180914)			
ASHISH DEPOSIT		10000		A.F.P.L	MCHA180820-4	70750			2	DOC GET
NEPAL DEPOSIT		10000		2 M.S.	MCHA180818-2	76115			2	DOC GET
AGENT	RMB/USD	39187	23.12	3 GE.P.L	MCHA181114-1	23151	LC is 91039-114230		3	
M.S.		60028.9	21.12	1 M.S.	MCHA181124-2	37217			1	
Damage call claim		12520		2 M.S.T	MCHA181225	11922	LC is 61663-73585		2	
A.F.P.L		65230		3 GE.P.L	MCHA181201	24027	LC is 100156-173079		3	
M.S.		45000	08.01.19	2 M.S.	MCHA181211	20430			2	
M.S.		30000	17.01.19	4 M.S.	MCHA181114-3	14450			4	
M.S.T		127532	25.01.19		LC NEPAL DIFFERENCE	7358	80163-72398 nepal container (cd) Temese			MCHA181225
M.S.T		68238	25.01.19							
AGENT		29750								
AGENT		14880								
		57833				529080			21	

- (xxiv) On being asked to explain the entry of 'M.S.T', he stated that the MCHA181225 was the serial number of the invoice of the supplier and the "LC is 61663-73585" mentioned in the corresponding column meant that the value mentioned in the said invoice was USD 61663 for which LC was issued by the bank and the actual value of the goods covered under the said invoice was USD 73585. He also stated that difference of the two (actual value minus invoice value), i.e., USD 11922 was paid to Vick Jiang through hawala channel.

- (xxv) After going through the BEs of MST, he stated that the invoice No. MCHA181225 issued by Guizhou Zhongruixianghe Supply Co to M/S. MST for sale of Stainless Steel Cold Rolled Coils weighing 56006 Kg and the invoice value of the coils was USD 61663. He had declared value of USD 61663 in the BE No. 9767011 dated 23.01.2019 filed for the import of the said coils. He admitted that the correct value of the said coils weighing 56006 Kg was USD 73585 and with an intent to pay less Customs duty, he had declared incorrect value of USD 61663 in the said BE.

- (xxvi) On being asked about the entries of "Transfer by Agent" and "Agent" available in the left-side portion of the said worksheet, he stated that the said entries were of USD 30000, USD 39187, USD 29750 and USD 14880 transferred to the supplier through hawala agent.

2.14. Shri Amit Mittal, Proprietor of M/s.MST, in his voluntary statement recorded on 10.11.2021, under Section 108 of the Customs Act, 1962, *inter alia*, stated that:

- (i) He was shown his statements recorded on 15.09.2020 and 16.08.2021. He had read the statements and the statements were recorded as per his version.
- (ii) He stated that he was shown page No. 9 of the printouts taken from his Vivo mobile phone on 16.08.2021. He had explained about a few entries of the worksheet available in the page No. 9 in his statement recorded on 16.08.2021.
- (iii) On being asked about the 1st entry of heading "BALANCE" of the left-side portion of the worksheet (extract of the worksheet reproduced below), he stated that as per the said entry balance amount of USD 14875 was carried forward from the last account settlement done between him and Vick Jiang. On being asked, he stated that the 2nd entry was of USD 30000 transferred on 21.12.2018 to Vick Jiang through hawala agent.

BALANCE FORWARD AFTER ADJUSTMENT ALL				COM
BALANCE		14875		
TRANSFER BY AGENT		30000	21.12.18	
ASHISH DEPOSIT		10000		
NEPAL DEPOSIT		10000		
AGENT	RMB/USD	39187	20.12	
M.S.		60028.8	21.12	
Damage coil claim		12500		
A.F.P.L		65250		
M.S.		25000	03.01.19	
M.S.		30350	17.01.19	
M.S.T.		127632	25.01.19	
M.S.T.		68338	25.01.19	
AGENT		29750		
AGENT		14880		
		357831		

- (iv) On being pointed out that from the said first two entries it was evident that he was dealing with Vick Jiang even prior to 21.12.2018 whereas in statement recorded on 15.09.2020, he had stated that he came in contact with Vick Jiang in July-August 2019, he stated that on 15.09.2020, he had by mistake stated that he had come in contact with Vick Jiang in July-August 2019. He admitted that he had been purchasing Cold Rolled Stainless Steel Coils and Circles through Vick Jiang from his company Guizhou Zhongruixianghe Supply Chain Co Ltd from China since 2018. He further stated that Vick Jiang started issuing invoices of MCH Steel from August/September of 2019.
- (v) On being asked, he stated that Vick Jiang was an employee of Guizhou Zhongruixianghe Supply Chain Co Ltd, and later, Vick Jiang informed him that he had opened his own company in the name of MCH Steel Industry Co. Ltd. and started issuing invoices, packing lists etc. of MCH Steel. On being asked, he stated that the signatures of Vick Jiang were available in almost all the invoices of Guizhou Zhongruixianghe Supply Chain Co Ltd and MCH Steel, submitted by them to the Customs.
- (vi) On being asked whether the 'BALANCE' amount of USD 14875 mentioned in the worksheet was recorded in the official books of account of MS/ MST, he stated the said worksheet was the private account containing details of the true value of the imported goods and the payments made from the bank accounts of the importer as well as amounts transferred through hawala channel to the supplier and the balance amount of USD 14875 was the balance after adjusting the amount paid to Vick Jiang (through bank

account and through hawala channel) minus the value of the goods imported by all the importers, i.e., MST, MS and other importers for whom he had acted as a mediator. On being asked, he stated that the differential amount i.e., true & actual transaction value of the goods minus the invoiced value, was transferred through hawala agent to Vick Jiang in the account number provided by Vick Jiyang to him for said purpose.

- (vii) On being asked about the two entries of USD 10000 each of "ASHISH DEPOSIT" and "NEPAL DEPOSIT", he stated that the USD 20000 were also paid to Guizhou Zhongruixianghe Supply Chain Co. Ltd through hawala agent. He also stated that the other entries of 39187, 29750 and 14880 of 'AGENT' were also the amounts (in USD) transferred through hawala channel to Guizhou Zhongruixianghe Supply Chain Co Ltd towards the amount payable to them for the difference of the true & correct transaction value and the invoiced value of the goods imported in MS, M/S. MST and other importers like GEPL (for whom he had procured goods from his suppliers).
- (viii) On being asked, he stated that the worksheet available in page No. 9 was of the period 21.12.2018 to 31.01.2019 and the closing balance as on 31.01.2019 was USD 28751 and the said closing balance of USD 28751 of worksheet of page No. 9, was the opening balance of the first worksheet available in page No. 10 of the printouts. For better appreciation, extract of the 1st worksheet available on page no. 10 is reproduced below:

557831-529080	PINO:						
BALANCE DEPOSIT COME		28751					
NEPAL X2 CON. DIFFERENCE	MCHA181224	231181571-83882			2 A.F.P.L	MCHA181215	64850
NEPAL X1+1 CON.	MCHA190122	269469475-72170					
A.F.P.L		56262/12.02.19			2 G.E.P.1	MCHA190222	83775
AGENT		30000/15.02.19			1 ANIL	MCHA190225	33287
M.S.T.		42873/11.03.19			1 MST HIGH SEAS	MCHA190222-2	33547
M.L.Y.		29394			1 M.S. HIGH SEAS	MCHA181210	33936
RMB by china friend	3940 RMB	588					
GEPL bank		65825/28.03.19					
M.S. bank		1333.5/28.03.19					
RMB BY AGENT		37258/29.03.19					
		298490					289395

He stated that the opening balance of USD 28751 was mentioned against the narration "BALANCE DEPOSIT COME" in the first entry. He also stated that USD 28751 was his advance available with the supplier.

- (ix) On being asked, he stated that the three worksheets available in page Nos. 10 & 11 covered the period up to the end of the month of June 2019 and the closing balance of June 2019 was USD 46459. On being asked, he stated that he had prepared similar worksheets for the subsequent period also and had shared them with Vick Jiang through WhatsApp through his other mobile phone (other than the seized mobile phone). On being asked, he stated that on the day of search at the office of Mukesh Steel, he had left the said mobile phone at his house and he had later deleted the said worksheets from the said mobile phone.
- (x) He stated that he was shown page Nos. A1 to A90 printed from the cloned/retrieved data of his mobile phone Apple iPhone 6S. He stated that the said pages were the printouts of the attachments of messages

- (x) (excl, pdf, images) shared on the Whatsapp and he had explained about a few of the said pages in his earlier statements.
- (xi) He stated that most of the said pages were the commercial invoices & their packing lists issued by MCH Steel to his firm MST, his nephew's firm MS and customers, namely, GEPL and Dharam Impex, for whom he had procured Stainless Steel products from MCH Steel. On being asked, he stated that Vick Jiang had sent the said Commercial Invoices & Packing lists in excel files to him on his mobile phone and from the said mobile phone he had forwarded the said messages to his Apple mobile phone (seized by the DRI) through WhatsApp.
- (xii) On being asked, he had gone through the page Nos. A1 and A2. He stated that the page No. A1 was the Commercial Invoice No. MCHA190809 dated 07.09.2019 issued by MCH Steel to his firm M/s. MST for the sale of *Stainless Steel Cold Rolled Coils Mill Edge* weighing 54.048 MT at total value of USD 65355.56.
- (xiii) On being asked, he had gone through the details of the BEs filed by MST. He stated that he had filed the BE No. 5427727 dated 24.10.2019 for import of Stainless Steel Cold Rolled Coils weighing 54.048 MT purchased from MCH Steel and he had declared rate of USD 700/MT of the said coils (total value of USD 37833.6) in the said BE. On being asked, he stated that in the BE, he had declared uniform rate of USD 700/MT irrespective of the sizes of the coils. He admitted that the actual rate of the different coils was mentioned in the Commercial Invoice No. MCHA190809 available at page No. A1. He also admitted that the true and actual transaction value of the Stainless Steel Cold Rolled Coils imported under BE No. 5427727 dated 24.10.2019 was USD 65355.56. He admitted that he had paid USD 37833.6 to the supplier from the bank account of his firm and transferred the balance USD 27521.96 in instalments to the supplier through hawala channel. He admitted that he had declared incorrect and less than actual value to the Customs to pay less Customs duty.
- (xiv) On being asked to provide the photocopy of the Sales Contract with the supplier for the above said coils, he stated that he did not have the Sales Contract in which the true and actual rates of the coils were agreed between him and the supplier.
- (xv) On being asked about the copies of the Sales Contract available in the documents resumed by the DRI from their premises, he stated that after negotiating the rate, Vick Jiang used to prepare a Sales Contract with the correct rates of the goods and shared the same with him through WhatsApp. On his instructions, Vick Jiang used to prepare another Sales Contract for the same goods but with reduced value, as told by him to Vick. The said second Sales Contract (with less than actual rate of the goods) was kept by them in their records. On being asked, he stated that the Sales Contracts available in the resumed documents did not contain the true and correct rates/values at which they had purchased goods from Vick Jiang/Chinese suppliers.
- (xvi) On being asked, he had gone through page Nos. A27 and A28 of the printouts. He stated that the page No. A27 was the Commercial Invoice No. MCHA191125-2 of MCH Steel issued to Dharam Impex for sale of *Stainless Steel Cold Rolled Coils Ex Stock Grade J3* totally weighing

53.409 MT at total value of USD 61680.01. The page No. A28 was corresponding packing list. On being asked, he stated that from the rates & values of the different Coils mentioned in the said Commercial Invoice, he could state that the said Commercial Invoice contained the true and correct rates/value of the Coils imported from China.

- (xvii) On being asked, he had gone through the details of the BEs of MS and Dharam Impex. He stated that the details of the coils mentioned in the said Commercial Invoice No. MCHA191125-2 of MCH Steel (page no. A27) matched with the details of the Coils imported by MS vide BE No. 6498271 dated 16.01.2020. On being asked, he stated that Vick Jiang had sent the said Commercial Invoice to him with the correct value of the goods available at page No. 27 and he instructed Vick about the rates for which the Commercial Invoice for Customs purpose was to be issued. He also told Vick to issue the said Commercial Invoice in the name of the MS instead of Dharam Impex. On being asked, he stated that in the Commercial Invoice No. MCHA191125-2 of MCH Steel prepared for Customs purposes, the total value of the Coils was mentioned as USD 39522.66. He admitted that the true and correct transaction value of the Coils weighing 53.409 MT imported by MS under BE No. 6498271 dated 16.01.2020 was USD 61680.01.
- (xviii) On being asked, he stated that Vick Jiang used to send the Commercial Invoices containing actual rate and value of the coils/circles in excel file to him through WhatsApp and mostly he (Amit) used to tell Vick about the rates at which the Commercial Invoice for Customs purpose was to be issued and sometimes, after altering the rate of the goods, i.e., reducing the value of the goods, he returned the altered commercial invoice in excel file to Vick through WhatsApp for issuing the same for Customs purposes.
- (xix) On being asked, he had gone through page Nos. A42 to A47 (WhatsApp attachments). He had also gone through the printouts (1 to 22) of the WhatsApp messages taken from his Apple mobile phone. He stated that the page Nos. A42 to A47 were the printouts of the documents sent by him on WhatsApp to 'Gulshan' on 13.01.2020. He had saved the number of GEPL as "Gulshan" in his mobile phone. On being asked, he stated that the page Nos. A42 to A47 were the commercial invoice, packing list, etc. of MCH Steel issued to GEPL and he had forwarded the said documents to GEPL for keeping the same in official records. On being asked, he stated that he had also forwarded the same documents to Shri Deepak, an employee their CHA, for filing the BE of GEPL and Customs clearance of the said goods. On being asked, he stated that the phone number of Deepak was saved as *Deepak Mundra* in his mobile phone and the WhatsApp messages available at page No. 8 to 12 were between them.
- (xx) On being asked, he stated that the values of the Imported goods declared to the Customs in the BEs of GEPL were not correct and in the BEs incorrect & less than actual values of the imported goods were declared to pay less Customs duty.
- (xxi) He stated that he had gone through the messages sent on 16.01.2020 to Sanya, available at page No. 19 of the printouts. He stated Sanya was his daughter and he had created the WhatsApp account in the name of Sanya and in reality, the said WhatsApp account was his own account in

different mobile number. For better appreciation, the messages are reproduced below:

(xxix) 1125-2, 61681 2020-01-16 10:01:51
1125-3, 65701
1120-2, 86653
1125-4, 62278
1126-2, 91324
1209, 60712
Total is 428349
95000+75000+39522= 209524 2020-01-16 10:02:28
428349-209524= 218825 is balance 2020-01-16 10:03:22

(xxxi) On being asked, he stated that '1125-2' was a part of the serial number of the Commercial Invoice No. MCHA191125-2, and to get the complete invoice No. "MCHA19" was to be prefixed in all the similar numbers mentioned in the said message.

(xxii) After going through the BEs of M/s.MST, M/s.MS and M/s.GEPL, he stated that the invoices mentioned in the said message were the invoices issued to MST, MS and GEPL. On being asked, he stated that the value of the goods mentioned in the message was the true and correct value of the goods at which the goods were sold by MCH Steel and the said amounts were paid to MCH Steel partly from the bank account of the importer and the rest through hawala channel. He also stated that he had got the goods covered under the said invoices cleared from the Customs. He admitted that MST, MS and GEPL had declared incorrect transaction values of the imported goods in the BEs to evade payment of Customs duty.

(xxiii) On being asked about the message "95000+75000+39522= 209524", he stated that the said figures were the payments made to Vick Jiang/MCH. On being asked, he stated that out of the three amounts, the amount of USD 39522 was paid through the bank account of MS and the remaining payments of USD 95000 and USD 75000 were transferred to MCH Steel through a hawala agent.

(xxiv) He stated that he was shown the page No. A65. He stated the said page was the printout of the Slip of Telegraphic Transfer of USD 95000 to the bank account of MCH Steel on 13.01.2020. He stated that as per the said slip, USD 95000 were transferred from the bank account of South East Pacific Travel Corporation PTE Ltd. with UOB Singapore Bank to the account of MCH Steel with HSBC Bank. On being asked, he stated that he did not know anything about South East Pacific Travel Corporation PTE Ltd. and he had never dealt with the said company. He admitted that he had arranged the transfer of USD 95000 to MCH Steel through a hawala agent and the figure of "95000" mentioned in the said WhatsApp message pertained to the USD

95000 transferred to MCH Steel through hawala agent on 13.01.2020.

(xxv) On being asked, he had gone through the page Nos. 2 and 3 of the printouts taken from VIVO phone on 16.08.2021. He stated that the said pages were printouts of two different screenshots of whatsapp messages between him and Vick Jiang. On being asked about the image available in the message posted by Vick Jiang (page No. 3), he stated that he had sent the image of the said Telegraphic Transfer slip of USD 95000 on WhatsApp to Vick Jiang and Vick Jiang by re-posting the said image had sought his (Amit's) confirmation whether the said amount was transferred by him to MCH Steel.

(xxvi) On being asked, he stated that the page No. A83 was the printout of the Slip of the payment of USD 75000 made by Bansal Overseas, Myanmar to the account of MCH Steel. He stated that Bansal Overseas had paid USD 75000 to MCH Steel on his behalf and the figure of "75000" mentioned in the said WhatsApp message pertained to the said payment to MCH Steel.

(xxvii) On being asked, he had gone through the page no. A71. He stated that the said page was a Slip (similar to the slip available at page No. A-65) of Telegraphic Transfer of USD 15000 transferred to the Bank account of MCH Steel on 16.01.2020 from the bank account of *South East Pacific Travel Corporation PTE Ltd*. He admitted that the said amount of USD 15000 was also paid to MCH Steel through hawala channel.

(xxviii) On being asked, he stated that the page No. A67 was the Slip of telegraphic transfer of USD 19936 done on 14.01.2020 to the bank account of *Comet International Ltd Hongkong* from the *UOB, Singapore Bank*. On being asked, he stated that Comet International Ltd was a supplier from whom he had imported goods from China.

(xxix) On being asked, he had gone through the details of the BEs. He stated that GEPL had purchased **STAINLESS STEEL COLD ROLLED COILS GRADE J3 EX STOCK** weighing 51790 Kg from Comet International Ltd through its Commercial Invoice No. CMTSZ-19313 and GEPL had file BE No. 6599726 dated 23.01.2020 for the import of the said Coils. After going through the page No. A59, he stated that the said page was the printout of the Commercial Invoice No. CMTSZ-19313 of Comet International Ltd. issued to GEPL and he had sent the said Commercial Invoice & other documents through WhatsApp to CHA "Deepak Mundra" for Customs clearance. He also stated that as per the Commercial Invoice No. CMTSZ-19313, the total value of the Coils (weighing 51790 Kg) was USD 38583.55 and in the BE No. 6599726 dated 23.01.2020 also, GEPL had declared the same value of the imported Coils.

(xxx) On being asked, he stated that the value of USD 38583.55 declared in the BE was not correct value of the said coils. He admitted that the true and correct value of the coils weighing 51790 Kg imported by GEPL from Comet International Ltd from China was USD 58519.55.

(xxxi) He further stated that GEPL had paid the invoiced value, i.e., USD 38583.55 to Comet International through its bank account and he

(Amit Mittal) had arranged the transfer of balance USD 19936 to the account of Comet International Ltd through hawala channel towards the difference of the actual value (USD 58519.55) minus the invoiced value (USD 38583.55) of the coils weighing 51790 Kg imported by GEPL under BE No. 6599726 dated 23.01.2020.

(xxxii) On being asked, he stated cash payment was made to the hawala agent. On being asked, he stated that Shri Suresh or his brother Shri Ashok of GEPL had given him cash amount and he handed over the cash to the hawala agent for transferring to the account of Comet International Ltd.

(xxxiii) On being asked, he had again gone through the details of the BEs filed by GEPL. He stated that all the Stainless Steel Cold Rolled Coils imported by GEPL from China from MCH and Guizhou Zhongruixianghe Supply Chain Co., Ltd, during 2018, 2019 and 2020 were procured through him (Amit Mittal). He had procured all the said coils through Vick Jiang. On being asked, he stated that in almost all the imports incorrect & less than the true and actual value of the imported coils were declared in BEs submitted to the Customs by GEPL.

(xxxiv) On being asked, he stated that he had not charged any commission from GEPL for arranging import of their goods from his suppliers. He stated that sometimes GEPL had sent the imported coils to his factory (MS) for cutting of circles from the imported coils and a few times, GEPL sold the imported coils to their firms (M/S. MST&MS) and after cutting circles, they (M/S. MST&MS) sold the circles to GEPL.

(xxxv) On being asked, he stated that he had also arranged import of Coils from Malaysia for GEPL through Vick Jiang. On being asked, he stated that GEPL was aware that the coils imported from Malaysia were of China origin and the said coils were routed through Malaysia to save payment of Customs duty. On being asked, he stated that Vick Jiang had arranged invoices of Setica Industries (M) SDN BHD, Malaysia and the Certificates of Origin of Malaysia for the coils shipped from China to Malaysia and then from Malaysia to India.

2.15. Statement of Shri Mukesh Mittal, Proprietor of M/s. MS was recorded on 21.12.2021, under Section 108 of the Customs Act, 1962, wherein he, inter alia, voluntarily stated that:

- (i) He was shown statements of Amit Mittal, Proprietor of M/s. MST recorded on 16.08.2021 and 10.11.2021 and he agreed with the said statement.
- (ii) He stated that he and his Uncle Amit Mittal used to look after the work of M/s. MS and M/s. MST. Amit Mittal mostly looked after the work of import of goods and dealing with the customers and he (Mukesh) looked after the work in the factory (cutting of circles, etc.) of the firms.
- (iii) On being asked he stated that all the work related to import of goods like negotiation with the suppliers, placing of orders on the supplier, clearance of goods from the Customs and payments to the overseas suppliers were looked after by Amit Mittal. He stated that both of them (Amit and Mukesh) managed the work of MS and M/S. MST in consultation with each other.

- (iv) On being asked, he stated that the Cold Rolled Stainless Steel Coils were imported from China were procured through Vick Jiang, who was a representative of Tocean Industry Limited, Guizhou Zhongruixianghe Supply Chain Co Ltd. (GZSCCL). Vick Jiang had also opened the new firm namely MCH Steel Co. Ltd. He also stated that communications regarding purchase of imported goods from the said suppliers were done by Amit Mittal with Vick Jiang and sometimes, he (Mukesh) had also communicated with Vick through Whatsapp messages.
- (v) On being asked about the goods imported from Malaysia on the invoices of Jentayu Industry, Malaysia, he stated that that they (MS) had imported two consignments from Malaysia in 2019 and he had filed BE No. 3665170 dated 15.06.2019 for import of Stainless Steel Cold Rolled Coils Grade J3(200) Mix Size weighing 54.569 MT from Malaysia and BE No. 3725322 dated 19.06.2019 for import of Stainless Steel Cold Rolled Circles Grade J3(200)2B of different sizes totally weighing 27.544 MT from Malaysia, on the invoice nos. MCHA190306-5 and MCHA190425 respectively of Jentayu Industry. On being asked, he stated that he had submitted Certificates of Origin (Form A1) of Malaysia with both the BEs and availed the benefit of Notification no. 46/2011-Cus and had paid IGST only.
- (vi) On being asked, he stated that he did not know any person of Jentayu Industry. He had never communicated with any person of Jentayu Industry, Malaysia. On being asked whether Jentayu Industry was a manufacturer, he stated that Jentayu Industry was a trader. On being asked, he stated that the Coils and Circles covered under the invoices of Jentayu Industry, Malaysia, were supplied by Vick Jiang from China. He also stated that fully finished Coils & Circles (completely manufactured in China) were shipped from China to Malaysia and from Malaysia, the same coils and circles were shipped to India. On being asked, he stated that no work or process was done on the said coils and circles in Malaysia and Vick Jiang had arranged the invoices of Jentayu Industry, Malaysia and Certificates of Origin of Malaysia.
- (vii) He admitted that the coils and circles imported by MS under BE No. 3665170 dated 15.06.2019 and BE No. 3725322 dated 19.06.2019 respectively, were of China origin and to avail the benefit of Notification No. 46/2011-Customs, the said goods were routed through Malaysia.
- (viii) On being asked, he had gone through the Certificates of Origin (Form A1) Ref. No KL-2019-AI-21-055174 and KL-2019-AI-21-054341 of Malaysia in respect of Stainless Steel Cold Rolled Circles imported under BE No. 3725322 and Stainless Steel Cold Rolled Coils imported under BE No. 3665170 respectively, which were available in file folder No. 7 and 8 resumed under panchinama dated 11.2.2020 from his office. He stated that "WO" was mentioned in the column No. 8 of Origin Criterion of both the certificates. After going through the Overleaf Notes, he stated that 'WO' pertained to goods wholly obtained or produced in the territory of exporting country. On being asked, he had also gone through 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. After going through the Rule 4 of the said Rules, he stated that the Stainless Steel Coils and Circles imported from Malaysia did not qualify to be "Wholly obtained or produced goods" of Malaysia. He admitted that the goods covered under the said two Certificates of Origin of Malaysia were not of Malaysian origin.

- (ix) He stated that he was shown the statement of Amit Mittal recorded on 16.08.2021 and the page Nos. 9, 10 & 11 of the printouts taken from the apple mobile phone of Amit Mittal during the recording of said statement. On being asked about the pages, he stated that he had knowledge of the worksheet/account ledgers available in the said pages. He stated that Amit Mittal used to share said worksheets/account ledgers with him time to time through Whatsapp. He also stated that the said worksheets contained the details of the actual value of the imported goods and the payments made to the supplier (Vick Jiang) for the goods imported in MS, MST, GEPL & other parties.
- (x) On being asked, he stated that the entries on the right side of worksheets/ledgers were of the imported goods viz. number of containers, invoice no., value etc.
- (xi) On being asked, he had gone through the entry of MCHA190306-5 available on page No. 10 of the said printouts. For better appreciation, relevant extract of the page No. 10 is reproduced below:

BALANCE FORWARD 381264-358064	52286	23.05.19	2	MST	MCHA190422-1	68798		1260
AGENT 500000	77150	25.05.19	2	MST	MCHA190306-4	66047		1260
AGENT 206400/6.88	30000	31.05.20	1	MS	MCHA190425	43380	ML	1255
MS BANK	67119	14.06.19	2	MS	MCHA190306-5	75053.08	ML	1255
AGENT 414000/6.9	60000	15.06.19	1	MST	MCHA190520	13203	LC	7093-56310
AGENT 412800/6.88	60000	16.06.19	1		MCHA190429	61735		
	374756					326297.1		
BALANCE FORWARD 374756-326297-46489 USD								
PLUS BANK CHARGE AND AFTA USD9684 TOTAL BALANCE USD55143					MCHA181105-1			
					MCHA181105-2	1266	BANK CH	

- On being asked, he stated that '2' mentioned in the 1st column denoted that the goods were shipped in two containers, 'MS' mentioned in next column stands for Mukesh Steel, 'MCHA190306-5' was the commercial invoice no., '75053.08' was the actual value of the goods in USD and 'ML' denoted that the goods were imported through Malaysia.
- He admitted that the true and correct value of the SS Cold Rolled Coils weighing 54.569 MT imported & cleared under BE No. 3665170 dated 15.06.2019 was USD 75053.08 and he had declared incorrect value of USD 67119.87 in the said BE to pay less IGST.
- (xii) On being asked, he had gone through all the entries of "MS" available in the page Nos. 9, 10 & 11 and had compared the invoice Nos. and values mentioned in the said entries with the purchase invoices of MS, he stated

that all the entries of MS pertained to the goods imported by his firm MS. He admitted that the values mentioned in the said entries were the true and correct value of the SS Cold Rolled Coils imported by his firm MS. He also admitted that he had declared incorrect and less than actual transaction value of the imported goods in the BEs.

- (xiii) On being asked, he stated that the entries of "MST" available in the said worksheets pertained to the M/s. MST and the entries of "GEPL" pertained to Gulshan Exim Pvt. Ltd.
- (xiv) On being asked, he stated that the left side entries of the worksheets were of the details of payments made to the supplier (Vick Jiang). On being asked, he stated that the entries of "MS" and "MS BANK" were the entries of the payments made through the bank account of MS, for example, the entry "MS BANK" of 67120 was the entry of USD 67120 paid through the bank account of MS.
- (xv) On being asked, he stated that payment of the value mentioned in the invoices and declared to the Customs was made through the bank account of MS and the payment for the amount over and above the invoiced value i.e., actual value minus value mentioned in the invoice, was made through the hawala channel to the supplier. On being asked about the entries in which 'Agent' was mentioned, he stated that the said entries were of the payments made to the supplier through hawala agent. On being asked to explain the entry of "RMB BY AGENT" dated 05.04.2019 of '29850', he stated that the entry denoted that RMB equivalent to USD 29850 were transferred to the supplier through hawala agent. He also stated that all the entries of the worksheets were in USD and all the entries were the true and correct record of transactions with Vick Jiang.
- (xvi) On being asked, he had gone through the page No. A23 of the printouts of the attachments of the Whatsapp messages taken from the mobile phone of Amit Mittal. He stated that the page No. A23 was the printout of the Commercial Invoice No. MCHA191126-1 of MCH Steel Industry Co. Ltd. issued for sale of Stainless Steel Cold Rolled Coils Ex Stock Grade J3 weighing 109.384 MT for total value of USD 124688.33 to his firm MS.
- (xvii) On being asked, he had also gone through the page No. 87 of the file folder No. 22 resumed from his office. He stated that the said page was the Commercial Invoice No. MCHA191126-1 of MCH Steel Industry Co. Ltd. for the Coils weighing 109.384 MT and he had submitted the said invoice to the Customs with the BE No. 6264426 dated 27.12.2019 and in the said BE, he had declared value of the coils as USD 81491.09. He also stated that the invoice No. MCHA191126-1 available at page No. 87 of the file folder was the parallel invoice of MCH Steel Industry Co. Ltd with less than actual value prepared by Vick Jiang for submitting to the Customs.
- (xviii) He admitted that the correct and true transaction value of the said coils weighing 109.384 MT was USD 124688.23 and he had paid USD 124688.23 to the supplier for the said coils. He further stated that out of USD 124688.23, amount of USD 51491.09 (as per Customs invoice) was paid through the bank account of MS and the balance amount was transferred to the supplier through hawala channel. He

also admitted that he had declared incorrect value in the BE No. 6264426 dated 27.12.2019 to pay less Customs duty.

- (xix) On being asked, he had gone through the page No. 38 of the file folder No. 22, he stated that the said page was the Sales Contract No. MCHA191126-1 dated 26.11.2019. On being asked, he stated that the rates of the coils mentioned in the said Sales Contract matched with the Commercial Invoice No. MCHA191126-1 available at page No. 87, which he had submitted to the Customs. On being asked, he stated that the Sales Contract was not the real Sales Contract and the rates mentioned in the said Sales Contract were not true and correct rates. He also stated that the said Sales Contract was prepared for keeping in the official records of M/s.MS. On being asked, he stated that the original Sales Contracts were shared on Whatsapp and after finalizing the transactions, said original Sales Contract deleted from the mobile phone.

2.16. Statement of Shri Ashok Kumar, Director of GEPL was recorded on 01.02.2022, under Section 108 of the Customs Act, 1962, wherein he, *inter alia*, voluntarily stated that:

- (i) He was one of the Directors of GEPL and the other Directors of GEPL were Ravinder Kumar and Gulshan Kumar. GEPL was engaged in the trading of Wood, Steel, Rice, and Pulses. The name of the GEPL was Gulshan Timber Pvt. Ltd and it was changed to GEPL in 2008. On being asked, he stated that GEPL was importing wood logs and steel products like coils and circles. Most of the steel products were imported from China from Sino Steel Shenzhen Co., Ltd., Great China Alliance Ltd., Comet International Ltd, MCH Steel Industry Co., Ltd. They had also imported steel products from Malaysia from Setica Industries (M) SDN BHD. On being asked, he stated that the Customs clearance of imported steel products was done by Deepak (9727591304) of CHA firm SVJ Logistics.
- (ii) On being asked about the sizes of the coils and circles imported by GEPL, he stated that they had imported Circles of sizes 9 inch, 13 inch and 12 inch of all types. They had imported Coils of 1.2mm to 2.6 mm thickness of width ranging 2500 mm to 5500 mm of all types.
- (iii) On being asked, he stated that for purchasing coils from China, he used to talk with Vick. Vick used to come to Wazirpur market and later, he (Ashok) used to talk with Vick on phone. Vick had also come to their office located at A-34, Wazirpur Industrial Area, Delhi around 5-6 times. The phone number of Vick was +8615015589870 and his (Ashok's) phone numbers were 8527115297 & 9818014800. On being asked, he stated that Vick did not know Hindi and he (Ashok Kumar) did not know Chinese and English languages. On being asked then how he used to talk on phone with Vick, he stated that whenever Vick visited India, he used to keep an Indian national with him and the said Indian person used to talk with him in Hindi.
- (iv) On being asked, he stated that there was no written agreement between GEPL and Vick/Vick's company, regarding the stainless steel products purchased from Vick and all the transactions were done verbally.
- (v) On being asked, he stated that he knew Amit Mittal, Proprietor of M/s. MST and Mukesh Mittal, Proprietor of M/s.MS. He was shown statement

of Amit Mittal recorded on 15.09.2020. After going through the statement, he stated that, Amit Mittal in his statement, had stated that the page No. A39 contained details of the payment made by GEPL to MCH Steel, the page Nos. A42 to A61 were the Sales Contract (between GEPL and MCH Steel) & other documents of GEPL and Amit Mittal had sent the said documents to Deepak CHA for Customs clearance. On being asked, he had also gone through the said pages said to be printed from the Whatsapp messages available in the phone of Amit Mittal. On being asked, he stated that he did not know how said documents (Sales Contract etc.) of GEPL were available with Amit Mittal and why he had sent said documents to Deepak CHA. He stated that he (Ashok Kumar) used to look after the Customs clearance work of his company (GEPL) and he himself used to send the documents to Deepak CHA through courier.

- (vi) He stated that he was shown the printouts of the Whatsapp messages between Amit Mittal and Deepak Mundra which were available in page Nos. 8 to 12 of the printouts said to be taken from the mobile phone of Amit Mittal. He stated that in the whatsapp messages, Amit Mittal had sent the said documents of GEPL to Deepak Mundra.
- (vii) He stated that he was shown the printouts of the Whatsapp messages between Amit Mittal and 'Gulshan' which were available in page No. 21 of the printouts. He stated that through the Whatsapp message on 13.01.2020, Amit Mittal had sent to him (Ashok) the same Sales Contract & other documents of GEPL which he had sent on 11.02.2020 to Deepak Mundra through WhatsApp. On being asked, he stated that he did not remember why Amit Mittal had sent the said GEPL's documents to him (Ashok Kumar).
- (viii) On being asked whether the Sales Contract between MCH and GEPL available at page No. A42 of WhatsApp attachment printouts, was really executed between GEPL and MCH Steel, he stated that no such agreement was executed between GEPL and MCH.
- (ix) He stated that he was shown the printouts (13 pages) said to be taken on 16.08.2021 from the Vivo mobile phone of Amit Mittal. He was also shown the statement of Amit Mittal recorded on 16.08.2021. He stated that in his statement, Amit Mittal had stated that the page Nos. 9, 10 & 11 of the printouts contained the *account statements* of the steel products imported from China through Vick and the details, viz., name of the importer, invoice number, value of the imported goods, etc. were recorded in the said *account statements*. Amit Mittal had also stated that "GEPL" mentioned in the said *account statements* denoted Gulshan Exim Pvt. Ltd.
- (x) He stated that he was also shown statement of Mukesh Mittal recorded on 21.12.2021. He stated that in his statement Mukesh Mittal had stated that the page Nos. 9, 10 & 11 contained details of the actual value of the goods imported by GEPL and payments made to Vick for the said goods.
- (xi) **He admitted that all the steel products imported from China by GEPL were arranged by Amit Mittal and Amit Mittal used to talk & negotiate with Vick for the goods to be imported by GEPL. He admitted that Amit Mittal used to get the goods imported by GEPL cleared from the Customs. He also stated that he agreed with the**

statements of Amit Mittal and Mukesh Mittal & he had signed on the said statements and page Nos. 9, 10 & 11.

(xii) He accepted that Amit Mittal used to send the documents of GEPL to Deepak CHA for Customs clearance and Amit Mittal had sent GEPL's documents on whatsapp messages to him (Ashok Kumar) for keeping the same in the records of GEPL.

(xiii) He admitted that the entries of GEPL available in the page Nos. 9, 10 & 11 pertained to his company (GEPL). He admitted that the Stainless Steel Coils received from Setica Industries (M) SDN BHD from Malaysia were sent by Vick from China to Malaysia & then from Malaysia to India and the said coils were also arranged by Amit Mittal through Vick.

(xiv) On being asked, he stated that the entry of GEPL of MCHA190306-3 which available in page No. 10, pertained to his company GEPL. For better appreciation of the facts, the relevant worksheet is reproduced below:

AMT MONEY DEPOSITS LIST				VICKI MATERIAL INVOICE LIST			
Sl. No.	Particulars	Amount	Date	Sl. No.	Particulars	Amount	Date
1	BALANCE FORWARD (288490-288495)	43005		1	GEPL	18431	18.03.19
2	WESPIE 2CON.	2224	23.02.2019	2	GEPL	14895	18.03.19
3	Weight difference 3315-3156=159kg	325		3	GEPL	16039	18.03.19
4	MEGPIE 3CON.	671	35.03.2019	4	GEPL	22193	18.03.19
5	TRMS BY AGENT	29830	05.04.19	5	GEPL to ashish	73100	05.04.19
6	ASHISH FOILS	46818	25.04.2019	6	GEPL	22226	18.03.19
7	ASHISH FOILS	99921	05.05.2019	7	MEGPIE	72109	
8	MEGPIE	40000	09.05.2019	8	GEPL	125015	18.03.19
9	MEGPIE	48517	14.05.2019	9	ASHISH	35526	
10	GEPL-MLY	68087	15.05.2019	10	GEPL	80637	
11	GEPL-MLY	68087	15.05.2019	11	GEPL	80637	
TOTAL		381264		TOTAL		358064	

On being asked, he stated that the entry of GEPL of MCHA190306-3 in which MLY was mentioned pertained to the goods imported by GEPL under invoice No. MCHA190306-3 of Setica Industries (M) SDN BHD, Malaysia. He stated that the said consignment was received in 2 containers and the actual value of the consignment was USD 80637. On being asked about the entry 'GEPL-MLY - 68087 - 16.05.2019' available of the left-side portion of the worksheet, he stated that the said entry was of payment of USD 68087 made from the bank account of GEPL to Setica Industry (M) SDN BHD for the value of the goods mentioned in its invoice No. MCHA190306-3.

2.17. During Investigation, summons dated 01.02.2022 & 10.02.2022, were issued to Ashok Kumar, Director of Gulshan Exim Pvt Ltd., under section 108 of the Customs Act, 1962. However, he did not join the investigation.

2.18. Statement of Puneet Jain, Proprietor of Dharam Impex, was recorded on 08.02.2022, under Section 108 of the Customs Act, 1962, wherein he, *inter alia*, voluntarily stated that:

- He was the Proprietor of Dharam Impex and he had imported Stainless Steel Coils and Stainless-Steel Circles mostly from China and a few times from Indonesia. He had not imported any Stainless-Steel products from China or Indonesia since May 2020.
- On being asked, he stated that he had imported Stainless Steel Coils from China from MCH Steel. On being asked, he stated that he knew Amit Mittal

of M/S. MStand Mukesh Mittal of MS. He had sold and purchased Coils and Circles to/from their firms.

- (iii) He stated that he was shown the printouts of the whatsapp messages said to be printed from the mobile phone of Amit Mittal. He had gone through the page Nos. 4 to 6 of the said printouts, which contained whatsapp messages between Amit Mittal and Puneet A-30. On being asked, he stated that his office was located at A-30, Wazirpur Industrial Area, Delhi and the whatsapp messages available in page Nos. 4 to 6 were between him and Amit Mittal.
- (iv) He stated that he had gone through the statement of Amit Mittal recorded on 15.09.2020. He stated that in his statement Amit Mittal had stated that he had introduced him (Puneet) to Vick and Vick had sent the invoices and packing lists of the Stainless Steel products imported by Dharam Impex to him (Amit) which were available at page Nos. A21 to A28.
- (v) He had also gone through the page Nos. A21 to A22 and the said pages were the Commercial Invoice No. MCHA191125-1 dated 03.12.2019 of MCH Steel issued to his firm Dharam Impex for sale of Stainless Steel Coils weighing 54.644 MT and MCH Steel's packing list respectively. He had also gone through the page Nos. A25 & A26 and the said pages were the Commercial Invoice No. MCHA191120 dated 09.12.2019 of MCH issued to his firm Dharam Impex for sale of Stainless Steel Coils weighing 54.255 MT and its packing list respectively.
- (vi) He stated that he had filed BE No. 6264349 dated 27.12.2019 and BE No. 6341304 dated 03.01.2020 for import of the Coils imported/purchased under MCH's invoice no. MCHA191120 and MCHA191125-1 respectively.
- (vii) He further stated that Amit Mittal in his statement recorded on 15.09.2020 had stated that the said commercial invoices sent to him by Vick, contained the actual rate of the Coils. He (Amit) had also stated that the only difference between the commercial invoices with actual rates and the commercial invoices submitted to the Customs, was in the rate of the coils.
- (viii) He had submitted the photocopies of the MCH Steel's commercial invoice nos. MCHA191125-1 & MCHA191120, which he had submitted to the Customs with the BEs.
- (ix) On being asked, he had compared the Customs commercial invoices with the commercial invoices available at page Nos. A21 & A25 (printed from Amit's mobile phone). He stated that the only difference between the said two set of invoices was the rate of coils. He admitted that the rate and value of coils mentioned in the invoices available at page Nos. A21 & A25 were the true and actual rate/value at which he had purchased coils from MCH. He admitted that the true and correct value of the stainless steel coils weighing 54255 Kg imported under BE No. 6264349 was USD 58586.01 and the true and correct value of the stainless steel coils weighing 54844 Kg imported under BE No. 6341304 was USD 60779.76. He admitted that he had declared incorrect and less than actual value in the said two BEs.
- (x) On being asked, he stated that the amount mentioned in the invoices of MCH Steel submitted to the Customs, was paid to MCH Steel through the bank account of his firm and he had given the difference of actual value minus invoiced value, in cash to Amit Mittal.

- (xi) He admitted that he had paid less Customs duty in the said two BEs and he would deposit the differential duty.

2.19. Statement of Shri Mukesh Mittal, Proprietor of M/s.MS, was recorded on 21.02.2022, under Section 108 of the Customs Act, 1962, wherein he, *inter alia*, voluntarily stated that:

- (i) He was shown his statement recorded on 21.12.2021. He had gone through the statement and the statement was recorded as per his version.
- (ii) He stated, that in his presence, the hard disc said to be containing the cloned/retrieved data of the Apple iPhone 7 and the electronic devices resumed during search of his premises, was attached with the computer.
- (v) The cloning/data retrieval of various electronic devices including Apple iPhone 7 was conducted under panchnama dated 26.06.2020 in his presence.
- (iii) On being asked, he stated that the Apple iPhone 7 was his mobile phone and he had been using the said mobile phone. He stated that certain printouts of the data available in the apple iPhone 7 were taken & serially numbered from page No. 1 to 11 and he had signed on all the said printouts. On being asked, he stated that said the printouts were the account ledgers pertaining to his firm (MS) and M/s. MST prepared on Tally Software.
- (iv) On being asked, he stated that the said ledgers were private ledgers which contained the details of the goods sold and amounts received from the customers by MS and MST. On being asked, he stated that the said ledgers (in pdf format) were sent to him by Amit Mittal through WhatsApp, time to time and therefore, the ledgers were of different periods.
- (v) On being asked about the entries of "M/S. MSTKTK" and "MS KTK" available in the ledgers, he stated that M/S. MST denoted Mukesh Steel Trading and MS denoted Mukesh Steel and KTK denoted to Karnataka Bank and the said entries were of the amounts received from the customers through banking channel. On being asked, he stated that the amounts mentioned in the entries of "Cash" were the cash amounts received from the customer and in the entries of "Sale", the sizes of the Circles and Coils sold to the customer were mentioned.
- (vi) On being asked, he stated that the said private ledgers contained the correct value at which the coils or circles were sold to the customer and the cash amounts were received from the customers towards the difference of the actual value of the coils/circles sold to the customers and the value mentioned in the sale invoices of M/s.MS and M/s.MST.
- (vii) On being asked, he stated that the said cash amounts were received from customers to whom they we had sold the Circles cut from the Coils imported by M/s.MS and M/s.MST as well as the Circles cut out of the coils which they had purchased from local traders who had imported the said Coils. In respect of the Coils also the cash amounts pertained to the Coils imported by M/s.MS & M/s. MST as well as locally procured imported coils (coils imported by their local suppliers). On being asked, he stated that since they had declared less than actual value of the coils and circles to the Customs and therefore, to adjust the sale price as per import price shown on papers/account books, they used to issue sale invoice of less than the

actual value and the amount over & above the value declared in sale invoice was received in cash. On being asked, he stated that their local suppliers who had imported said coils, had issued sale invoice at less than actual sale value and they paid the invoice value to them through banking channel and the difference between the actual value minus invoice value was paid in cash. For adjusting the account books, they also issued invoices of less than actual value for the locally procured imported Coils or for the Circles cut out of the locally procured imported coils.

- (viii) On being asked, he stated the Coils weighing 6750.30 Kg seized at his premises were purchased from Dharam Impex (Proprietor, Puneet Jain). On being asked, he stated that Amit Mittal had arranged the import of Coils by Puneet/Dharam Impex from China through Vick Jiang (MCH Steel) and the Coils weighing 6750.30 kg were part of the Coils imported by Dharam Impex from MCH Steel. On being asked about the Circles weighing 26154 Kg seized at his premises, he stated that the said Circles were purchased from Choice Cargo Agencies Pvt. Ltd.
- (ix) He stated that he was shown the page No. 7 of the printouts taken from the data of his apple iPhone. He stated that the page No. 7 was a ledger of "Kapil Dollar" and contained entries of the period 05.11.2019 to 30.11.2019. On being asked, he stated that Kapil was a hawala agent and the entries dated 05.11.2019, 14.11.2019 and 15.11.2019 of cash payment of Rs.26,100/-, Rs.1,49,500/- and Rs.3,98,800/- respectively available in the said ledger, were the entries of cash paid to Kapil for transferring to their overseas suppliers towards the difference of the actual value of the imported goods and the value mentioned in the invoices issued by the suppliers. On being asked about the entry of 30.11.2019 of receipt of Rs.3,36,500/-, he stated that Kapil was also transferring the payment from their customers located out of Delhi to them and the said entry was of the cash amount received from their customer through Kapil.
- (x) He stated that he was shown the printouts of the attachments of WhatsApp chats taken from the WhatsApp of the Apple iPhone mobile phone of Amit Mittal. On being asked, he had gone through page Nos. A21 and A27 of the printouts. He stated that the page Nos. A21 and A27 were the Commercial Invoice Nos. MCHA191125-1 and MCHA191125-2 respectively, of MCH Steel issued to Dharam Impex for sale of Stainless Steel Cold Rolled Coils Ex Stock. The invoice No. MCHA191125-2 dated 17.12.2019 was for the sale of Coils weighing 53,409 MT at total value of USD 61680 to Dharam Impex. He stated that he was also shown page Nos. 10 and 11 of the file folder No. 24 resumed from his premises. He stated that the page No. 10 was the Commercial Invoice No. MCHA191125-2 dated of MCH Steel issued to his firm (MS) for sale of Stainless Steel Cold Rolled Coils Ex Stock weighing 53.409 MT at total value of USD 39522.66 and the page No. 11 was corresponding packing list. On being asked, he had compared the commercial invoice available at Page No. A27 & its packing list available at page No. A28 (printed from the phone of Amit Mittal) with the commercial invoice & packing list available in file folder No. 24. He stated that except the rates of the Coils, the description, weight etc. of the coils mentioned in both the invoices and packing lists were identical. **On being asked, he stated that in the BE No. 6498271 dated**

16.01.2020 filed by M/s.MS for import of said coils weighing 53.409 MT, he had declared value of USD 395212.66.

- (xi) He admitted that the actual value of the Coils weighing 53.409 MT imported under BE No. 6498271 dated 16.01.2020 was USD 61680.01 and he had declared less than actual value in the said BE. On being asked, he stated that at the time of placing of order on Vick Jiang, Amit Mittal had told him that the Coils were being imported for Dharam Impex and therefore, Vick prepared both the invoice Nos. MCHA191125-1 & MCHA191125-2 with actual rates in the name of Dharam Impex but later, on the instructions of Amit Mittal, Vick prepared parallel invoice No. MCHA191125-2 for Customs purpose with less than actual value in the name of M/s.MS.
- (xii) On being asked he stated that the Coils weighing 6750.30 Kg seized at his premises were imported by Puneet Jain/Dharam Impex from MCH Steel, China through Amit Mittal. Amit Mittal was also looking after the work of Customs clearance of goods imported through him by Dharam Impex and GEPL. On being asked, he stated that in the BE filed by Dharam Impex for import of the Coils (arranged by Amit Mittal), the correct value of the Coils was not declared. On being asked, he stated that Puneet Jain had handed over the differential amount i.e., actual value of imported goods minus invoice value, to Amit Mittal who got the same transferred to Vick Jiang/supplier company through hawala agent.
- (xiii) On being asked, he stated that the rate of the stainless-steel coils and circles depended upon their thickness and width. On being asked, he stated that in the commercial invoices (shared on WhatsApp) containing true rates and value, different rates of different sizes of the coils/circles were mentioned, but in the parallel invoices issued for the Customs purpose which they submitted to the Customs, uniform rate for all the sizes of coils/circles was mentioned.
- (xiv) On being pointed out that in the Sales Contracts available in the documents resumed during search of his premises also uniform rate irrespective of the sizes of the coils/circles was mentioned, he stated that the Sales Contracts available in the official records of M/s.MS and M/s. MST were not the correct Sales Contract. The actual Sales Contracts were shared on WhatsApp between Amit Mittal and Vick Jiang and in the actual Sales Contracts different rates of different sizes of coils/circles were mentioned. He stated that the Sales Contracts available in the official records were prepared later with less than actual rate of the goods for keeping the same in the official records. On being asked about the original Sales Contract, he stated that the same were not available as Amit Mittal had deleted the same from his mobile phones.
- (xv) He stated that with his assistance the following chart was prepared on the basis of the BEs filed by him (MS) and the actual & true value of the goods available in the worksheets (page No. 9, 10 & 11 of printouts of Amit's Vivo mobile phone) & the actual invoices containing actual values (attachments of whatsapp messages printed from Amit's Apple iPhone 6) found in the phones of Shri Amit Mittal:

Chart-A

BE No.	Date	Supplier	Commercial Invoice no.	Value declared in BE (USD)	True & Actual Transaction Value (USD)
A	B	C	D	E	F
9613699	11.01.2019	Guizhou Zhongruixianghe Supply Chain Co Ltd	MCHA180918-2	60028.9	76115
9766361	23.01.2019		MCHA181114-2	30349.99	37217
9985492	08.02.2019		MCHA181211	68337.68	80430
9997617	09.02.2019		MCHA181114-3	127632.3	144670
3665170	15.06.2019	Jentayu Industry	MCHA190306-5	67119.87	75053.08
3725322	19.06.2019		MCHA190425	43381.8	43381.8
6264426	27.12.2019	MCH Steel Industry Co.	MCHA191126-1	81491.08	124688.2
6316465	01.01.2020		MCHA191107	81623.71	129737.1
6498271	16.01.2020		MCHA191125-2	39522.66	61680.1
6498934	16.01.2020		MCHA191125-3	40832.25	65701

(xvii) He admitted that the value of the goods mentioned in the column F of the Chart-A, were the true and correct transaction value of the goods imported in the corresponding BE and he had declared the incorrect transaction value (mentioned in Column E) in the BEs to pay less customs duty. He also admitted that the goods imported under BE Nos. 3665170 and 3725322 from Malaysia under invoices of Jentayu Industry, Malaysia, were of China Origin and he had wrongly availed the benefit of Notification No. 46/2011-Customs. He admitted that they had paid the values mentioned in the Commercial Invoice submitted with the BE to the supplier through the bank account of MS and the balance amount (actual value minus invoice value) was transferred through hawala channel to the supplier.

(xix) He stated that he had gone through the details of the BEs filed by M/s.MS. On being specifically asked about the stainless-steel cold rolled coils imported under BE Nos. 4256704 and 5074667 procured from Guizhou Zhongruixianghe Supply Chain Co Ltd (GZSCCL), BE No. 4841208 procured from MCH Steel and BE No. 8475272 procured from Shandong Mengyin Huarun Imp. and Exp. Co. Ltd. (Shandong in short), he stated that the value of the coils declared in the said four BEs were also not correct and he had declared less than the actual transaction value in the BEs. On being asked, he stated that the original commercial invoices shared on the WhatsApp by Vick Jiang were not available with them. He stated that with his assistance the following Chart-B was prepared in which the actual transaction value was calculated as stated by him, which was based on the rates of coils of approximately same quantity imported on the nearest date of the above said BEs:

Chart-B :

BE No.	Date	Supplier	Invoice no.	Value declared in BE (USD)	Transaction value (USD)
A	B	C	D	E	F
4256704	27.07.2019	GZSCCL	MCHA190528	47176.09	79180.53
4841208	10.09.2019	MCH Steel	MCHA190801	46676.16	78066.56
5074667	27.09.2019	GZSCCL	MCHA190806	92106.00	138513.5
8475272	14.08.2020	Shandong	20MS0721	40939.50	66594.92

(xx) He accepted the transaction value as detailed in Column F of the above Chart-B, of the Stainless Steel Cold Rolled Coils imported under the BE mentioned in the Column A. He admitted that he had declared incorrect and less than actual transaction value, as detailed in Column E of the chart, to the Customs.

(xx) On being asked, he stated that they had issued sale invoices the Coils/ imported Circles/ Circles cut from the imported Coils at less than actual sale value and the amount over & above the invoiced value was collected in cash from the customers. He also stated that the cash so received from their customers was used in making payment to the foreign suppliers through hawala agent. He stated that due to competition in the market, he was forced to do undervaluation otherwise his business would not have survived in the competition. He also stated that he would deposit the differential Customs duty in a few days.

2.20: Verification report of the Ministry of International Trade and Industry, Malaysia:

Mukesh Steel (MS) imported Stainless Steel Cold Rolled Coils and stainless-steel cold Rolled Circles from Malaysia on the invoices of Jentayu Industry, Malaysia and GEPL imported Stainless Steel Cold Rolled Coils from Malaysia on the invoices of Setica Industries (M) Sdn Bhd., Malaysia. For claiming the benefit of Notification No. 46/2011-Cus dated 01.06.2011, MS and GEPL had submitted Certificates of Origin (Form-A1) of Malaysia purported to be issued by the Ministry of International Trade and Industry, Malaysia (MITI). Various Certificates of Origin (COO) pertaining to the above said two Malaysian suppliers were forwarded to the MITI for verification. The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI, vide email dated 14.04.2021, informed, *inter alia*, that based on their assessment 87 out of 143 copies of the COO are not authentic and they were not issued by the MITI. The email also mentioned that MITI had never received any COO applications from the respective companies via their system. The list containing details of the said 87 COOs was also attached with the email. Various COOs pertaining to the suppliers, namely, Setica Industries (M) SDN BHD and Jentayu Industry (from whom MS and GEPL had also procured stainless steel products) are also mentioned in the said list.

3. From the above it is evident that:

- M/s.MS, M/s.MST, M/s.Dharam Impex and M/s.GEPL had imported stainless steel cold rolled coils from China which were procured from Vick of

MCH Steel/ GZSCCL. M/s.MS and M/s.GEPL also imported Stainless Steel Coils & Circles from China via Malaysia into India.

- (ii) Shri Amit Mittal, Proprietor of M/s.MST, used to look after all the work viz. negotiation with the supplier, sales contract, payment, Customs clearance, etc. related to import of stainless-steel products directly from China or from China via Malaysia. Amit Mittal used to contact Vick Jiang, who is stated to be employee of GZSCCL and Director of MCH Steel. Vick Jiang's signatures are available on most of the invoices & corresponding packing lists of GZSCCL and MCH Steel. From the WhatsApp messages between Amit Mittal and Deepak Mundra, it is evident that Amit Mittal also used to look after the work related to the Customs clearance, in respect of the goods imported by MST, MS, Dharam Impex & GEPL. Infact, on one occasion, Amit Mittal forwarded the commercial invoice, packing list, etc. pertaining to goods imported by GEPL to Deepak CHA for Customs clearance and after two days, forwarded the same documents through Whatsapp to 'Gulshan' (Ashok Kumar) for keeping the same in the official records of GEPL.
- (iii) **Both Shri Amit Mittal and Shri Mukesh Mittal admitted that Vick Jiang used to send the commercial invoices with the actual rates/value of the coils through WhatsApp to Amit Mittal for checking and Amit Mittal used to tell Vick about the rates/value (less than the actual & true rates/value) of the same coils to be mentioned in the parallel invoices to be issued for the Customs purposes.**
- (iv) Various invoices (in excel format) and corresponding packing lists issued by MCH Steel to M/s.MS, M/s. MST and M/s. Dharam Impex were found in the Apple mobile phone of Shri Amit Mittal seized by the DRI under panchnama dated 11.02.2020 from Amit Mittal at the office-cum-godown premises of MS. Amit Mittal stated the said invoices were received in his other phone (other than the resumed Apple mobile phone) from Vick Jiang and from the said other mobile phone, Amit Mittal had sent the said parallel invoices through WhatsApp to the mobile resumed by the DRI.
- (v) Shri Amit Mittal admitted that the said invoices (available in his mobile phone) contained the true & correct rate/value at which the stainless-steel cold rolled coils mentioned therein were imported by M/s.MS, M/s. MST and Dharam Impex. He also admitted that he used to tell Vick Jiang about the rates (less than the actual & true rates of the coils) for which the parallel invoice for the same coils, for submission to the Customs, was to be issued by Vick Jiang/supplier. In addition to the rates of goods, Amit Mittal was also instructing Vick Jiang about the importer to whom the parallel invoice was to be issued. For example, the commercial invoice Nos. MCHA191125-1 & MCHA191125-2 (two consignments of the same Sales Contract No. MCHA191125) found in the mobile phone of Amit Mittal, were issued in the name of Dharam Impex. The said two commercial invoices contained the true and actual rates/value of the coils supplied by Vick Kiang. Later, on Amit Mittal's instructions, Vick issued parallel invoice no. MCHA191125-1 to Dharam Impex and the parallel invoice no. MCHA191125-2 to MS.
- (vi) Shri Mukesh Mittal and Shri Puneet Jain (Dharam Impex), when confronted with the commercial invoices printed from the mobile phone of Amit Mittal, admitted that the said commercial invoices contained the true and actual value of the coils imported by them from China through Amit Mittal. Amit Mittal, Mukesh Mittal and Puneet Jain admitted that the commercial invoices

- (vi) submitted by them to the Customs with the BEs were the parallel invoices with less than actual rate/value and the values declared by them in the BEs were not true and correct value.
- (vii) Shri Amit Mittal admitted that the values mentioned in the WhatsApp message dated 16.01.2020 to Sanya, available in the printouts taken from his Apple mobile phone, were the true and correct values of the imported Stainless Steel Coils purchased under the commercial invoices mentioned therein. The invoices mentioned in the said messages were issued by MCH Steel to M/s. MS, M/s. MST and GEPL and few of the said invoices with actual value were found in the mobile phone of Amit Mittal and the values mentioned in the actual invoices matched with the values mentioned in the said message. The details of the payments made through hawala channel are also available in the other whatsapp messages of 13.01.2020 and the corresponding slips evidencing payments to the suppliers through hawala channel were also found in Amit's Mittal.
- (viii) The account statements/worksheets available at page No. 9, 10 & 11 of the printouts taken from the Vivo mobile phone of Amit Mittal contain details of the period 21.12.2018 to 26.06.2019. The heading of the payment section of one of the said account statement/worksheet was "AMIT MONEY DEPOSITS LIST" and heading of the other section of the same worksheet was mentioned as "VICKI MATERIAL INVOICE LIST". The four account statements/worksheets available in the said pages, were inter-connected as the closing balance of one account statement/worksheet was the opening balance of the next account statement/worksheet. The details of the payments through bank mentioned in the said account statements match with the payments through the bank accounts of MS, M/S. MST and GEPL to GZSCPL, MCH Steel and the Malaysian supplier on whose invoices Vick Jiang routed the goods from China via Malaysia to India. The invoice numbers mentioned in the said account statements were found to be issued to the same importer as mentioned in the said account statements and the numbers of containers mentioned in corresponding entry match with the packing list submitted to the Customs with the BE.
- (ix) In the entries pertaining to GEPL, the amounts for which GEPL's bank issued LC in favour of the supplier are also mentioned and the LC value matched with the invoice submitted by GEPL to the Customs & the value declared in the BEs.
- (x) The above-mentioned facts clearly show that the said account statements/worksheets contained true and correct account of the transactions between Amit Mittal and Vick Jiang/Chinese suppliers. Amit Mittal and Mukesh Mittal, when confronted with the said account statements/worksheets, admitted that the said account statements/worksheets contained details of the true and correct values of the imported goods and the payments mentioned therein were made through the bank account and through the hawala channel. They also explained various entries of the said account statements.
- (xi) Both Shri Amit Mittal and Shri Mukesh Mittal admitted that the Sales Contracts available in the documents resumed during search from their premises, were not the actual Sales Contracts. They stated that the original contracts with true and correct rates agreed with the suppliers were shared through WhatsApp and later, on Amit Mittal's directions, Vick use to prepare

another Sales Contract for the same goods with less than true and actual rates for keeping the same in the official records of the importers. They had deleted the original Sales Contract from the mobile phone.

(xii) Shri Ashok Mittal, Director of GEPL, during recording of his statement, initially tried to mislead the investigation by stating that he himself was interacting with Vick Jiang for the import of goods, he himself was handling the Customs related works of GEPL & sending the documents of GEPL to the CHA through courier. He also stated that he did not know how Amit Mittal got GEPL's documents and why Amit Mittal sent the said documents to Deepak, CHA. However, when confronted with the evidences like statements of Mukesh Mittal & Amit Mittal, whatsapp messages, the account statements etc., Ashok Kumar admitted that Amit Mittal used to interact with Vick Jiang for the import of stainless-steel products for GEPL and Amit Mittal was also handling the Customs related work in respect of the stainless steel products imported from China through Vick Jiang. Ashok Kumar also admitted the entries of GEPL available in the account statements printed from the mobile phone of Amit Mittal, contained true and correct value of the goods imported by GEPL and the value declared to the Customs for which their bank had issued LC. He also admitted that he had declared less than actual value in the BEs and he used to make cash payment for the differential value (actual & true value minus the invoice value) to Amit Mittal, who transferred the same to the supplier through hawala channel. He also admitted that the Coils imported by GEPL from Malaysia were of China origin and the said coils were at first shipped from China to Malaysia and then from Malaysia, the same coils were shipped to India.

(xiii) Shri Puneet Mittal, Proprietor of M/s. Dharam Impex also admitted that Amit Mittal had introduced him to Vick Jiang and the goods imported on the invoices of MCH Steel were arranged from Vick Jiang by Shri Amit Mittal. Shri Puneet Jain admitted that he had declared incorrect and less than actual value imported goods in the BEs. He admitted that the values mentioned in the two invoices of MCH Steel issued to Dharam Impex available in the printouts taken from the Apple mobile phone of Amit Mittal, were the true and correct values of imported goods and he had paid the differential amount (true & actual value minus invoice value) in cash to Amit Mittal for transferring to the supplier through hawala channel.

4. Payment of the differential amount (actual value minus invoice value) to the supplier through hawala channel:

(i) Shri Amit Mittal, Proprietor of M/s. MST, Shri Mukesh Mittal, Proprietor of M/s. MS, Ashok Kumar, Director of M/s. GEPL and Shri Puneet Jain, Proprietor of Dharam Impex unambiguously admitted that they had not declared the correct value of the imported goods in the BEs and they had declared less than actual and true transactional value in the BEs to pay less Customs duty. The importers also admitted that the invoiced value was paid to the supplier from their bank accounts and remaining amount, i.e., actual value minus invoice value, was transferred to Vick/supplier through hawala channel. Ashok Kumar and Puneet Jain also stated that they used to give the differential value (actual value minus invoiced value) in cash to Amit Mittal for transferring the same to the supplier through hawala channel.

- (ii) The page No. 14 to 18 of the printouts of the WhatsApp messages taken from the mobile phone of Amit Mittal contain the WhatsApp messages between Amit Mittal and Kapil. On being asked about Kapil, Amit Mittal stated that Kapil was Vick Jiang's person to whom he used to pay cash for transferring to Vick/supplier.
- (iii) The page No. A65 of the printouts of WhatsApp attachments is a slip of Telegraphic Transfer of USD 95,000 to the bank account of MCH Steel on 13.01.2020 from the bank account of *South East Pacific Travel Corporation PTE Ltd*. Amit Mittal admitted that he had got transferred the said amount of USD 95000 through hawala channel to MCH Steel.
- (iv) In respect of the slip available at page No. A67, Amit Mittal stated that the said Slip was of telegraphic transfer of USD 19,936 done on 14.01.2020 to the bank account of *Comet International Ltd Hongkong* from the *UOB, Singapore Bank* and the said amount was also transferred through hawala channel.
- (v) The page no. A71 is a slip of telegraphic transfer of USD 15000 to the Bank account of MCH Steel on 16.01.2020 from the bank account of *South East Pacific Travel Corporation PTE Ltd*. Shri Amit Mittal admitted he had got transferred the said amount USD 15,000 to the account of MCH through hawala channel.
- (vi) The said three slips available at page No. A65, A67 and A71 were posted by Kapil in the WhatsApp messages on 14.01.2020, 14.01.2020 and 16.01.2020 respectively, to Amit Mittal. Prior to the said messages, Amit Mittal had posted the details of the recipient's bank account in the messages and he had also informed Kapil about the amounts to be transferred to the said accounts.
- (vii) The page No. 2 & 3 of the printouts taken from Vivo mobile phone of Amit Mittal are the printouts of the snapshots of messages between Vick and Amit Mittal. In the said messages, Vick after posting the same slip of transfer of USD 95,000 (page No. A65) and sought Amit Mittal's confirmation whether the said amount was paid by Amit Mittal.
- (viii) At page No. 7 of the printouts taken from Mukesh Mittal's mobile account, a ledger of "*Kapil Dollar*" was available. Mukesh Mittal when confronted with said ledger, admitted that Kapil was a hawala agent and the entries of payments available in the said ledger were the amounts paid to Kapil for transferring the same to the supplier through hawala channel.
- (ix) In the account statements /worksheets available in the page Nos. 9, 10 & 11 of the printouts taken from the Vivo mobile phone of Amit Mittal, the details of the payments made to Vick/supplier are also available. Both Amit Mittal and Mukesh Mittal admitted that the amounts mentioned the said account statements/worksheets were paid to the supplier through the bank accounts of the importer and through the hawala channel. The payments made by M/s.MS, M/s. MST & M/s.GEPL through their bank accounts to the supplier matched with the entries of the bank payments available in all the said account statements/worksheets. Both Amit Mittal and Mukesh Mittal admitted that the entries of "Agent" available in the worksheets were of the amounts transferred to Vick Jiang through hawala channel towards the difference of the actual value minus invoice value of the imported goods. In the said worksheets details of payments of USD

3,60,967 through hawala channel during 21.12.2018 to 26.06.2019 are available.

- (x) As per the first entry of the account statement/worksheet available on page No. 9, the opening balance as on 21.12.2018 was USD 28,751 (advance with the supplier). The advance of USD 28751 to the supplier was not recorded in the books of accounts of the importers, which indicates that prior to 21.12.2018 also, payments through hawala channel for the difference of the actual value and invoice value were made to Vick Jiang/supplier.
- (xi) The last entry of the last account statement/ worksheet available in page No. 10 was "BALACE FORWARD 374756-328297= 46459 USD", which means that as on 26.06.2019, advance amount of USD 46459 was available with the supplier. The said advance of USD 46459 was not shown in the books of accounts of the importers. Amit Mittal in his statement recorded on 16.08.2021 stated that he had prepared similar worksheets for the subsequent period also and after search of their premises by the DRI, he had deleted the same from his other mobile phone. Further, the actual invoices found in the mobile phone of Amit Mittal were of the period later than 26.02.2019.
- (xii) The actual invoices found in the mobile phone of Shri Amit Mittal were of the period after 26.02.2019. The above facts also indicate that Amit Mittal was dealing with Vick Jiang even prior to 21.12.2018 and he was continuously indulged in undervaluation of the goods imported from China by his firm M/S. MST and the other importers for whom he was procuring goods from his supplier (Vick Jiang).

5. Stainless Steel products imported by MS and GEPL from Malaysia:

5.1. As discussed hereinabove, M/s.MS and M/s.GEPL availed the benefit of the concessional/preferential rate of duty under Notification No. 46/2011-Cus, dated 01.06.2011, as amended, in respect of the Cold Rolled Stainless Steel Coils & Circles imported from Malaysia on the invoices of Jentayu Industry, Malaysia and Setica Industries (M) Sdn Bhd., Malaysia respectively.

- Shri Mukesh Mittal, Proprietor of M/s.MS in his statement recorded on 21.12.2021 admitted that the stainless-steel coils and circles imported by Mukesh Steel from Malaysia on the invoices of Jentayu Industry were of China origin. He admitted that the fully finished coils and circles were shipped by Vick Jiang from China to Malaysia and from Malaysia, the same coils and circles (without any working & processing in Malaysia) were shipped to India on the invoices & other documents of Jentayu Industry. He also admitted that the coils and circles imported by MS under BE No. 3665170 dated 15.06.2019 and BE No. 3725322 dated 19.06.2019 respectively, were of China origin and to wrongly avail the ineligible benefit of Notification No. 46/2011-Customs, the said goods were routed through Malaysia.
- From the Certificates of Origin of Malaysia submitted by MS to the Customs, it is evident that in column No. 8 of the COOs, the *Origin Criterion* was mentioned as "WO" which as per the Overleaf Notes of COO, pertained to goods wholly obtained or produced in the territory of exporting country. Mukesh Mittal after going through Rule 4 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, admitted that the goods covered under the two COOs submitted by him to the Customs did not qualify to be of Malaysian origin. He also admitted to the undervaluation of the goods imported from Malaysia.

➤ Ashok Kumar, Director of GEPL, in his statement recorded on 01.02.2022, admitted that the stainless-steel coils imported by GEPL from Malaysia were also arranged by Amit Mittal. He also admitted that the said coils were of China origin and Vick had shipped the said coils from China to Malaysia and then from Malaysia to India. He also admitted to the undervaluation of the coils imported from Malaysia.

➤ Amit Mittal who was admittedly looking after all the work related to stainless steel products imported by MS and GEPL and used to communicate with Vick Jiang, also admitted that all the goods imported from Malaysia by MS and GEPL were arranged by him from Vick Jiang and Vick Jiang had shipped the said goods from China to Malaysia and from Malaysia to India. He admitted that no work/process on the goods was undertaken in Malaysia and from China, the completely finished goods were routed through Malaysia to India to save Customs duty and CVD.

➤ In the account statements/worksheets available at page no. 9, 10 & 11 of the printouts taken from the Vivo mobile phone of Amit Mittal, which contain the details of the transactions between Amit Mittal and Vick Jiang pertaining to import of goods from China, the details of the invoices of Malaysian suppliers to MS and GEPL are mentioned. In the said account statements, the actual value of the goods imported from China via Malaysia, details of the payments made to Malaysian supplier through bank accounts of the importers and the amounts over & above the invoice value paid through hawala channel to Vick Jiang are also available. These facts also indicate that the goods imported from Malaysia were arranged by Vick Jiang from China to Malaysia and then from Malaysia to India.

➤ The verification report received from the MITI (ref. Para 17) mention that the Malaysian suppliers, including 'Setica Industries (M)' SDN BHD, Malaysia and Jentayu Industry, had never applied for COO and was even not registered in their ePCO system through which a company applies for issuance of Certificate of Origin. This clearly establish that the COOs submitted by MS and GEPL to claim duty exemption under Notification No. 46/2011-Cus, were not issued by MITI and the said COOs are fake.

➤ It is, therefore, apparent that Amit Mittal, MS and GEPL in connivance with their Chinese suppliers submitted fake Certificates of Origin of Malaysia and the goods claimed to be of Malaysia origin did not qualify to be originating goods of Malaysia in terms of Rules 3, 4, 5 & 6 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. It is also apparent that Shri Amit Mittal, M/s.MS and M/s.GEPL were aware of the Chinese origin of the goods imported from Malaysia and to wrongly claim ineligible benefit, they submitted fake Certificates of Origin of Malaysia to the Customs. It, therefore, appears that M/s.MS and M/s.GEPL had intentionally

by misstatement and suppression of facts, wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011, as amended, in respect of the Stainless Steel Cold Rolled Coils/Circles imported from Malaysia.

6. As discussed in foregoing para, the detained goods as per panchnama dated 11.02.2021, were seized under Seizure Memo/Order dated 13.10.2020 & its corrigendum dated 26.10.2020. During investigation, Shri Mukesh Steel and Mukesh Steel Trading submitted documents in respect of the said goods. Mukesh Mittal in his statement dated 21.09.2021, stated that the coils weighing 42266.63 Kgs were imported by M/s.MS. The SS coils weighing 119004 Kgs were received from M/s. MST for job work. The coils weighing 6750.30 Kgs were purchased from Dharam Impex and were part of the coils imported by Dharam Impex from MCH Steel. Shri Puneet Jain, Proprietor of M/s.Dharam Impex admitted that he had declared less than actual transaction value in the BEs pertaining to the coils imported from MCH Steel.

7. LEGAL PROVISIONS IN RESPECT OF THE VALUATION OF THE IMPORTED GOODS ARE AS UNDER:

(i) Section 14 of the Customs Act, 1962 -Valuation of goods-

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

PROVIDED ...

(ii) Customs Valuation ((Determination of Value of Imported Goods), Rules, 2007 (CVR, in short)

3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India;

or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below:

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods;

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

4. Transaction value of identical goods.

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

5. Transaction value of similar goods:

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

6. Determination of value where value cannot be determined under rules 3, 4 and 5:

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

7. Deductive value:

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

8. Computed value.-

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

9. Residual method.-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of -

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

Rule-11. Declaration by the importer. -

(1) The importer or his agent shall furnish -

- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
- (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule-12. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

8. THE RELEVANT PROVISIONS OF THE CUSTOMS ACT, 1962 ARE AS UNDER:

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

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act.

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

8.2 In terms of Section 17 of the Customs Act, 1962, relating to assessment of duty, it is mandatory for the importer, save as otherwise provided in Section 85 of the Act, to self-assess the duty, and in case it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under the Act, re-assess the duty leviable on such goods.

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

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following; namely:—

(a) the accuracy and completeness of the information given therein; and
(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

8.4 In terms of Section 28(4) of the Customs Act, 1962: "Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

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

8.5 In terms of Section 28AA(1) of the Customs Act, 1962 - the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

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

8.7 In terms of Section 112 of the Customs Act, 1962- Any person, -

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

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

8.8 In terms of Section 114A of the Customs Act, 1962 - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 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

(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.

8.9 In terms of Section 114AA of the Customs Act, 1962 -If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

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

9.1. From the facts discussed hereinabove, it is apparent that the value of the imported items declared by MS, MST, GEPL and Dharam Impex in the BEs is not the true and actual transaction value. It is also evident that the true and correct transaction value of the imported goods are available in the actual commercial invoices and account ledgers/worksheets found in the mobile phones of Amit Mittal, who was looking after all the work pertaining to import of goods of his firm, MS, GEPL and Dharam Impex. The proprietor/Director of the importers unambiguously admitted that they had incorrectly declared less than actual transaction value in the BEs to pay less Customs duty. In view of the above, it appears that the value declared in the BEs is liable to be rejected in terms of the Rule 12 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and redetermined as per the true transaction value of the imported goods available in the evidence discussed in the notice, in terms of Section 14 of the Customs Act, 1962 read with Rule 3 and Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

9.2. From the facts discussed hereinabove, it appears that MS/MST/GEPL/Dharam Impex were intentionally and deliberately involved in the under-valuation of the imported goods. Amit Mittal was looking after the import-related work of the stainless- steel products imported from China through Vick Jiang. He instructed the suppliers to issue parallel invoice of same number & date with less than the actual transaction value. Mukesh Mittal, Ashok Kumar

and Puneet Jain were also aware of the true and correct transaction value of the imported goods and the amount actually paid to the supplier for the goods imported by them. MS/MST/GEPL/Dharam Impex willfully misstated and suppressed the correct and true transaction value of the goods imported by them and thereby, evaded payment of appropriate duty. It also appears that MS and GEPL were also aware that the goods imported by them from Malaysia were of Chinese origin. They were aware that the goods of Chinese origin were only routed through Malaysia for fraudulently showing Malaysian origin of the said goods. They and Amit Mittal connived with their Chinese supplier in routing the goods from China through Malaysia and submitted fake Certificates of Origin of Malaysia. MS and GEPL were aware that the goods imported by them did not qualify to be origin of Malaysia, yet in order to evade payment of the Customs duty, they suppressed the China origin of the said goods and mis-declared the country of origin on the basis of the fake Certificates of Origin. They have by willful misstatement and suppression of facts availed the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, though such benefit was not available on the goods of China origin routed through Malaysia. Thus, MS, MST, GEPL and Dharam Impex had willfully and knowingly violated the provisions of Sections 46(4) and 46(A) of the Customs Act, 1962 and failed to discharge the obligation of proper 'self-assessment of duty' in terms of Section 17 of the Customs Act, 1962. Such willful misclassification/ misstatement of material facts in the bills of entry filed by them before Customs with an intent to evade duty, justifies invocation of Section 28(4) of the Customs Act, 1962, to demand duty along with interest under Section 28AA of the Customs Act, 1962. For the same reasons, MS, MST, GEPL and Dharam Impex also appear to be liable for imposition of penalty under the provisions of Section 112 and/or Section 114A and 114AA of the Customs Act, 1962.

9.3. In terms of Section 111(m) of the Customs Act, 1962, the goods not corresponding in respect of value or in any other particular with the entry made under the Customs Act, 1962, are liable to confiscation. Further, in terms of Section 112 of the Customs Act, 1962, penalty is liable to be imposed on the persons in relation to the goods liable to confiscation under Section 111 of the Customs Act, 1962. In this regard, it appears that MST, MS, GEPL and Dharam Impex were aware of the true and actual transaction value of the imported goods but with an intent to evade Customs duty, they deliberately and intentionally declared incorrect & less than actual value of the goods in the Bills of Entry. Further, MS and GEPL by mentioning the Notification No. 46/2011-Cus. dated 01.06.2011, in the BEs filed for import of Stainless Steel Cold Rolled Coils/Circles from Malaysia, certified that the said items qualify as an originating goods of Malaysia, in terms of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 and thereby eligible for duty concessions. MS and GEPL submitted fake Certificate of Origin purported to be issued by MITI in order to wrongly claim the ineligible benefit of the Notification No. 46/2011-Cus. dated 01.06.2011. The above-said willful mis-declarations and suppression of material facts, made by MS, MST, GEPL and Dharam Impex had led to short-levy of duty and therefore, it appears that MS, MST, GEPL and Dharam Impex have rendered the said imported goods as detailed in **Annexures-MS-1/MS-2/MST-1/MST-2/Gulshan-1/Gulshan-2/Gulshan-3 & Dharam-1**, liable to

confiscation under Section 111(m) of the Customs Act, 1962 and rendered itself liable to penalty in terms of the Section 112 of the Customs Act, 1962.

9.4. Shri Amit Mittal had procured the goods for MS, GEPL and Dharam Impex from his supplier and he was aware of the true and correct transaction value of the imported goods and the amount actually paid to the supplier for the imported goods. He also aware that the goods imported from Malaysia were of Chinese origin and the same were only routed through Malaysia to wrongly avail the benefit of Notification No. 46/2011-Cus dated 01.06.2011. He was instrumental in arranging fake Certificates of Origin and thereby evasion of duty by MS and GEPL by declaration of wrong Country of origin and incorrect transaction value of the imported goods to the Customs and therefore, it appears that Amit Mittal has rendered himself liable to penalty under Sections 112 and 114AA of the Customs Act, 1962.

10. The duty calculation worksheet enclosed with the notice contain details of the BE's, the value declared in the BEs, the correct transaction value of the goods, duty already paid and differential duty payable by the importers. The duty calculation worksheets pertaining to MS and GEPL also contain the BEs and the goods in respect of which they had wrongly claimed the benefit of the Notification No. 46/2011-Cus dated 01.06.2011, as amended. As discussed in the paras above, the goods covered under the said BEs did not appear to qualify to be originating goods of Malaysia in terms of the Rules notified under the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. Further, the Certificates of Origin of Malaysia pertaining to their suppliers are found to be fake. All the said goods imported from Malaysia by them were of China origin and therefore, the benefit of the preferential rate of duty in terms of the Notification No. 46/2011-Cus dated 01.06.2011, appears to be not available to the said goods. The said goods were shipped from China via Malaysia to India only to wrongly claim ineligible benefit and therefore, it appears that appropriate duty equivalent to the duty applicable on the goods of China origin imported into India from China, is payable on the said goods.

10.1. It is evident that MS, MST, GEPL and Dharam Impex had not declared the correct transaction value of the goods imported directly from China or China via Malaysia. The documents printed from the mobile phones of Amit Mittal contained the true and correct transaction value of the imported goods and therefore, in terms of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, in short), for the purpose of duty calculation, the value as available in the said documents, which is admittedly the correct and true transaction value, has been taken as transaction value of the goods imported under the respective bills of entry.

10.2. From the import data of MS, M/S. MST and GEPL, it is evident that the value of similar goods supplied by the same foreign supplier declared in the other bills of entry (missing BEs) in respect of which direct evidences of the actual transaction value are not available, are in concurrence with to the value declared in the bills of entry in respect of which direct evidences of misdeclaration and undervaluation have been found. The evidence, such as, advance deposits available with the supplier at the starting date of the account statements as well as the end date of the available account statements, etc. also clearly indicate that the values declared in the missing BEs are also not the true and correct transaction value. Admittedly, the rate of the coils and circles depend upon their size. In each of the actual commercial invoices printed from the mobile phone of

Amit Mittal, different rates of different sizes of coils were mentioned. However, with an intent to declare less than actual transaction value, on Amit Mittal's instructions, the supplier mentioned uniform rate for all sizes of coils/circles in the parallel commercial invoices issued for Customs purposes and accordingly, in the BEs also, the importers did not declare the correct and complete details of the imported goods.

10.3. In the absence of direct evidence of the correct and true transaction value of goods imported under missing BEs, the value of the imported goods is to be determined proceeding sequentially through Rule 4 to 9 of the CVR. However, the factors such as, the transaction value of identical or similar goods in a sale at the same commercial level about the same time, the actual prices at which the goods were sold in the highest aggregate quantity, the details of cost structure, etc. which are required for determination of the actual transaction value in terms of Rule 4 to 8 of the CVR are also not available and therefore, the actual transaction value of the coils and circles (covered under missing BEs) is to be determined by resorting to Rule 9 of the CVR. Hence, for the purpose of calculation of Customs duty, the value of the goods covered under the missing BEs has been calculated as per the rate of the same/similar size of the coils/circles available in the actual commercial invoices. It is pertinent to mention that the transaction value so determined of missing BEs is not based on the provisions of Rule 9(2) of the CVR, i.e., the determined transaction value is not on the basis of the selling price in India of the goods produced in India or a system which provides for the acceptance for customs purposes of the highest of the two alternative values or the price of the goods on the domestic market of the country of exportation or the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8 or the price of the goods for the export to a country other than India or minimum customs values or arbitrary or fictitious values.

10.4. The summary of port wise Customs duty evaded by M/s. Mukesh Steel, M/s. Mukesh Steel Trading, M/s. Gulshan Exim Pvt. Ltd., and M/s. Dharam Impex is tabulated as under:

Table-1

Sr. No.	Name of the Importers	Port / Customs Location Code wise Import			
		Mundra port (INMUN1) (Amt of Duty in Rs.)	ICD Loni (INLON6) (Amt of Duty in Rs.)	ICD Sabarmati (INSBI6) (Amt of Duty in Rs.)	Total Duty Importer wise (Amt in Rs.)
		3	4	5	6
1	M/s. Mukesh Steel,	1,26,33,120/-	8,85,882	0	1,35,19,002/-
2	M/s. Mukesh Steel Trading,	1,79,16,115/-	1,67,377	0	1,80,83,492/-
3	M/s. Gulshan Exim Pvt. Ltd.,	1,30,88,337/-	14,09,946	14,42,625	159,40,908/-
4	M/s. Dharam Impex	10,95,789/-	0	0	10,95,789/-
	Grand Total	4,47,33,361	24,63,205	14,42,625	4,86,39,191

11. SHOW CAUSE NOTICE:

11.1. Therefore, show cause notice bearing No. GEN/ADJ/COMM/42/2023-Adjn dated 08.05.2023 was issued to **M/s. Mukesh Steel (IEC 0513087818)**; **M/s. Mukesh Steel Trading (IEC 0508066573)**; **M/s. Gulshan Exim Pvt. Ltd. (IEC 0516002061)**; and **M/s. Dharam Impex (IEC 0514049693)**, made answerable to the Commissioner of Customs, Customs Mundra, detailed as under:

11.2. In respect of SCN issued to **M/s. Mukesh Steel (IEC 0513087818)**, **C-45, Wazirpur Industrial Area, Delhi**, through its Proprietor, **Mukesh Mittal, R/o B-84, Jyoti Apartment, Sector-14, Rohini, New Delhi**, it has been proposed to:

- i. Reject the value of the goods declared in the bills of entry, detailed in the Annexures-MS-1 & MS-2 to the impugned SCN, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and redetermine in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability.
- ii. Deny the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia under the bills of entry detailed in Annexure-MS-1 to impugned notice;
- iii. Demand and recover the differential duty amounting to **Rs. 1,35,19,002/- (Rupees One Crore Thirty Five Lakhs Nineteen Thousand Two only)** short levied / short paid on the goods covered under subject bills of entry, as detailed in Annexure-MS-1 & MS-2 to impugned Notice, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;
- iv. Confiscate the goods imported under the subject bills of entry, as detailed in Annexure-MS-1 & MS-2, valued at **Rs. 8,65,13,108/-** under Section 111(m) of the Customs Act, 1962;
- v. Impose Penalty on **M/s. Mukesh Steel (IEC 0513087818)** under Sections 112 or 114A and 114AA of the Customs, Act, 1962;
- vi. Impose penalty upon **Shri Amit Mittal** under Sections 112(a) and 114 AA of the Customs Act, 1962.

11.3. In respect of SCN issued to **M/s. Mukesh Steel Trading (IEC 0508066573)**, **C-18/2, Wazirpur Industrial Area, Delhi**, wherein it has been proposed to:

- i. Reject the value of the goods declared in the subject bills of entry, detailed in the Annexures-MST-1 & MST-2 to subject SCN, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and redetermine, in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability.
- ii. Demand and recover the differential duty amounting to **Rs. 1,80,83,492/- (Rupees One Crore Eighty Lakhs Eighty Three Thousand Four Hundred Ninety Two only)** short levied / short paid on the goods covered

under bills of entry, as detailed in Annexure-MST-1 & MST-2 to subject Notice, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;

- iii. Confiscate the goods imported under the bills of entry, as detailed in Annexures-MST-1 & MST-2, valued at **Rs. 12,58,13,957/-** under Section 111(m) of the Customs Act, 1962;
- iv. Impose Penalty should upon **M/s. Mukesh Steel Trading (IEC 0508066573)** under Sections 112 or 114A and 114AA of the Customs, Act, 1962;

11.4. In respect of SCN issued to M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061), C-18/3, Wazirpur Industrial Area, Delhi, wherein it has been proposed to:

- i. Reject the value of the goods declared in the subject bills of entry, detailed in the Annexure-Gulshan-1, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and redetermine as detailed in Annexures - Gulshan-1, Gulshan-2, Gulshan-3 in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability.
- ii. Deny the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia under the subject bills of entry detailed in Annexure-Gulshan-1 to this notice;
- iii. Demand and recover the differential duty amounting to **Rs.1,59,40,908/- (Rupees One Crore Fifty Nine Lakhs Forty Thousand Nine Hundred Eight only)** short levied/ short paid on the goods covered under subject bills of entry, as detailed in Annexure-Gulshan-1 to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;
- iv. Confiscate the goods imported under the subject bills of entry, as detailed in Annexure- Gulshan-1, Gulshan-2 & Gulshan-3, valued at **Rs.14,04,69,204/-** under Section 111(m) of the Customs Act, 1962;
- v. Impose Penalty upon **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)** under Sections 112(a) or 114A and 114AA of the Customs, Act, 1962;
- vi. Impose penalty upon **Shri Ashok Kumar, Director of Gulshan Exim Pvt. Ltd.,** under Sections 112 and 114 AA of the Customs Act, 1962.
- vii. Impose penalty upon **Shri Ravinder Kumar, Director of Gulshan Exim Pvt. Ltd.,** under Sections 112 and 114 AA of the Customs Act, 1962.
- viii. Impose penalty upon **Shri Gulshan Kumar, Director of Gulshan Exim Pvt. Ltd.,** under Sections 112 and 114 AA of the Customs Act, 1962.
- ix. Impose penalty upon **Shri Amit Mittal,** under Sections 112(a) and 114 AA of the Customs Act, 1962.

11.5. In respect of SCN issued to M/s.Dharam Impex (IEC 0514049693), A-30 Wazirpur Industrial Area, Delhi, through its Proprietor Pameet Jain, R/o. A3/51, Sector-4, Rohini, New Delhi, wherein it has been proposed to:

- i. Reject the value of the goods declared in the bills of entry, detailed in the Annexure-Dharam-1, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and redetermine, in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability.
- iii. Demand and recover the differential duty amounting to **Rs. 10,95,789/- (Rupees Ten Lakh Ninety Five Thousand Seven Hundred Eighty Nine only)** short levied/ short paid on the goods covered under bills of entry, as detailed in Annexure-Dharam-1 to this Notice, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;
- iii. Confiscate the goods imported under the subject bills of entry, as detailed in Annexure-Dharam-1, valued at **Rs. 85,97,594/-** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- iv. Impose Penalty upon **M/s.Dharam Impex (IEC 0514049693)** under Sections 112(a) or 114A and 114AA of the Customs Act, 1962;
- v. Impose penalty upon **Shri Amit Mittal, R/o C-72, Jyoti Apartment, Sector-14, Exten. Prashant Vihar, Rohini, New Delhi**, under Sections 112(a) and 114 AA of the Customs Act, 1962.

12. DEFENSE SUBMISSION:

12.1. All the noticees made submission dated 18.04.2024 against the impugned show cause notice, wherein they submitted that:

We deny the above said allegations made in the Show Cause Notice. We further deny that the value of imported goods declared by the noticees in their respective Bills of Entry are not true and not actual transaction value. We further deny that the alleged so called actual commercial Invoices and account ledgers/worksheets purportedly found in the mobile phone of Amit Mittal are the true and correct transaction value of the imported goods. We further deny that the value declared in the bills of entry are liable to be rejected in terms of Rule 12 of CVR, 2007 and the same are liable to be re-determined as per the alleged true transaction value of the imported goods available in the alleged ledger/worksheets in terms of Section 14 of the Customs Act, 1962 read with Rule 3 and Rule 9 of CVR, 2007. The Show Cause Notice did not give the co-relation chart in reference to those Bills of Entry where according to the Show Cause Notice itself there is no so-called direct evidence by way of the alleged Invoices and ledger account found in the mobile phone of Mr. Amit Mittal and therefore, it is incomprehensible as to from where the differential duty demand has been calculated based on which evidence. Hence, we had requested for the co-relation chart, however, the same has not yet been supplied.

1. There is a calculation error in respect of differential duty demand for the imports made by Mukesh Steel Trading. It is submitted that Mukesh Steel Trading had paid partial duty through Licences in respect of 4 Bills of Entry No. 5778170 dated 21.11.2019 for Rs.1,97,681, 5694750 dated 15.11.2019 for Rs. 67,906.20, 5608261 dated 08.11.2019 for Rs.1,31,629.90 and 5705672 dated 16.11.2019 for Rs.1,31,267.30. However, the differential duty chart enclosed with the Show Cause Notices

have erroneously demanded these very amounts already paid through Licences. Hence, the differential duty demand is required to be re-calculated. Copies of Bills of Entry showing payments through Licences are enclosed as **ANNEXURE-1 (Colly)**.

2. The noticee submits that the impugned Show Cause Notice so far it relates to the 23 bills of entry out of the total 32 bills of entry pertaining to Gulshan Exim Pvt. Ltd. is concerned, the same is not maintainable as M/s Gulshan Exim Pvt. Ltd. were issued 3 Show Cause Notices details of which are as under:-

- i. Show Cause Notice No. 11/ADC/Noida/Cus/2022-23 dated 24.03.2023 in respect of 2 bills of entry;
- ii. Show Cause Notice issued under F. No. GEN/ADJ/ADC/478/2022-Adjn. Dated 20.05.2022 in respect of 20 Bills of Entry; and
- iii. Show Cause Notice issued vide DIN 2023571M0000055755F dated 12.05.2023 were issued in respect of 1 bill of entry;

These 3 Show Cause Notices were issued to Gulshan Exim Pvt. Ltd. and based on the detailed investigation carried out by the DRI, Zonal Unit Ahmedabad, wherein the only issue raised was with regard to denial of the benefit of Notification No. 50/2018-Customs dated 30.06.2018. These Show Cause Notices have also been adjudicated and appealed against the same is pending adjudication before CESTAT, Ahmedabad. Copy of the Show Cause Notices are enclosed as **ANNEXURE-2 (Colly)**.

Thus there cannot be peace-meal investigation against the same bill of entry twice as the same amounts to double jeopardize which is not permitted under law.

3. The Show Cause Notice under reply suffers from various assumptions and presumptions with regard to the alleged under valuation. It has been assumed in the Show Cause Notice that Sh. Amit Mittal used to instruct Mr. Vick Jiang of China to issue parallel Invoice of the same number and date with less than the actual transaction value and the said Mr. Vick Jiang complied with the said instructions. It have further been assumed that noticees were aware that some of the consignments imported by them were of Chinese Origin routed through Malaysia for fraudulently showing Malaysian origin. It has been assumed that Sh. Amit Mittal connived with their supplier in routing the goods of Chinese origin through Malaysia and submitted fake certificate of origin. It has further been assumed that the assessment report in respect of 87 out of 143 copies of COO are not authentic submitted by Principal Assistant Direct, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI, Malaysia and that they never received any COO Application from the respective companies via their system and therefore, it has been assumed that all the COO certificates were fake. The Show Cause Notice further assumes that since Mr. Amit Mittal has stated while recording his statement that he used to receive the actual invoice on his other mobile phone from Mr. Vick Jiang and that thereafter he used to instruct him to prepare Invoices of lessor value which were sent to him for the purpose of submission before Indian Customs and that he used to destroy the actual Invoices. This assumption has been made without any recovery of actual Invoices from the possession of Sh. Amit Mittal. The Show Cause Notice further assumes that the statement of

account/work sheets recovered from the vivo mobile phone of Amit Mittal reflected the true transaction value and the mode of payment of the differential value through Hawala channel.

4. We submitted that all these above referred assumption are without any credible evidence.
5. The Noticees submit that the Show Cause Notice itself admits at para 15 (xv) that with the assistance of Mr. Amit Mittal a chart has been prepared on the basis of Bills of Entry filed by him (MS) and the actual and true value of the goods available in the worksheets (Page No.9,10 and 11 of printouts of Amit's Vivo mobile phone) and the actual invoices containing actual values (attachments of whatsapp messages printed from Amit's Apple iPhone 6).
7. The said chart mentions 10 Bills of Entry. We will deal with the alleged evidence of worksheets and the invoices found as mentioned in later part of the reply, however, it is suffice to mention here that without admitting their contents to be true, if at all these evidences are to be accepted as admissible then also it would apply in respect of 10 Bills of Entry only. The Show Cause Notice has proposed to apply Rule 9 of CVR, 2007 in respect of remaining Bills of Entry. However, the duty calculation chart in respect of the missing Bills of Entry, the chart does not specify as to which of the evidence has been applied which are said to be the same/similar size of the coils/circles available. Hence, a detailed chart is required to be provided to the Noticees to deal with the specific evidence in respect of the missing Bills of Entry as mentioned in para 15 (xv) and para 24.3 and 24.4.
6. The Noticees submit that these evidences are not admissible as the same are not in consonance with the provisions of Indian Evidence Act and IT Act. Moreover, the DRI ought to have obtained the Export declarations in respect of these evidences and in the absence of the same, the same are not reliable.
7. The noticees submits that the entire allegation of under valuation and mis-declaration of country of origin are based on statements recorded during investigation and the purported statement of account/worksheets and certain invoices set to have been sent by Mr. Vick Jiang to Amit Mittal without any co-relation. The alleged statement of account/worksheet allegedly contains the invoice number, name of importing firms, actual value, quantity and the differential value sent through Hawala. If we analyze the said worksheet, it is clear that it does not have any evidentiary value in as much as the same cannot constitute an evidence if the same are not supported by any documentary evidence like recovery of parallel invoice supporting the details of the worksheet. It is submitted that the said worksheet was being maintained by Sh. Amit Mittal in order to gain some extra profit from the imports and trading by showing the worksheet to their buyers to justify the selling price in India.
8. The Noticee Amit Mittal was forced to make co-relation anyhow so to substantiate the allegation of mis-declaration of value by adding the alleged amount in the ledger to the invoices submitted to customs. In this regard, the Noticee submits that the alleged invoices which the DRI alleges as being the actual invoice have no evidentiary value as firstly the alleged invoices recovered from the mobile of Amit Mittal are in Excel Format without any signature as admitted in the Show Cause Notice. Any document which are in excel format can be amended by anybody. It is not the case of the DRI that these invoices are in PDF Format with signature of the supplying company. Further, there is no evidence brought on record to prove that the

said invoices have been received by Amit Mittal from their overseas supplier. The Noticee further submits that they had entered into Sales Contract with their supplier which clearly mentioned that although the value is being indicated at the time of signing of the Sales Contract but the price would be subject to revision depending upon the market price at the time of shipment. Hence, these alleged actual invoices are not reliable evidence. As already explained Amit Mittal was drafting such invoices and also creating ledgers to justify his sale price to his domestic buyers.

9. The alleged Invoices and the ledger found in the mobile of Amit Mittal cannot be the actual Invoices. The Invoices total 14 in numbers are referred in the Show Cause Notice as RUD-9. A bare examination would reveal that these alleged Invoices would confirm that these cannot be relied upon and taken as true and actual Invoices for the following reasons:-

- i. These Invoices are in the EXCEL Format and not in the PDF Format. It is common knowledge that any document which is in Excel Format or word format can be edited.
- ii. Invoice No. MCHA-190809 mentions the total Invoice value as USD 65355.56 whereas the total value shown in figures in the very same invoice as ONE HUNDRED AND FIVE THOUSAND FOUR HUNDRED AND NINETY NINE AND EIGHTY FIVE CENT.
- iii. Invoice No. MCHA191106 mentions weight of the consignment as 81.940 MT whereas the Invoice which was actually received by the Noticee through Banking Channel and submitted to Customs mentioned the weight as 82.64 MT and it was found to be correctly declared.
- iv. Page No. 72 of RUD-9 is a Invoice in Excel Format where the total value shown in the Invoice is USD 40832.25. However, the Show Cause Notice did not take this Invoice as actual Invoice.
- v. Page 76 of RUD-9 is Invoice No. MCHA-191125-4 mentioning the importer as Gulshan Exim where the total Invoice value mentioned is USD 39971.84. However, the DRI did not accept this value shown in the said Invoice as correct and the import made with the said Invoice number has been enhanced and shown as USD 62,278 i.e. @ 11.50/KG in the duty calculation chart. Further, two more Invoices were found in excel format from Mr. Amit Mittal's mobile which was Invoice No. MCHA 11125-3 and MCHA 191126-2 and these two invoices having the same value were also filed with the Customs in respect of their respective bills of entry. However, in respect to the three invoices where the invoices found in excel format in the Amit Mittals' Mobile as well as the invoices filed with the Customs having same value mentioned therein, the DRI did not accept the same as representing the true value and the same substituted with some other value mentioned in the messages sent on 16.01.2020 to Sanya being the Page No. 19 of RUD-16. Thus it is clear that the DRI itself not believed the invoices found in excel format in Amit Mittal's mobile as sacrosanct. The three invoices are being annexed as **ANNEXURE-3 (Colly)**.
- vi. Page No. 83 of RUD-9 is one TT Copy for USD 75,000, which has been alleged to be Hawala transfer along with other TT for USD 95,000 and mentioned in the Show Cause Notice at Para 11(xxiii). According to

12. DRI this TT for USD was made by one Bansal Overseas on behalf of Mukesh Steel as the same were found in the mobile of Mr. Amit Mittal. Mr. Amit Mittal explained the DRI during recording of statement that these are merely confirmation of payments sent to him by Bansal Overseas for their own imports from MCH and since Amit Mittal is also one of the importers from MCH, it was sent to him to confirm the MCH that Bansal Overseas has transferred the amount for their imports. It had nothing to do with imports by Mukesh Steel. However, he was forced to admit the same as their Hawala transfer. The Noticee is filing proof that Bansal Overseas was regular importer from MCH as **ANNEXURE-4.**

Thus, it is clear that the DRI itself did not accept these alleged Invoices as representing true value. The law is well settled in this regard that either all the documents so found are to be accepted or rejected in totality. There cannot be pick and choose.

10. Similar is the case with the ledger found in the mobile of wife of Mr. Amit Mittal which has been relied as RUD-15. In this ledger, there are two entries at Page No. 10 where MST HIGH SEAS MCHA190222-2 - 33547 and MS HIGH SEAS MCHA 181210 33936. Here MST means Mukesh Steel Trading and the consignment imported against this Invoice MCHA190222-2 have been sold on HIGH SEA Sale. The figure mentioned as 33547 is to represent the actual Invoice value if the DRI is to be believed as in the Show Cause Notice this two page ledger has been read like this only. The Noticee submits that this ledger cannot be taken as representing true details as in fact as the Noticee Mukesh Steel Trading had in fact contracted this consignment against this particular Invoice where the total Invoice value was USD 42,873 as against the figure of 33547 mentioned in the ledger. Mukesh Steel Trading sold this consignment to JP Stainless on High Sea who filed the Bill of Entry No. 2636471 dated 30.03.2019. Copy of the actual Invoice filed with Customs Lori for import of the consignment is **ANNEXURE-5.**

11. Similarly, another entry mentioned in this Page No. 10 of the ledger as MS HIGH SEAS - MCHA181210 - 33936. Here MS means Mukesh Steel and the consignment imported against this Invoice MCHA181210 has been sold on HIGH SEA Sale. The figure mentioned as 33936 is to represent the actual Invoice value if the DRI is to be believed as in the Show Cause Notice this two page ledger has been read like this only. The Noticee submits that this ledger cannot be taken as representing true details as in fact as the Noticee Mukesh Steel had in fact contracted this consignment against this particular Invoice where the total Invoice value was USD 4633.50 as against the figure of 33936 mentioned in the ledger. Mukesh Steel sold this consignment to Ashish Foils Pvt. Ltd on High Sea who filed the Bill of Entry No. 2851091 dated 15.4.2019. Copy of actual Invoice filed with Customs Lori for import of the consignment is **ANNEXURE-6.**

12. Similar is the case with Magppie mentioned at Page -10 of ledger as part of the RUD-9 where it is mentioned as MEGPIE MCHA190304 72103. Here MEGPIE is in fact Magppie International Limited who had imported a consignment against this Invoice MCHA190304 and if DRI is to be believed then figure 72103 rejected actual Invoice value as the ledger has been understood by the DRI in this manner only. However, RUD-15 at page-5 contains this very Invoice and the amount mentioned in this Invoice is USD

88,517.36 against the figure 72103 mentioned in the ledger. ANNEXURE-7.

13. From the above, it is thus clear that neither the ledger nor the Invoices as RUD- 9 and 15 can be relied upon.
14. The Noticee submits that their import documents from their suppliers were always received through banking channels as such the alleged scope of manipulation has to be ruled out. The DRI checked mails of Noticee and it was confirmed that the import documents received on mail were the same as received through banking channel and submitted with the customs. Copies of documents received in banks and the proof of payments made through banking channel against which these imports have been made by the noticees are being annexed as ANNEXURE-8.
15. The Noticee submits that the DRI in their zeal to justify the under-valuation by the Noticees, has referred to certain TT copies which were found in the mobile of Amit Mittal and one such TT copy is for USD 75000 mentioned at para 11(xxvi) as A83 showing transfer by Bansal Overseas and Amit Mittal stated that the said payment was on his behalf to MCH Steel. This is factually wrong admission. In fact, this amount of USD 75000 was made by Bansal Overseas, Myanmar for their own imports from MCH Steel and this was sent by the said Bansal Overseas to Amit Mittal only as confirmation to Vick Jiang that Bansal Overseas has transferred for their own import.
16. The Noticee submits that the goods are Stainless Steel Cold Rolled Coils and stainless steel cost are dependent upon international market price which are susceptible to high fluctuations and therefore, the Noticees had, prior to imports, entered into Sales Contract time to time which mentioned the Invoice number date of Contract, quantity, price and terms of import. One such terms mentioned in all such Sales Contract is at serial 4 as **"Price will be decide at the time of shipment accordingly metal price in market (nickel, copper, chrome) today we decide basic and price is flexible according metal price"**. All imports by the Noticees were against these written contracts and a bare look at the invoices sent by the suppliers through Banking Channel and mostly imported against Letter of Credit, mentioned the Sales Contract number. Hence, to say that these Sales Contract and invoices received through Banking Channels are manipulated ones based on the alleged ledger and invoices found in mobiles which are in excel format which can be edited, are to be believed, is erroneous. Sales Contract is enclosed as ANNEXURE-9.
17. The Noticees submit that their assertion that the price of Stainless Steel Cold rolled coils depended upon constituent element like Nickel, copper and chrome is also substantiated from the fact that the Customs authorities have been deciding the value for the purpose of assessment based on these constituent element in the international market time to time and used to revise the price accordingly. The DGOV has been revising the valuation of Stainless Steel Coil time to time based on international price of constituent elements. It is pertinent to mention herein that the price of stainless steel is governed by LME and if the value of the goods imported by these noticees were what the department is now alleging then certainly any import must have been made by any importer for similar goods during the relevant period. Furthermore, the DGOV ought to have issued valuation circular reflecting such value for assessment after making such investigating with regard to the constituent element of stainless steel. However, no such DGOV

Valuation Circular has indicated such value at which the imports made by these noticees are being alleged in the Show Cause Notice.

18. It is pertinent to mention here that the Bills of Entry No.5427723 and 5427727 both dated 24.10.2019 which is part of the demand in the present Show Cause Notice had earlier been subjected to detailed scrutiny regarding the declared value at the time of import. The Noticee Mukesh Steel Trading had declared the value @USD 700/PMT in respect of both the Bills of Entry as per their Sales Contract and invoices. The Customs authority disputed the said declared value and proceeded to carry out investigation regarding the value. The Noticee submitted the Sales Contract No. MCHA190910-2 for Bill of Entry No.5427723 and MCHA-190809 for Bill of Entry No.5427727. The customs authorities proceeded to examine the veracity of the declared value in reference to the DGOV Circulars. After analyzing the DGOV Guidelines and MTC of the imported consignment with prevailing contemporaneous price of the imported consignment, a chart was prepared indicating the value of various constituent elements and thereafter the department arrived at the value @ 705.20/PMT which was found to be close to the declared value and therefore the declared value was accepted and goods were cleared. Copy of the investigation report dated 8.11.2019 is annexed as **ANNEXURE-10**.
19. The Show Cause Notice now proposes to enhance the value from USD 700/PMT to 1147.6/PMT in respect of the Bill of Entry No. 5427723 for which there is no evidence even in the form of ledger entry as annexed in RUD-9 or RUD-15 in the form of invoice. In respect of Bill of Entry No. 5427727 the declared value has been proposed to be enhanced from USD 700/PMT to USD 1209.12/PMT based on alleged Invoice annexed in RUD-9. However, it is intriguing to note that the said alleged invoice gives two different amounts for the said consignment differently in figures and words. The invoice mentions the total value in the said invoice as USD 65355.56 whereas the total value shown in figures in the very same Invoice as One Hundred and Five Thousand Four Hundred and Ninety Nine and Eighty Five Cent. Copy of Invoice annexed in RUD-9 is annexed as **ANNEXURE-11**. This clearly support the submission of the Noticees that these alleged invoices which are in excel format are not true invoices nor the figures mentioned in the ledgers are reliable. The noticee submits that against this very invoice Mukesh Steel Trading imported goods vide bill of entry No. 5427727 dated 24.10.2019 and the actual invoice submitted with Customs is annexed as **ANNEXURE-12** and the invoice found in the mobile of Amit Mittal is mentioned in the Show Cause Notice as RUD.9. A bare comparison of these two documents reveal that the alleged invoice found in mobile are not reliable as the value shown in figure and words are different as mentioned above. Moreover the very same value pertaining to the bill of entry no. 5427727 was under investigation by the Customs Authorities at the time of import and after detail investigation as, the same was accepted as correct value. Against these facts during the recording of statement on 10.11.2021 was confronted with the invoice found in his mobile and he allegedly admitted to representing the correct value and that the differential value shown in the invoice submitted with the customs in respect of the Bill of Entry No. 5427727 were send through Hawala to the supplier. This admission of Amit Mittal was factually incorrect. Therefore, it is evident that

the invoice mentioned as RUD 9 and ledger as RUD 15 cannot be taken as representing the correct value.

20. The Show Cause Notice essentially alleged under valuation and therefore, it is imperative to examine as to whether the value declared in the respective bills of entry are liable to be rejected under Rule 12 and the same are re-determined under Rule 3 and 9 of CVR, 2007 based on the alleged worksheet, invoices found in the vivo mobile phone and statements of the noticees.
21. The noticee states that there is absolutely no ground which entitles the department to reject the transaction value. It submitted that under the Act, customs duty is chargeable on goods and according to Section 14(1) of the Act the assessment of duty is to be made on the value of the goods. The value according to Section 14(1) shall be the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and the price is the sole consideration for the sale.
22. Rule 3 of the CVR, 2007 provides that subject to Rules 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. It further provides that the Value of imported goods under sub-rule (1) shall be accepted:-
- Provided that:-
- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which
 - (i) are imposed or required by law or by the public authorities in India; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
 - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
 - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
 - (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below:-

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods,

in sales to unrelated buyers in India;

23. (ii) the deductive value for identical goods or similar goods;
(iii) the computed value for identical goods or similar goods;

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Thus it is evident that Rules 4 to 9 can be applied only when the transaction value is not found to be acceptable. In the present case there is no basis for rejecting the transaction value.

23. Rule 12 provides for the rejection of the declared value. The present case fulfills all the conditions for acceptance of the declared value and there is no other condition which could entitle the Department to reject the same. The Rule 12 is reproduced below:

12. Rejection of declared value. — (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. — (1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

- (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- (c) the sale involves special discounts limited to exclusive agents;
- (d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;
- (f) the fraudulent or manipulated documents.

24. The Hon'ble Supreme Court in the case of *Union of India v. Mahindra and Mahindra Ltd.*, reported in 1995 (76) ELT 481 (SC) considered the question relating to valuation of certain components of machinery and held as follows:-

"Ordinarily the Court should proceed on the basis that the apparent tenor of the agreement reflects the real state of affairs The short question is whether the Revenue has succeeded in showing that the apparent is not the real and that the price shown in the invoices does not reflect the true sale prices and so Section 14(1)(b) of the Act was properly invoked"

25. The Hon'ble Supreme Court while considering the provisions of Customs Valuation Rules, 1988 has held in the case of *Eicher Tractors Ltd.* reported in 2000 (122) ELT 321 (SC) that unless the price actually paid for the particular transaction falls within the exceptions in Rule 4(2), the Customs authorities are bound to assess the duty on the transaction value. Both Section 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in Section 14(1) and particularized in Rule 4(2). Rule 4(1) speaks of the transaction value. Utilization of the definite article indicates that what should be accepted as the value for the purpose of assessment of customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of Rule 4(1) must, therefore, be read as referring to the 'particular transaction'. It is only when the transaction value under rule 4 is rejected, then under Rule 3 (ii), the value shall be determined by providing sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent rules. Rule 3 of the Customs Valuation Rules 2007 is identical to the earlier Rule 4 of CVR, 1988.

26. Thus, a bare reading of Rule 3(2) it is clear that mandate has been cast on the authorities to accept the price actually paid in respect of the goods under assessment as the transaction value if does not fall under the exceptions provide under Rule 3(2). Therefore, it follows that unless the price paid for the particular transaction falls within the exception the authorities are bound to assess the duty on the transaction value.

27. There is no allegation or finding that any of the clauses of proviso to Rule 3(2) which would enable the Department to reject the transaction value are applicable to the facts of this case. There are no restrictions as to the disposition or use of the goods by the buyer. There is no evidence that the sale or price is subject to any condition for which a value cannot be determined in respect of the goods being valued. There is no evidence that any part of the proceeds of any subsequent re-sale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller. There is no evidence nor is there any finding that buyer and seller are related to each other. Rule 3(2) mandates that the transaction value of imported goods shall be accepted provided it is not hit by any of the clauses of the proviso. As such, the Revenue authorities are bound by law to accept the transaction value.

28. It is settled law by the following four decisions of the Hon'ble Supreme Court that unless there is additional consideration involved or any of the exceptions of Rule 4(2) are attracted, transaction value cannot be rejected:

- i. Eicher Tractors Limited 2000 (122) ELT 321 (SC).
- ii. Commissioner of Customs, Mumbai Vs. Bureau Veritas 2005 (181) ELT 3.
- iii. Tolin Rubbers (P) Limited Vs. Commissioner of Customs, Cochin 2004 (163) ELT 289 (SC).

All these decisions of the Hon'ble Supreme Court clearly lay down that if the circumstances mentioned in proviso to Rule 3(2) are not applicable, the Department is bound to assess the duty under transaction value. Therefore, unless the price actually paid for the particular transaction falls within the exceptions mentioned in Rule 3(2), the Department is bound to assess the duty on the transaction value. The primary basis for Customs Valuation is the transaction value, i.e., the price actually paid or payable for the goods when sold for export to the country of importation subject to adjustment under Rule 9.

29. The noticees submit that the Show Cause Notice proposes to substitute the declared value with that of the value allegedly found in the worksheet/alleged actual invoice in the mobile phone of Mr. Amit Mittal, taking the same as transaction value under Rule 3 of CVR, 2007 and wherever such value was not available, the Show Cause Notice has proposed to apply Rule 9 of CVR, 2007. In this regard it is submitted that for substituting the similar value with a particular value, the department is required to produce the respective invoices with which they wish to replace the invoice submitted at the time of clearance of goods submitted by the Noticees. There is no actual invoice available on record and therefore, merely having some invoices in the mobile phone and certain details in the worksheet do not make them actual invoice for the purpose of acceptance substituting the transaction value. There is no verification made by the department from the overseas supplier by way of export declaration negating the truthfulness of the invoices submitted with the customs at the time of clearance. It is pertinent to mention herein that it is not the case of department that the invoices which were submitted by the noticees at the time of clearances with the customs are not the invoices which had accompanied the goods. Once those invoices are issued by the supplier of the goods, the same cannot be rejected later on alleging that some other

invoices representing the true value are to be considered for the purpose of assessment.

30. The Show Cause Notice is also not maintainable for another reason as well. The Bills of Entry in question are finally assessed by the Proper Officer. The assessment had been carried out after examination, verification of documents including the COO and only after satisfaction of the Proper Officer, the value in respect of maximum number of Bills of Entry were re-assessed and duty collected as per re-assessment. Hence, all such assessment attained finality. Now, after clearance of goods, the DRI cannot allege that the assessment in respect of these very Bills of Entry is to be again re-assessed with having challenging the earlier assessment.

31. Section 47 of the Customs Act provides that the proper officer of Customs is to allow clearance of the goods only after satisfying him that the goods are not restricted and prohibited. This satisfaction is made by the proper officer by examination of the documents; enquiries made by him regarding the value, description or otherwise, reference to the provisions of the Customs Act and the policy, etc. and by the examination reports of the goods. If necessary, he is also entitled to send samples for testing by the Customs Laboratory or any other laboratory. After all such enquiries, he takes a conscious decision that the goods are not restricted and prohibited and on the basis of that satisfaction, gives an order for clearance of the goods on payment of duty as assessed by him. It has been held in a number of cases that this function is not a pure, administrative function, but has the attributes of exercise of quasi-judicial power. The impugned goods have been assessed to Customs Duty under Section 47 of the Customs Act. The assessment Orders passed under Section 47 of the Customs Act have become final and binding on the Department, as no appeal against those Orders have been preferred by the Department. In the matter of **C.C. Vs. Arvind Export (P) Ltd. -2001 (44) RLT 32 (CEGAT -LB)**, the Larger Bench of the Tribunal has held that the exercise of Power under Section 47 of the Customs Act has necessarily to be viewed as a quasi-judicial exercise of Power. The Larger Bench has held, relying upon the judgment of the Madras High Court in the case of **Best & Crompton Engineering Vs. CC, Madras -1997 (93) ELT 21 (Mad)**, as under:-

"Para 6..... "The exercise of power under Section 47 either way has the consequences of conferring or denying rights to a citizen and correspondingly certain rights or obligations vest with the Department. An exercise of power with such consequences has necessarily to be viewed as a quasi-judicial exercise of power and in the absence of any specific provision or power conferred upon such officer to review or alter or cancel the said order, such order cannot be said to be an administrative order."

32. In case, if the Department, aggrieved by the Order, does not appeal against the order and instead resorts to reopening of the matter by issuance of a fresh Show Cause Notice it would create an absurdity in law as the possibility of two quasi-judicial orders opposed to each other may come into existence in respect of the same imports at one given point of time. This can never be the intention of any legislation. In the present case quasi-judicial assessment order was passed on the Bills of Entry which have attained finality and the same have not been reviewed in exercise of power under

Section 129-D of the Customs Act. In the matter of **Kalinga Gases Vs. CC - 2004 (170) ELT 252 (T)**, the Tribunal has clearly held in Para 4:-

"The order passed by the Assistant Commissioner under Section 47 was comprehensive and covered all these liabilities in relation to the goods. If the department was aggrieved by the said order, the remedy available to them was under Section 129D, which enabled the Jurisdictional Commissioner to exercise his revisional power and call upon his subordinate officer to file an appeal to the Commissioner (Appeals). The department did not resort to this remedy. Instead, they issued a Show Cause Notice for confiscating the goods and the vehicle as also to penalise the importer on the ground of misdeclaration in Bill of Entry. The correctness or otherwise of the declaration by the importer stood already decided by the assessment order issued under Section 47, which could not be reopened through Show Cause Notice. It could have been done only by recourse to Section 129D. This is precisely what was held by the Bombay High Court in the cited case of *Popular Dychem* (supra) and by this Tribunal in the case of *Decor India* (supra). Ld. Counsel has succeeded in substantiating his plea that the Show Cause Notice proceedings are not maintainable in view of the finality of assessment on the subject Bill of Entry under Section 47 of the Act. Ld. Commissioner of Customs has rejected the above plea of the appellants by relying on the Supreme Court's judgment in *Candid Enterprises* (supra), wherein the Court, dealing with an application for condonation of delay of appeal, invoked the principle enshrined in Section 17 of the Limitation Act, which was, that fraud nullified everything. I am at a loss to understand as to how such a principle under the Limitation Act could be adopted in the present case....."

In the present case:

The fact that the description of goods, documents like COO and value declared have already been examined by the proper officer is not in dispute. The proper officers allowed the clearance of the goods after applying his mind. Thus the order of assessment passed under Section 47 of the Act is final and binding upon the Department as the same has not been challenged in accordance with the provisions of the Customs Act, 1962. It is submitted that by questioning the value of the goods and the COO at this belated stage, the Department in fact is questioning and/or disputing the Orders of the Department itself passed under Provisions of Section 47 of the Act without challenging the same as provided under Section 129-D(2) of the Act. Therefore, in view of the aforesaid case law cited the present Show Cause Notice is not maintainable and sustainable under the provision of the Customs Act, 1962.

33. It is also pertinent to mention here that Hon'ble Supreme Court has considered the question as to whether refund of customs duty can be claimed under Section 27 of the Customs Act without challenging the Assessment Order in the case of **Priya Blue Industries Vs. CC (P) - 2004 (172) ELT 145 (SC)**. It has been submitted before the Supreme Court by the Appellants that if the assessment is not correct, a party could file a claim for refund and the correctness of the Assessment Order can be examined while considering the claim for refund. It was further submitted that wording

of Section 27, regarding filing of a claim of refund within a period of six month also showed that a claim for refund can be made even though no appeal had been filed against the Assessment Order. The Supreme Court found itself unable to accept these submissions. The Supreme Court has held that once an Order of assessment is passed, the duty would be payable as per that Order. **"So long as the Order of assessment stands, the duty would be payable as per that order of assessment. A refund claim is not an appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an Assessment Order."** The Supreme Court also did not find any substance in the contention that provisions under Section 27 of the Customs Act for a period of limitation indicates that a refund claim could be filed without filing an Appeal. The ratio of the judgment in **M/s. Priya Blue Industries Ltd.** case is that once an order of assessment is passed the duty would be payable as per that order. Thus duty cannot be demanded by issuing a Show Cause Notice under Section 28 of the Customs Act, which also like Section 27 of the Customs Act, 1962, provides a time limit for demanding the duty. If the refund claim cannot be filed, the duty of demand also cannot be made under Section 28 of the Customs Act so long as the Order of Assessment stands. A Show Cause Notice for demanding duty is not an appeal proceedings and the Officer considering such notice cannot sit in appeal over an assessment made by a competent Officer. The Officer adjudicating the Show Cause Notice cannot also review Assessment Order. In view of this legal position the Show Cause Notice is bad in law and deserves to be vacated.

34. The Appellate Tribunal in the case of **Wipro Ltd. Vs. CC, Chennai, 2005 (70) RLT 833 (CESTAT)**. The Tribunal has held as under:-

"The Appellant's contention that the assessment done on the Bill of Entry filed on 01.06.1998 is final and no demand can survive until and unless the assessment order is reviewed by the department is correct. The Honourable Apex Court in the case of Priya Blue Industries Ltd. Vs. CC, (Preventive) reported in 2004 (64) RLT 321 (SC) = 2004 (172) ELT 145 (SC) have held that refund claim contrary to assessment order not maintainable without order of assessment having been modified in Appeal or reviewed under Section 28 of Customs Act, 1962". On the same lines, Revenue also cannot demand duty without order of assessment having been modified in Appeal or reviewed under Section 28 of the Customs Act, 1962. Even the other case laws cited by the learned counsel are relevant. Even on this ground alone, the order-in-original is liable to be set aside."

35. The Tribunal has held the same view in **Superpack Vs. Commissioner of Customs 2006 (193) ELT 354 (T)** it has been held that since the Department did not challenge the assessment and in fact took a conscious decision not to challenge the Order passed on Bill of entry, the differential duty demand for the normal period is not sustainable in terms of judgment in Priya Blue Industries case. It has now been settled by the Tribunal, that once the Bill of Entry has been assessed, the Department cannot demand differential duty without the Order of Assessment having been modified in appeal or reviewed under Section 129 D of the Customs Act. As all the Assessments Orders passed on all the Bills of Entry involved in the present

matter have not been modified nor reviewed, no differential duty can be demanded from the Noticee by way of issuing the Show Cause Notice.

36. A large number of Bills of Entry of the Noticees were cleared after enhancing the value mentioned therein after making inquiry which was required by the proper officer. From the provisions of Customs Act it becomes very clear that if the proper officer has reasons to discard the declared value and if he loads the value after making enquiries as he deemed fit, then further proposal to re-load is not permissible. The Hon'ble CESTAT in the case of **CC Vs. Lord Shiva Overseas reported in 2005 (98) ECC 50** has held that any further proposal to reload the value once the declared value was rejected and loading was done, cannot be approved since no ground of earlier enquiry being inadequate or otherwise doubted or taken to be incorrect was shown. The Hon'ble CESTAT again in the case of **Hitaishi Fine Craft Vs. C.C. reported in 2002 (148) ELT 364** has held that when a bill of entry was assessed and declared value enhanced then further proposal by a Show Cause Notice by DRI cannot be upheld. This view was also reiterated by the Hon'ble Larger Bench of CESTAT in the case of **CC, Kochin Vs. Arvind Export reported in 2001 (130) ELT 54 (LB)** wherein it was held that the proper officer was duty bound to make such inquiries as he deemed fit, including inquiry about the nature of goods, its classifications, contemporaneous values, market value etc. and then resort to an assessment of loading. Piece meal value loading and re-adjudication is not envisaged under the Customs Act and cannot be upheld mere so when valuation has been determined on the Bill of Entry assessed would be an order appealable adjudication order. The Supreme Court in **Mohan Meakin Ltd. Vs. C.C.E. 2000 (115) ELT 3 (SC)** has held that there was an obligation on the adjudicating authority to find out the market value of the goods imported and to collect all duty and other charges payable on the goods before releasing the goods on payment of redemption fine. Having released the goods, it is not open to the Collector to initiate another proceeding to recover the so called differences in valuation. If the collector failed to make a proper enquiry as to the market value of the goods and released the same after halfhearted adjudication. Halfhearted adjudications and failure to make proper market inquiry if it is to be believed, then how the proper officer loaded the value. The Supreme Court did not approve of the halfhearted adjudication.
37. The Appellate Tribunal has held in the case of **Bhagwati Electrical Enterprises & Ors. Vs. Commissioner of Customs, 2005 (102) ECC 325 (T)** that issue of valuation of the goods cannot be reopened and cannot be agitated again and again. The Tribunal observed that "If that is allowed, there will not be any end to the number of proceedings..... There should be finality to litigation. No doubt, when the investigation is not proper, the cause of justice suffers. That is no reason to have multiplicity of proceedings, which is against the public policy." In the present matters also, the goods were duly examined by the proper officers and they were found to be tallying with Bill of Entry, Packing list and Bill of Landing. In some cases samples were drawn and no further action was taken by the Department which means that the test report of the samples confirmed the quality of the goods imported. Further the proper officers had loaded the value declared by the Noticee in many bill of entries which goes to show that the enquiry/investigation was conducted by the Department and there after

the value was enhanced. In view of these facts, it is not open to the Department to claim now that the value is further to be enhanced. The valuation has reached finality as the same was not reviewed by the Department under Section 129-D of the Customs Act. No new proceeding is allowed under the law. The Show Cause Notice deserves to be quashed on the ground alone.

38. All the goods were properly opened and examined to verify that goods were as per the description given on the bill of entry, invoice, packing list and bill of lading. The goods were accordingly examined by the proper Officer who had found them as per bill of entry, invoice, packing list and Bill of lading. Sometimes samples were also drawn for testing. With such examination report on bills of entry recorded by the proper officer of the customs after opening the container and examining the goods, the Department cannot now allege that there was mis-declaration on the part of the Petitioner. Thus the extended period of limitation is not invocable in this matter.
39. In the case of **Pahwa Chemicals Pvt. Ltd. Vs. CCE 2005 (189) ELT 257 (SC)**, the Supreme Court has reiterated that "mere failure to declare does not amount to willful mis-declaration or willful suppression. **There must be some positive act on the part of the party to establish either willful mis-declaration or willful suppression. When all the facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no willful mis-declaration or willful suppression.** If the Department felt that the party was not entitled to the benefit of the Notification, it was for the Department to immediately take up the contention that the benefit of the Notification was lost".
40. The Tribunal has consistently been holding that if the goods had been examined by the Customs officers, extended period of limitation is not applicable. In a very recent decision in the case of **TTK Prestige Ltd. Vs. Commissioner of Customs 2005 (188) ELT 385 (T)** has been held by the Tribunal that there is no justification for invoking the larger period to demand the duty, since the goods had been examined by the Customs officers and allowed to be exported. Similarly in **CC, Amritsar Vs. Jyoti Industries Ltd. 2005 (188) ELT 88 (T)** when the goods were examined by the Customs officers and found to be as per the description given in invoice and bill of entry, the Tribunal has held that the importer is not to be held liable for suppression of facts for any mistake on the part of customs officer in proper assessment of goods and extended period is not invocable.
41. It has been held by the Hon'ble Supreme Court in the following cases: (i) **Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay** reported in 1995 (78) ELT 401 (SC), (ii) **Collector Vs. HMM Ltd** reported in 1995 (76) ELT 497 (SC), (iii) **Padmini Products Vs. CCE** reported in 1989 (43) ELT 195 (SC), (iv) **Champhar Drugs** reported in 1989 (40) ELT 76 (SC), and in the case of **CCE Vs. Surat Textile Mill** reported in 2004 (167) ELT 379 (SC), that for the purpose of invoking the extended period of limitation, the authorities must specify whether they consider it a case of suppression or mis-statement or collusion and secondly they must specify what has been suppressed from the authorities and the particulars must be given so as to comply with the ingredients of suppression, collusion, fraud or mis-statement. The Show Cause Notice does not give any evidence or even any allegation of collusion with the officers of Customs. The entire

Show Cause Notice is based on the allegation of mis-statement. The goods were examined by the Customs authorities from time to time and they had checked the value of the goods and in most cases the declared value were not accepted and on the basis of the investigation made regarding the international price of the constituent metals and analyzing the contemporaneous price, the value were enhanced. Therefore, there is no justification for invoking the extended period of limitation. The Noticees have prepared a chart to indicated the declared value, assessed value and the further proposed value in the Show Cause Notice as **ANNEXURE-13**.

42. So far as the allegation of authenticity of certain certificate of origin for certain consignments pertaining to the imports from Malaysia are concerned the allegation that the same are not the genuine certificates are based on conjectures and mere assumption based on a mail received from Principal Assistant Director Trade and Industry Cooperation Section, Trade and Industry Support Division MITI vide email dated 14.04.2021. The Show Cause Notice itself at Para 16 says that as per the mail it stated that "based on their assessment 87 out of 143 copies of COO are not authentic and they were not issued by MITI". The language of the mail itself shows that the confirmation with regard to the COO not being genuine is not forthright. Merely on the basis of assessment, COO cannot be rejected. It is not the allegation in the Show Cause Notice that the goods in question are not manufactured in Malaysia and therefore, their origin is doubtful. In any case, the Noticees have no role to play in obtaining the COO as it is the responsibility of the supplier to approach their issuing office. Although the Show Cause Notice mentions such verification report at Para 16 as RUD 24. However, no such RUD number is even mentioned in Annexure-X List of RUDs annexed with the Show Cause Notice. In fact the RUD numbers are 1 to 23 only and there is no such report annexed as RUD 24 with the Show Cause Notice. Since there is neither any document enclosed as RUD 24, nor any such document in list of RUDs of the Show Cause Notice, no cognizance taken in the alleged verification report. If the so-called verification report is discarded then there is virtually no evidence to show that the goods imported from Malaysia are of Chinese origin. Moreover, there is no denial in the Show Cause Notice that these goods are not manufactured in Malaysia and that the manufacturer shown in those import documents are not in existence. Malaysian supplier. It is also unbelievable and against the common business sense that if the good are available in Malaysia itself then importing the same first from China to Malaysia and thereafter, the same to be shift to India as the cost incurred for import from China to Malaysia would not be cost effective and therefore no business can do this.

43. The noticees submit that the allegation of transfer of the differential value through the representative of Mr. Vick Jiang is also based on the alleged worksheet and to support the said allegation the noticee Amit Mittal was fed with a fictitious name of one person who was said to be the representative of Mr. Vick Jiang to whom Sh. Amit Mittal accepted to have paid the differential value of the imported goods in cash in India. This alleged acceptance by Amit Mittal is clearly a motivated statement recorded from him under threat and duress. Even if we accept the said statement of Amit Mittal to be true then the question would arise as to why the DRI did not record statement from the said person. It is pertinent to mention herein that the reference to alleged differential amount are too high and the same went

on for a considerable long period and therefore, the contact details of the said person cannot be said to be not available. This shows that the said person was fictitious and no such amount of the alleged differential value was ever paid to anybody by the noticees. It is further pertinent to mention herein that the noticees indulged in such large scale under valuation then certainly unaccounted cash ought to have been recovered or at-least the account statement for the sale in India would have shown such discrepancies. The Show Cause Notice is completely silent on the same.

44. The DRI during investigation resumed certain mobile Phones of Amit Mittal which contained certain WhatsApp messages forwarded from some other mobile phone which according to the DRI belong to Amit Mittal who had accepted the same. The said messages allegedly contained certain details of telegraphic transfers which were admitted by Sh. Amit Mittal as having transferred on his direction, to the suppliers of the imported goods. The figures mentioned in those telegraphic transfers have been admitted by Amit Mittal to be the differential value against the imports made by him. These very figures were taken and added with the amounts transferred by the respective noticees to their suppliers to their banking channels and thereafter, the correct transaction value has been arrived at. It is submitted that such exercise was made in futility merely to show that the value declared by the noticees in their Bills of Entry were not the true transaction value. It is submitted that these messages or the figures retrieved from the mobile, cannot be said to be a credible piece of evidence for rejecting the transaction value and substituting the same with the mixed and matched figures calculated by the investigating agency to reflect the transaction value under Rule 3 and 9 of the CVR, 2007.
45. It is pertinent to mention herein that the documents retrieved from the mobile phone cannot be relied upon to be the authentic documents, is also evident from the fact that Sh. Ashok Kumar, Director of GEPL his statement was recorded on 02.01.2022 and during the recording of his statement, he was shown a sale contract said to have been entered between MCH and GEPL and Sh. Ashok Kumar was asked as to whether such sales contract was entered between them or not. Sh. Ashok Kumar categorically stated that no such sales contract was ever executed between MCH and GEPL. This clearly show that the documents/worksheets found in the mobile phone of Amit Mittal was nothing but imaginary documents created by Sh. Amit Mittal only to extract higher amount from the persons like Ashok Kumar who were procuring goods through him.
46. It is submitted that the investigating agency merely believed the account statement/documents found in the mobile phone of Amit Mittal representing the true transaction value without any supporting documents. The investigating agency believing into those documents forced Amit Mittal to accept the same as true and correct value and thereafter statements of other co-noticees were recorded showing them the statements of Amit Mittal accepting the same as the documents reflecting the true value. It is submitted that it was Amit Mittal who himself created statement/account statement to befool the co-noticees who were importing goods through Amit Mittal and since Amit Mittal had already communicated the value of the imported goods showing them these very account statement/documents in order to extract more value, when these co-noticees were shown the statements of Amit Mittal based on the very same worksheet/documents, it

was quite natural for them to accept these documents to be reflecting the correct value. The investigating agency ought to have gathered supporting evidence by way of export declaration or otherwise to substantiate the value shown in the account statement/document.

47. It is further submitted that the contemporaneous import data of similar goods imported into India from China Malaysia would confirm that the value declared by these noticees in their bills of entry are more or less similar and those very imports have not been questioned by the DRI till date. Copy of contemporaneous import data for the relevant period would show that stainless steel cold rolled were being imported at about the same price at which the Appellant had imported. Had there been mis-declaration to the extent it has been alleged based on the un-reliable ledger and the invoices referred to as RUD-9 and RUD-15, there would have been at least one import at the proposed value. Moreover, this very product has been under alert at various ports and that is why DGOV circulars are being issued and revised after meticulously analyzing and examining all the relevant data and thereafter clearance prices are being advised to the Port authority. In none of these circulars such huge difference in price has ever been noticed. Copy of contemporaneous data is annexed as **ANNEXURE-14**. This data of contemporaneous import would show that there are thousands of consignments imported during the same period from the very same supplier i.e. MCH Industry Company Limited, Comet International Ltd. & Sandong Menguin Huarun Import and Export Company from whom other importers have also imported the very same grade of stainless steel and value declared in those imports are between USD 700-750/PMT and all such bills of entry have been cleared without any objection and no case has been made out against them. These contemporaneous import data are required to be taken into consideration as true value representing the goods imported by these noticees as well.

GOODS WHICH NOT AVAILABLE CANNOT BE CONFISCATED:

48. As regards confiscation of goods as proposed in the Show Cause Notice it is submitted that said BEs were finally assessed and the goods were already cleared for home consumption. Admittedly, they were not physically available. It is further submitted that confiscation of goods which are not physically available cannot be ordered. Under Section 125 of the Customs Act, 1962, the department is under compulsion to give option of redemption of confiscated goods in lieu of confiscation. It specifies as -

(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:-

"To confiscate means to appropriate private property to public treasury. Thus, after confiscation the goods becomes a property of the government and the government can deal with it as it wants. Through option of redemption fine, government offers to some person to take ownership of the goods. Redemption fine is not a penalty and it has no penal connotation. In Blue Dart

Express v. Commissioner of Customs [1999 (111) ELT 102 (Tribunal)], the Tribunal observed that redemption fine in lieu of confiscation is not a fine as understood in criminal jurisprudence. Redemption fine is not a penalty in that sense. It is only an option to the person to pay an amount in lieu of confiscation. Proceeding of confiscation is a proceeding against the goods, they are proceedings in rem. "In rem" literally means against the property, not against the person. A proceeding in rem is one taken directly against the property, and has for its object the disposition of the property, without reference to the title of individual claimants. In *CC v. Bhooramal* (2000(125) ELT 118 (Mad)) it was held that confiscation proceeding can be initiated even without ascertaining as to who is the real owner of goods. Thus, the proceeding of confiscation is a proceeding against the goods and goods only. When goods are not physically available, how can option of redemption be ordered. Thus, in case, goods are not physically available, confiscation cannot be ordered.

In the case of *Finesse Creation Inc* (2009(248) ELT 122 (Bom)), the Hon'ble Bombay High Court has held that in absence of goods confiscation cannot be ordered. The observation is as under:-

"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fines. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption, once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in *Weston* (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed." The above decision has also been maintained by the Hon'ble Supreme Court as reported in (2010 (255) ELT A120 (SC)). Decision of the CESTAT in the case of *Raja Impex (p) Ltd* [2008(235)ELT 623 (T-LB)] is also relied upon. In view of the above decision, in the instant case, the confiscation cannot be ordered as goods are not physically available. In the case of *Bramhani Industries Ltd* [2018(363) ELT 277(Tribunal Chennai)] it has been held by the CESTAT that-

"As per the law laid down by higher appellate Courts, when the goods are not available, there can be no confiscation, unless and of course, they have been cleared under bond etc. which is

admittedly not the case herein. This being so, that part of the impugned order No. 138/2010, dated 4-3-2010 ordering confiscation of impugned goods as also ordering redemption fine of Rs. 1,00,00,000/- under Section 125 of the Customs Act is not justified by law and is therefore set aside."

In the case of P.B. Enterprises [2017(355) ELT 430 (Tri-Del)], it has been observed by the CESTAT that:-

"However, in respect of the earlier consignment covered by Bill of Entry No. 41760211, dated 27-9-2011, the goods involved have already been cleared and were not available for confiscation at the time of passing the impugned order. Consequently, we are of the view that only the differential customs duty can be demanded in respect of the earlier consignment. In the absence of the goods, no order of confiscation under Section 111(m) can be made on these goods.

Consequently, the redemption fine imposed on the same is set aside.

In view of the above decisions, the issue of confiscation and redemption fine in respect of goods not physically available is no more res-integra. It is very well settled that no confiscation can be authorised for the goods which are not physically available and also no redemption fine can be imposed.

GOODS ALREADY CLEARED FOR HOME CONSUMPTION AGAINST FINALLY ASSESSED BILL OF ENTRY CANNOT BE CONFISCATED:-

49. In the Show Cause Notice, the confiscation of goods which were already cleared by the customs after assessment and payment of duty has been proposed under sub-clause (m) of Section 111 of the Customs Act, 1962 which reads as under

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

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

50. A plain reading of above provisions indicates that only 'imported goods' can be confiscated in terms of various sub clauses of Section 111 of the Customs Act, 1962. Words and terms used in the opening of the said Section clearly indicate that they provide to confiscate the improperly imported goods. In simple words only those goods which fall within category of 'imported goods' can be confiscated under Section 111 of the Customs Act, 1962. The goods which are not covered in the category of imported goods' cannot be confiscated under Section 111 of the Customs Act, 1962. It is further seen that the term 'imported goods' finds statutory definition under Section 2(25) of the as-

"imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption".

51. It is clear from the above that the term 'imported goods' has temporal element, i.e., goods brought in to India from outside India will be termed imported goods only for a period from the time goods are imported to the time when they are cleared for home consumption. After clearance for home consumption, character of 'imported goods' ceases. It indicates that the goods brought from the outside India would not be termed as 'imported goods' once they are cleared for home consumption. As the goods in the present case were properly assessed and cleared for home consumption by the Customs, such goods cannot be treated as 'imported goods'. Therefore, the said goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962. In this context reliance is placed on the following judicial decisions:-

a. In the case of *Bussa Overseas & Properties Pvt. Ltd.* [2004 (163) ELT 304 (Bom)] it has been ruled by the Hon'ble Bombay High Court that goods brought into India from outside and were allowed to be cleared for home consumption cannot be treated as "imported goods" and its confiscation under Section 111 of the Customs Act, 1962 would not be sustainable. The relevant portion of the decision is reproduced below:-

"7. The learned counsel urged that once the goods are cleared for home consumption, then the goods covered by the consignments cease to be imported goods in accordance with the definition of expression 'imported goods' under Section 2 of the Act and consequently such goods are not liable for confiscation. There is considerable merit in the submission of the learned counsel. The goods lose its character of imported goods on being granted clearance for home consumption."

The said decision has also been upheld by the Hon'ble Supreme as reported under 2004 (163) ELT A160 (SC).

b. In the case of *Southern Enterprises* [2005 (186) ELT 324 (T1)], the CESTAT has observed that the goods which have been cleared for home consumption cannot be confiscated as they ceased to be imported goods as defined under Section 2 of the Customs Act.

c. In the case of *KB. Tyres* Neutral Citation-2023: PHHC:124090 it has been held by the Hon'ble Punjab & Haryana High Court as:-

"9. As per definition under Section 2(25) of the Act, the term 'imported goods' clearly changes the nature once it is cleared for home consumption. Admittedly, in the case the goods were duly cleared in favour of the importer and subsequently sold to the present petitioner for home consumption. Coupled with the above, the authorities have not challenged the sale made by said importer in favour of present petitioner. Therefore, the respondents were not within their right to seize the goods."

d. The CESTAT in the case of *Subir Modak* [2022-TIOL-75-CESTAT-KOL] has held that goods of foreign origin if they have been imported and cleared for home consumption, they cease to be imported goods thereafter and importer cease to be importer thereafter- therefore no duty can be assessed in respect of already cleared goods.

In view of the above settled legal position the proposal of confiscation of goods in the Show Cause Notice is improper and illegal as the said goods were already cleared by the Customs for home consumption. Hence, the proposal for confiscation of the goods already cleared is liable to be quashed.

52. In the SCN, the penalty under Section 114AA of the Customs Act, 1962 has also been proposed. Section 114AA of the Customs Act, 1962 reads as below:-

Proposal for Penalty under Section 114AA of the Customs Act, 1962.

Section 114AA reads as under:-

"114AA. Penalty for use of false and incorrect material-if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

b) Provisions of Section 114AA will be applicable only when it is proved with the help of cogent evidence that the noticee had, knowingly or intentionally, made, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of the business relating to clearance of the impugned goods.

c) The SCN has failed to demonstrate with evidence that the alleged actual country of origin of the goods was within their knowledge. Further, the SCN is vague & general and does not specify as to whether:-

- i. Noticee had made or signed or used any declaration, statement or document which was false or incorrect in any material particular; or
- ii. Noticee had caused to be made, signed or used any declaration, statement or document which was false or incorrect in any material particular.
- iii. The fact remains that the Bill of Entry for clearance of the impugned goods were filed on the basis of the import documents received from the suppliers. It is the view of the department based on one sided investigation. Such a view/opinion does not make the import documents false or incorrect in material particulars.

d) Without further prejudice to the above, it is stated that the purpose of introduction of Section 114AA in the Customs Act, 1962 w.e.f. 13.07.2006 vide the Taxation Laws (Amendment) Act, 2006 was different i.e. to check frauds in export as evidenced by the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 - 06) in relation to the Taxation Laws (Amendment) Bill, 2005 as under:-

Clause 24 (Insertion of new Section 114AA)

62. Clause 24 of the Bill reads as follows: After Section 114A of the Customs Act, the following Section shall be inserted, namely: "114AA. Penalty for use of false and incorrect material- if a

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

t) The information furnished by the Ministry states as follows on the proposed provision:

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new Section 114 AA is proposed to be inserted after Section 114A."

g) It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under: "The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under Section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

h) The Ministry also informed as under: "The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

i) The Committee observes that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty up to five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise

the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

j) In this regard, we also rely upon the ratio of Hon'ble Tribunal Order in the case of M/s Access World Wide Cargo reported as 2021 (8) TMI 640 - CESTAT BANGALORE wherein it was held, inter alia, that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). It was held, inter alia, as under:

"6. Further, I find that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). I also find that in the present case, the Department has failed to prove that there was a mala fide and willful misrepresentation by the Customs Broker. It seems that the Commissioner (Appeals) has totally misunderstood the facts and has wrongly observed that the appellant (Customs Broker) and the exporter have been operating from the same premises and have an identical ICE Code which leads one to suspect the bona fides of the appellant. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the appellant is involved in the illegal report whereas the appellant is only a Customs Broker who has filed the shipping bills on the basis of the documents furnished by the exporter. Therefore, in view of these facts, the imposition of penalty itself is not sustainable in law and therefore I set aside the imposition of penalty the appellant by allowing the appeal of the appellant."

k) They further refer to the Hon'ble CESTAT order in the case of M/s Interglobe Aviation Ltd reported as 021 (7) TMI 1027 - CESTAT BANGALORE wherein it was held, inter alia, as under:

"20. The appellants also contended that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section 114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable."

l) The Noticee also refer to the Hon'ble CESTAT order in the case of appeal filed by the department against M/s Sri Krishna Sounds & Lightings reported as 2018 (7) TMI 867 - CESTAT CHENNAI wherein it was held, inter alia, as under:-

"7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of

the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 11444 since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection fled by respondent also stands dismissed".

In view of the above, in the facts of the present case which relates to import of goods, penalty is not imposable on us under Section 114AA on the above ground as well.

m) Without prejudice to the above, it is stated that in the factual matrix of this case, there is no evidence that the noticee had knowledge of the actual origin of the goods. Penalty under Section 114AA of the Customs Act, 1962 can be levied only if the person has knowledge and intention in commission and omission of the act. There is no evidence to show that the Noticee had any prior knowledge or intention to mis-declare the port of loading or country of origin. Therefore, penalty under Section 114AA cannot be imposed.

In view of the above no penalty is imposable on the Noticee under Section 114 AA of the Customs Act, 1962.

53. The noticee submit that since there was no mis-declaration either of the value of the country of origin in the respective bills of entry there is no question of imposition of penalty either under Section 111(a) and/or 114A and 114AA of the Customs Act, 1962. In any case so far as proposed penalty in the Show Cause Notice on Sh. Ravinder Kumar and Sh. Gulshan Kumar both Directors of Gulshan Exim Pvt. Ltd. under Section 112(a) and 114AA of the Customs Act, 1962 are concerned penalties cannot be imposed for the alleged mis-declaration as none of these persons were examined during investigation. However, none of the persons whose statements were recorded have stated with regard to the alleged mis-declaration or they have dealt with the goods in any manner. Merely because both these persons happened to be Directors of M/s Gulshan Exim Pvt. Ltd. does not make them liable for penalty with any role attributable to them for the mis-declaration.
54. Now coming to the confessional statements recorded during investigation by the DRI. However, we state that his statements were coerced one and were recorded under threat of arrest. The Hon'ble Supreme Court in the case of **K.I. Panunny Versus Asstt. Collr. (Hq.), C. Ex. Collectorate, Cochin** 1997 (90) E.L.T. 241 (S.C.) has held that Confessional statement of accused, if found to be voluntary, can form the sole basis for conviction, If retracted, Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful - If found to be voluntary and truthful, inculpatory portion of retracted confession could be relied upon to base conviction - However, prudence and practice require that Court should seek assurance by way of corroboration from other evidence adduced by prosecution - A general corroboration would suffice, and not for each detail contained in the confessional statement. It was further held that wealth of details contained therein is by itself not an assurance of its voluntary character. The Hon'ble Supreme Court of India in **Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Limited & Others**, (supra) in which their Lordships held that inculpatory statement made by a person under Section 108 of the Customs Act has no tinge of inadmissibility if the person while making it is not in police custody, but

Nevertheless the caution in law is that such a statement should be scrutinized by the Courts in the same manner as confession made by an accused person to any non-police personnel. It was held that such a statement has to pass the tests prescribed in Section 24 of the Evidence Act.

13. RECORDS OF PERSONAL HEARING:

13.1. Following principal of natural justice Personal hearing (i.e. PH) in the matter was granted to all the noticees on 05.04.2024, 10.04.2024 and 23.04.2024. Details of the PH are as under:

- (i) **1st and 2nd PH were conducted on 05.04.2024 & 10.04.2024 respectively:** None of the noticees appeared to attend the PH on both the occasions.
- (ii) **3rd PH conducted on 23.04.2024:** Shri Prem Ranjan Kumar, Advocate appeared on behalf of all the noticees i.e. Notice No. 1 to 10. Besides his written submission dated 18.04.2024 he stated that the basis of valuation of the goods has not been made in SCN as per Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. He also requested to provide RUD 24 (MITI communication).

14. DISCUSSION AND FINDINGS:

14.1. I have carefully gone through the SCN bearing F.No. GEN/ADJ/COMM/42/2023-Adjn, dated 08.05.2023; issued by the Commissioner of Customs, Custom House, Mundra, the relied upon documents, submissions made by the Noticees, legal provisions and the records available before me. The issues before me to decide are as under:

- (i) Whether the value of the impugned goods declared in the subject bills of entry is liable to be rejected in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for being lesser than the actual transaction value, and liable to be redetermined in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (ii) Whether the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended is to be denied to the importers on the charges that the impugned goods are of Chinese origin imported from Malaysia under the subject bills of entry;
- (iii) Whether the duty of Rs. Demand and recover the differential duty amounting to Rs. 4,86,39,191/- (Rs. 1,35,19,002/- from M/s. MS + Rs. 1,80,83,492/- from M/s. MST + Rs. 1,59,40,908/- from M/s. Gulshan + Rs. 10,95,789/- from M/s. Dharam) short levied / short paid on the impugned goods covered under subject bills of entry, is to be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;
- (iv) Whether the impugned goods imported under the subject bills of entry valued at Rs. 36,13,93,863/- (Rs. 8,65,13,108/- imported by M/s. MS; + Rs. 12,58,13,957/- imported by M/s. MST; + Rs. 14,04,69,204/- imported by M/s. Gulshan; + Rs. 85,97,594/- imported by M/s. Dharam) are liable for confiscation under Section 111(m) of the Customs Act, 1962;

- (v) Whether the Penalties are imposable upon the noticees as proposed vide the impugned SCN.

14.2. I find that the instant case is based on investigation carried out by the DRI, Delhi that the M/s.MS (IEC 0513087818), and M/s.MST (IEC 0508066573), indulged in evasion of the Customs duty by way of undervaluation of the Cold Rolled Stainless Steel Coils and Circles falling under tariff item 7220 or 7219 of the First Schedule of the CTA, imported from China. The investigation also revealed that M/s.MS was wrongly availing the benefit of the preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 (Indo-ASEAN FTA), as the Cold Rolled Stainless Steel Coils & Circles imported by them from Malaysia and declared to be of Malaysian origin, were, in fact, of Chinese origin and were routed through Malaysia to wrongly avail the benefit of preferential duty.

14.3. I FIND THAT DOCUMENTARY EVIDENCES, ON RECORDS, AND STATEMENTS OF KEY MANAGERIAL PERSONS OF NOTICEES M/S.MS, M/S.MST, M/S.DHARAM IMPEX AND M/S.GEPL; AS DISCUSSED IN DETAIL IN FOREGOING PARAS, REVEALED THAT NOTICEES RESORTED TO UNDERVALUATION OF IMPUGNED GOODS IN ORDER TO EVADE THE DUTY OF CUSTOMS:

- (i) M/s.MS, M/s.MST, M/s.Dharam Impex and M/s.GEPL had imported stainless steel cold rolled coils from China which were procured from Chinese national Vick Jiang who is stated to be Director of M/s.MCH Steel and representative of who was a representative of M/s.Tocean Industry Limited, M/s.Guizhou Zhongruixianghe Supply Chain Co Ltd. (GZSCCL).
- (ii) Shri Amit Mittal, Proprietor of M/s.MST, used to look after all the work viz. negotiation with the supplier, sales contract, payment, Customs clearance, etc. related to import of stainless-steel products directly from China or from China via Malaysia.
- (iii) Shri Amit Mittal used to contact Shri Vick Jiang, who is stated to be employee of M/s.GZSCCL and Director of M/s.MCH Steel. Vick Jiang's signatures are available on most of the invoices & corresponding packing lists of GZSCCL and MCH Steel.
- (iv) From the WhatsApp messages between Shri Amit Mittal, Proprietor of M/s.MST and Shri Deepak Mundra, an employee their CHA, it has been revealed that Shri Amit Mittal also used to look after the work related to the Customs clearance, in respect of the goods imported by MST, MS, Dharam Impex & GEPL.
- (v) Investigation revealed that both Shri Amit Mittal, Proprietor of M/s.MST and Shri Mukesh Mittal, Proprietor of M/s. MS admitted in their respective statements that Vick Jiang used to send the commercial invoices with the actual rates/value of the coils through WhatsApp to Shri Amit Mittal for checking and he used to direct Vick Jiang about the rates/value (less than the actual & true rates/value) of the same coils to be mentioned in the parallel invoices to be issued for the Customs purposes.
- (vi) Various invoices and corresponding packing lists were recovered from the Apple mobile phone of Shri Amit Mittal seized by the DRI under panchnama dated 11.02.2020 at the office-cum-godown premises of M/s.MS, which were issued by M/s.MCH Steel to M/s.MS, M/s.MST and

- (vi) M/s.Dharam Impex. Shri Amit Mittal admitted in his statement that the invoices available in his mobile phone contained true & correct rate/value at which the stainless-steel cold rolled coils mentioned therein were imported by M/s.MS, M/s.MST and M/s.Dharam Impex. He also admitted that he used to tell Vick Jiang about the rates **(less than the actual & true rates of the coils)** for which the parallel invoice for the same coils, for submission to the Customs, was to be issued by Vick Jiang/supplier. In addition to the rates of goods, Shri Amit Mittal was also instructing Shri Vick Jiang about the importer to whom the parallel invoice was to be issued. For example, the commercial invoice Nos. MCHA191125-1 & MCHA191125-2 (two consignments of the same Sales Contract No. MCHA191125) found in the mobile phone of Shri Amit Mittal, were issued in the name of M/s.Dharam Impex. The said two commercial invoices contained the true and actual rates/value of the coils supplied by Shri Vick Jiang. Later, on Shri Amit Mittal's instructions, Shri Vick Jiang issued parallel invoice no. MCHA191125-1 to Shri Dharam Impex and the parallel invoice no. MCHA191125-2 to M/s.MS.
- (vii) **M/s.Mukesh Mittal and Shri Puneet Jain** of M/s.Dharam Impex, when confronted with the commercial invoices printed from the seized mobile phone of Shri Amit Mittal, admitted that the said commercial invoices contained the true and actual value of the coils imported by them from China through Shri Amit Mittal.
- (viii) Shri Amit Mittal, Shri Mukesh Mittal and Shri Puneet Jain admitted that the commercial invoices submitted by them to the Customs with the BEs were the parallel invoices with less than actual rate/value and the values declared by them in the BEs were not true and correct value.
- (ix) Shri Amit Mittal admitted in his statement 10.11.2021 that the values mentioned in the WhatsApp message dated 16.01.2020 sent to Sanya (his daughter), were the true and correct values of the imported Stainless Steel Coils purchased under the commercial invoices mentioned therein. The invoices mentioned in the said messages were issued by M/s.MCH Steel to M/s.MS, M/s.MST and M/s.GEPL and few of the said invoices with actual value were found in the mobile phone of Shri Amit Mittal and the values mentioned in the actual invoices matched with the values mentioned in the said message. The details of the payments made through hawala channel are also available in the other whatsapp messages of 13.01.2020 and the corresponding slips evidencing payments to the suppliers through hawala channel were also found in mobile phone of Shri Amit Mittal.
- (x) The account statements/worksheets recovered from the Vivo mobile phone the Vivo 1818 mobile phone of Shri Amit Mittal which was resumed under panchnama dated 11.02.2020 by the DRI, contain details of the period 21.12.2018 to 26.06.2019. The details of the payments through bank mentioned in the said account statements match with the payments through the bank accounts of MS, MST and GEPL to GZSCPL, MCH Steel and the Malaysian supplier on whose invoices Vick Jiang routed the goods from China via Malaysia to India. The invoice numbers mentioned in the said account statements were found to be issued to the same importer as mentioned in the said account statements and the numbers

of containers mentioned in corresponding entry match with the packing list submitted to the Customs with the BE. In the entries pertaining to GEPL, the amounts for which GEPL's bank issued LC in favour of the supplier are also mentioned and the LC value matched with the invoice submitted by GEPL to the Customs & the value declared in the BEs.

- (xi) The above-mentioned facts clearly show that the said account statements/worksheets contained true and correct account of the transactions between Shri Amit Mittal and Shri Vick Jiang/Chinese suppliers. When Shri Amit Mittal and Shri Mukesh Mittal, confronted with the said account statements/ worksheets, admitted that the said account statements/ worksheets contained details of the true and correct values of the imported goods and the payments mentioned therein were made through the bank account and through the hawala channel. They also explained various entries of the said account statements.
- (xii) **Both Shri Amit Mittal and Shri Mukesh Mittal admitted in their respective statements that the Sales Contracts available in the documents resumed during search from their premises were not the actual Sales Contracts. They stated that the original contracts with true and correct rates agreed with the suppliers were shared through WhatsApp and on directions of Shri Amit Mittal, Shri Vick use to prepare another Sales Contract for the same goods witch were lesser than true and actual rates for the official records of the importers. They admitted to have deleted the original Sales Contract from the mobile phone.**
- (xiii) Shri Ashok Mittal, Director of M/s.GEPL, during recording of his statement dated 01.02.2022, initially tried to mislead the investigation by stating that he himself was interacting with Vick Jiang for the import of goods. However, when he was confronted with the evidences like statements of Shri Mukesh Mittal & Shri Amit Mittal, whatsapp messages, the account statements etc., Shri Ashok Kumar admitted that Shri Amit Mittal used to interact with Shri Vick Jiang for the import of stainless-steel products for M/s.GEPL and Shri Amit Mittal was also handling the Customs related work in respect of the stainless steel products imported from China through Vick Jiang. Shri Ashok Kumar also admitted that the entries of M/s.GEPL available in the account statements printed from the mobile phone of Shri Amit Mittal, contained true and correct value of the goods imported by M/s.GEPL and the value declared to the Customs for which their bank had issued LC. **He also admitted that he had declared less than actual value in the BEs and he used to make cash payment for the differential value (actual & true value minus the invoice value) to Shri Amit Mittal, who transferred the same to the supplier through hawala channel. Shri Ashok Mittal also admitted that the Coils imported by M/s.GEPL from Malaysia were of China origin and the said coils were at first shipped from China to Malaysia and then from Malaysia to India.**
- (xiv) **Shri Puneet Jain, Proprietor of M/s.Dharam Impex also admitted in his statement dated 08.02.2022 that Shri Amit Mittal had introduced him to Shri Vick Jiang and the goods imported on the invoices of MCH Steel were arranged by Shri Amit Mittal from Shri Vick Jiang. Shri Puneet Jain admitted that he had declared incorrect and less than actual**

value imported goods in the BEs. He admitted that the values mentioned in the two invoices of MCH Steel issued to Dharam Impex available in the printouts taken from the Apple mobile phone of Amit Mittal, were the true and correct values of imported goods and he had paid the differential amount (true & actual value minus invoice value) in cash to Amit Mittal for transferring to the supplier through hawala channel.

14.3.1. PAYMENT OF THE DIFFERENTIAL AMOUNT (ACTUAL VALUE MINUS INVOICE VALUE) TO THE SUPPLIER THROUGH HAWALA CHANNEL:

- (i) I find that Shri Amit Mittal, Proprietor of Shri MST, Shri Mukesh Mittal, Proprietor of M/s.MS, Shri Ashok Kumar, Director of M/s.GEPL and Shri Puneet Jain, Proprietor of M/s. Dharam Impex categorically admitted that they had not declared the correct value of the imported goods in the BEs and they had declared less than actual and true transactional value in the BEs to pay less Customs duty.
- (ii) I find that said importers also admitted that the invoiced value was paid to the supplier from their bank accounts and remaining amount, i.e., actual value minus invoice value, was transferred to Vick/supplier through hawala channel. Shri Ashok Kumar and Shri Puneet Jain also stated that they used to give the differential value i.e. actual value minus invoiced value, in cash to Shri Amit Mittal for transferring the same to the supplier through hawala channel.
- (iii) I find that the WhatsApp messages recovered from the mobile phone of Shri Amit Mittal contain the WhatsApp conversation between Shri Amit Mittal and Shri Kapil, stated to be Vick Jiang's person to whom he used to pay cash for transferring to Vick/supplier.
- (iv) I find that a slip of Telegraphic Transfer recovered from the WhatsApp attachments which shows transfer of USD 95,000 to the bank account of M/s.MCH Steel on 13.01.2020 from the bank account of **South East Pacific Travel Corporation PTE Ltd.** Shri Amit Mittal admitted in his statement dated 10.11.2021 that he had got transferred the said amount of USD 95000 through hawala channel to MCH Steel. Therefore, it is evident that they **South East Pacific Travel Corporation PTE Ltd was used as channel to transfer the money to M/s. MCH.**
- (v) I find that Shri Amit Mittal in his statement dated 10.11.2021 stated that the telegraphic transfer of USD 19,936 was done on 14.01.2020 to the bank account of *Comet International Ltd Hongkong* from the *UOB, Singapore Bank* and the said amount was also transferred through hawala channel.
- (vi) I find that in respect of telegraphic transfer of USD 15000 to the Bank account of MCH Steel on 16.01.2020 from the bank account of *South East Pacific Travel Corporation PTE Ltd.* Shri Amit Mittal in his statement dated 10.11.2021 admitted to have transferred the said amount USD 15,000 to the account of MCH through hawala channel.
- (vii) I find that the three slips regarding the aforementioned transactions were sent by Shri Kapil in the WhatsApp messages on 14.01.2020, 14.01.2020 and 16.01.2020 respectively to Shri Amit Mittal. Prior to the said messages, Shri Amit Mittal had shared the details with Shri Kapil

about the recipient's bank account and the amounts to be transferred to the said accounts.

- (viii) I find that snapshots of messages between Shri Vick and Shri Amit Mittal recovered from the seized Vivo mobile phone of Shri Amit Mittal shows that Shri Vick Jiang sought confirmation from Shri Amit Mittal whether the said amount of USD 95,000 was paid by him.
- (ix) **I find that Shri Mukesh Mittal** in his statement dated 21.02.2022, admitted that Shri Kapil was a hawala agent and the entries of payments available in the said ledger were the amounts paid to Shri Kapil for transferring the same to the supplier through hawala channel.
- (x) I find that both **Shri Amit Mittal and Shri Mukesh Mittal** admitted in their respective statements that the amounts mentioned the said account statements/worksheets were paid to the supplier through the bank accounts of the importer and through the hawala channel. The payments made by M/s.MS, M/s. MST & M/s. GEPL through their bank accounts to the supplier matched with the entries of the bank payments available in all the said account statements/worksheets. Both Amit Mittal and Mukesh Mittal admitted that the entries of "Agent" available in the worksheets were of the amounts transferred to Vick Jiang through hawala channel towards the difference of the actual value minus invoice value of the imported goods. In the said worksheets details of payments of USD 3,60,967 through hawala channel during 21.12.2018 to 26.06.2019 are available.
- (xi) I find that the account statement/worksheet recovered on 16.08.2021 from Vivo mobile phone of Shri Amit Mittal available, revealed that the opening balance as on 21.12.2018 was USD 28,751 (advance with the supplier), however, the advance of USD 28,751 to the supplier was not recorded in the books of accounts of the importers, which indicates that prior to 21.12.2018 also, payments through hawala channel for the difference of the actual value and invoice value were made to Vick Jiang/supplier.
- (xii) I find that the Balance Forward entry of 46459 USD shown in seized Vivo mobile phone of Shri Amit Mittal indicated that as on 26.06.2019, advance amount of USD 46459 was available with the supplier. The said advance of USD 46459 was not shown in the books of accounts of the importers. Shri Amit Mittal in his statement recorded on 16.08.2021 stated that he had prepared similar worksheets for the subsequent period also and after search of their premises by the DRI, he had deleted the same from his other mobile phone. Further, the actual invoices found in the mobile phone of Shri Amit Mittal were of the period later than 26.02.2019. The above facts also indicate that Shri Amit Mittal was dealing with Vick Jiang even prior to 21.12.2018 and he was continuously indulging in undervaluation of the goods imported from China by his firm MST and the other importers for whom he was procuring goods from his supplier (Vick Jiang).

14.3.2. REJECTION OF CERTIFICATES OF ORIGIN OF THE IMPUGNED IMPORTS STAINLESS STEEL PRODUCTS IMPORTED BY M/s.MS AND M/s.GEPL FROM MALAYSIA:

- 1) I find that in the instant case M/s.MS and M/s.GEPL the importers have imported 'Cold Rolled Stainless-Steel Coils and Circles' from Malaysia and declared to be of Malaysian origin, which were in fact of Chinese origin and were routed through Malaysia to wrongly avail the benefit of preferential duty in terms of Notification No. 46/2011-Customs dated 01.06.2011. In order to avail such wrong benefit of the said notification the importers resorted to producing fake/ forged COOs. The key managerial persons of the importers in their respective statements have accepted that COOs submitted by them were fake, and the same fact has been corroborated by the emails of MITI as discussed in forgoing paras.
- 2) I find that **Shri Mukesh Mittal, Proprietor of M/s.MS** in his statement recorded on 21.12.2021 admitted that the stainless-steel coils and circles imported by M/s.Mukesh Steel from Malaysia on the invoices of Jentayu Industry were of China origin. He admitted that the fully finished coils and circles were shipped by Vick Jiang from China to Malaysia and from Malaysia, the same coils and circles (without any working & processing in Malaysia) were shipped to India on the invoices & other documents of Jentayu Industry. He also admitted that the coils and circles imported by M/s.MS under BE No. 3665170 dated 15.06.2019 and BE No. 3725322 dated 19.06.2019 respectively, were of China origin and in order to wrongly avail the ineligible benefit of Notification No. 46/2011-Customs, the said goods were routed through Malaysia.
- 3) I find that in column No. 8 of the Certificates of Origin (i.e. COO) of Malaysia submitted by MS to the Customs, the Origin Criterion was mentioned as "WO" which as per the Overleaf Notes of COO, pertained to goods wholly obtained or produced in the territory of exporting country. Shri Mukesh Mittal after going through **Rule 4 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, admitted that the goods covered under the two COOs submitted by him to the Customs did not qualify to be of Malaysian origin. He also admitted to the undervaluation of the goods imported from Malaysia.
- 4) I find that **Shri Ashok Kumar, Director of M/s.GEPL**, in his statement dated 01.02.2022, admitted that the stainless-steel coils imported by M/s.GEPL from Malaysia were also arranged by Shri Amit Mittal. He also admitted that the said coils were of China origin and Shri Vick Jiang had shipped the said coils from China to Malaysia and then from Malaysia to India. He also admitted to the undervaluation of the coils imported from Malaysia.
- 5) I find that **Shri Amit Mittal** admitted in his statement that all the goods imported from Malaysia by M/s.MS and M/s.GEPL were arranged by him from Vick Jiang and Vick Jiang had shipped the said goods from China to Malaysia and from Malaysia to India. He admitted that no work/process on the goods was undertaken in Malaysia and from China, the completely finished goods were routed through Malaysia to India to save Customs duty and CVD.

- 6) I find that the transactions between Shri Amit Mittal and Shri Vick Jiang pertaining to import of goods from China, recovered from the seized Vivo mobile phone of Shri Amit Mittal; disclose the details of the details of the invoices of Malaysian suppliers to M/s.MS and M/s.GEPL are mentioned. In the said account statements, the actual value of the goods imported from China via Malaysia, details of the payments made to Malaysian supplier through bank accounts of the importers and the amounts over & above the invoice value paid through hawala channel to Shri Vick Jiang are also available. These facts also indicate that the goods imported from Malaysia were arranged by Shri Vick Jiang from China to Malaysia and then from Malaysia to India.
- 7) I find that the verification report received from the MITI mention that the Malaysian suppliers, including Setica Industries (M) SDN BHD, Malaysia and Jentayu Industry; had, never, applied for COO and was even not registered in their ePCO system through which a company applies for issuance of Certificate of Origin. This clearly establish that the COOs submitted by M/s.MS and M/s.GEPL to claim duty exemption under Notification No. 46/2011-Cus, were not issued by MITI and the said COOs are fake.
- 8) Therefore, it is evident that Shri Amit Mittal, M/s.MS and M/s.GEPL in connivance with their Chinese suppliers submitted fake **Certificates of Origin of Malaysia** and the goods claimed to be of Malaysia origin did not qualify to be originating goods of Malaysia in terms of Rules 3, 4, 5 & 6 of the Customs Tariff [Determination of Origin] of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. It is also apparent that Amit Mittal, MS and GEPL were aware of the Chinese origin of the goods imported from Malaysia and to wrongly claim ineligible benefit, they submitted fake **Certificates of Origin of Malaysia** to the Customs. It, therefore, appears that MS and GEPL had intentionally by misstatement and suppression of facts, wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011, as amended, in respect of the Stainless Steel Cold Rolled Coils/Circles imported from Malaysia.

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

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

13. Certificate of Origin.

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

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

14.3.5. Therefore, I find that the importers have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had mis-declared Country of origin as 'Malaysia' in the declaration in the form of Bills of Entry filed under the provision of Section 46(4) of the Customs Act, 1962 and thereby wrongly availed country of origin benefit to evade the duties of Customs.

15. I find that "*Ignorantia Juris Non Excusat*" is an important principle in law. This principle places the responsibility on individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer, and that the exemption notification are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

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

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

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

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

Relevant Para the said judgement is reproduced hereunder;

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

15.2. I observe that under a trade agreement, duty concessions are required to be extended only to such imported goods which are 'made in' the exporting country. Each Trade Agreement contains a set of rules of origin, which prescribe the criteria that must be fulfilled for goods to attain 'originating status' in the exporting country. Such criteria are generally based on factors such as domestic value addition and substantial transformation in the course of manufacturing/processing. The goods imported under a trade agreement are required to be covered under a 'Certificate of Origin' (COO) issued by the designated authority of the exporting country. The COO contains details of goods covered and originating criterion fulfilled. Misuse of trade agreements not only causes loss to the exchequer but also places the domestic industry at an unfair disadvantage. In the instant case, I find that the importer has violated the basic requirement of a valid 'Certificate of Origin' in order to avail benefit of Notification No. 46/2011-Cus. dated 01.06.2011. **In view of above, I hold that 'M/s MS' and M/s. GEPL have wrongly availed the benefit under said Notification in contravention to the Country of Origin rules to the extent that they submitted fake COOs to the Customs Authorities; therefore, the benefit of concessional rate of duty is not available to them.**

16. I refer that Vide Finance Act, 2011 w.e.f. 08.04.2011, "Self-Assessment" has been introduced 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 importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI.

16.1: I find that the statements of various key managerial persons of the noticees have sufficient evidentiary value to prove the fact that they not only undervalued the impugned goods but also wrongly availed the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011 by way of submitting fake

EOOs. The noticees also indulged in transferring money to their Chinese counterpart through Havalas channels. I place reliance on the following relevant judgements of various Courts wherein **evidentiary value of statements recorded under Section 108 of the Customs Act, 1962** is emphasized.

- The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962, is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull-1983(13)ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur (2000(117) E.L.t. 515(Tri))** wherein Hon'ble Tribunal held that— 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

16.2. In view of above, I find that **the importers** have deliberately contravened the provisions discussed hereinabove with intent to evade payment of Customs Duty by resorting to **undervaluation and wrongly availing** benefit of concessional tariff under Notification No. 46/2011-Cus. dated 01.06.2011 on the import of Cold Rolled Stainless Steel Coils and Circles falling under tariff item 7220 or 7219 of the First Schedule of CTA. I hold that importers had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as they while filing Bill of Entry, failed to ensure the accuracy and completeness of the information filed by them and thereby failed to fulfill their legal obligation of

providing correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs.

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

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

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

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

(a) collusion; or

(b) any wilful misstatement; 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.

Explanation. For the purposes of this section, "relevant date" means,—

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund

(d) in any other case, the date of payment of duty or interest.

17.2. It is evident from the investigation carried out by the DRI, that the undervaluation and mis-use of CCO benefit in respect of imported goods has been done by the importers willfully with sole intention to execute the modus of defrauding the govt. exchequer, moreover they also indulged themselves in Havala transactions. Therefore, I find that it is appropriate to invoke section 28(4) of the customs act to demand the duty in the instance case. **I hold so.**

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

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

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

(ii). As discussed in the foregoing paras, it is evident the Importers have deliberately undervalued the impugned imported goods with a mala fide intention to evade duty. Further **M/s. MS and M/s. GEPL** also failed to submit the correct Country of Origin Certificate prerequisite to avail the benefit of Notification No. 46/2011-Cus. dated 01.06.2011. In light of these acts of mis-classification of goods, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962. I hold so.

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

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

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

(v). As regards applicability of Section 111(m) of the Customs Act, I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. In the instant case goods valued at **Rs. 1,91,91,322/-** were seized vide Seizure Memo/ Order dated 13.10.2020. Further, the said seized goods were ordered for provisional release vide Order of the Deputy Commissioner, Customs House, Mundra, vide F. No. VIII/48-1322/Mukesh Steel/Gr.IV/MCH/2020-21/6433 dated 31.12.2020, subject to fulfilment of conditions thereof. Therefore, said goods valued at **Rs.1,91,91,322/-** are liable for provisional release subject to fulfilment of conditions thereof.

(vi). However, remaining goods have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripalspat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any ground to stand.

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

(vii) In the instant case, **M/s.MST, M/s.MS, M/s.GEPL and M/s.Dharam Impex** were aware of the true and actual transaction value of impugned imported goods nonetheless with an intent to evade payment of Customs duty, they deliberately and intentionally mis declared incorrect & lesser value than the actual value of the goods at the time of filing of Bills of Entry. The said wilful mis-declarations and suppression of material facts which has led to short levy of duty. Therefore, such acts of omission and commission on their part have rendered the impugned imported goods (as detailed in Annexures to impugned SCN), liable to confiscation under Section 111(m) of the Customs Act, 1962 and rendered itself liable to penalty in terms of the Section 112 of the Customs Act, 1962.

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

20. ROLE PLAYED BY M/S MUKESH STEEL, M/S. MUKESH STEEL TRADING, M/S. GULSHAN EXIM PVT. LTD. AND M/S. DHARAM IMPEX AND THEIR KEY MANAGERIAL PERSONS:

- (i) I find that **M/s. MS, M/s. MST, M/s. GEPL and M/s.Dharam** had imported Stainless Steel Cold Rolled Coils and Circles, from China through China based suppliers **M/s. MCH Steel Industry Co. Pvt. Ltd.** I find that **Shri Mukesh Mittal Prop. of M/s. Mukesh Steel (MS)** and his uncle **Shri Amit Mittal- Proprietor of M/s. Mukesh Steel Trading (MST)** hatched a conspiracy to import Chinese origin goods and declaring in the Bills of Entry, lower value than the actual value of goods. They used to transfer the difference amount over and above the invoice value to their **Shri Vick Jiang of M/s. MCH Steel Industry Co. Pvt. Ltd., Havala channels.**
- (ii) I find that **Shri Amit Mittal, Prop. of M/s. MST** stated in his statement that he had imported Stainless Steel Cold Rolled Coils on IEC of **M/s.MST and M/s. MS.** I find that **Shri Amit Mittal**, in his statement dated 10.11.2021 admitted that **M/s. MS, M/s. MST, and M/s. GEPL** had declared incorrect transaction values of the imported goods in the Bills of Entry to evade payment of Customs duty. **Shri Amit Mittal** confirmed in his statement dated 10.11.2021 that all the Stainless-Steel Cold Rolled Coils imported by **GEPL** from China from **MCH and Guizhou Zhongruixianghe Supply Chain Co., Ltd.** during 2018, 2019 and 2020 were procured through him. He had procured all the said coils through **Vick Jiang**. On being asked, he stated that in almost all the imports incorrect & less than the true and actual value of the imported coils were declared in BEs submitted to the Customs officials by **M/s.GEPL.**
- (iii) I find that **Shri Ashok Kumar, Director of M/s. GEPL** in his statement dated 01.02.2022 admitted that all the Steel products imported from China by **GEPL** were arranged by **Shri Amit Mittal** and **Shri Amit Mittal** used to talk & negotiate with **Vick Jiang** for the goods to be imported by **M/s.GEPL.** He admitted that **Shri Amit Mittal** used to get the goods

imported by GEPL cleared from the Customs. Shri Ashok Kumar also agreed with the statements of Shri Amit Mittal and Shri Mukesh Mittal.

(iv) I find that **Shri Puneet Jain-Prop. of M/s. Dharam Impex** in his statement dated 08.02.2022 admitted that he had declared incorrect and less than actual value in the two Bills of Entry i.e. BE No. 6264349 dated 27.12.2019 and BE No. 6341304 dated 03.01.2020.

(v) I find that **M/s.MS** imported Stainless Steel Cold Rolled Coils & Circles from Malaysia on the invoices of Jentayu Industry, Malaysia; and **M/s.GEPL** imported Stainless Steel Cold Rolled Coils from Malaysia on the invoices of Setica Industries (M) Sdn Bhd., Malaysia. For claiming the benefit of Notification No. 46/2011-Cus dated 01.06.2011, MS and GEPL had submitted Certificates of Origin (Form-A1) of Malaysia purported to be issued by the Ministry of International Trade and Industry, Malaysia (MITI). Various COOs pertaining to the above said two Malaysian suppliers were forwarded to the MITI for verification. The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI, vide email dated 14.04.2021, informed, *inter alia*, that based on their assessment 87 out of 143 copies of the COO are not authentic and these were not issued by the MITI. The email also mentioned that MITI had never received any COO applications from the respective companies via their system. Therefore, it is evident that **Shri Amit Mittal, Proprietor of M/s. MST, M/s.MS and M/s.GEPL** in connivance with their Chinese suppliers submitted fake Certificates of Origin of Malaysia and the goods claimed to be of Malaysia origin did not qualify to be originating goods of Malaysia in terms of Rules 3, 4, 5 & 6 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009.

(vi) In view of discussion supra, I find that **Shri Amit Mittal, M/s.MS and M/s.GEPL** were aware of the Chinese origin of the goods imported from Malaysia and to wrongly claim ineligible benefit, they submitted fake Certificates of Origin of Malaysia to the Customs. Therefore, I hold that **M/s.MS and M/s.GEPL** had intentionally by misstatement and suppression of facts, wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011, as amended.

21. I observe that as per Section 46(4) of the Customs Act, 1962, it is mandatory for the importer to make a truthful declaration regarding the contents of the Bill of Entry. Also, as per Section 46(4A) of the Customs Act, 1962, it is mandatory for the importer to ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. Further, in terms of Section 17 of the Customs Act, 1962, read with the definition of assessment specified under Section 2(2) *ibid*, it is obligatory for the importer to correctly self-assess the duty on the imported goods, with reference to the classification of the goods. It is specified that an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Customs Act, 1962. It is apparent that goods not corresponding in respect of value or in any other particular with the

entry made under the Act, 1962, are liable to confiscation in terms of Section 111(m) and the consequent penalty is imposable in terms of Section 112, in the case of dutiable goods. Further, in cases where duty has not been levied on account of willful misstatement or suppression of facts, the person liable to pay the duty determined under the provisions of Section 28 of the Customs Act, 1962, is liable to pay a penalty under Section 114A equal to the duty short paid/not paid.

22. VALUATION OF IMPUGNED GOODS AS PER CUSTOMS VALUATION ((DETERMINATION OF VALUE OF IMPORTED GOODS), RULES, 2007 (CVR, IN SHORT)

22.1. I find that **M/s.MS, M/s.MST, M/s.GEPL and M/s.Dharam Impex** had not declared the correct transaction value of the impugned goods imported directly from China or via Malaysia. The documents printed from the mobile phones of Shri Amit Mittal contained the true and correct transaction value of the imported goods and therefore, for the purpose of duty calculation, the value which is admittedly correct and true transaction value, has been taken as transaction value of the goods imported under the respective bills of entry in terms of **Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR for short)**. Further, in respect of Bills of Entry in respect of which in respect of which direct evidences of the actual transaction value are not available, the value of the imported goods is to be determined proceeding sequentially through **Rule 4 to Rule 9 of the CVR, 2007**. However, the factors such as, the transaction value of identical or similar goods in a sale at the same commercial level about the same time, the actual prices at which the goods were sold in the highest aggregate quantity, the details of cost structure, etc. which are required for determination of the actual transaction value in terms of **Rule 4 to 8 of the CVR** are also not available and therefore, the actual transaction value of the coils and circles (covered under missing BEs) is to be determined by resorting to **Rule 9 of the CVR**. Hence, for the purpose of calculation of Customs duty, the value of the goods covered under the missing BEs has been calculated as per the rate of the same/similar size of the coils/circles available in the actual commercial invoices. It is pertinent to mention that the transaction value so determined of missing BEs is not based on the provisions of **Rule 9(2) of the CVR**, i.e., the determined transaction value is not on the basis of the selling price in India of the goods produced in India or a system which provides for the acceptance for customs purposes of the highest of the two alternative values or the price of the goods on the domestic market of the country of exportation or the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Rule 8 or the price of the goods for the export to a country other than India or minimum customs values or arbitrary or fictitious values.

22.2. I find that **M/s.MS, M/s.MST, M/s.GEPL and M/s.Dharam Impex** while filing Bills of Entry they have not declared the actual transaction value of the imported items. It is also evident that the true and correct transaction value of the imported goods are available in the actual commercial invoices and account ledgers/worksheets found in the mobile phones of Shri Amit Mittal, who was looking after all the work pertaining to import of goods of his firm M/s. MST, along with M/s.MS, M/s.GEPL and M/s.Dharam Impex. The proprietor/Director of the importers categorically admitted that they had intentionally declared less than actual transaction value in the BEs to pay less Customs duty. In view of the above, the value declared in the BEs is liable to be rejected in terms of the

Rule 12 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and redetermined as per the true transaction value of the imported goods available in the evidence discussed in the notice, in terms of Section 14 of the Customs Act, 1962 read with Rule 3 and Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

23. I find that the noticees vide their written submission have contested that the duty calculation chart does not specify as to which evidence has been applied in case of re-valuation of the same/similar size of the coils/circles covered under subject Bills of Entry.

23.1. In this connection, I find that during recording of statement dated 21/02/2022 of **Shri Mukesh Mittal, Proprietor of M/s.MS**, with his assistance following chart was prepared on the basis of the BEs filed by him and the actual & true value of the goods available in the worksheets recovered from Vivo mobile phone of Shri Amit Mittal & the actual invoices containing actual values recovered from whatsapp messages of Apple iPhone 6 of Shri Amit Mittal, as discussed vide Chart A & B of Para 2.19. I find that the said Chart consist of Bills of Entry filed between January 2019 to August 2020.

23.2. I observe that the period covered for the purpose of raising total demand of differential duty is also same i.e. **January 2019 to August 2020**. Therefore, it is evident that the importers resorted to undervaluation of impugned goods since they started importing the impugned goods. However, as detailed vide Chart -A hereinabove, the True & Actual Transaction Value in respect of 10 Nos. of Bills of Entry could only be recovered from their seized Mobile phone, rest of the data they had deleted in order to escape the investigation. Further, with his assistance, as detailed vide Chart-B hereinabove was prepared in which the actual transaction value was calculated based on the rates of coils of approximately same quantity imported on the nearest date of the above said BEs.

23.3. I find that the importers have categorically admitted in their respective statements that they had filed Bills of Entry doing undervaluation of impugned goods. I find that the details of actual transaction value unearthed by the DRI during the course of investigation only, had the DRI not investigated the case, the importers could have destroyed the complete data of actual transaction value and the evasion of the duty could have gone unnoticed. Therefore, I hold that the instant case has been built up on strong foundation of sincere investigation carried out by the DRI and corroborated by various irrefutable evidences, as discussed in detail vide foregoing paras. Therefore, I hold that the contention of the noticees is not sustainable.

24. ROLE PLAYED BY SHRI AMIT MITTAL-PROPRIETOR OF M/S. MST IN DEFRAUDING THE GOVT EXCHEQUER BY WAY OF EVADING THE DUTY:

24.1. I find that **Shri Amit Mittal-Proprietor of M/s. MST** had procured impugned goods for M/s.MS, M/s.GEPL and M/s.Dharam Impex from his supplier and he was aware of the true and correct transaction value of the imported goods and the amount actually paid to the supplier for the imported goods. Moreover, he was also aware that the goods imported from Malaysia were of Chinese origin and the same were only routed through Malaysia to wrongly avail the benefit of Notification No. 46/2011-Cus dated 01.06.2011. He was instrumental in arranging fake Certificates of Origin and thereby evasion of duty by M/s.MS and M/s.GEPL by declaration of wrong Country of origin and incorrect transaction value of the imported goods to the Customs and therefore,

therefore, Shri Amit Mittal has rendered himself liable to penalty under Sections 112 and 114AA of the Customs Act, 1962.

25. ROLE PLAYED BY M/S.MS, AND M/S.GEPL IN WRONG AVAILMENT OF BENEFIT OF THE NOTIFICATION NO. 46/2011-CUS. DATED 01.06.2011:

25.1. I find that **M/s.MS and M/s.GEPL** along with Shri Amit Mittal connived with their Chinese supplier in routing the goods from China through Malaysia and submitted fake Certificates of Origin of Malaysia. M/s.MS and M/s.GEPL were aware that the goods imported by them did not qualify to be origin of Malaysia, yet in order to evade payment of the Customs duty, they suppressed the China origin of the said goods and mis-declared the country of origin on the basis of the fake Certificates of Origin. They have willfully misstated and suppressed the facts availed the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, though such benefit was not available on the goods of China origin routed through Malaysia. The above-said wilful mis-declarations and suppression of material facts, made by M/s.MS, and M/s.GEPL had led to short-levy of duty. Therefore, I hold that M/s.MS, and M/s.GEPL have rendered the said imported goods as detailed **vide Annexures attached to the impugned SCN**, liable to confiscation under Section 111(m) of the Customs Act, 1962 and rendered itself liable to penalty in terms of the Section 112 of the Customs Act, 1962.

26. ROLE PLAYED BY M/S.MS, M/S.MST, M/S.GEPL AND M/S.DHARAM IMPEX IN DEFRAUDING THE GOVT EXCHEQUER BY WAY OF EVADING THE DUTY:

26.1. As discussed in detail hereinabove, I find that **M/s.MS, M/s.MST, M/s.GEPL and M/s.Dharam Impex** had willfully and knowingly violated the provisions of Sections 46(4) and 46(A) of the Customs Act, 1962 and failed to discharge the obligation of proper 'self-assessment of duty' in terms of Section 17 of the Customs Act, 1962. Such willful misclassification/ misstatement of material facts in the bills of entry filed by them before Customs with an intent to evade duty, justifies invocation of Section 28(4) of the Customs Act, 1962, to demand duty along with interest under Section 28AA of the Customs Act, 1962. In view of foregoing discussion, I find that **M/s.MS, M/s.MST, M/s.GEPL and M/s.Dharam Impex** are also liable for penalty under the provisions of Section 112 and Section 114A and Section 114AA of the Customs Act, 1962.

27. DEMAND OF DIFFERENTIAL DUTY IN RESPECT OF M/S GULSHAN EXIM PVT. LTD.

27.1. I find that the noticees vide their written submission dated **18.04.2024** submitted that the impugned Show Cause Notice so far it relates to the 23 bills of entry out of the total 32 bills of entry pertaining to Gulshan Exim Pvt. Ltd. is concerned, the same is not maintainable as **M/s Gulshan Exim Pvt. Ltd.** were issued 3 Show Cause Notices details of which are as under:-

- i. Show Cause Notice No. 11/ADC/Norda/Cus/2022-23 dated 24.03.2023 in respect of 2 bills of entry;
- ii. Show Cause Notice issued under F. No. GEN/ADJ/ADC/478/2022-Adjn. Dated 20.05.2022 in respect of 20 Bills of Entry; and
- iii. Show Cause Notice issued vide DIN 2023571M0000055755F dated 12.05.2023 were issued in respect of in respect of 1 bill of entry;

These 3 Show Cause Notices were issued to Gulshan Exim Pvt. Ltd. and based on the detailed investigation carried out by the DRI, Zonal Unit Ahmedabad, wherein the only issue raised was with regard to denial of the benefit of Notification No. 50/2018-Customs dated 30.06.2018. These Show Cause Notices have also been adjudicated and appealed against the same is pending adjudication before CESTAT, Ahmedabad.

27.2. I find that the aforementioned Show Cause Notices dated 20.05.2022, 24.03.2023 and 12.05.2023 were issued to **M/s. Gulshan Exim Pvt. Ltd.**, which have been adjudicated vide Order-In-Original MUN-CUSTM-000-COM-18-23-24 dated 11.12.2023 passed by the Commissioner of Customs, Custom House, Mundra; whereby demand of differential duty in respect of 18 Bills of Entry filed by M/s. Gulshan Exim Pvt. Ltd., has been confirmed.

27.3. Therefore, in the present adjudication, I take up only **6 Bills of Entry (23 BEs covered under instant SCN (-) 18 Bills of Entry covered under earlier SCN to M/s. Gulshan Exim Pvt. Ltd.)** for the purpose of demand of differential duty from M/s. Gulshan Exim Pvt. Ltd. The details of the Bills of Entry which are covered under instant case is as under:

Table-2

Annexure Gulshan-1-Showing details of differential duty payable by Gulshan Exim Pvt Ltd. in respect of goods imported at MUNDRA PORT.											
	BE No. & Dt.	CTH	Ass. Value declared as per BE	Rede mine d Ass. Value (INR)	BCD	CVD	Surch arge	IGST	Duty payabl e	DUTY	Diff. Duty
				1	2={1*55%* 7.5%} or 1*7.5%	3={1+ 2}*18 .95%	4=2* 10%	5={1+2+3 +4}*18%	6={2+3 +4+5}	7	8={6-7}
1	261415 1, dt. 28/03/ 2019	7220 9090	4677 714	5654 792.8 6	424109	11519 51.99	4241 0.95	1309187. 75	29276 60.15	841988.50	2085672
2	332355 2, dt. 21/05/ 2019	7220 9090	4844 453	5737 322.5 5	430299	11687 64.32	4302 9.92	1328294. 88	29703 88.31	872001.50	2098387
				1139 2115					58980 48.46	1713990.0 0	4184058

Table-3

Annexure Gulshan-2-Showing details of differential duty payable by Gulshan Exim Pvt Ltd. in respect of goods imported at LONI PORT.											
	BENUM BER	CTH	Ass. Value decla red as per BE	Rede rmin ed Ass. Valu e (INR)	BCD	CVD	Surch arge	IGST	Duty payable	DUTY	Diff. Duty
				1	2={1*5 5%*7.5 %}	3={1+2} *18.95 %	4=2* 10%	5={1+ 2+3+4 }*18%	6={2+3+4+5}	7	8={6- 7}
1	18119031	722090 22	7158 634	8138 887.5	335729 .1	160593 9.847	3357 2.91	18205 43.29	3795785.15	654415.3	8954 0.15

9662281 , dt. 16.01.19	722090 22								328247	
	722090 22								453779.8	
	722090 22								816008.3	
	722090 22								660832	
	722090 22								362590.1	
	722090 22								279805.2	
	722090 22								150567.1	
	722090 22									
			8138 888					3795785.15	3706244.8	8954 0

Table-4

Annexure Gulshan-3-Showing details of differential duty payable by Gulshan Exim Pvt Ltd in respect of goods imported at ICD SABARMATI, PORT CODE- INSB16											
BE No.	CTH	Ass. Value declared as per BE	Redetermined Ass. Value (INR)	BCD	CVD	Surcharge	IGST	Duty payable	DUTY	Diff. Duty	
			1	2=(1*55 %*7.5%) or 1*7.5%	3=(1+2)*18.95 %	4=2*10%	5=(1+2+3+4)*18%	6=(2+3+4+5)	7	8=(6-7)	
1	717	722020	423854.1	521291.1	39096.83	106193	3909.	120688.4	269888	219442	50446.04
	763	90		2	.52	68	1	.44	.40		
	2,	722020	691490.9	850453.2	63783.99	173247	6378.	196895.4	440305	358006	82299.70
	dt.	90		6	.96	40	5	.80	.10		
	12/0	722020	207476	255171.3	19137.85	51981.	1913.	59076.81	132110	107416	24693.23
	7/20	90		0	.58	78		.03	.80		
	18	722020	602470.1	740968.0	55572.60	150944	5557.	171547.6	383621	311917	71704.62
		90		0	.44	26	1	.92	.30		
		722020	560257	689050.7	51678.81	140368	5167.	159527.8	356742	290062	66680.48
		90		9	.26	88	3	.78	.30		
2	740	722020	392337.8	482529.8	36189.74	98297.	3618.	111714.4	249820	203125	46695.22
	048	90		0	.35	97	6	.52	.30		
	7,	722020	305973.2	376311.4	28223.36	76659.	2822.	87122.97	194828	158411	36416.20
	dt.	90		4	.34	34		.00	.80		
	28/0	722020	230592.7	283602.1	21270.16	57773.	2127.	65659.07	146829	119384	27444.65
	7/20	90		5	.30	02		.55	.90		
	18	722020	341725.2	420282.1	31521.16	85616.	3152.	97302.98	217592	176921	40671.38
		90		3	.72	12		.98	.60		
		722020	210204.1	258526.4	19389.49	52665.	1938.	59853.60	133847	108829	25018.01
		90		9	.08	95		.11	.10		
	740	722020	223527.8	282313.5	21173.52	57510.	2117.	65360.75	146162	115727	30435.12
	048	90		8	.80	35		.42	.30		
	7,	722020	714562.9	902486.5	67686.49	183847	6768.	208942.1	467245	369951	97293.81
	dt.	90		0	.78	65	0	.01	.20		
	28/0	722020	440493.5	556339.3	41725.45	113333	4172.	128802.7	288034	228057	59977.00
	7/20	90		7	.28	55	2	.00	.00		
	18	722020	363983.1	459707.3	34478.05	93648.	3447.	106430.6	238004	188445	49559.44
		90		7	.14	81	5	.64	.20		
		722020	616621.1	778786.9	58409.02	158648	5840.	180303.3	403201	319243	83958.25
		90		5	.64	90	9	.95	.70		
		722020	635818.6	803033.1	60227.48	163587	6022.	185916.8	415754	329182	86572.14
		90		2	.89	75	2	.94	.80		
		722020	313162.3	395521.1	29664.09	80572.	2966.	91570.36	204773	162133	42639.66
		90		5	.60	41		.46	.80		
		722020	533897.7	674308.0	50573.10	137364	5057.	156114.6	349109	276415	72694.79
		90		1	.97	31	1	.99	.20		
			Total	9730683	Total						995200

Therefore, aforementioned 03 Bills of Entry involving demand of differential duty of **Rs.52,68,798/-** is being taken up for present adjudication proceeding in respect of M/s.Gulshan Exim Pvt. Ltd.

Table-5

CALCULATION OF DIFFERENTIAL DUTY RECOVERABLE BY M/S. GULSHAN EXIM PVT. LTD., I.E. DIFFERENTIAL DUTY DEMANDED VIDE IMPUGNED SCN (MINUS) DUTY ALREADY CONFIRMED VIDE ORDER DATED 11.12.23											
	Port	BE No.	BE DATE	CTH	Ass. Value declared as per BE	Redetermined Ass. Value (INR)	Duty payable	DUTY	Diff. Duty	demand already confirmed vide OJO dtd. 11.12.23	DIFFERENTIAL Duty recoverable (Amt in Rs.)
1	INMU-N1	8212235	26/09/2018	72209022	338754.65	4995980	2329727	1636794	692933	180233	512700.45
2	INMU-N1	8256606	29/09/2018	72209022	380357.77	5168449	2410442	1670668	739774	183936	555838.48
3	INMU-N1	8488971	16/10/2018	72209022	433108.2	2572812	1199898	830698	369200	91471	277729.45
4	INMU-N1	8835320	13/11/2018	72209022	424508.15	2604554	1214703	816974	397729	89960	307768.50
5	INMU-N1	8988596	24/11/2018	72209022	269491.66	2441514	1167090	1051325	115765	115765	0.00
6	INMU-N1	9063886	30/11/2018	72209022	1147003.6	5027838	2403764	2165332	238432	238432	0.00
7	INMU-N1	2727546	05/04/2019	72209022	3942421.34	4942618	2305120	1838652	466468	202460	264007.86
8	INMU-N1	2912728	20/04/2019	72209022	4218169.94	4976928	2321122	1967255	353867	216621	137245.83
9	INMU-N1	3013523	27/04/2019	72209022	6297696.22	7366867	3435753	2937097	498636	323414	175222.10
10	INMU-N1	3147467	08/05/2019	72209022	6378859.92	7581125	3535658	2974950	560708	327582	233125.85
11	INMU-N1	3409645	27/05/2019	72209022	6335315.53	7430977	3465632	2954642	510991	325346	185644.66
12	INMU-N1	4841157	10/09/2019	72209022	3505046.27	5162933	2407870	1634671	773199	179999	593200.24
13	INMU-N1	4876218	12/09/2019	72209022	8564148.32	12614990	5883334	3994117	1889217	439806	1449411.20
14	INMU-N1	6509689	17/01/2020	72209022	2902684.8	4462219	2081074	1353744	727330	149065	578264.85
15	INMU-N1	6599726	23/01/2020	72209022	2783065.13	4192926	1955482	1297956	657526	142922	514603.87
16	INLON6	9986405	08/02/2019	72209022	1087162.42	12777939	5959329	5070269	889060	558305	330755.28
17	INLON6	2709384	04/04/2019	72209022	6300792.96	6800793	3369887	2938541	431345	323573	107772.42
18	INSR16	7926226	05/09/2018	72209022	525528.4	9662141	4506195	4058770	447425	446925	500.00
									10759606	4535815	6223791

27.4. I find that in respect of **18 Nos. Bills of Entry** covered under earlier SCNs as discussed above, issued to M/s. Gulshan Exim Pvt. Ltd., demand of duty of

Rs.45,35,815/- has already been confirmed. However, in the instant case, the impugned goods covered under subject 18 Nos. of Bills of Entry were found undervalued during the course of investigation carried out by the DRI; therefore, valuation of goods covered under these Bills of Entry was undertaken in consonance with the actual invoices recovered from the seized mobile phone of Shri Amit Mittal. Hence, the differential duties of Customs in respect of impugned goods covered under aforementioned Bills of Entry, to the tune of **Rs.62,23,791/- (Differential duty of Rs. 1,07,59,606/- recoverable in the instant case (minus) Demand of Rs. 45,35,815/- already confirmed vide OIO dtd. 11.12.2023)** is remaining part of demand in the instant case, therefore, the same is recoverable from them.

27.5. In view of above, the demand of differential duty of **Rs.1,14,92,589/- (Rs.52,68,798/- + Rs.62,23,791/-)** is recoverable from **M/s. Gulshan Exim Pvt. Ltd.**, and demand of **Rs. 51,81,302/-** is liable to be dropped.

Table-6

Detail of differential duty recoverable from M/s. GEPL					
Total Demand of diff. duty raised vide impugned SCN (Amt. in Rs.)	demand already confirmed vide OIO dtd.11.12.23 (Amt. in Rs.)	Demand of diff. duty in respect of 03 BEs in the impugned SCN (Amt. in Rs.)	Demand of diff. duty due to re-valuation of impugned goods covered under 18 BEs. (Amt. in Rs.)	Diff. demand of duty recoverable from M/s. GEPL (Amt. in Rs.)	Demand of duty dropped in the instant case (Amt. in Rs.)
1	2	3	4	5 (3+4)	6 (1-5)
1,59,40,908/-	45,35,815/-	52,68,798/-	62,23,791/-	1,14,92,589/-	44,48,319/-

28. From the facts discussed hereinabove, it is established that **M/s.MS, M/s.MST, M/s.GEPL, M/s.Dharam Impex** were intentionally and deliberately involved in the under-valuation of the imported goods. Shri Amit Mittal was looking after the import related work of the stainless- steel products imported from China through Vick Jiang; He instructed the suppliers to issue parallel invoice of same number & date with less than the actual transaction value. Shri Mukesh Mittal, Shri Ashok Kumar and Shri Puneet Jain were also aware of the true and correct transaction value of the imported goods and the amount actually paid to the supplier for the goods imported by them. **M/s.MS, M/s.MST, M/s.GEPL, M/s.Dharam Impex** wilfully misstated and suppressed the correct and true transaction value of the goods imported by them and thereby, evaded payment of appropriate duty. In view of above the differential duty evaded by them is recoverable from them along with interest at the appropriate rate. The details of the same is as under:

Sr. No.	Name of the Importers	Demand of diff. duty (Amt in Rs.)
1	M/s. Mukesh Steel,	1,35,19,002/-
2	M/s. Mukesh Steel Trading,	1,80,83,492/-
3	M/s. Gulshan Exim Pvt. Ltd.,	1,14,92,589/-
4	M/s. Dharam Impex	10,95,789/-
	Total	4,41,90,872

29. ROLE PLAYED BY SHRI ASHOK KUMAR, SHRI RAVINDER KUMAR, AND SHRI GULSHAN KUMAR IN DEFRAUDING THE GOVT EXCHEQUER BY WAY OF EVADING THE DUTY:

29.1: I find that Shri Amit Mittal was looking after the import related work of the stainless steel products imported from China through Chinese national Shri Wick Jiang. He instructed the suppliers to issue parallel invoice of same number & date with less than the actual transaction value. From the evidences discussed in detail hereinabove, it is evident that **Shri Ashok Kumar**-Director of M/s. GEPL, **Shri Ravinder Kumar**-Director of M/s. GEPL, **Shri Gulshan Kumar**-Director of M/s. GEPL, were also aware of the true and correct transaction value of the imported goods and the amount actually paid to the supplier for the goods imported by them. Moreover, they along with **Shri Amit Mittal**-Proprietor of M/s. MST hatched a conspiracy of evading the duty by way of misstating the facts to the Customs department and resorting to undervaluation of impugned goods at the time of filing of Bills of Entry. Therefore, such acts of omission and commission on part of **Shri Ashok Kumar, Shri Ravinder Kumar, Shri Gulshan Kumar** have rendered them liable to penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

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

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

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he

29.3. knows or has reason to believe are liable to confiscation under section 111, shall be liable,

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

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

(iii) ...

(iv) ...

(v) ...

29.3. I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also be liable to pay penalty under Section 114A.

These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962. I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, penalty under Section 112(a) of Customs Act, 1962 is not warranted upon them.

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

ORDER

30.1. IN RESPECT OF M/s.MUKESH STEEL (IEC 0513087818), C-45, WAZIRPUR INDUSTRIAL AREA, DELHI:

- (i) I reject the value of the goods declared in the bills of entry **M/s.Mukesh Steel (IEC 0513087818)**, as detailed in the Annexure-MS-1 & MS-2, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; and Order to re-determine, the same in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability;
- (ii) I disallow the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia under the bills of entry detailed in Annexure-MS-1 & MS-2 to the impugned SCN;
- (iii) I confirm the demand of **Rs. 1,35,19,002/- (Rupees One Crore Thirty Five Lakhs Nineteen Thousand Two only)** short levied/ short paid on the goods covered under subject bills of entry, as detailed in Annexure-MS-1 & MS-2 to impugned Notice; and order to recover the same from **M/s.Mukesh Steel (IEC 0513087818)** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;
- (iv) I order to confiscate the goods imported under the subject bills of entry filed by **M/s.Mukesh Steel (IEC 0513087818)**, as detailed in Annexure-MS-1 & MS-2 to the impugned SCN, valued at **Rs. 1,91,91,322/- (Rupees One Crore Ninety One Lakhs Ninety One Thousand Three Hundred Twenty Two only)** under Section 111(m) of the Customs Act, 1962; which was seized vide Seizure Memo/Order dated 13.10.2020 & its corrigendum dated 26.10.2020; and released provisionally vide Order dated 31.12.2020. However, I give **M/s.Mukesh Steel (IEC 0513087818)** an option to redeem the impugned goods on payment of redemption fine of **Rs.20,00,000/- (Rupees Twenty Lakhs only)** under Section 125 of the Customs Act, 1962 in lieu of confiscation of impugned imported goods.
- (v) I order to confiscate the goods imported under the subject bills of entry **M/s.Mukesh Steel (IEC 0513087818)**, as detailed in Annexure-MS-1 & MS-2 to the impugned SCN, valued at **Rs.6,73,21,786/-** under Section 111(m) of the Customs Act, 1962; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.

- (vi) I impose Penalty of **Rs. 1,35,19,002/- (Rupees One Crore Thirty Five Lakhs Nineteen Thousand Two only)** upon **M/s. Mukesh Steel** (IEC 0513087818) under Sections 114A of the Customs, Act, 1962;
- (vii) I refrain from Imposing Penalty upon **M/s. Mukesh Steel** (IEC 0513087818) under Sections 112 of the Customs, Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable;
- (viii) I impose Penalty of **Rs. 10,00,000 (Rupees Ten Lakhs only)** upon **M/s. Mukesh Steel** (IEC 0513087818) under Sections 114AA of the Customs, Act, 1962;
- (ix) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Amit Mittal**, Proprietor of **Mukesh Steel Trading** (IEC 0508066573), under Sections 112(a) of the Customs Act, 1962.
- (x) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Amit Mittal**, Proprietor of **Mukesh Steel Trading** (IEC 0508066573), under Sections 114 AA of the Customs Act, 1962.

30.2. IN RESPECT OF M/s.MUKESH STEEL TRADING (IEC 0508066573), C-18/2, WAZIRPUR INDUSTRIAL AREA, DELHI:

- (i) I reject the value of the goods declared in the bills of entry filed by **M/s. Mukesh Steel Trading** (IEC 0508066573), detailed in the Annexure-MST-1 & MST-2, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; and order to redetermine, as detailed in Annexure-MST-1 & MST-2 in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability.
- (ii) I confirm the demand of differential duty amounting to **Rs. 1,80,83,492/- (Rupees One Crore Eighty Lakhs Eighty Three Thousand Four Hundred Ninety Two only)** short levied / short paid on the goods covered under bills of entry, as detailed in Annexure-MST-1 & MST-2 to impugned SCN; and order to recover the same from **M/s. Mukesh Steel Trading** (IEC 0508066573) in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;
- (iii) I order to confiscate the goods imported under the subject bills of entry, as detailed in Annexure-MST-1 & MST-2 to the impugned SCN, valued at **Rs.12,58,13,957/-** under Section 111(m) of the Customs Act, 1962; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- (iv) I impose Penalty **Rs. 1,80,83,492/- (Rupees One Crore Eighty Lakhs Eighty Three Thousand Four Hundred Ninety Two only)** upon **M/s. Mukesh Steel Trading** (IEC 0508066573) should under Sections 114A of the Customs, Act, 1962;
- (v) I refrain from Penalty upon **M/s. Mukesh Steel Trading** (IEC 0508066573) under Sections 112 of the Customs, Act, 1962 since as per

5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable;

- (vi) I impose Penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **M/s. Mukesh Steel Trading** (IEC 0508066573) should under Sections 114AA of the Customs, Act, 1962;

30.3. IN RESPECT OF M/S.GULSHAN EXIM PVT. LTD., (IEC 0516002061), C-13/3, WAZIRPUR INDUSTRIAL AREA, DELHI

- (i) I reject the value of the goods declared in the bills of entry filed by **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)**, detailed in the Annexures- Gulshan-1, Gulshan-2, Gulshan-3 attached to impugned SCN, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; and order to redetermine the same in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability.
- (ii) I disallow the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)** from Malaysia under the bills of entry detailed in Annexures -Gulshan-1 to this notice, should not be denied;
- (iii) I confirm the demand of differential duty amounting to **Rs. 1,14,92,589/- (Rupees One Crore Fourteen Lakhs Ninety Two Thousand Five Hundred Eighty Nine only)** short levied/ short paid on the goods covered under bills of entry, as discussed vide Para 27 hereinabove; and order to recover the same from **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;
- (iv) I drop the demand of differential duty of **Rs. 44,48,319/- (Rupees Forty Four Lakhs Forty Eight Thousand Three Hundred Nineteen only)**, since the said amount of differential duty has already been decided and confirmed vide Order-in-Original No. MUN-CUSTM-000-COM-18-23-24 dated 11.12.2023.
- (v) I order to confiscate the goods imported under the subject bills of entry filed by **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)**, as detailed in Annexure- Gulshan-1, Gulshan-2, Gulshan-3 to the impugned SCN, valued at **Rs.14,04,69,204/-** under Section 111(m) of the Customs Act, 1962; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- (vi) I impose Penalty of **Rs. 1,14,92,589/- (Rupees One Crore Fourteen Lakhs Ninety Two Thousand Five Hundred Eighty Nine only)** upon **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)** under Sections 114A of the Customs, Act, 1962;
- (vii) I refrain from imposing Penalty upon **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)** under Sections 112 of the Customs, Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are

mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.

- (viii) I impose Penalty of **Rs.5,00,000/- (Rupees Five Lakhs only)** upon **M/s. Gulshan Exim Pvt. Ltd., (IEC 0516002061)** under Sections 114AA of the Customs Act, 1962.
- (ix) I impose Penalty of **Rs.10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Ashok Kumar**, Director of Gulshan Exim Pvt. Ltd., under Sections 112 of the Customs Act, 1962.
- (x) I impose Penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** upon **Shri Ashok Kumar**, Director of Gulshan Exim Pvt. Ltd., under Sections 114 AA of the Customs Act, 1962
- (xi) I impose Penalty of **Rs 10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Ravinder Kumar**, Director of Gulshan Exim Pvt. Ltd., under Sections 112 of the Customs Act, 1962.
- (xii) I impose Penalty of **Rs.10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Ravinder Kumar**, Director of Gulshan Exim Pvt. Ltd., under Sections 114 AA of the Customs Act, 1962
- (xiii) I impose Penalty of **Rs.10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Gulshan Kumar**, Director of Gulshan Exim Pvt. Ltd., under Sections 112 of the Customs Act, 1962.
- (xiv) I impose Penalty of **Rs.5,00,000/- (Rupees Five Lakhs only)** upon **Shri Gulshan Kumar**, Director of Gulshan Exim Pvt. Ltd., under Sections 114 AA of the Customs Act, 1962.
- (xv) I impose Penalty of **Rs.10,00,000/- (Rupees Ten Lakhs only)** upon **Shri Amit Mittal**, Proprietor of **Mukesh Steel Trading (IEC 0508066573)** under Sections 112 of the Customs Act, 1962.
- (xvi) I impose Penalty of **Rs.5,00,000/- (Rupees Five Lakhs only)** upon **Shri Amit Mittal**, Proprietor of **Mukesh Steel Trading (IEC 0508066573)** under Sections 114 AA of the Customs Act, 1962.

30.4. IN RESPECT OF M/S. DHARAM IMPEX (IEC 0514049693), A-30 WAZIRPUR INDUSTRIAL AREA, DELHI.

- (i) I reject the value of the goods declared in the bills of entry filed by **M/s.Dharam Impex (IEC 0514049693)**, as detailed in the Annexure-Dharam-1, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; and order to redetermine the same in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability.
- (ii) I confirm the demand of the differential duty amounting to **Rs.10,95,789/- (Rupees Ten Lakh Ninety Five Thousand Seven Hundred Eighty Nine only)** short levied / short paid on the goods covered under bills of entry, as detailed in Annexure-Dharam-1 to the impugned SCN, and order to recover the same from **M/s.Dharam Impex (IEC 0514049693)** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

- (iii) I order to confiscate the goods imported under the bills of entry filed by **M/s.Dharam Impex (IEC 0514049693)**, as detailed in Annexure-Dharam-1 attached to impugned SCN, valued at **Rs. 85,97,594/-** under Section 111(m) of the Customs Act, 1962; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- (iv) I impose Penalty of **Rs.10,95,789/- (Rupees Ten Lakh Ninety Five Thousand Seven Hundred Eighty Nine only)** upon **M/s.Dharam Impex (IEC 0514049693)** them under Sections 114A of the Customs, Act, 1962;
- (v) I refrain from imposing Penalty upon **M/s.Dharam Impex (IEC 0514049693)** under Sections 112 of the Customs, Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable;
- (vi) I impose Penalty of **Rs.1,00,000/- (Rupees One Lakh only)** upon **M/s.Dharam Impex (IEC 0514049693)** them under Sections 114AA of the Customs, Act, 1962
- (vii) I impose Penalty of **Rs.1,50,000/- (Rupees One Lakh Five Thousand only)** upon **Shri Amit Mittal**, Proprietor of **M/s.Mukesh Steel Trading (IEC 0508066573)**, under Sections 112 of the Customs Act, 1962.
- (viii) I impose Penalty of **Rs.1,00,000/- (Rupees One Lakhs only)** upon **Shri Amit Mittal**, Proprietor of **M/s.Mukesh Steel Trading (IEC 0508066573)**, under Sections 114 AA of the Customs Act, 1962.
31. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.


(K. Engineer)

Pr. Commissioner of Customs
Custom House Mundra.

Date:06.05.2024.

F.No.CUS/ADJ/COMM/42/2023-Adjn.

BY SPEED POST/BY EMAIL/ NOTICE BOARD:

To (The Noticees),

- (i) **M/s.Mukesh Steel (IEC 0513087818)**,
C-45, Wazirpur Industrial Area, Delhi, through its Proprietor, Mukesh Mittal, R/o. House No. B-84, Jyoti Apartment, Sector-14, Rohini, New Delhi.
- (ii) **Mukesh Mittal**,
R/o B-84, Jyoti Apartment, Sector-14, Rohini, New Delhi
- (iii) **Shri Amit Mittal**,

R/o C-72, Jyoti Apartment, Sector-14, Exten. Prashant Vihar, Rohini, New Delhi

- (iv) **M/s.Mukesh Steel Trading (IEC 0508066573),**
C-18/2, Wazirpur Industrial Area, Delhi, through its Proprietor,
Amit Mittal, R/o C-72, Jyoti Apartment, Sector-14, Exten. Prashant Vihar,
Rohini, New Delhi.
- (v) **M/s. Dharam Impex (IEC 0514049693),**
A-30 Wazirpur Industrial Area, Delhi, through its Proprietor Puneet Jain,
R/o. A3/51, Sector-4, Rohini, New Delhi
- (vi) **Shri Puneet Jain,**
R/o. A3/51, Sector-4, Rohini, New Delhi
- (vii) **M/s.Gulshan Exim Pvt. Ltd., (IEC 0516002061),**
C-18/3, Wazirpur Industrial Area, Delhi.
- (viii) **Shri Ashok Kumar, Director of Gulshan Exim Pvt. Ltd.,**
C-18/3, Wazirpur Industrial Area, Delhi, R/o 82, Pocket-27,
Sector-24, Rohini-110085.
- (ix) **Shri Gulshan Kumar, Director of Gulshan Exim Pvt. Ltd.,**
C-18/3, Wazirpur Industrial Area, Delhi.
- (x) **Shri Ravinder Kumar, Director of Gulshan Exim Pvt. Ltd.,**
C-18/3, Wazirpur Industrial Area, Delhi, R/o 82, 1st floor, Pocket-27,
Sector-24, Rohini-110085.

COPY TO:-

- 1) The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054, for information.
- 2) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 3) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- 4) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 6) Notice Board
- 7) Guard File.