

KDL/ADC/DPB/08/2024-25

DIN- 20240671ML000000CDA5



OFFICE OF THE COMMISSIONER

CUSTOM HOUSE, KANDLA

NEAR BALAJI TEMPLE, NEW KANDLA

Phone : 02836-271468/469 Fax: 02836-271467

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| | | |
|---|---------------------------------------|--|
| A | File No. | GEN/ADJ/ADC/65/2024-Adjn-O/o Commr-Cus-Kandla |
| B | Order-in-Original No. | KDL/ADC/DPB/08/2024-25 |
| C | Passed by | Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla. |
| D | Date of Order | 28.06.2024 |
| E | Date of Issue | 28.06.2024 |
| F | SCN NO. & Date | Waiver of Show Cause notice |
| G | Noticee / Party / Importer / Exporter | 1. M/s Shiv Krupa Trading, Plot No. 586, Shop No. 15, Police Station Road, Ward 12/B, Gandhidham-370201. 2. Shri Nathji Impex, Plot No. 37-38, DC-3, Rambaugh Road, Adipur, Kutch-370202. 3. Balaji Traders, Plot No. 77, Ward-5B Adipur Taluka, Gandhidham, Kutch Gujarat-370205. 4. M/s United Safeway India Pvt. Ltd., Plot No. 210, Riddhi Siddhi Arcade, Plot No. 13, Sector 08, Gandhidham, Gujarat-370201. |

1. यह मूल आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्र सीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमाशुल्कआयुक्त (अपील),

7 वीं मंजिल, मृदुलटावर, टाइम्सऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्यप्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मदसं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ इयूटि/ ब्याज/ टण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

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6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्कया शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

Brief Facts of the case

M/s United Safeway India Pvt. Ltd (hereinafter referred to as 'SEZ unit') was situated at Shed no 238-239, as Open Plot, Phase-I, Sector-III, KASEZ, Gandhidham, Kutch. The Letter of Approval (LOA) dated 02.02.2021 was granted to them vide F.No. KASEZ/IA/35/2020-21(**RUD-1**) by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ unit and carry out authorized operations of warehousing and trading services activity. Whereas, the Unit Approval Committee (UAC) after due deliberations has approved the requests of the said SEZ unit for inclusion of additional items in their warehousing service activity and accordingly, amendments in the original LOA have been made from time to time.

1.1. The said SEZ Unit, namely, M/s. United Safeway India Pvt. Ltd has filed certain Bills of Entry(**RUD-2**) for import of goods described as "Hot Rolled Pipes" for warehousing on behalf of various DTA Clients. The details of various import Bills of Entry are mentioned in Table-I below.

Table-I

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| S.No | BE No | Goods Description | DTA Client Name | Declared COO | Value of the goods (in Rs.) |
|------|------------------------|---|--|--------------------------------|-----------------------------|
| 1 | 1012921; 23.08.2023 | HOT ROLLED PIPE GR-304L OF PCS 744(AS PER INVOICE) | SHIV KRUPA TRADING (IEC- BMEPR9252E) | China | 56,54,051/- |
| 2 | 1012958; 24.08.2023 | HOT ROLLED PIPE GR-304L OF PCS 776(AS PER INVOICE) | SHIV KRUPA TRADING (IEC- BMEPR9252E) | China | 57,64,188/- |
| 3 | 1012922; 23.08.2023 | HOT ROLLED PIPE GR- 316H OF PCS 287(AS PER INVOICE) | BALAJI TRADERS (IEC- BNWPT0028B) | China | 1,05,41,419/- |
| 4 | 1012919; 23.08.2023 | HOT ROLLED PIPES GR- 304L OF PCS 397(AS PER INVOICE) | SHIV KRUPA TRADING (IEC- BMEPR9252E) | China | 57,53,329/- |
| 5 | 1012649; 19.08.2023 | HOT ROLLED PIPE GR.316H NO.OF PCS:871 | SHRI NATHJI IMPEX (IEC- JGTPK5059M) | UNITED ARAB EMIRATE S | 1,05,25,521/- |
| 6 | 1012648; 19.08.2023 | HOT ROLLED PIPE GR.316H NO.OF PCS:676 | SHRI NATHJI IMPEX (IEC- JGTPK5059M) | UNITED ARAB EMIRATE S | 1,06,02,372/- |
| 7 | 1013006; 25.08.2023 | HOT ROLLED PIPE NO.OF PCS:1707 PCS(AS PER INVOICE) | BALAJI TRADERS (IEC- BNWPT0028B) | UNITED ARAB EMIRATE S | 77,22,343/- |
| 8 | 1012941; 24.08.2023 | HOT ROLLED PIPE GR- TP304H OF PCS 770(AS PER INVOICE) | SHRI NATHJI IMPEX (IEC- JGTPK5059M) | China | 52,23,027/- |
| 9 | 1012920; 23.08.2023 | HOT ROLLED PIPES GR- 316L OF PCS 1470(AS PER INVOICE) | SHIV KRUPA TRADING (IEC- BMEPR9252E) | China | 89,67,475/- |
| | | | | Total | 7,07,53,725/- |

2. Examination of the goods:

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During examination of the goods, some discrepancies were noticed by the different authorised officers and individual observations were put in the NSDL system(**RUD-3**). The general observations w.r.t all the imports are as under

1. The goods appear to be appropriately classifiable under HSN Code: 7304 4900 whereas the goods are classified under HSN code 7304 9000.
2. The goods are declared as "Hot Rolled Pipes" by the SEZ unit/ DTA Clients, whereas during examination of the goods, the goods were found to be "Stain-less Steel Seamless Pipes and Tubes".
3. The goods are found to be Seamless Pipes and Tubes of various size mostly less than 6 NPS. Whereas on the documents, the specific type of the pipes are not mentioned.
4. Seamless Pipes and Tubes originated from China are subject to antidumping duty in terms of the Notification No. 31/2022-Cus (ADD) dated 20.12.2022. Whereas in the Bill of Entry no notification was applied so as to calculate the duty forgone and rate of duty is not correctly declared.
5. The goods appear to be subjected to Steel Quality Control, 2020 (BIS) as amended. During examination of the goods, no markings of BIS as mandated by the Steel QCO are found on the goods.
6. Apart from the above, for three bills of entry nos.1012649 dated 19.08.2023, 1012648 dated 19.08.2023 and 1013006; 25.08.2023 the goods were declared to be originated from UAE.

After consolidating all the import Bills of Entry, the goods were examined under Panchnama dated 10.10.2023(**RUD-4**) and goods under the above referred Bills of entry were seized as the goods appears to be liable to confiscation under Section 111 of the Customs Act, 1962.

3. Detailed observations w.r.t above points.**3.1 Classification and Violation of LOA:****3.1.1 Classification:**

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The subject imported goods were examined at the unit premises under panchanama dated on 10.10.2023. During examination under Panchnama, it was seen that there was just an open plot where goods i.e., Seamless Pipes and Tubes of Circular Cross Section of different outer diameter(s) and sizes bunched together in different bales/bundles were lying. Marks of the declared grade viz. 304L/ 316H/ 316L/ TP304H were seen on the pipes.

Since the subject goods are Stainless Steel Pipes of Circular Cross Section, therefore the goods appear to be properly classifiable under CTI 7304 49 00 instead of 7304 90 00 as declared. The relevant CTH is pasted as under for ready reference: -

| | | | | | |
|------------|-----|---|-----|-----|---|
| 7304 | | TUBES, PIPES AND HOLLOW PROFILES, SEAMLESS, OF IRON | | | |
| | | (OTHER THAN CAST IRON) OR STEEL | | | |
| | - | Line pipe of a kind used for oil and gas pipelines: | | | |
| 7304 11 | -- | Of stainless steel: | | | |
| 7304 11 10 | --- | Tubes and pipes | kg. | 15% | - |
| 7304 11 20 | --- | Blanks for tubes and pipes | kg. | 15% | - |
| 7304 11 90 | --- | Other | kg. | 15% | - |
| 7304 19 | -- | Other: | | | |
| 7304 19 10 | --- | Tubes and pipes | kg. | 15% | - |
| 7304 19 20 | --- | Blanks for tubes and pipes | kg. | 15% | - |
| 7304 19 90 | --- | Other | kg. | 15% | - |
| | - | Casing, tubing and drill pipe, of a kind used in drilling for oil or gas: | | | |
| 7304 22 00 | -- | Drill pipe of stainless steel | kg. | 15% | - |
| 7304 23 | -- | Other drill pipe: | | | |
| 7304 23 10 | --- | Of iron | kg. | 15% | - |
| 7304 23 90 | --- | Other | kg. | 15% | - |
| 7304 24 00 | -- | Other, of stainless steel | kg. | 15% | - |
| 7304 29 | -- | Other: | | | |
| 7304 29 10 | --- | Of iron | kg. | 15% | - |
| 7304 29 90 | --- | Other | kg. | 15% | - |
| | - | Other, of circular cross-section, of iron or non-alloy steel: | | | |

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| | | | | | |
|------------|------|---|-----|-----|---|
| 7304 31 | --- | Cold-drawn or cold-rolled (cold-reduced): | | | |
| | --- | Up to 114.3 mm outer diameter: | | | |
| 7304 31 11 | ---- | Of iron | kg. | 15% | - |
| 7304 31 19 | ---- | Other | kg. | 15% | - |
| | --- | Above 114.3 mm but up to 219.1 mm outer | | | |
| | | diameter | | | |
| 7304 31 21 | --- | Of iron | kg. | 15% | - |
| 7304 31 29 | --- | Other | kg. | 15% | - |
| | --- | Above 219.1 mm diameter: | | | |
| 7304 31 31 | ---- | Of iron | kg. | 15% | - |
| 7304 31 39 | ---- | Other | kg. | 15% | - |
| 7304 39 | -- | Other: | | | |
| | | Up to 114.3 mm outer diameter: | | | |
| 7304 39 11 | ---- | Of iron | kg. | 15% | - |
| 7304 39 19 | ---- | Other | kg. | 15% | - |
| | --- | Above 114.3 mm but up to 219.1 mm outer diameters: | | | |
| 7304 39 21 | ---- | Of iron | kg. | 15% | - |
| 7304 39 29 | -- | Other | kg. | 15% | - |
| | -- | Above 219.1 mm diameter: Of | | | |
| 7304 39 31 | - | iron | kg. | 15% | - |
| | - | | | | |
| | - | | | | |
| | - | | | | |
| 7304 39 39 | ---- | Other | kg. | 15% | - |
| | - | <u>Other, of circular cross section, of stainless</u> | | | |
| 7304 41 00 | -- | <u>steel:</u> | kg. | 15% | - |
| | | Cold-drawn or cold-rolled (cold-reduced) | | | |
| 7304 49 00 | -- | <u>Other (Proposed)</u> | kg. | 15% | - |
| 7304 51 | --- | Other, of circular cross section, of alloy steel: | | | |
| | | Cold-drawn or cold rolled (cold-reduced): | | | |
| 7304 51 | --- | Up to 114.3 mm diameter | kg. | 15% | - |

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| | | | | | | |
|---------|----|-----|--|-----|-----|---|
| 10 | | | | | | |
| 7304 20 | 51 | --- | Above 114.3 mm but up to 219.1 mm outer diameter | kg. | 15% | - |
| 7304 30 | 51 | --- | Above 219.1 mm outer diameter | kg. | 15% | - |
| 7304 10 | 59 | -- | Other: | | | |
| 7304 20 | 59 | --- | Up to 114.3 mm diameter | kg. | 15% | - |
| 7304 30 | 59 | --- | Above 114.3 mm but up to 219.1 mm outer diameter | kg. | 15% | - |
| 7304 00 | 90 | --- | <u>Other (Declared)</u> | kg. | 15% | - |

As the subject imported goods are Stainless Steel Pipes having Circular Cross Section and the Pipes are not cold drawn, the subject goods appear to merit classification under CTI 7304 4900. When a specific heading for a product is available in the Tariff, the goods must be classified there only rather than residuary heading of the chapter heading in terms of Rule 3 (a) of the General Rules for the interpretation of the First Schedule. Rule 3(a) of the General Rules for the interpretation of the First Schedule is reproduced as under: -

*“3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be affected as follows:*

*(a) **The heading which provides the most specific description shall be preferred to headings providing a more general description.***

The declared CTI by the SEZ unit/DTA Client is general i.e. **7304 9000** for others, however the subject imported goods being Stainless Steel Pipes having Circular Cross Section, and when there is specific heading for pipes having circular cross section of stainless steel, the goods merit classification under sub-heading of the tubes, pipes and hollow profiles, seamless, of circular cross section, of stainless steel only i.e. under **CTI7304 49 00**. In view of the above, the goods appear to be liable for confiscation in terms of section 111 (m) of the Customs Act, 1962.

3.1.2 Violation of LOA:

The said SEZ Unit has been issued LoA No. 35/2020-21 dated 02.02.2021(**RUD-1**) to operate as an SEZ Unit and to undertake authorized activities of Trading and Warehousing Services. Based on the requests of the said SEZ unit for inclusion of additional items in their warehousing service activity, as approved, amendments in the original LOA have been made from time to time. It appears that the said SEZ Unit didn't have the permission to import goods falling under CTH 7304 4900, therefore it appears that the said SEZ unit, by importing the subject goods, has violated the terms and conditions of the Letter of Approval issued by the Development Commissioner as required for operation under SEZ Act 2005 and rules made thereunder. Therefore, it appears that the SEZ unit has indulged in un-authorised operations by importing the goods of CTI other than the permitted CTIs in their LOA and hence the goods imported by them appears to be prohibited to import under the SEZ Act, 2005 and thereby appears to fall under the definition of the "Prohibited Goods" as defined in Section 2(33) of the Customs Act, 1962. Therefore, the impugned goods appear to be liable for confiscation under section 111 (d) of the Customs Act, 1962.

3.2 Mis-declaration of Description of the goods:

The description of the goods appear to be mis-declared as the SEZ unit has mentioned only "Hot Rolled Pipe" in the Bills of Entry instead of complete description "Hot rolled Seamless Steel Pipes" of the subject goods under CTI 7304 4900. Further during the examination of the goods, it is seen that the goods are found to be Seamless Pipes and Tubes of various size mostly less than 6 NPS. Whereas on the documents, the specific type of the pipes are not mentioned. In view of the above, the goods appear to be liable for confiscation in terms of section 111 (m) of the Customs Act, 1962.

3.3 Mis-declaration of Country of Origin:

From the details of the Bills of Entry nos. 1012649 dated 19.08.2023, 1012648 dated 19.08.2023 and 1013006; 25.08.2023 respectively mentioned at Sr.No. 5, 6 & 7 of Table-I above, the goods are found to be declared as originated as UAE. Whereas, as per the corresponding invoice no. 0001/EXP/2023 dated 27.07.2023 issued by the Supplier, namely, M/s. Special Nickel Alloy Trading, FZE, Dubai, UAE, the country of origin is mentioned as "China". Further, the unit vide their letter dated 29.09.2023 (**RUD-5**) submitted at page 2 that "the origin is CHINA". Whereas, in view of the above, it appears that the said SEZ Unit and the DTA clients mis-declared the Country

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of Origin as "UAE" in Bills of entry no. 1012649 dated 19.08.2023, 1012648 dated 19.08.2023 and 1013006; 25.08.2023. Accordingly, for act of mis-declaration of Country of Origin in the import documents the goods imported under Bills of entry 1012649 dated 19.08.2023, 1012648 dated 19.08.2023 and 1013006; 25.08.2023 having a total assessable value of Rs. 2,88,50,236/- are liable for confiscation under section 111 (m) of the Customs Act, 1962.

3.4 Non-declaration of Anti-dumping Duty:

Seamless Pipes and Tubes originated from China are subject to Anti-dumping duty (ADD) in terms of the Notification No. 31/2022-Cus (ADD) dated 20.12.2022. However, the SEZ Unit has not declared the ADD in the Import Bills resulting in suppression/ mis-declaration of rate of duty. In view of the above, it appeared that the said SEZ Unit and the DTA clients have suppressed the applicable ADD and thereby mis-declared the rate of duty in the import Bills resulting in the imported goods liable for confiscation in terms of section 111 (m) of the Customs Act, 1962.

3.5 Applicability of BIS / Steel Quality Control, 2020: -

3.5.1. Ministry of Steel has issued the Steel and Steel Products (Quality Control) Order, 2020 (here-in-after referred to as "QCO, 2020" for brevity) dated 27.05.2020, as amended from time to time, mandating conformity to standards and essential requirements on Steel and Steel products. The QCO, 2020 mandates Compulsory use of Standard Mark on the Steel/ Steel products. Whereas, in the instant case, the subject imported goods being classifiable under CTI 7304 4900 should be subjected to BIS compliances as prescribed under QCO, 2020, as amended. It further appeared that during examination proceedings conducted under panchanama dated 10.10.2023, no BIS markings were found to be mentioned/ imprinted on the imported Steel pipes/ tubes.

3.5.2. The Stainless Steel Pipes and Tubes are mentioned at Sr. no. 2 in the Table 2 of the Steel and Steel Products (Quality Control) Order, 2020 dated 12.11.2020. The essential condition for the Sr no 2 in the table is Clause 2(3) of the said order. Clause 2(3) of the said QCO is reproduced as under: -

"Conformity to standards and essential requirements- (I) every steel and steel product specified in column (3) of Table 1 shall conform to the corresponding Indian Standards specified in column (2) of the said table with effect from the dates specified in column (5) thereof.

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(3) *Goods and articles specified in column (2) of Table 2 at Sl. No. 2 shall be made from the stainless steel as input material, specified in column (3) of Table 1, conforming to Indian Standards specified in column (2) of Table 1, bearing Standard Mark under a licence from the Bureau as per Scheme – I of Schedule – II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018 and shall be accompanied with the test certificate of the input material.*
 ...

3.5.3. From the above clause, it appeared that the raw material from which Stainless Pipes and Tubes are manufactured should be conforming to Indian Standards, bearing Standard Marks under a license issued by the Bureau and such Pipes should be accompanied with the test certificate of the raw material. Generally, Seamless Stainless-Steel tubes / pipes are manufactured using Cylindrical Bar of Steel. Thus, as per the clause, the Cylindrical Bar of Steel (CTH 7222) must also conform to Indian Standards, bearing Standard Marks under a license issued by the Bureau. Also a test certificate has to be accompanied with the consignment. Whereas, in respect of subject imported goods, no BIS marking were found on the goods and the said SEZ Unit and the DTA clients have not furnished any test certificate of the input material. In view of the above mentioned non-compliance of QCO, 2020 the subject imported goods appear to be "Prohibited" under Section 2(33) of the Customs Act, 1962 and are liable for confiscation under Section 111(d) of the Customs Act, 1962.

3.5.4. From the Table-2 of the QCO, 2020, it appeared that the CTI mentioned in import documents 7304 9000 is not covered i.e. exempted from Quality control compliances. Therefore, it also appeared that the SEZ unit and the DTA clients have intentionally mis-classified the goods instead of proper classification 7304 4900 to escape the quality conditions imposed as per the Steel Quality Control Order.

4. Accordingly the draft SCN bearing following charges was proposed-

4.1 The DTA client/Importer, namely, M/s. Balaji Traders, IEC- BNWPT0028B, is hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 40 days from the receipt of this notice as to why:

- a. The classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry appearing in Table-I of Annexure-A to the Show Cause Notice, should not be rejected and re-classified as "Hot rolled Seamless Steel Pipes" under Customs Tariff item 7304 4900.

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- b. The goods mentioned in Table-I in **Annexure-A** to the Show cause notice having assessable value of Rs. **1,82,63,762/-** should not be held liable to confiscation under Section 111 (d) and Section 111(m) of the Customs Act, 1962.
- c. Penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- d. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.

4.2. The DTA client/Importer, namely, M/s. Shiv Krupa Trading, IEC- BMEPR9252E, is hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 40 days from the receipt of this notice as to why:

- a. The classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry appearing in Table-II of Annexure-A to the Show Cause Notice, should not be rejected and re-classified as "Hot rolled Seamless Steel Pipes" under Customs Tariff item 7304 4900.
- b. The goods mentioned in Table-II in **Annexure-A** to the Show cause notice having assessable value of Rs. **2,61,39,044/-** should not be held liable to confiscation under Section 111 (d) and Section 111(m) of the Customs Act, 1962.
- c. Penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- d. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.

4.3. The DTA client/Importer, namely, M/s. Shiv SHRI NATHJI IMPEX, IEC- JGTPK5059M, is hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 40 days from the receipt of this notice as to why:

- a. The classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry appearing in Table-III of Annexure-A to the Show Cause Notice, should not be rejected and re-classified as "Hot rolled Seamless Steel Pipes" under Customs Tariff item 7304 4900.
- b. The goods mentioned in Table-III in **Annexure-A** to the Show cause notice having assessable value of Rs. **2,63,50,919/-** should not be held liable to confiscation under Section 111 (d) and Section 111(m) of the Customs Act, 1962.

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- c. Penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- d. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.

4.4. The SEZ Unit, namely, M/s United Safeway India Pvt Ltd, situated at Shed no as Open Plot, Phase-I, Sector-III,KASEZ, Gandhidham, Kutchis hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 40 days from the receipt of this notice as to why:

- a. The classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry appearing in Table-I mentioned at para 1.1 above, should not be rejected and re-classified as "Hot rolled Seamless Steel Pipes" under Customs Tariff item 7304 4900.
- b. The goods mentioned in Table-I at para 1.1 above having assessable value of **Rs.7,07,53,725/-** should not be held liable to confiscation under Section 111 (d) and Section 111(m) of the Customs Act, 1962.
- c. Penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- d. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above
- e. Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the duty and other liabilities arising out of subject goods removed from the said SEZ unit to DTA as detailed in Annexure-B.

5. PROVISIONAL RELEASE OF GOODS

Goods were provisionally released vide letter F. No. GEN/ADJ/ADC/65/2024-Adjn-O/o Commr-Cus-Kandla Dated: 16.01.2024 on submission of the bond and Bank guarantee subject to the condition that goods shall be 100% exported and no DTA clearance shall be made.

6. Personal hearing:- All the noticees vide their letters dated 19.06.2024 requested for waiver of show cause notice and personal hearing in the matter.

7. Defence Submission:- All the noticees vide their submissions dated 28.05.2024 and 10.06.2024 interalia stated that they have fulfilled the conditions stipulated for the release of the guarantee . they have done Exports against provisionally released imported goods with the relevant

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regulations and requirements. they have requested for the release of their Fixed deposits which were provided as security for the export of the aforementioned goods.

In this regard, they have submitted following documents as below-

1. Self -certified copy of import Bill of entry for home consumption.
2. Self -certified copy of Import Bill of entry (SEZ to Bonded Warehouse)[Rule46(13)].
3. Self -certified copy of Export Shipping Bill along with Annexure-A and Export invoice.
4. Self -certified copy of space certificate and re-warehousing certificate related to import Bill of entry.
5. Self -certified copy of Fixed Deposits.

DISCUSSION AND FINDINGS:-

7. I find that M/s United Safeway India Pvt. Ltd SEZ unit was granted the Letter of Approval (LOA) dated 02.02.2021 vide F.No. KASEZ/IA/35/2020-21(**RUD-1**) by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ unit and carry out authorized operations of *warehousing and trading services activity*. The Unit Approval Committee (UAC) after due deliberations had approved the requests of the said SEZ unit for inclusion of additional items in their warehousing service activity and accordingly, amendments in the original LOA were made from time to time.
8. I find that the said SEZ Unit, filed Bills of Entry for import of goods described as "Hot Rolled Pipes" for warehousing on behalf various DTA Clients. The details of various import Bills of Entry are mentioned in Table below.

| S.No | BE No | Goods Description | DTA Client Name | Declared COO | Value of the goods (in Rs.) |
|------|------------------------|---|-------------------------------------|----------------------|-----------------------------|
| 1 | 1012921; 23.08.2023 | HOT ROLLED PIPE GR-304L OF PCS 744(AS PER INVOICE) | SHIV KRUPA TRADING (IEC-BMEPR9252E) | China | 56,54,051/- |
| 2 | 1012958; 24.08.2023 | HOT ROLLED PIPE GR-304L OF PCS 776(AS PER INVOICE) | SHIV KRUPA TRADING (IEC-BMEPR9252E) | China | 57,64,188/- |
| 3 | 1012922; 23.08.2023 | HOT ROLLED PIPE GR-316H OF PCS 287(AS PER INVOICE) | BALAJI TRADERS (IEC-BNWPT0028B) | China | 1,05,41,419/- |
| 4 | 1012919; 23.08.2023 | HOT ROLLED PIPES GR-304L OF PCS 397(AS PER INVOICE) | SHIV KRUPA TRADING (IEC-BMEPR9252E) | China | 57,53,329/- |
| 5 | 1012649; 19.08.2023 | HOT ROLLED PIPE GR.316H NO.OF PCS:871 | SHRI NATHJI IMPEX (IEC-JGTPK5059M) | UNITED ARAB EMIRATES | 1,05,25,521/- |
| 6 | 1012648; 19.08.2023 | HOT ROLLED PIPE GR.316H NO.OF PCS:676 | SHRI NATHJI IMPEX (IEC-JGTPK5059M) | UNITED ARAB EMIRATES | 1,06,02,372/- |
| 7 | 1013006; | HOT ROLLED PIPE NO.OF | BALAJI TRADERS | UNITED | 77,22,343/- |

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| | | | | | |
|---|------------------------|---|--|---------------|---------------|
| | 25.08.2023 | PCS:1707 PCS(AS PER INVOICE) | (IEC-BNWPT0028B) | ARAB EMIRATES | |
| 8 | 1012941; 24.08.2023 | HOT ROLLED PIPE GR-TP304H OF PCS 770(AS PER INVOICE) | SHRI NATHJI IMPEX (IEC-JGTPK5059M) | China | 52,23,027/- |
| 9 | 1012920; 23.08.2023 | HOT ROLLED PIPES GR-316L OF PCS 1470(AS PER INVOICE) | SHIV KRUPA TRADING (IEC- BMEPR9252E) | China | 89,67,475/- |
| | | | | Total | 7,07,53,725/- |

9. During the examination of the goods, it was observed that goods have been mis-declared by the SEZ unit and the imported goods were Stainless Steel Pipes of Circular Cross Section classifiable under CTI 7304 49 00 instead of 7304 90 00 as declared in the above Bills of Entry.

10. Before proceeding further, it is pertinent to reproduce the relevant CTH as given below:-

| | | | | | |
|------------|-----|--|-----|-----|---|
| 7304 | | TUBES, PIPES AND HOLLOW PROFILES, SEAMLESS, OF IRON | | | |
| | | (OTHER THAN CAST IRON) OR STEEL | | | |
| | - | Line pipe of a kind used for oil and gas pipelines: | | | |
| 7304 11 | -- | Of stainless steel: | | | |
| 7304 11 10 | --- | Tubes and pipes | kg. | 15% | - |
| 7304 11 20 | --- | Blanks for tubes and pipes | kg. | 15% | - |
| 7304 11 90 | --- | Other | kg. | 15% | - |
| 7304 19 | -- | Other: | | | |
| 7304 19 10 | --- | Tubes and pipes | kg. | 15% | - |
| 7304 19 20 | --- | Blanks for tubes and pipes | kg. | 15% | - |
| 7304 19 90 | --- | Other | kg. | 15% | - |
| | - | Casing, tubing and drill pipe, of a kind used in drilling for oil or gas: | | | |
| 7304 22 00 | -- | Drill pipe of stainless steel | kg. | 15% | - |
| 7304 23 | -- | Other drill pipe: | | | |
| 7304 23 10 | --- | Of iron | kg. | 15% | - |
| 7304 23 90 | --- | Other | kg. | 15% | - |
| 7304 24 00 | -- | Other, of stainless steel | kg. | 15% | - |
| 7304 29 | -- | Other: | | | |
| 7304 29 10 | --- | Of iron | kg. | 15% | - |
| 7304 29 90 | --- | Other | kg. | 15% | - |
| | - | Other, of circular cross-section, of iron or non- alloy steel: | | | |
| 7304 31 | --- | Cold-drawn or cold-rolled (cold-reduced): | | | |

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| | | | | |
|------------|------|--|-----|-----|
| | | | | |
| | --- | Up to 114.3 mm outer diameter: | | |
| 7304 31 11 | ---- | Of iron | kg. | 15% |
| 7304 31 19 | ---- | Other | kg. | 15% |
| | --- | Above 114.3 mm but up to 219.1 mm outer | | |
| | | diameter | | |
| 7304 31 21 | --- | Of iron | kg. | 15% |
| 7304 31 29 | --- | Other | kg. | 15% |
| | --- | Above 219.1 mm diameter: | | |
| 7304 31 31 | ---- | Of iron | kg. | 15% |
| 7304 31 39 | ---- | Other | kg. | 15% |
| 7304 39 | -- | Other: | | |
| | | Up to 114.3 mm outer diameter: | | |
| 7304 39 11 | ---- | Of iron | kg. | 15% |
| 7304 39 19 | ---- | Other | kg. | 15% |
| | --- | Above 114.3 mm but up to 219.1 mm outer diameters: | | |
| 7304 39 21 | ---- | Of iron | kg. | 15% |
| 7304 39 29 | -- | Other | kg. | 15% |
| 7304 39 31 | -- | Above 219.1 mm diameter: Of iron | kg. | 15% |
| 7304 39 39 | ---- | Other | kg. | 15% |
| 7304 41 00 | -- | <u>Other, of circular cross section, of stainless steel:</u> Cold-drawn or cold-rolled (cold-reduced) | kg. | 15% |
| 7304 49 00 | -- | <u>Other (Proposed)</u> | kg. | 15% |
| 7304 51 | --- | Other, of circular cross section, of alloy steel: Cold-drawn or cold rolled (cold-reduced): | | |
| 7304 51 | --- | Up to 114.3 mm diameter | kg. | 15% |

| | | | | | | |
|---------|----|-----|---|-----|-----|---|
| 10 | | | | | | |
| 7304 51 | 20 | --- | Above 114.3 mm but up to 219.1 mm outer | kg. | 15% | - |
| 7304 51 | 30 | --- | diameter Above 219.1 mm outer diameter | kg. | 15% | - |
| 7304 59 | | -- | Other: | | | |
| 7304 59 | 10 | --- | Up to 114.3 mm diameter | kg. | 15% | - |
| 7304 59 | 20 | --- | Above 114.3 mm but up to 219.1 mm outer | kg. | 15% | - |
| 7304 59 | 30 | --- | diameter Above 219.1 mm outer diameter | kg. | 15% | - |
| 7304 90 | 00 | --- | <u>Other (Declared)</u> | kg. | 15% | - |

Classification of the subject goods:- As the subject imported goods were Stainless Steel Pipes having Circular Cross Section and the Pipes were not cold drawn, the subject goods merit classification under CTI 7304 4900. When a specific heading for a product is available in the Tariff, the goods must be classified there only rather than residuary heading of the chapter heading in terms of Rule 3 (a) of the General Rules for the interpretation of the First Schedule. Rule 3(a) of the General Rules for the interpretation of the First Schedule is reproduced as under:

*“3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be affected as follows:*

*(a) **The heading which provides the most specific description shall be preferred to headings providing a more general description.***

The declared CTI by the SEZ unit/DTA Client is general/residuary entry i.e. **7304 9000** for others, however the subject imported goods being Stainless Steel Pipes having Circular Cross Section, and when there is specific heading for pipes having circular cross section of stainless steel, the goods merit classification under sub-heading of the tubes, pipes and hollow profiles, seamless, of circular cross section, of stainless steel only i.e. under CTH **7304 49 00**. In view of the above, I hold that the goods merit classification under CTH 73044900.

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11. On going through the details of the Bills of Entry nos. 1012649 dated 19.08.2023, 1012648 dated 19.08.2023 and 1013006; 25.08.2023 respectively mentioned at Sr. No. 5, 6 & 7 of Table above, I find that the goods were declared as originated from UAE. Whereas, as per the corresponding invoice no. 0001/EXP/2023 dated 27.07.2023 issued by the Supplier, namely, M/s. Special Nickel Alloy Trading, FZE, Dubai, UAE, the country of origin is mentioned as "China". Further, the unit vide their letter dated 29.09.2023 (**RUD-5**) submitted at page 2 that "the origin is CHINA". It is clear that the SEZ Unit and the DTA clients mis-declared the Country of Origin as "UAE" in Bills of entry no. 1012649 dated 19.08.2023, 1012648 dated 19.08.2023 and 1013006; 25.08.2023.

12. I find that Seamless Pipes and Tubes originated from China are subject to Anti-dumping duty (ADD) in terms of the Notification No. 31/2022-Cus (ADD) dated 20.12.2022. However, the SEZ Unit has not declared the ADD in the Import Bills resulting in suppression/ mis-declaration of rate of duty. In view of the above, it is apparent that the said SEZ Unit and the DTA clients have clearly suppressed the applicable ADD and thereby mis-declared the rate of duty in the import Bills.

13. As per Steel and Steel Products (Quality Control) Order, 2020 (here-in-after referred to as "QCO, 2020" for brevity) dated 27.05.2020 issued by Ministry of Steel, as amended from time to time, mandating conformity to standards and essential requirements on Steel and Steel products. The QCO, 2020 mandates Compulsory use of Standard Mark on the Steel/ Steel products. In the instant case, the subject imported goods being classifiable under CTI 7304 4900 are subjected to BIS compliances as prescribed under QCO, 2020, as amended. However, no BIS markings were found to be mentioned/ imprinted on the imported Steel pipes/ tubes. This shows that the imported goods were not having BIS compliance.

14. While going through the Steel and Steel Products (Quality Control Order, 2020) it is observed that this Order dated 27.05.2020 shall not apply to steel and steel products manufactured domestically for export, as reproduced below:-

MINISTRY OF STEEL ORDER New Delhi, the 27th May, 2020

S.O. 1673(E). *In exercise of the powers conferred by section 16 of the Bureau of Indian Standards Act, 2016 (11 of 2016) and in the supersession of the Steel and Steel Products (Quality Control) Order, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated 19th February, 2020 vide notification number S.O. 756(E), dated the 14th February, 2020 except as respects things done or omitted to be done before such supersession, the Central Government being of the opinion that it is necessary or expedient so to do in the public interest and after consulting the Bureau, hereby makes the following order, namely:-*

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1. *Short title, commencement and application.* (1) *This order may be called the Steel and Steel Products (Quality Control) Order, 2020.*
- (2) *Save as otherwise provided in this order, it shall come into force on the date of its publication in the Official Gazette.*
- (3) *It shall apply to steel and steel products specified in column (3) of Table 1 and goods and articles specified in column (2) of Table 2 **except steel and steel products manufactured domestically for export** which conform to any other specification required by a foreign buyer.*

However the above exception is not available to steel and steel products imported into SEZ for the purpose of export. Therefore, the SEZ unit/DTA clients have failed to comply with the BIS norms and therefore they have engaged themselves in importing restricted goods in violation of the LoA granted to them.

15. Whether the subject goods are prohibited or restricted in nature:-

15.1 The Central Government has the authority to issue notifications under Section 11 of the Customs Act, 1962, declaring the export or import of any items as forbidden. The prohibition can be unconditional or conditional. A notification under Section 11 can be issued for a variety of reasons, including maintaining India's security, preventing a shortage of goods in the country, conservation of foreign exchange, safeguarding balance of payments etc.

15.2 In order to understand the meaning of the terms 'Restriction' and 'Prohibition', it becomes essential on my part to first try and understand the literal meanings of the same. The Cambridge Dictionary, defines prohibition as "law or rule that officially stops something from being done, or the fact of not being allowed by official rules or laws" similarly, it defines restriction as "an official limit set by law on something". Understandably, the peripheral understanding after reading the above definitions shows that the definition for the prohibition is strongly worded with no scope for an exception. In contrast, the definition for restriction is not strongly worded compared to prohibition and carries a scope for the exception.

15.3 Similarly, under the Customs Act, 1962, the definition for "prohibited goods" is strongly drafted with no scope of exception and carries a penalty in the form of confiscation of goods as per sections 111, 113, 112 & 124 of the act. However, on the other hand, sections 3 to 5 of the Foreign Trade (Development and Regulation) Act, 1992 are not so strongly worded and carry the scope of an exception in issuing a license for import and export of the restricted commodity. For example, the export of human skeletons is prohibited as per section 2 (33). In contrast, export of cattle which

is restricted suitable as per the 'ITC- HC' list, is allowed against an export licence obtained under schedule II ITC(HS) Classification of Export and Import Items, 2018.

15.4 Moreover, the restriction and prohibition of goods are not just limited to the Customs act, 1962 and Notifications of DGFT. Import and export of some specified goods will also be restricted/prohibited under other laws such as Environment Protection Act, Wild Life Act, Indian Trade and Merchandise Marks Act, Arms Act, etc. The prohibition under these acts will also apply to the penal provisions of the Customs Act, rendering such goods liable for confiscation under section 111(d) of the Customs Act (for import) and 113 (d) of the Customs Act (for export)¹¹.

15.5 The relief for the distinction and differentiation in treating restricted and prohibited goods lies in lieu of section 125 of the Customs Act, 1962. *Section 125 of the act makes a clear distinction between prohibited goods and other goods and obligates the release of other goods on payment of redemption of a fee. Similarly Section 112 makes a clear distinction between prohibited and dutiable goods.*

15.6 In this regard, I rely on the following judgements:-

(i) *Shaik Md. Omer v. Collector of Customs AIR 1967 Cal*

It is the most highlighted case, which elaborates the meaning and the scope of the word 'prohibition' as per section 2(33) of the act. In this case, the Hon'ble High Court of Calcutta observed that prohibition means every prohibition: and restriction is also a type of prohibition. The Court further explained that whenever there is a condition attached with the import or export of the good, then such goods are labelled as 'restricted goods' and import or export of such goods can be permitted on account of the fulfilment of the necessary condition. *Shaik Md. Omer*

(ii) *Commissioner of Customs v. Atul Automation (P.) Ltd*

The Hon'ble Supreme Court, in this case, has underscored the difference between what is prohibited and what is restricted. The goods imported or exported without authorisation were found to be restricted goods. ***Restricted goods have the option of being redeemed and do not deserve the treatment of absolute confiscation, which could be applied only to prohibited goods.***

(iii) *Horizon Ferro Alloys (P.) Ltd. v. Union of India*

In this case, the difference between prohibited and restricted goods was made considering the tainted characteristics they hold.¹⁵ It was observed that goods like fake currency, pornographic material, dead animal skin or body etc., are prohibited goods as per section 2 (33) of the act. *Moreover,*

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in this case, it was also observed that merely exceeding the quantity restriction over restricted goods will not make them fall under the category of prohibited goods. The Adjudication Authority can use its discretion according to section 125 to declare such goods as restricted goods.

In the instant case, the goods are not under the category of 'absolute prohibition'. The goods were restricted in nature, which is a type of prohibition only when certain conditions are not followed. In view of the above discussion and legal findings, I hold that the goods in question are restricted in nature and shall not be termed as prohibited.

CONFISCATION OF GOODS:-

16.I find that the SEZ Unit/DTA Clients have mis-declared the imported goods in terms of their description, Classification and Country of Origin. Further they have not followed BIS compliance as mandated under Steel Quality Control Order. It is apparent that imports of steel and steel products in India, without complying with the BIS norms, are not allowed. However, import of steel is not absolutely prohibited but is restricted. Such mis-declaration has rendered their goods liable for confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962. Further, in this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that *when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not-*. This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

17. REDEMPTION FINE:-

I find that the subject goods were provisionally released after taking Bond and Bank Guarantee subject to the condition that goods shall not be allowed to be cleared into DTA as the goods did not follow the BIS norms mandated under Steel Quality Control Order discussed herein above. Therefore, it is apt to impose redemption fine upon the owner of the goods i.e. DTA client/importer. In this regard, I rely upon the judgement of Weston Components Ltd. -2002-TIOL-176-SC-CUS wherein it was held that "*the goods were released on executing a bond and so, it was held by the Supreme Court that if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the Customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the Customs authorities to levy redemption fine.*"

17.1. EXPORT OF IMPORTED GOODS:-

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The Noticees in their submission dated 28.05.2024 and 10.06.2024 have informed that they imported the subject goods only for the purpose of export and submitted Bond for provisional release of goods with an undertaking that all the goods would be exported. The details of export in respect of the imported goods are as under:-

| NAME OF IMPORTER | S.N. | IMPORT BOE NO | WAREHOUSE BE NO. | DESCRIPTION OF GOODS | GRADE | WAREHOUSE BE QTY | VALUE OF GOODS | IMPORT QUANTITY USED | EXPORT KGS | SHIPPING BILL NO. | SB DATE | VALUE OF GOODS | BALANCE /WASTE | VALUE OF BALANCE /WASTE GOODS | | | | |
|--------------------|------|--------------------------|--------------------------|----------------------|----------|------------------|----------------|----------------------|------------|-------------------|------------|----------------|----------------|-------------------------------|---------|--|--|--|
| SHIV KRUPA TRADING | 1 | 1012958 DATED 24.08.2023 | 2014221 DATED 28.08.2023 | HOT ROLLED PIPES | 304/304L | 27059 | 5800342 | 4981 | 4883 | 9608640 | 03-05-2024 | 1026086 | 550 | 113300 | | | | |
| | | | | | | | | 5648 | 5537 | 9860655 | 14-05-2024 | 1163488 | | | | | | |
| | | | | | | | | 2281 | 2236 | 9848914 | 14-05-2024 | 469886 | | | | | | |
| | | | | | | | | 8610 | 8440 | 9842909 | 13-05-2024 | 1773660 | | | | | | |
| | | | | | | | | 5000 | 4900 | 9904598 | 15-05-2024 | 1030000 | | | | | | |
| | | | | | | | | 1087 | 1066 | 9904598 | 15-05-2024 | 223922 | | | | | | |
| | | | | TOTAL (1) | | 28157 | | 5800342 | 27607 | 27062 | | | 5687042 | 550 | 113300 | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | HOT ROLLED PIPES | 304/304L | 20554 | 5689514 | 8385 | 8219 | 9935703 | 16-05-2024 | 1727310 | 365 | 75190 | | | | |
| BALAJI TRADERS | 2 | 1012921 DATED 23.08.2023 | 2014223 DATED 28.08.2023 | | | | | 11769 | 11540 | 9989870 | 18-05-2024 | 2424414 | | | | | | |
| | | | | | | | | 175 | 173 | 1363744 | 01-06-2024 | 36050 | | | | | | |
| | | | | | | | | 560 | 548 | 9989870 | 18-05-2024 | 115360 | | | | | | |
| | | | | | | | | 445 | 436 | 1332808 | 31-05-2024 | 91670 | | | | | | |
| | | | | | | | | 5920 | 5800 | 1332833 | 31-05-2024 | 1219520 | | | | | | |
| | | | TOTAL (2) | | | 27619 | | 5689514 | 27254 | 26716 | | | 5614324 | 365 | 75190 | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | HOT ROLLED PIPES | 316/316L | 20444 | 5532130 | 6115 | 5995 | 9557664 | 02-05-2024 | 1259690 | 475 | 97850 | | | | | |
| | | | | | | | 13919 | 13646 | 9604479 | 03-05-2024 | 2867314 | | | | | | | |
| | | | | | | | 6346 | 6284 | 1363746 | 01-06-2024 | 1307276 | | | | | | | |
| | | | TOTAL (3) | | 26855 | | 5532130 | 26380 | 25925 | | | 5434280 | 475 | 97850 | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | HOT ROLLED PIPES | 304/304L | 19906 | 5789424 | 8600 | 8425 | 1146871 | 24-05-2024 | 1771600 | 565 | 116390 | | | | | |
| | | | | | | | 10906 | 10690 | 1147329 | 24-05-2024 | 2246636 | | | | | | | |
| | | | | | | | 4144 | 4072 | 1147329 | 24-05-2024 | 853664 | | | | | | | |
| | | | TOTAL (4) | | 28104 | | 5789424 | 27539 | 26997 | | | 5673034 | 565 | 116390 | | | | |
| | | | | | | | | | | | | | | | | | | |
| SHRI NATHJI IMPEX | 5 | 1013006 DATED 25.08.2023 | 2014276 DATED 29.08.2023 | HOT ROLLED PIPES | 304/304H | 28629 | 7758459 | 4507 | 4419 | 9556858 | 02-05-2024 | 1221397 | 575 | 155825 | | | | |
| | | | | | | | | 5277 | 5174 | 9557664 | 02-05-2024 | 1430067 | | | | | | |
| | | | | | | | | 7156 | 7016 | 9604479 | 03-05-2024 | 1939276 | | | | | | |
| | | | | | | | | 4635 | 4544 | 9585903 | 03-05-2024 | 1256085 | | | | | | |
| | | | | | | | | 6479 | 6352 | 9608640 | 03-05-2024 | 1755809 | | | | | | |
| | | | | TOTAL (5) | | 28629 | | 7758459 | 28054 | 27505 | | | 7602634 | 575 | 155825 | | | |
| | | | | | | | | | | | | | | | | | | |
| | 6 | 1012922 DATED 23.08.2023 | 2014312 DATED 29.08.2023 | HOT ROLLED PIPES | 316/316H | 17778 | 10564125 | 17600 | 17255 | 9556858 | 02-05-2024 | 6600000 | 386 | 144750 | | | | |
| | | | | | | | | 525 | 515 | 9556858 | 02-05-2024 | 196875 | | | | | | |
| | | | | HOT ROLLED PIPES | 316/316H | 10393 | | 9660 | 9470 | 9557664 | 02-05-2024 | 3622500 | | | | | | |
| | | | | TOTAL (6) | | 28171 | | 10564125 | 27785 | 27240 | | | 10419375 | 386 | 144750 | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | HOT ROLLED PIPES | 304/304H | 27668 | 5256920 | 8036 | 7878 | 9533974 | 30-04-2024 | 1526840 | 574 | 109151 | | | | |
| | | | | | | | | 8678 | 8508 | 9528971 | 30-04-2024 | 1648820 | | | | | | |
| | | | | | | | | 10380 | 10176 | 9532885 | 30-04-2024 | 1972109 | | | | | | |
| | | | | TOTAL (7) | | 27668 | | 5256920 | 27094 | 26562 | | | 5147769 | 574 | 109151 | | | |
| | | | | | | | | | | | | | | | | | | |
| | 8 | 1012649 DATED 19.08.2023 | 2014322 DATED 29.08.2023 | HOT ROLLED PIPES | 316/316H | 28351 | 10546572 | 16410 | 16086 | 9441944 | 27-04-2024 | 6104520 | 570 | 212040 | | | | |
| | | | | | | | | 11371 | 11148 | 9533974 | 30-04-2024 | 4230012 | | | | | | |
| | | | | TOTAL (8) | | 28351 | | 10546572 | 27781 | 27234 | | | 10334532 | 570 | 212040 | | | |
| | | | | | | | | | | | | | | | | | | |
| | 9 | 1012648 DATED 19.08.2023 | 2001100 DATED 18.01.2024 | HOT ROLLED PIPES | 316/316H | 28558 | 10623576 | 4980 | 4883 | 9533974 | 30-04-2024 | 1852560 | 578 | 215016 | | | | |
| | | | | | | | | 11950 | 11715 | 9528971 | 30-04-2024 | 4445400 | | | | | | |
| | | | | | | | | 11050 | 10922 | 9532885 | 30-04-2024 | 4110600 | | | | | | |
| | | | | TOTAL (9) | | 28558 | | 10623576 | 27980 | 27520 | | | 10408560 | 578 | 215016 | | | |
| | | | | | | | | | | | | | 66321550 | 4638 | 1239512 | | | |
| | | | | TOTAL (1 TO 9) | | 252112 | 67561062 | 247474 | 242761 | | | | | | | | | |

In this regard, I find that 4,638Kgs of goods have still not been exported. It is clear that no DTA clearance is allowed of Balance/Waste as the subject raw material did not comply with the BIS norms. Therefore, the authorities concerned are to be suitably directed to not allow clearance of balance/wastage in DTA.

18. Penalties on the SEZ unit/DTA clients under Section 112, 114A and 114AA of the Customs Act, 1962.

18.1 In the instant case, it is evident that the goods in question are restricted in nature as their import are subject to BIS norms as mandated in Quality Control Order. Hence it was also liable for confiscation under Section 111(d) of the Customs Act. Consequently, the SEZ unit/DTA clients have rendered themselves for penal action under Section 112(a)(ii) of the Customs Act, 1962.

18.2 With regard to penalty under Section 114A of the Customs Act, 1962, I find that Section 114A provides for penalty for non/short payment of duty, however in the instant case, the Investigation report/DSCN doesn't propose evasion of duty of Customs, therefore, penal action under Section 114A of the Customs Act, 1962 is not attracted.

18.3 With regard to penalty under Section 114AA of the Customs Act, 1962, I find that the SEZ unit has made a false statement and document while presenting the Bill of Entry by mis-declaring the goods in terms of description, CTH and COO rendering themselves liable for penalty under Section 114AA of the Customs Act, 1962. Rule 75 of the SEZ Rules, 2006 mandates that unless and otherwise specified in these rules, all inward or outward movements of the goods into or from SEZ by the Unit shall be based on self-declaration made by the Unit. While importing subject goods, the said SEZ unit was bound for true and correct declaration and assessment. The said SEZ unit was fully aware of specifications, characteristics, nature and description of the goods imported and warehoused. Such act on their part has rendered them liable for penal action under Section 114AA of the Customs Act, 1962. Further the DTA clients were also well aware of the mis-declaration in the Bills of Entry filed by SEZ unit on their behalf. Such action on their part has rendered them liable for penal action under Section 114AA of the Customs Act, 1962.

19. In view of the above discussion and findings, I hereby pass the following order:-

A. Order in respect of the DTA client/Importer, namely, M/s. Balaji Traders, IEC- BNWPT0028B

- a. I reject the description and classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry and order to re-classify the same as "Hot rolled Seamless Steel Pipes" classifiable under Customs Tariff item 7304 4900.
- b. I order to confiscate the goods mentioned totally valued at Rs. **1,82,63,762/-** under Section 111 (d) and Section 111(m) of the Customs Act, 1962.

However, I impose redemption fine of Rs.1,80,000/- (Rupees One Lakh Eighty thousand only) under Section 125 of the Customs Act, 1962.

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- c. I impose penalty of Rs.5,000/- (Rupees Five Thousands Only) under Section 112(a)(ii) of the Customs Act, 1962.
- d. I refrain from imposing any penalty under Section 114A of the Customs Act, 1962.
- e. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) under Section 114AA of the Customs Act, 1962
- f. I order to enforce the Fixed Deposits No. 067794 dated 15.01.2024 of amount Rs. 9,13,188/- issued by UCO Bank Gandhidham Branch, for the payment of Redemption fines and penalties confirmed above.

B. Order in respect of the DTA client/Importer, namely, M/s. Shiv Krupa Trading, IEC- BMEPR9252E:-

- a. I reject the description and classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry and order to re-classify the same as "Hot rolled Seamless Steel Pipes" under Customs Tariff item 7304 4900.
- b. I order to confiscate the goods valued at Rs.2,61,39,044/-under Section 111 (d) and Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) under Section 125 of the Customs Act, 1962.
- c. I impose penalty of Rs.5,000/- (Rupees Five thousand) under Section 112(a)(ii) of the Customs Act, 1962.
- d. I refrain from imposing penalty under Section 114A of the Customs Act, 1962.
- e. I impose penalty of Rs.1,00,000/- (Rupees One Lakh only)under Section 114AA of the Customs Act, 1962.
- f. I order to enforce the Fixed Deposits No. 067796 dated 15.01.2024 of amount Rs. 13,06,952/- issued by UCO Bank Gandhidham Branch, for the payment of Redemption fines and penalties confirmed above

C. Order in respect of the DTA client/Importer, namely, M/s. SHRI NATHJI IMPEX, IEC- JGTPK5059M:-

- a. I reject the description and classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry and order to re-classify the same as "Hot rolled Seamless Steel Pipes" under Customs Tariff item 7304 4900.
- b. I order to confiscate the goods valued at Rs.2,63,50,919/-under Section 111 (d) and Section 111(m) of the Customs Act, 1962. However, I impose redemption fine of Rs.

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2,50,000/- (Rupees Two Lakhs Fifty Thousand only) under Section 125 of the Customs Act, 1962.

- c. I impose penalty of Rs.5,000/- (Rupees Five thousands only) under Section 112(a)(ii) of the Customs Act, 1962.
- d. I refrain from imposing penalty under Section 114A of the Customs Act, 1962.
- e. I impose penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 114AA of the Customs Act, 1962
- f. I order to enforce the Fixed Deposits No. 067795 dated 15.01.2024 of amount Rs. 13,17,546/- issued by UCO Bank Gandhidham Branch, for the payment of Redemption fines and penalties confirmed above

D. Order in respect of the SEZ Unit, namely, M/s United Safeway India Pvt Ltd:-

- a. I reject the description and the classification of the subject goods declared as "Hot Rolled Pipes" under Customs Tariff heading 7304 9000 of the Customs Tariff Act, 1975, in the Bills of Entry and order to re-classify the same as "Hot rolled Seamless Steel Pipes" under Customs Tariff item 7304 4900.
- b. I impose penalty of Rs.5,000/- (Rupees Five thousand only) under Section 112(a)(ii) of the Customs Act, 1962.
- c. I refrain from imposing penalty under Section 114A of the Customs Act, 1962.
- d. I impose penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 114AA of the Customs Act, 1962
- e. I order to enforce the Bond-cum-Legal Undertaking in Form-H furnished by the SEZ Unit towards the penalties confirmed above.

20. This order is issued without prejudice to any other action that may be taken against the SEZ unit or any other person under the Customs Act, 1962 or any other law for the time being in force.

(Dev Prakash Bamanavat)

Additional Commissioner

Customs House, Kandla

F.No. GEN/ADJ/ADC/65/2024-Adjn-O/o Commr-Cus-Kandla
DIN- 20240671ML000000CDA5

To,

KDL/ADC/DPB/08/2024-25

DIN- 20240671ML000000CDA5

1. M/s Shiv Krupa Trading, Plot No. 586, Shop No. 15, Police Station Road, Ward 12/B, Gandhidham-370201.
2. Shri Nathji Impex , Plot No. 37-38, DC-3, Rambaugh Road, Adipur, Kutch-370202.
3. Balaji Traders, Plot No. 77, Ward-5B Adipur Taluka , Gandhidham, Kutch Gujarat-370205.
4. M/s United Safeway India Pvt. Ltd., Plot No. 210, Riddhi Siddhi Arcade , Plot No. 13, Sector 08, Gandhidham, Gujarat-370201.

Copy to:-

1. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
2. The Deputy Commissioner, KASEZ, Gandhidham
3. The Superintendent, Review/TRC/EDI, Kandla Customs House, Kandla.
4. Guard File.