



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009

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

फा. सं./ F. No.:VIII/10-50/Pr.Commr./O&A/2023-24
DIN-20250271MN0000666DE9

आदेशकीतारीख/Date of Order : 26.02.2025
जारीकरनेकीतारीख/Date of Issue : 26.02.2025

द्वारापारित :-
Passed by :-

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

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COM-67-24-25 Dated 26.02.2025 in
the case of M/s. Vipra Impex**

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall

be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा शकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Subject: Show Cause Notice No. 2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 issued by Additional Commissioner, Customs, Gr.4A/4A, NS-III, JNCH, Nhava Sheva and No. VIII/10-50/Pr.Commr./O&A/2023-24 dated 15.05.2024 issued by Principal Commissioner, Customs, Ahmedabad in case of M/s Vipra Impex.

BRIEF FACTS OF THE CASE

M/s.Vipra Impex, (hereinafter also called as "Importer" for the sake of brevity), holder of IEC No. AHNPC3307J is having registered office at Plot No. 21, New GIDC, 52 Sector, Umbergaon, Valsad, Gujrat-396171. The importer is engaged in the business of trading a wide range of steel products including stainless steel coils & sheets. Cold Rolled Stainless Steel Coils & Sheets (hereinafter referred as "imported goods/impugned goods") are regularly imported from Malaysia under Free Trade Agreement (FTA) by the importer from various ports by availing the benefit of duty exemption under Notifications 46/2011-Customs dated 01.06.2011 and Notification No. 53/2011-Customs dated 01.07.2011. The impugned goods have been shipped from Malaysia falling under Customs Tariff item 72193590 & 72209090 to the First Schedule of the Customs Tariff Act, 1975. The importer filed the bills of entry through the Customs Broker for the clearance of the aforesaid goods by availing concessional rate of Customs duty benefit on the basis of Country of Origin Certificate prescribed under Notification No. 53/2011-Customs dated 01.07.2011, as amended. Based upon the self-assessed declarations regarding Country of Origin, benefit made by the importer in the aforesaid bills of entry, the imported goods viz. Cold Rolled Stainless Steel Coil & Sheets were cleared.

2. Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI for short) had forwarded a letter vide F. No. DRI/MZU/F/Misc-23/2022 dated 23.08.2022 with letters dated 25.07.2022 and 07.06.2022 issued vide F. No. DRI/HQ-CI/B-Cell/50D/Enq-01/2020-CI regarding verification of certificates of Country of Origin. Further reference was invited to Alert Circular 02/2021 dated 10.09.2021 and Alert Circular 01/2022 dated 07.02.2022 by DRI, HQ.

3. In the above-mentioned letters and references, it had been stated that 6 references pertaining to 187 unauthentic COOs, received from the PTA Cell, CBIC, New Delhi, were forwarded for further necessary action along with preliminary analysis conducted by them. During analysis, 2612 risky import consignments pertaining to 329 distinct importers were shared with the zonal units for comprehensive investigation in co-ordination with the field formations. Further, it had been stated that FTA cell had shared details of 42 COOs which were reported to be unauthentic by the issuing authority in Malaysia and all these 42 COOs pertain to two overseas suppliers namely M/s. MH Megah Maju Enterprises and M/s. Setica Industries (M) Sdn Bhd. The Ministry of International Trade and Industry (MITI), Malaysia, in its verification reports, stated that both the above mentioned overseas suppliers were not registered in their ePCO systems and appeared to be unauthentic. ePCO is a web-based Preferential Certificate of Origin application and approval system. Manufacturers/ Exporters who need certification of the country of origin for a particular product can use ePCO to apply in the form of an official online document the preferential Certificate of Origin. Upon analysis of the import consignments pertaining to the above referred 42 COOs, the same were found imported by the 20 importers and M/s. Vipra Impex is one of them. Thus, it appeared that COOs issued by said 42 overseas suppliers were fake as they were not registered with ePCO system to obtain Preferential Certificate of Origin.

Further, vide letter F.No. DRI/HQ-CI/B-cell/50D/Enq-01/2020-CI/1602 dated 25.07.2022 and 07.06.2022, it had been communicated that the said 187 COOs (184 COOs issued in Malaysia & 3 COOs issued in Thailand) were analyzed which pertained to the total 42 overseas entities claiming benefits of Notification No. 46/2011-Customs dated 01.06.2011 and Notification 53/2011-Customs dated 01.07.2011. Further, these 42 overseas suppliers appeared to be risky or unauthentic as detailed in para 7 of the above said letter dated 07.06.2022 and M/s. Ezy Metal Enterprises was one of them. In view of the above facts, the matter of verification of Country of Origin Certificate in respect of M/s. Vipra Impex was taken up for investigation by Directorate of Revenue Intelligence, Pune.

4. On perusal of the import data of M/s Vipra Impex from ISS portal since 2018, it was observed that the importer had imported stainless steel articles viz. stainless steel sheets, cold rolled stainless steel coils & sheets from various suppliers of Malaysia, Vietnam, US, Thailand, China and others under the CTI72193590 & 72209090. Further, it was noted that when the said goods were imported from Malaysia, the importer had taken the benefit of Notification No. 46/2011 under the serial no 967(I) and availed the exemption benefit of Customs duty on the basis of Country of Origin Certificate prescribed under Notification No. 53/2011-Customs dated 01.07.2011, as amended.

5. On scrutiny of the import data of the importer, it was noticed that out of the said 42 overseas entities, M/s Vipra Impex had imported cold rolled stainless steel coils & sheets under CTI 72193590 & 72209090 from two entities viz. M/s MH Megah Maju Enterprises, Malaysia & M/s. Ezy Metal Enterprises, Malaysia. The details of which were as below:

Sr. No.	Port	Overseas Supplier	Assessable Value (In Rs.)	BE No. & Date
1.	INSAJ6	MH Megah Maju Enterprises	8,90,72,151/-	As per Annexure A
		Ezy Metal Enterprises	39,40,463/-	5319998 dated 16.10.2019
2.	INNSA1	MH Megah Maju Enterprises	26,77,640/-	As per Annexure A

6. The benefit under Notifications 46/2011-Customs was available provided the goods were of Malaysian Origin in accordance with provision of the Customs Tariff [Determination of Origin of Goods were under the Preferential Trade Agreements between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published vide Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. As per the aforesaid Rules, the "Certificate of Origin" was required to be issued by the designated authority.

Similarly, benefit of the Customs Notifications No. 46/2011-Customs dated 01.06.2011 and Notification No. 53/2011-Customs dated 01.07.2011 were available, provided the goods were of Malaysian origin in accordance with provisions of the Customs Tariff [Determination of Origin of Goods were under the Preferential Trade Agreements between the Governments of the Republic of India and Malaysia] Rules, 2011, published vide Notification No. 43/2011-Customs (N.T.).

7. In pursuance of the foregoing paras, summons dated 15.09.2022 & 21.11.2023 were issued to the importer to give evidence and to submit details of imports made under FTA/PTA since 2018 from Malaysia and certificates of country of origin of the said imports. In response to the said summons Shri Vipin Chaturvedi, Proprietor of M/s. Vipra Impex vide his letter dated 28.12.2023 submitted that the said goods were originated from Malaysia and not anywhere else. The Malaysian supplier had given them the Country of Origin Certificate of Malaysia and, accordingly, they had availed the benefit of exemption of Customs duty under Notification 46/2011 dated 01.06.2011 on the basis of the said Country of Origin Certificate of Malaysia. However, the Malaysian authorities had certified that the entity viz. M/s MH Megah Maju Enterprises was not registered in their ePCO systems and M/s. Ezy Metal Enterprises, Malaysia was among the said risky 42 suppliers. Hence, it appeared that the COO certificates issued to them were unauthentic.

8. In view of the above facts discussed in the foregoing paras and evidences available on record, it appeared that M/s Vipra Impex had contravened the provisions of Section 46(4) of the Customs Act, 1962, in as much, as they had taken a wrong exemption of Customs duty based upon invalid or forged document namely Country of Origin Certificate in terms of the Notifications No. 46/2011-Customs dated 01.06.2011, and thereby they appeared to have suppressed material facts from the department and produced forged Country of Origin Certificate as mentioned above for the imported goods, while filling the declaration, seeking clearance at the time of importation of the impugned goods based upon invalid and forged documents viz. Country of Origin Certificate leading to unlawful and wrong availment of exemption from Customs duty under Notifications No. 46/2011-Customs dated 01.06.2011 by the importer. M/s. Vipra Impex appeared to have knowingly and intentionally contravened the provisions of Section 17 of the Customs Act, 1962 read with Section 46, ibid, inasmuch as they by reason of collusion, wilful mis-statement and suppressed the material facts from the department and produced unauthentic Country of Origin Certificate for the imported goods, while filling the declaration, seeking clearance at the time of importation of the impugned goods based upon invalid and unauthentic documents viz. Country of Origin Certificate as mentioned in the show cause notice leading to wrong availment of exemption from Customs duty under Notifications No. 46/2011-Customs dated 01.06.2011 by the importer. Therefore, the differential Customs duties were recoverable involving the extended period under the provisions of Section 28 (4) of the Customs Act, 1962.

9. Differential Duty Liability:

9.1. The total differential duty leviable along with IGST on the said goods amounted to Rs. 93,15,446/- without allowing exemption of Customs duty based on Country of Origin Certificate benefit of Malaysian origin. Exemption of Customs duty based on Country of Origin for the said imported goods was not available to them for the reasons as discussed in the foregoing paras. Therefore, it appeared that the amount of differential Customs duties amounting to Rs. 93,15,446/- was recoverable in terms of Section 28(4) of the Customs Act, 1962 from M/s. Vipra Impex, by denying exemption of Customs duty based upon the Country of Origin of imported goods. M/s. Vipra Impex, and its proprietor Mr. Vipin Chaturvedi, appeared to have knowingly and intentionally contravened the provisions of Section 17 of the Customs Act, 1962 read with Section 46, ibid, inasmuch as they suppressed material facts from the department and produced unauthentic Country of Origin

Certificate as mentioned above for the imported goods, while filling the declaration, seeking clearance at the time of importation of the impugned goods based upon invalid and forged documents viz. Country of Origin Certificate leading to unlawful and wrong availment of exemption from Customs duty under Notifications No. 46/2011-Customs dated 01.06.2011 by the importer. In view of the above, the goods of the declared value imported and cleared under the bills of entry, were liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962, as they suppressed material facts from the department and produced forged Country of Origin Certificate.

10. Section 110 AA. Action subsequent to inquiry, investigation or audit or any other specified purpose-

Whereas in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of Customs has reasons to believe that-

- (a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;
- (b) any duty has been erroneously refunded;
- (c) any drawback has been erroneously allowed; or
- (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded, then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing-
 - (a) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or
 - (b) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5,
and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5."

11. The imports of cold rolled stainless steel coils & sheets under CTI 72193590 & 72209090 by the Importer had been taken place at ICD Tumb (INSAJ6) and Nhava Sheva (INNSA1) and highest Duty demand pertains to the ICD Tumb (INSAJ6), which falls under the jurisdiction of the Principal Commissioner of Customs, Ahmedabad. Therefore in terms of Section 110AA read with Notification No.28/2022 Customs (NT) dated 31.03.2022 the proper officer in the instant case was the Principal Commissioner of Customs, Ahmedabad.

12. Therefore, M/s. Vipra Impex, having registered office at Plot No. 21, New GIDC, 52 Sector, Umbergaon, Valsad, Gujrat-396171 were called upon to show cause to the Principal Commissioner of Customs, Ahmedabad, as to why:

- i. The exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the goods imported under various Bills of Entry filed at ICD Tumb & Nhava Sheva, as mentioned in the Show Cause Notice, should not be disallowed as the Competent authority of Malaysia had stated that overseas suppliers were not registered in their ePCO systems.
- ii. The impugned goods having total assessable value of **Rs.9,56,90,255/- (Rupees Nine Crore, Fifty Six Lakh, Ninety Thousand, Two Hundred and Fifty Five only)** as mentioned in the Show Cause Notice should not be held liable for confiscation as per the provisions of Section 111(m) and 111 (o) of the Customs Act, 1962. However, as the said goods were not physically available for confiscation, why fine should not be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962;
- iii. The differential Customs Duty amounting to **Rs.93,15,446/- (Rupees Ninety Three Lakh, Fifteen Thousand, Four Hundred and Forty Six Only)** as mentioned in the Show Cause Notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- iv. The interest at the applicable rate should not be recovered from them on the said differential Customs Duty as mentioned at (iii) above under Section 28 AA of the Customs Act, 1962;
- v. Penalty should not be imposed on the Importer under Section 112(a) & (b) of the Customs Act, 1962;
- vi. Penalty should not be imposed on the Importer under Section 114A of the Customs Act, 1962;

13. Shri Vipin Chaturvedi, Proprietor of M/s. Vipra Impex, Plot No. 21, New GIDC, 52 Sector, Umbergaon, Valsad, Gujrat-396171 was called upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why:

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

14. SHOW CAUSE NOTICE ISSUED TO M/S VIPRA IMPEX BY ADDITIONAL COMMISSIONER OF CUSTOMS, GR.4A/4A, NS-III, JNCH, NHAVA SHEVA

14.1. Another, show cause notice SCN No./2023-24/ADC/Gr. IV/CAC/JNCH dated 27.02.2024 was also issued by the Additional Commissioner, Customs, Nhava Sheva on the similar lines for another consignment. In this regard, the following Bills of Entry No. 4966393 dated 19.09.2019 and 5257421 dated 11.10.2019, were filed by M/s. VipraImpex, having supplier as M/s MH MegahMaju Enterprise.

Sr. No.	Bill of Entry No & Date	Description of Goods		Supplier	CTI	Declared AV (in Rs.)	Paid Duty Structure	Declared Duty (in Rs.)
01	4966393 dated 19.09.2019	Cold Stainless Circle Grade 410M4	Rolled Steel Coils NSS	MH MegahMaju Enterprise	72209090	19,37,406	BCD@0%, SCD@0%, IGST@18%	3,48,733
02	5257421 dated 11.10.2019	Cold Stainless Circle Grade 410M4	Rolled Steel Coils NSS	MH MegahMaju Enterprise	72209090	16,60,207	BCD@0%, SCD@0%, IGST@18%	2,98,837
						35,97,613		

The details of Country-of-Origin Certificate and Invoice in respect of Bill of Entry No. 4966393 dated 19.09.2019 and 5257421 dated 11.10.2019 filed by M/s. Vipra Impex were:

Sr. No.	Bill of Entry No. & date	Supplier	Country of Origin (Declared)	Invoice No.	COO Certificate No.
01	4966393 dated 19.09.2019	MH MegahMaju Enterprise	Malaysia	190725-10 dated 10.09.2019	KL-2019-AI-21-083286 dated 18.09.2019
02	5257421 dated 11.10.2019	MH MegahMaju Enterprise	Malaysia	190805-12 dated 30.09.2019	KL-2019-AI-21-086910 dated 09.10.2019

14.2. Statement of Sh. Sanjay T. Zeemur S/o Sh. Tanaji Ganpat Zeemur, G Card Holder (Card No. Z-60) of M/S. I M Logistics (Cb No. 11/2266) was recorded under Section 108 of the Customs Act, 1962 in the Office of Special Investigation And Intelligence Branch (Import), JNCH At Tal-Uran, DistRaigad, Maharashtra – 400707 on 23.01.2024, wherein he inter-alia stated that:

(i) they had scrutinize all the documents provided by the importer to check whether all were in order or not. Further, they did not have any source to verify the authenticity of Country of Origin Certificates. The said COO was verified by the respective Group and the same was verified before granting OOC by the Department.

(ii) they had filed Bill of Entries Bills of Entry No. 4966393 dated 19.09.2019 and 5257421 dated 11.10.2019 at JNCH port for clearance of Cold Rolled Stainless Steel Coils Grade NSS410M4 on behalf of Importer M/s Vipra Impex. The subject goods are imported from Malaysia under Invoice No. 190725-10 dated 10.09.2019 & 190805-12 dated 30.09.2019 respectively and that they received information from the Department about the COO certificates being fake, and the same was conveyed to the importer and they were unaware the COO certificate was fake.

(iii) that there were few other consignments from the supplier MH MegahMaju Enterprise Malaysia, Malaysia for other importers had been filed by them

(iv) that they as Customs Broker, came in contact with the documents of the imported goods only a few days before the arrival in India and upon scrutinizing the documents, the same were found in order and hence they filed the bill of entry on the basis of documents provided by the importer. However, they were completely unaware about the routing of goods, if any, before the same being imported in India from Malaysia.

14.3. In the matter, Summons dated 26.08.2021, 03.09.2021 and 05.01.2024 was issued under Section 108 of the Customs Act, 1962 to the importer, M/s. Vipra Impex, directing them to appear before this office, however, the Importer did not appear before the authority.

14.4. Further, it was intimated by the office of Additional Director, DRI, New Delhi vide its letter vide F.No. DRI/DZU/23/ENQ-15/2022/1501 dated 11.05.2023 that Shri Sanjay Jain, one of the Chinese/Malaysian Suppliers, in his statement dated 02.02.2023, 04.02.2023 & 20.02.2023 admitted to had supplied Chinese origin goods via Malaysia to a number of importers in India. In his statement, Shri Sanjay Jain mentioned that he established company EVG Metals and in detail explained, how Chinese origin goods were routed through Malaysia to India. Among the companies where COO was found unauthentic, EVG Metal was one of those which tried to take benefit of FTA and avoided BCD and CVD on Chinese origin goods. From above, it was clearly established that companies like EVG Metals & MH MegahMaju Enterprise etc. were created only to route Chinese origin goods through Malaysia to India for the purpose of non-payment of Countervailing Duty vide Notification No. 01/2017-Customs (CVD) dated 07.09.2017 on Stainless Sheet Coils supplied/originated from China and imported to India. Hence, it appeared that M/s. Vipra Impex in connivance with their Chinese and Malaysian based supplier submitted fake COO of Malaysia and goods claimed to be of Malaysia Origin and did not qualify to be goods of Malaysia origin. Further, as stated in statement that they also imported hot rolled steel from China, therefore importer was not new to import, and that he was fully aware of various modus operandi. It, therefore, appeared that M/s. Vipra Impex had intentionally by suppression of facts, wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011 dated 01.06.2011 as amended, in respect of the goods imported from Malaysia on the invoice of Suppliers.

14.5. Customs Broker M/s. I M Logistics had filed Bills of Entry for other importers as well to avail benefits of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(I). It appeared that said Customs Broker was also aware of the modus operandi and actively connived with Importers to avail ineligible benefits of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(I) availing Country of Origin benefit and to evade Countervailing Duty imposed Notification No. 01/2017-Customs (CVD) dated 07.09.2017 on Stainless Sheet Coils supplied/originated from China and imported to India. In the present case also, the Customs Broker appeared to be actively involved in such nefarious act resulting in loss of government revenue. It appeared that the Customs Broker M/s. I M Logistics, in connivance with importer, had filed the said Bill of entry and helped the importer to avail the benefits of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(I) availing Country of Origin benefit in view of 'Rule 13' of Rules of Origin for ASEAN-India FTA (AIFTA) and also helped in duty evasion to the tune of Rs. 8,29,687/- and that they had not exercised due diligence in verifying the correctness of the certificates provided by the importer which had been found fake at later stage.

14.6. COO certificate in respect of Bill of entry filed by M/s. Vipra Impex had been verified as non-authentic and that the goods covered under relevant bill of entry had not originated from Malaysia and it appeared that the said goods had been originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty i.e. BCD (7.5%) by availing Customs Tariff Notification No. 46/2011 dated 01.06.2011 as well as CVD (@18.95% on landed value as it was applicable on goods under heading 7219 or 7220 originated from China and exported from China or Any country as per Notification No. 1/2017-Customs (CVD) dated 07.09.2017. Hence, it appeared that they were wilfully involved in this case of undue availment of duty exemption benefit by availing Customs Tariff Notification No. 46/2011 dated 01.06.2011 and evading applicable higher duties in terms of Notification No. 01/2017-Customs (CVD) dated 07.09.2017 and thus the said importer appeared to be liable for evading government revenue on account of submission of fake Country of Origin Certificates in respect of the said Bill of Entry as mentioned above. Hence, it appeared that they were wilfully involved in this case of undue availment of duty exemption benefit by availing Customs Tariff Notification No. 46/2011 dated 01.06.2011 and evading applicable higher duties in terms of Notification No. 01/2017-Customs (CVD) dated 07.09.2017 and thus the said importer appeared to be liable for evading government revenue on account of submission of fake Country of Origin Certificates in respect of the said Bill of Entry as mentioned in above.

14.7. It appeared that the goods declared in the subject Bill of Entry attracted higher rate of duty i.e. BCD @7.5%, CVD @18.95% on Landed value and IGST@18% as applicable for CTI 72202090 as it appeared that the said goods had been originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty. The details of Country-of-Origin Certificate and Invoice in respect of Bill of Entry No. 4966393 dated 19.09.2019 and 5257421 dated 11.10.2019 filed by M/s. Vipra Impex were:

Sr. No.	Bill of Entry No. & date	Supplier	Country of Origin (Declared)	Invoice No.	COO Certificate No.
01	4966393 dated 19.09.2019	MH MegahMaju Enterprise	Malaysia	190725-10 dated 10.09.2019	KL-2019-A1-21-083286 dated 18.09.2019

02	5257421 dated 11.10.2019	MH MegahMaju Enterprise	Malaysia	190805-12 dated 30.09.2019	KL-2019-AI-21-086910 dated 09.10.2019
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14.8 Therefore, it appears that the goods declared in the subject Bills of Entry attracts higher rate of duty i.e. BCD @7.5%, CVD @18.95% on Landed value and IGST@18% as applicable for CTI 7220/7219 as it appeared that the said goods had been originated from China and first routed to Malaysia from China and then exported to India with an intent to evade payment of appropriate Customs Duty. The duty re-assessed and the details of duty foregone were:

Sr. No.	Bill of Entry No & Date	Declared AV (in Rs.)	Declared Duty (in Rs.)	Duty Payable (in Rs.)	Duty Paid vide Challan	Differential Duty payable (in Rs.)
				BCD@7.5%, SWS@10%,		
				CVD@18.95% IGST@18%		
1	4966393 dated 19.09.2019	19,37,406	3,48,733	10,03,055		
2	5257421 dated 11.10.2019	16,60,207	2,98,837	8,59,540	3,85,338	8,29,687
		35,97,613	6,45,570	18,62,595		

14.9. M/s Vipra Impex had paid Differential Duty of Rs. 3,85,338 (Duty-Rs. 2,96,803 & Interest-88,535) in respect of Bills of Entry No. 4966393 dated 19.09.2019 and 5257421 dated 11.10.2019. However, total duty liability in respect of Bills of Entry No. 4966393 dated 19.09.2019 and 5257421 dated 11.10.2019 was Rs. 18,62,595/-, due to non-payment of Countervailing Duty as per Notification No. 01/2017-Customs (CVD) dated 07.09.2017 and wrong availment of COO benefit under Notification No. 046/2011 dated 01.06.2011 as the Certificate of Origin was found to be non-authentic. Thus, there appeared to be duty evasion of **Rs. 8,29,687/-** in respect of Bills of Entry No. 4966393 dated 19.09.2019 and 5257421 dated 11.10.2019 and same was liable to be recovered under Section 28(4) of the Customs Act, 1962 alongwith the applicable interest.

14.10. Summary of Investigation:

(i) In view of the above facts discussed in the foregoing paras and evidences available on record, it appeared that M/s Vipra Impex had contravened the provisions of Section 46(4) of the Customs Act, 1962, in as much, as they had taken a wrong exemption of Customs duty based upon invalid or forged document namely Country of Origin Certificate in terms of the Notifications No. 46/2011-Customs dated 01.06.2011, and thereby they appeared to had suppressed material facts from the department and produced forged Country of Origin Certificate as mentioned above for the imported goods, while filling the declaration, seeking clearance at the time of importation of the impugned goods based upon invalid and forged documents viz. Country of Origin Certificate leading to unlawful and wrong availment of exemption from Customs duty under Notifications No. 46/2011-Customs dated 01.06.2011 by the importer. M/s. Vipra Impex appeared to have knowingly and intentionally contravened the provisions of Section 17 of the Customs Act, 1962 read with Section 46, ibid, inasmuch as they by reason of collusion, wilful mis-statement and suppressed the material facts from the department and produced unauthentic Country of Origin Certificate for the imported goods, while filling the declaration, seeking clearance at the time of importation of the impugned goods based upon invalid and unauthentic documents viz. Country of Origin Certificate leading to wrong availment of exemption from Customs duty under Notifications No. 46/2011-Customs dated 01.06.2011 by the importer. Therefore, the differential Customs duties were recoverable involving the extended period under the provisions of Section 28 (4) of the Customs Act, 1962.

(ii) It appeared that the Customs Broker M/s. I M Logistics, had not exercised due diligence to ascertain the correctness of any information which he imparted to the client with reference to any work related to clearance of cargo. It was also noticed that they were involved in filing Bills of Entry of other Importers as well wherein benefits under Notification No. 46/2011 dated 01.06.2011 as amended had been wrongly availed. It appeared that they had not advised their client to comply with the provisions of the act, other allied Acts and the rules and regulations thereof, and in case of non-compliance bring the matter to the

notice of the Department which rendered Customs Broker M/s I M Logistics liable for penal action under the provision of Section 112 of the Customs Act, 1962.

14.10. Therefore, M/s Vipra Impex(IEC No. AHNPC3307) was called upon to show cause to the Additional/Joint Commissioner of Customs, Gr4/4A, NS-III, JNCH, NhavaSheva, Taluka - Uran, District - Raigad, Maharashtra - 400707, as to why:

- i. The duty exemption benefit of Customs Tariff Notification No. 46/2011 dated 01.06.2011 under Sr. No. 967(I) should not be denied and CVD @18.95% on the landed value should not be levied as per the Notification No. 01/2017-Customs (CVD) dated 07.09.2017 and Differential Duty amount of **Rs. 8,29,687/- (Rupees Eight Lakh Twenty Nine Thousand Six Hundred and Eighty Seven Only)** as mentioned in the notice should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
- ii. The subject goods as detailed in the notice having a total assessable value of Rs. 35,97,613/- (Rupees Thirty Five Lakh Ninety Seven Thousand Six Hundred and Thirteen Only) should not be held liable for confiscation under Section 111(q) of the Customs Act, 1962.
- iii. Penalty should not be imposed on the importer under Section 112 (a) and /or 114 A and 114AA of the Customs Act, 1962.
- iv. M/s. I. M. Logistics, as to why Penalty should not be imposed on them under Section 112 of the Customs Act, 1962.

15. Relevant Provisions of Law:

15.1 Sub-section (4) of section 46 of the Customs Act, 1962, specifies that, the importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

15.2 SECTION 17. Assessment of duty -

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

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

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

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment in within fifteen days from the date of re-assessment of the Bill of Entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

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

15.3 Circular No.17/2011- Customs dated 8th April, 2011 issued by the Ministry of Finance, specified that Section 17 of the Customs Act, 1962 provided 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. The importer or exporter at the time of self-assessment was to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill. The Bill of Entry or Shipping Bill self-assessed by importer or exporter, as the case may be, could be subject to verification with regard to

correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. For the purpose of verification, the proper officers were also required to order for examination or testing of the imported or export goods, production of any relevant document or ask the importer or exporter to furnish any relevant information.

15.4 Section 111: - Confiscation of improperly imported goods, etc. -

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

- (o) [any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer];
- (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 77³ [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];"

15.5 Section 112:- Penalty for improper importation of goods, etc-

- Any person, -*
- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act) or
 - (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable to penalty.

15.6 Section 114A provides

that 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.

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

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

15.8 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 erroneously 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 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.

15.9 Section 28AA (1) stipulates that -

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.

15.10 Section 2. Definitions -

In this Act, unless the context otherwise requires,
 (26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes 22 [any owner, beneficial owner] or any person holding himself out to be the importer;

15.11.Various provisions of the Customs Act, 1962 and the Rules made thereunder as applicable.

16. REFERENCE RECEIVED FROM CUSTOMS NHAVA SHEVA UNDER SECTION 110AA OF THE CUSTOMS ACT, 1962.

A reference was received from the Office of the Commissioner of Customs (NS-III), Jawaharlal Nehru Custom House, Nhava Sheva, Raigad, Maharashtra vide letter dated

16.12.2024 issued from F.No.S-10-1140/2023-24/ADC/GR IV/NS-III/CAC/JNCH issued by Superintendent, Customs/CAC, NS-III, JNCH informing that M/s Vipra Impex had informed them that Bill of Entry No.4966393 dated 19.09.2019 and Bill of Entry No.5257421 dated 11.10.2019 were also covered under the show cause notice No.2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 issued by the Additional Commissioner of Customs, Gr.4a, NS-III, JNCH, Nhava Sheva. Therefore, as the show cause notice on the same issue has been issued through multiple jurisdictions, the show cause notice No.2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 issued by the Additional Commissioner of Customs, Gr.4a, NS-III, JNCH, Nhava Sheva was sent to the undersigned for adjudication in terms of Section 110AA of the Customs Act, 1962 read with Notification No.28/2022-Customs (NT) dated 31.03.2022 issued by the Board.

DEFENCE REPLY

17. M/s Vipra Impex vide their letter dated 09.02.2025 filed their written submissions, wherein they inter-alia stated that:

- (i) they had already voluntarily paid the differential duty and interest totaling Rs.3,85,338 for the show cause notice No.2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 issued by the Additional Commissioner of Customs, Gr.4a, NS-III, JNCH, Nhava Sheva and that no penalty was imposable when duty along with interest were paid voluntarily soon after clearance and that they rely on judgment in case of R.M.Electronics V/s. Commissioner of Customs, Jaipur reported in 2003(160) ELT-896 (Tri.-Delhi);
- (ii) they procured the Certificates of Origin in good faith from their suppliers relying on the legitimacy of documents issued by the Malaysian authorities under standard trade practices and at the time of import there was no reason to doubt their authenticity;
- (iii) in case of verifying the genuineness of the certificate of origin, the Department was required to verify it with the authorities of the exporting country in accordance with Article 16 of the Operational Certification Procedures for the Rules of Origin under the ASEAN-India FTA, as set out in Appendix D;
- (iv) verification process was also prescribed in Section 28DA of the Customs Act, 1962 and the CAROTAR, Rules, 2020 and also CBIC Circular No.38/2020-Customs dated 21.08.2020 which elaborates the procedures to sending verification requests and provides guidelines for their implementation;
- (v) Rule 6 of CAROTAR Rules, 2020 provides mandate for verification process for authenticity of certificate of origin; that no reference of any formal verification request made to Malaysian authorities nor any communication with the noticee regarding the initiation of such process were made, thereby denying them the procedural rights;
- (vi) Rule 5 of CAROTAR Rules, 2020 also provides that the importer should be given an opportunity to furnish information and supporting documents before allegations of non-compliance were made and that no such attempt were made by the department;
- (vii) the show cause notice lacks concrete evidence in as much the department has relied merely on general alerts from DRI and certain verifications by OSD, FTA Cell, CBIC, New Delhi and importantly, no specific verification report proving that the certificates in the instant case were not genuine;
- (viii) they rely on the judgment of the Hon'ble CESTAT in case of Ratnamani Metals and Tubes Ltd., V/s Commissioner of Customs, Mundra reported in 2024 18 CENTAX 31 (Tri.-Ahmd) and in Riddhi Siddhi Bullions Ltd. V/s Commissioner of Customs, Hyderabad reported in 2017(355) ELT-585(Tri.-Hyd.) wherein it was held that proper verification of certificates of origin was required with the issuing authority before denying preferential tariff benefits;
- (ix) there was no intent to evade duty or wilful mis-statement as the required documents were submitted in accordance with the prevailing trade practices ensuring full compliance with applicable import regulations, including customs procedures and documentary requirements under Customs Act, 1962 and as required under ASEAN-India Free Trade Agreement (AIFTA)
- (x) there was no evidence of collusion between them and the overseas entity to mis-declare the origin of goods and the transactions were conducted transparently with all relevant documentation provided to the customs authorities and that the certificates of origin were obtained through established channels and there was no indication of

fraudulent intent or collusion on their part and that no conclusive proof was provided in the show cause notice that there was a deliberate act of misrepresentation or manipulation by them to gain undue benefit; therefore no demand and penalty was sustainable; that they rely on Hon'ble Supreme Court's judgment in case of Hindustan Steel V/s State of Orissa reported in 1978 ELT 159 wherein it was held that penalty should not be imposed unless there is a deliberate fraud, wilful misrepresentation, or conscious non-compliance of statutory requirements.

18. M/s I.M. Logistics filed their defence reply dated 12.02.2025, wherein they inter-alia contended that:

- (i) they had filed the bills of entry based on the documents forwarded by M/s Vipra Impex and that they had performed their duty without suppressing any facts;
- (ii) no clear evidence has been mentioned in the investigation to show that they were aware of the facts of the alleged availment of fake certificate of origin and that they had no detailed knowledge of the product and classification which was provided by M/s Vipra Impex;
- (iii) that they rely judgment of the Hon'ble Tribunal in case of D.K.Shipping Agency V/s Commissioner of Customs, Kolkata reported in 2016(342) ELT-280 (Tri.-Kolkata), Arokiaraj V/s Commissioner of Customs, Chennai reported in 2004(168) ELT-336(Tri.-Chennai), HIM Logistics Pvt. Ltd. V/s Commissioner of Customs, New Delhi reported in 2016(338) ELT-721(Tri.-Delhi) and Hon'ble High Court's judgment in case of Commissioner of Customs V/s Vaz Forwarding Ltd. reported in 2011(266) ELT-39(Guj.). In all these cases, penalty on the Customs House Agent were set aside as no direct evidence of the forged documents was in the knowledge of them was on record.

PERSONAL HEARING

19. A personal hearing was fixed on 07.02.2025, which was adjourned to 14.02.2025 on the request of Shri Naresh Satwani, Consultant, representing all the noticees, M/s Vipra Impex, Shri Vipin Chaturvedi, Proprietor of M/s Vipra Impex and M/s I.M.Logistics, Customs House Agent. Shri Naresh Satwani, Consultant appeared, virtually on 14.02.2025 on behalf of all the above noticees and reiterated the written submissions made by him vide letter dated 09.02.2025 and 12.02.2025 and requested time to file additional written submissions till 21.02.2025.

DISCUSSION AND FINDINGS

20. I have carefully gone through the records of the case and considered the written and oral submissions made by the noticees in this case. I proceed to adjudicate both the show cause notices, viz., VIII/10-50/Pr.Commr./O&A/2023-24 dated 15.05.2024 issued by the Principal Commissioner, Customs, Ahmedabad and No.2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 issued by the Additional Commissioner of Customs, Gr.4a, NS-III, JNCH, Nhava Sheva, in terms of Notification No.28/2022-Customs(N.T.) dated 31.03.2022.

21. The short point for determination in this case is:-

- (i) Whether the Certificate of Origin submitted along with the Bills of entries filed by M/s Vipra Impex were authentic, and if so, whether the benefit of Notification No.46/2011-Customs dated 01.06.2011 can be extended to the importer;
- (ii) Whether impugned goods involved in both the show cause notices were liable for confiscation under the provisions of Section 111 of the Customs Act, 1962;
- (iii) Whether differential customs duty is to be demanded or recovered under the provisions of Section 28(4) of the Customs Act, 1962, along with interest;
- (iv) Whether penalty is to be imposed on (a) M/s Vipra Impex under the provisions of Section 114A and Section 114AA of the Customs Act, 1962, (b) penalty on Shri Vipin Chaturvedi, Proprietor of M/s Vipra Impex under Section 112 and Section 114AA of the Customs Act, 1962 and (c) penalty on M/s I.M.Logistics, CHA of M/s Vipra Impex under Section 112 of the Customs Act, 1962.

22. The case of the department is that M/s Vipra Impex had filed bills of entries and availed duty exemption benefit of Customs Tariff Notification No.46/2011 dated 01.06.2011 under Sr.No.967(I), thereby availing the Country of Origin (CoO) benefit under Rules of Origin for ASEAN-INDIA FTA (AIFTA) agreement. On verification of

CoO's produced by M/s Vipra Impex along with filing of bills of entries, it was revealed that the same were fake/forged and these CoOs were issued in Malaysia to the suppliers, MH MEGAH MAJU Enterprises, EVG Metal Industries and many others. This resulted in customs duty evasion @ 7.5% of Basic Customs duty by M/s Vipra Impex.

23. The defence put forth by M/s Vipra Impex was that they were totally unaware that the CoOs filed along with the bills of entry were fake/forged and that they had obtained the same from the suppliers MH MEGAH MAJU Enterprises, EVG Metal Industries on good faith and that there was no reason for them to doubt their authenticity. They also contended that, be it as may be so, the Department did not verify the authenticity of the CoOs and failed to follow the procedure required in accordance with Article 16 of the Operational Certification Procedures for the Rules of Origin under the ASEAN-India FTA, as set out in Appendix D. They also stated that a verification process was also prescribed in Section 28DA of the Customs Act, 1962, the CAROTAR, Rules, 2020 and also under CBIC Circular No.38/2020-Customs dated 21.08.2020 which elaborates the procedures for sending verification requests to the country of import and provides guidelines for their implementation.

24. I find that the present case has arisen out of references by the FTA cell, CBIC, New Delhi forwarding details of 42 CoO's reported to be not authentic by the issuing authority in Malaysia. On verification of these CoO's, it was revealed that it pertained to 2 overseas suppliers namely, M/s MH Megah Maju Enterprises and M/s Ezy Metal Enterprises. The Ministry of International Trade and Industry (MITI), Malaysia in its verification report stated that both the above mentioned overseas suppliers were not registered in their ePCO systems. This verification report has been covered under DRI's letter No.DRI/HQ-CI/B-cell/50D/Enq-01/2020-CI dated 07.06.2022 and 25.07.2022 and were the basis of the investigation.

25. The importer, M/s Vipra Impex has argued that no proper verification of the CoO's submitted by them along with the bills of entry were made by the Department in terms of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 introduced by Notification No. 81/2020 - Customs (N.T.) dated, 21st August, 2020. It would be expedient to reproduce the relevant rules of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 [CAROTAR] for ease of reference:

"Rule 6. Verification request .-

(1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

(a) there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;

(b) there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or

(c) verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed:

Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific information from the Verification Authority as may be necessary to determine the origin of goods.

(2) Where information received in terms of sub-rule (1) is incomplete or nonspecific, request for additional information or verification visit may be made to the Verification Authority, in such manner as provided in the Rules of Origin of the specific trade agreement, under which the importer has sought preferential tariff treatment.

(3) When a verification request is made in terms of this rule, the following timeline for furnishing the response shall be brought to the notice of the Verification Authority while sending the request:

(a) timeline as prescribed in the respective trade agreement; or

(b) in absence of such timeline in the agreement, sixty days from the request having been communicated.

(4) Where verification in terms of clause (a) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods,

- (a) *The preferential tariff treatment of such goods may be suspended till conclusion of the verification;*
- (b) *The verification Authority shall be informed of reasons for suspension of referential tariff treatment while making request of verification; and*
- (c) *The proper officer may, on the request of the importer, provisionally assess and clear the goods, subject to importer furnishing a security amount equal to the difference between the duty provisionally assessed under section 18 of the Act and the preferential duty claimed."*

From the above rules, it is clear that the rules have been provided for verification of the genuineness of CoO's submitted by importers.

26. I find that Rule-1 of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 [CAROTAR] also empowers the proper officer to request for verification of certificate of origin from Verification Authority where there is a doubt regarding genuineness or authenticity of the certificate of origin. I find that Rule-5 of the said rules also provide:-

"(5) All requests for verification under this rule shall be made through a nodal office as designated by the Board."

27. From the above, it is amply clear that requests for verification shall be made through a nodal office as designated by the Board. I find that a special drive pertaining doubtful/risky unauthentic CoO's was undertaken by the FTA Cell, CBIC, New Delhi. Consequent to the detailed analysis regarding such unauthentic CoO's, pertaining to M/s MH Megah Maju Enterprises and M/s Ezy Metal Enterprises, the Ministry of International Trade and Industry (MITI), Malaysia in its verification report had stated that both the above mentioned overseas suppliers were not registered in their ePCO systems. This report is given by the Verification authority, which is the Ministry of International Trade and Industry (MITI), Malaysia, in the instant case. The stance taken by M/s Vipra Impex that the verification has not been done as required under the rules of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, and as per Article 16 of AIFTA in as much as no formal verification request was made to MITI nor references any communication was made with them regarding the initiation of such a process under Rule 6(2) of the said rules. This is totally baseless and without any merit. Rule 6(2) of the said rules are to be invoked only in cases where information received from the Verification Authority in terms of sub-rule (1) is incomplete or nonspecific. In the instant case, no such additional information was required from the Verification Authority, as the non-authenticity of the various CoO's, including those relevant in the instant case, was already rendered by the Verification Authority. Therefore, there was no constraint on the Department to seek any additional information from the Verification Authority.

28. I also find that the Board's Circular No.38/2020-Customs dated 21.08.2020 clearly provides guidelines for verification of genuineness in cases that are taken up by the Board. The verification of authenticity of CoO's had been taken up by FTA Cell, CBIC, New Delhi and the verification report had been received from the Verifying Authority, i.e., MITI. Therefore, the importer's contention that the Department had deliberately, bypassed the verification procedures is unjustified and deserves to be rejected.

29. Notwithstanding the above, I find that M/s Vipra Impex has voluntarily paid the duty along with interest, totaling to Rs.3,85,338, in case of bills of entry covered under show cause notice No.2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 issued by the Additional Commissioner of Customs, Gr.4a, NS-III, JNCH, Nhava Sheva. M/s Vipra Impex have also, in their defence, contended that they were anticipating that penalty would not be proposed in the show cause as they had paid up duty and interest soon after the clearance of the goods. This action, in itself, suggests that they were in the wrong in claiming the benefit of Notification No.46/2011 dated 01.06.2011, by producing unauthentic CoO's mentioned in the show cause notice.

30. I also find that in the investigations, Shri Sanjay Jain, one of the Chinese/Malaysian Suppliers, in his statement dated 02.02.2023, 04.02.2023 & 20.02.2023 admitted to have supplied Chinese origin goods via Malaysia to a number of importers in India. In his statement, Shri Sanjay Jain mentioned that he established company EVG Metals and in detail explained, how Chinese origin goods were routed through Malaysia to India. Among the companies where COO was found unauthentic, EVG Metal was one of those which tried to take benefit of FTA and avoided BCD and CVD on Chinese origin goods. It, therefore, was revealed that companies like EVG Metals & MH Megah Maju Enterprise, Ezy Metal Enterprises etc. were created only to route Chinese origin goods through Malaysia to India

for the purpose of non-payment of Countervailing Duty on Stainless Sheet Coils supplied/originated from China and imported to India.

31. Against this backdrop, I find that Rule 4 of CAROTAR, 2020 reads as under: (relevant provision reproduced for reference)

"Rule 4 – Origin related information to be possessed by the importer

Any importer who wishes to claim preferential rate of duty should possess information as indicated in Form I of the Rules and submit the same, when requested, to the proper officer. Form I provides a list of basic minimum information that the importer should know while claiming the preferential rate of duty for importing goods.

The importer should have all the supporting documents related to Form I for a minimum of 5 years from filing the bill of entry. He should exercise reasonable care for ensuring the truthfulness and accuracy pertaining to the information and documents obtained by him relating to Form I."

32. From the above provisions, I find that it was obligatory on the part of M/s Vipra Impex to ensure that the supporting documents, i.e., the Certificate of Origin submitted along with the respective bills of entry, in the instant case, was accurate or genuine, especially where the benefits of an exemption Notification are being availed. The importer, M/s Vipra Impex has utterly failed to that extent. I also find that despite several summons dated 26.08.2021, 03.09.2021, 05.01.2024 issued by the authority, directing them to appear before the authority, but they failed to appear. This clearly shows the culpability on the part of M/s Vipra Impex in the instant case.

33. From the above, I find that M/s. Vipra Impex in connivance with their Chinese and Malaysian based supplier submitted fake COO of Malaysia and goods claimed to be of Malaysia Origin and did not qualify to be goods of Malaysia origin. I find that M/s. Vipra Impex intentionally wrongly availed the benefit of concessional/preferential rate of duty under Notification No. 46/2011 dated 01.06.2011 as amended, in respect of the goods imported from Malaysia on the invoice of Suppliers and by submitting fake COO's. Therefore, the claim for preferential duty rates under Notification No.46/2011-Customs dated 01.06.2011 by M/s Vipra Impex deserves to be rejected, and the goods in question in both the show cause notices are liable for confiscation under the provisions of Section 111(m) (o) and (q) of the Customs Act, 1962.

33.1. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

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

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

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

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of

Section 125, "Whenever confiscation of any goods is authorised by this Act...", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

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

34. The differential Customs duty of Rs.8,29,687/- is required to be recovered under Section 28(4) of the Customs Act, 1962 along with interest in case of the show cause Notice No.2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024. However, it is observed that Bill of entry No.4966393 dated 19.09.2019 and 5257421 dated 11.10.2019 covered in the show cause notice No.2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 is also covered in VIII/10-50/Pr.Commr./O&A/2023-24 dated 15.05.2024, leading to duplicity. Therefore, differential Customs duty recoverable against the said same two bill of entries figuring in show cause notice No.VIII/10-50/Pr.Commr./O&A/2023-24 dated 15.05.2024 is required to be deducted from the total differential duty demand of Rs.93,15,446/-. I find that the total differential Customs duty for the said two bills of entry is Rs.2,60,668/- as per the annexure attached to the show cause notice. Accordingly, now the differential Customs duty of Rs.90,54,778/- [Rs.93,15,446 - Rs.2,60,668] is required to be recovered under Section 28(4) of the Customs Act, 1962 along with interest in case of the show cause notice No. VIII/10-50/Pr.Commr./O&A/2023-24 dated 15.05.2024.

35. From the above discussions, M/s Vipra Impex is also liable for penalty under Section 114A and Section 114AA of the Customs Act, 1962. I find that M/s Vipra Impex had placed reliance of the Hon'ble Supreme Court's decision in case of M/s Hindustan Steel Ltd. V/s State of Orissa reported in 1978 ELT 159, wherein it was established a key principle that penalties should not be imposed unless there is deliberate fraud, wilful misrepresentation or conscious non-compliance with statutory requirements. I find that it is a pure fact that there has not been a conscious effort on the part of the importer to ascertain the authenticity of the Certificate of Origin produced along with the bills of entry so as to justify the correct availment of Notification No.46/2011-Customs dated 01.06.2011 for preferential rate of Trade Agreement. Therefore, the reliance on the judgment placed by M/s Vipra Impex is not appropriate and cannot be equated to the instant case owing to the above reasons.

36. As regards the question of imposing penalty on Shri Vipin Chaturvedi, Proprietor of M/s Vipra Impex, I find that he, being the owner, was to shoulder the responsibility of ascertaining the authenticity of certificate of origins produced in connection to bills of entry. It is to reiterate that in the instant case, benefits of exemption Notification (preferential rate of Trade agreement) was being availed on the basis of these CoO's. I do not find any attempt made by him in this regard, and in fact, went on to voluntarily pay the differential duty along with interest immediately after clearance of the goods and the action contemplated by the Department. This clearly shows that there is a case that he was conscious in dealing with the imported goods, which were liable to confiscation and therefore, attract penalty under the provisions of Section 112(b) of the Customs Act, 1962. He is also liable to penalty under the provisions of Section 114AA of the Customs Act, 1962 in as much as he consciously used false/fake materials, in the instant case fake Certificates of Origin, to legitimize his imports.

37. I find that M/s I.M.Logistics, Custom House Agent of M/s Vipra Impex is also liable for penalty under Section 112 of the Customs Act, 1962 in as much as they have contravened the provisions of Customs Brokers Licensing Regulations, 2013, wherein:- (relevant obligations are reproduced)

"11. Obligations of Customs Broker.

A Customs Broker shall:

- (a)
- (b)
- (c)
- (d)

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

- (f)
- (g)
- (h)

37.1. I find that M/s I.M.Logistics, the Custom House Agent for M/s Vipra Impex had failed to exercise due diligence to ascertain the correctness with regard to clearance of cargo. In the instant case, they were very well aware that M/s Vipra Impex were importing goods from Malaysia, and claiming the benefit of Exemption Notification No.46/2011-Customs dated 01.06.2011 on the basis of Certificates of Origin. It was the obligation of the importer, as well as the Customs broker, to ensure that the benefit of exemption availed is correct and on the basis of authentic documents filed along with the bills of entry. M/s I.M.Logistics have relied on various Tribunal judgments in support of their defence, however all the cases are clearly distinguishable in as much as none of the cases refer to instances of fake CoO's and the penal implications on the Customs Broker.

37.2. In this regard, I would place reliance on the following judgment passed by the Hon'ble Supreme Court in case of Commissioner of Customs V/s K.M.Ganatra & Co., reported in 2016 (332) E.L.T. 15 (S.C.)

15. *In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. - Mumbai)] wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed :-*

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...." [emphasis supplied]

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed."

In view of the above, I find that M/s I.M.Logistics, the Custom House Agent is also liable to penalty under Section 112 (b) of the Customs Act, 1962.

38. Accordingly, I pass the following order:-

ORDER

IN CASE OF SHOW CAUSE NOTICE NO 2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024

- (i) I reject the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the goods imported under Bills of Entry filed at Nhava Sheva, as mentioned in the Show Cause Notice.
- (ii) I order to recover the differential Customs Duty amounting to **8,29,687/- (Rupees Eight Lakh, Twenty Nine Thousand, Six Hundred and Eight Seven Only)** as mentioned in the Show Cause Notice under Section 28(4) of the Customs Act, 1962;
- (iii) I order to recover interest at the applicable rate on the said differential Customs Duty as mentioned at (ii) above under Section 28 AA of the Customs Act, 1962;
- (iv) I impose penalty of **Rs.8,29,687/- (Rupees Eight Lakh, Twenty Nine Thousand, Six Hundred and Eight Seven Only)** on M/s Vipra Impex under Section 114A of the Customs Act, 1962, plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s Diwa. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to M/s Diwa, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of the receipt of this order.
- (v) I order confiscation of the impugned goods having total assessable value of **Rs.35,97,613/- (Rupees Thirty Five Lakh, Ninety Seven Thousand, Six Hundred and Thirteen only)** as mentioned in the Show Cause Notice under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962. However, as

the said goods are not physically available for confiscation, I impose a redemption fine of **Rs.3,60,000/- (Rupees Three Lakh and Sixty Thousand only)** in lieu of confiscation under Section 125 of the Customs Act, 1962;

- (vi) I impose penalty of **Rs.1,00,000/- (Rupees One Lakh only)** on M/s Vipra Impex under Section 114AA of the Customs Act, 1962;
- (vii) I impose penalty of **Rs.1,00,000/- (Rupees One Lakh only)** on M/s I.M.Logistics, Customs Broker of M/s Vipra Impex under Section 112(b) of the Customs Act, 1962.

IN CASE OF SHOW CAUSE NOTICE NO. VIII/10-50/Pr.Commr./O&A/2023-24
DATED 15.05.2024

- (i) I reject the exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the M/s Vipra Impex against the goods imported under various Bills of Entry, as mentioned in the Show Cause Notice.
- (ii) I confirm the differential Customs Duty amounting to **Rs.90,54,778/-** [Rs.93,15,446 - Rs.2,60,668, being the amount covered in Bill of entry No.4966393 dated 19.09.2019 and 5257421 dated 11.10.2019] **(Rupees Ninety Lakh, Fifty Four Thousand, Seven Hundred and Seventy Eight Only)** under Section 28(4) of the Customs Act, 1962 as discussed in the earlier para.
- (iii) I order to recover interest at the applicable rate on the said differential Customs Duty as mentioned at (ii) above under Section 28 AA of the Customs Act, 1962 from M/s Vipra Impex;
- (iv) I impose penalty of **Rs.90,54,778/- (Rupees Ninety Lakh, Fifty Four Thousand, Seven Hundred and Seventy Eight Only)** on M/s Vipra Impex under Section 114A of the Customs Act, 1962, plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s Diwa. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to M/s Diwa, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.
- (v) I order confiscation of the impugned goods having total assessable value of **Rs.9,56,90,255/- (Rupees Nine Crore, Fifty Six Lakh, Ninety Thousand, Two Hundred and Fifty Five only)** as mentioned in the Show Cause Notice under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962. However, as the said goods are not physically available for confiscation, I impose a redemption fine of **Rs.95,00,000/- (Rupees Ninety Five Lakh only)** in lieu of confiscation under Section 125 of the Customs Act, 1962;
- (vi) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on M/s Vipra Impex under Section 114AA of the Customs Act, 1962;
- (vii) I impose penalty of **Rs.9,00,000 (Rupees Nine Lakh only)** on Shri Vipin Chaturvedi, Proprietor of M/s. Vipra Impex, under Section 112(b) of the Customs Act, 1962.
- (viii) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on Shri Vipin Chaturvedi, Proprietor of M/s. Vipra Impex, under Section 114AA of the Customs Act, 1962.

39. Accordingly, I dispose both the following show cause notices, i.e. No. 2678/2023-24/ADC/Gr.IV/CAC/JNCH dated 27.02.2024 issued by Additional Commissioner, Customs, Gr.4A/4A, NS-III, JNCH, Nhava Sheva and No. VIII/10-50/Pr.Commr./O&A/2023-24 dated 15.05.2024 issued by the undersigned.



26.02.2025

(Shiv Kumar Sharma)
 Principal Commissioner

DIN- 20250271 MN 0000666 DE9

BY SPEED POST A.D

To,
1.M/s. Vipra Impex,
Plot No. 21, New GIDC,
52 Sector, Umbergaon,
Valsad, Gujrat-396171

2.Shri Vipin Chaturvedi,
Proprietor of M/s. Vipra Impex,
Plot No. 21, New GIDC,
52 Sector, Umbergaon,
Valsad, Gujarat-396171

Copy to:-

1. The Pr. Commissioner of Customs, Nhava Sheva Sea Port, Raigad for information please.
2. The Additional Director General, Mumbai Zonal Unit, 13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai 400020 for information please.
3. The Deputy/Assistant Commissioner of Customs, ICD-Tumb for information please.
4. The Superintendent (System), Customs HQ, Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
5. Guard File.