कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात-370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.
PHONE : 02838-271426/271423 FAX :02838-271425
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A. File No.	GEN/ADJ/COMM/709/2025-Adjn-O/o Pr Commr-Cus-mundra
B. Order-in-Original No.	**MUN-CUSTM-000-COM- 41 -26-27**
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	13.11.2026 13.11.2026
E. SCN No. & Date	39/2025-26/COMM/NS/ADJ/MCH Dated 28.11.2025
F. Importer	M/s G.K. Steel

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

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

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

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

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

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

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

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

BRIEF FACTS OF THE CASE

During the Investigation carried out by this office in respect of M/s. R. K. Traders, Plot No. 47, Block No. 59, Opposite Pagoda Rolling

Mill, Mamsa, Ghogha, District – Bhavnagar, it was found that importer was engaged in importing "old and used Steel Shaft" (under CTH - 7326 9080) and claiming preferential rate of duty under Notification No. 99/2011 dated 09.11.2011 (SAFTA) with the Country of Origin as Bangladesh.

2. The investigation in the above matter has been completed and Show Cause Notice No. GEN/ADJ/COMM/157/2024-Adjn dated 22.03.2024 has already been issued to M/s. R.K. Traders, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar.

3. Further, during the investigation, it was also observed that half portion of the premises of M/s. R.K. Traders, Bhavnagar was occupied by M/s. G. K. Steel, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat (IEC: AMKPK1153A), a proprietary concern of Shri Abdul Gafar Abdul Kadarbhai Kaliwala, who is also one of the partner of M/s. R. K. Traders.

4. M/s. G. K. Steel, Bhavnagar was also engaged in importing "old and used Steel Shaft" (under CTH - 7326 9080) and claiming preferential rate of duty under Notification No. 99/2011 dated 09.11.2011 (SAFTA) with the country of origin as Bangladesh similar to the goods imported by M/s. R. K. Traders. The goods imported by M/s. G. K. Steel, Bhavnagar viz. "old and used Steel Shaft" (under CTH - 7326 9080) which were obtained from ship breaking activity at Chattogram, Bangladesh, falls under the category of Second-Hand Goods other than Capital Goods which are restricted goods and requires Import Authorization as per Para 2.31 (II) of the Foreign Trade Policy 2015-2020.

5. M/s. G. K. Steel, Bhavnagar had imported 06 consignments during the period from March, 2021 to October, 2022 from the same exporter M/s. Asha Trading, Chattogram and M/s. Anan Enterprise, Chattogram who were also involved in the case of M/s. R.K. Traders, Bhavnagar and availed the benefit of Notification No. 99/2011 dated 09.11.2011. It appears that M/s. G. K. Steel had imported restricted goods by wrongly availing benefit of Notification No. 99/2011 dated 09.11.2011, as amended. The details of the 06 consignments are as under:

Sl. No.	B/E. No.	Date	RUD
01	3360158	30.03.2021	(RUD-01)
02	6561945	07.12.2021	(RUD-02)
03	8624199	10.05.2022	(RUD-03)
04	8623830	10.05.2022	(RUD-04)
05	9108386	14.06.2022	(RUD-05)
06	9937633	09.08.2022	(RUD-06)

STATEMENTS AND INQUIRY

Statement of Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G. K. Steel, Bhavnagar.

6. A Statement of Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G. K. Steel, was recorded under Section 108 on 02.02.2023 **(RUD No. 08)**, wherein he inter alia stated that:-

- M/s. G.K. Steel, Bhavnagar was importing 'Iron & Steel Shaft" (HSN 7326 9080) from Bangladesh.
- The B/E. No. 3360158 dated 30.03.2021, 6561945 dated 12.07.2021, 8624199 dated 05.10.2022, 9103386 dated 14.06.2022, 8623830 dated 05.10.2022 and 9937633 dated 08.09.2022 were filed by M/s. Malan Shipping on behalf of their firm M/s. G. K. Steel, Bhavnagar.
- He stated that they have imported 'Iron & Steel Shafts' from M/s. Anan Enterprises, Bangladesh and M/s. Asha Trading, Bangladesh.
- He stated that the Imported goods were pieces of old and used iron and steel shafts and they were selling them as scraps.
- He admitted that their firm does not possess any DGFT license/authorization in order to import such goods.
- Ongoing through the Para 2.31(II) of Foreign Trade Policy issued by DGFT, he stated that he came to know the fact that License/Authorization from DGFT is required to import 'old & used iron and steel shaft'. He also admitted in relation of import of old and used iron steel shaft, he does not have any license/authorization from DGFT.
- He admitted that his firm M/s. G. K. Steel, Bhavnagar has been importing Old and Used Iron & Steel Shafts without any DGFT Authorization/License. On being shown/explained about provisions of Para 2.31(II) of Foreign Trade Policy issued by DGFT, he admitted that as per the relevant provisions of DGFT import of 'Old/Used Iron and Steel Shaft' are restricted and requires authorization/license for import of such goods.
- He admitted that he was aware that the goods were old and used and obtained from the ship breaking activities.
- He was shown the provisions of Section 46 of the Customs Act, 1962 and after going through the provisions; he admitted that as per Section 46(4) of the Customs Act, 1962, he had to provide complete, accurate, authentic and valid information and to comply with restriction or prohibition relating to the goods.
- After understanding the provisions of Para 2.31(II) of the Foreign Trade Policy and Section 46 of the Customs Act, 1962, he admitted that he had violated the provisions Para 2.31(II) of Foreign Trade Policy and Section 46 of the Customs Act, 1962.

Legal provisions regarding old and used goods :

7. During the course of investigation, it appeared that the goods declared as 'Iron and Steel Shafts' were actually 'Old and Used Iron and Steel Shafts' imported by importer without DGFT authorization/license.

8. The proprietor of M/s. G. K. Steel admitted that imported goods i.e. **'Iron & Steel Shaft'** have been obtained from broken ships. The said goods fall under the category of Second-Hand Goods other than Capital Goods which were **restricted goods** and requires Import Authorization as per Para 2.31(II) of the Foreign Trade Policy 2015-2020. It also appeared that the Importer did not possess any valid Import Authorization from DGFT for importing such goods. Therefore, the importer by importing the Old and Used Iron and Steel Shaft without any authorization/license has contravened to the provisions of Foreign Trade Policy 2015-2020 issued by DGFT and hence the said goods are liable to be confiscated under Section 111(d), 111(m), 111(o) & 111(q) of the Customs Act, 1962.

9. It also appeared that in all the consignments of "Iron and Steel Shafts" which were imported by them, they have availed the benefit of Exemption Notification No.99/2011-Cus dated 09.11.2011 (SAFTA), on the basis of the Country of Origin Certificates issued by 'Export Promotion Bureau' Chattogram, Bangladesh.

10. Ongoing through the SAFTA Certificates produced by the importer issued by 'Export Promotion Bureau' Chattogram, it appears that the subject goods i.e. "Old/Used Iron and Steel Shafts" imported by the importer were obtained from ship breaking activity at Chattogram, Bangladesh. It also appears that the importer does not have authorization as stipulated under Para 2.31(II) of the Foreign Trade Policy to import "Old/Used Iron and Steel Shafts" which were restricted goods. On going through the provisions of Para 2.31(II) of the DGFT, the proprietor of the firm admitted that he has violated the said provisions of DGFT by importing the restricted goods and also admitted to have violated the provisions of Section 46 of the Customs Act, 1962.

11. The provisions of Para 2.31of the Foreign Trade Policy (FTP) 2015-20 reads under:-

Sl.No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
I	**Second Hand Capital Goods**		
(a)	(i) Desktop computers, (ii) Refurbished/reconditioned spares of re-furbished parts of Personal Computers/Laptops	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods Order 2012	Restricted	Importable against authorization.
(c)	Refurbished/re-conditioned spares of Capital goods	Free	Subject to production of Chartered Engineer

			certificate to the effect that such spares have at least 80% residual life of original spare.
(d)	**All other second hand capital goods {other than (a), (b) & (c) above}.**	**Free**	
II	**Second Hand Goods other than Capital Goods**	**Restricted**	Importable against Authorization.

12. The definition of **Capital Goods** as given in **Foreign Trade Policy 2015-20** is as below:-

> *"**Capital Goods"** means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly of goods or for rendering services, including those required for replacement, modernization, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing research and development, quality and pollution control."*

From the above definition of the Capital Goods, it appears that the imported "Old/Used Iron and Steel Shafts" does not fall under the category of Capital Goods, as these goods are not plant, machinery, equipment or accessories required for manufacture or production or purposes as defined in the definition above.

13. The imported goods being old and used shafts recovered from ship breaking falls under the category of 'Second Hand Goods other than Capital Goods), which is restricted as per Para 2.31(II) of Foreign Trade Policy (FTP) 2015-20 and can only be imported against valid authorization. Whereas, the importer did not possess any such authorization at the material time of import, rendering the goods liable to confiscation under Section 111(d), 111(m), 111(o) &111(q)of the Customs Act, 1962.

14. Shri Abdul Gafar Abdul Kadarbhai Kaliwala in his statement recorded under Section 108 of the Customs Act on 02.02.2023 had accepted the fact that his firm does not possess any import license (Authorization) issued by DGFT for restricted items at the time of import.

Scrutiny and Analysis of Documents/ Evidences:-

15. On scrutiny of import documents/data recovered/obtained from importer, it revealed that the importer had been importing 'Used Iron & Steel Shaft' products from Bangladesh since 2021 and availing the

benefits of concession duty under FTA in terms of Notification No.99/2011-Cus. dated 09.11.2011 on the said products, which were mainly exported by M/s. Anan Enterprise, Chattogram and M/s. Asha Trading, Chattogram, Bangladesh on the basis of SAFTA certificates of origin (in form of `Form-AI) in respect of M/s. Anan Enterprise, Chattogram and M/s. Asha Trading, Chattogram, Bangladesh. The `Form-A1' were submitted by the importer to Customs authorities for claiming the benefits of Notification No. 99/2011-Cus. Dated09.11.2011 which indicated the following:

a) The Form-AI was issued by Export Promotion Bureau in terms of South Asian Free Trade Area Agreement (SAFTA);

b) The Country of Origin shows as `Bangladesh;

c) The exporter is shown as (i) Anan Enterprise, Chattogram, and (ii) Asha Trading, Chattogram;

d) The origin criteria for the goods shown in the Forms-Al as "Wholly Obtained";

Preferential rate of duty:-

16. The importer has claimed benefit of preferential duty under Notification No. 99/2011(Cus) dated 09.11.2011, on the strength of the Country of Origin Certificates issued by 'Export Promotion Bureau' Chattogram, Bangladesh wherein, the origin criteria of goods is/are mentioned as "Wholly obtained". The relevant Rules of Origin for the Notification No.99/2011-Cus dated 09.11.2011 is **"Determination of origin of goods under the agreement of South Asian Free Trade Area (SAFTA)"** under Notification No.75/2006-Cus (NT) dated 30.06.2006 as amended. **Rule 5** of the Rules of Origin prescribes details of "Wholly obtained" goods as under:-

Rule 5 : Wholly produced or obtained

Within the meaning of Rule 4(a), the following shall be considered as wholly produced or obtained in the territory of the exporting Contracting State.

(a) raw or mineral products extracted from its soil, its water extending up to its Exclusive Economic Zone (EEZ), or its sea bed extending up to its seabed or continental shelf;
(b) Agriculture, vegetable and forestry products harvested there;
(c) Animal born and raised there;
(d) products obtained from animals referred to in clause (c) above;
(e) products obtained by hunting or fishing conducted there,
(f) products of sea fishing and other marine products from the high seas by its vessels;
(g) products processed and/or made on board its factory ships exclusively from products referred to in clause (f) above;

(h) raw materials recovered from used articles collected there;
(i) waste and scrap resulting from manufacturing operations conducted there;
(j) products taken from the seabed, ocean floor or subsoil thereof beyond the limits of national jurisdiction, provided it has the exclusive rights to exploit that sea bed, ocean floor or subsoil thereof;
(k) goods produced there exclusively from the products referred to in clauses (a) to (j) above.

17. Further, according to Rule 4 of the **Customs (Administration of Rules of Origin under Trade Agreements) Rules – 2020** (Carotar Rules – 2020), the origin related information is required to be possessed by importer for claiming the preferential rate of duty, the relevant extract is reproduced as under:-

*"4. **Origin related information to be possessed by importer:**-The importer claiming the preferential rate of duty shall –*

*(a) possess information, as indicated in **Form I,** to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.*

(b) Keep all supporting documents related to Form I for at least five years from date of filing bill of entry and submit the same to the proper officer on request.

(c) Exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents."

18. Further, the country of origin certificate uploaded in e-sanchit by the importer, in the origin criteria, the goods have been claimed to meet origin criteria as **'A'** under Box 8. For a better understanding of the above a sample copy of Form AI is scanned and juxtaposed below:-

CERTIFICATE OF ORIGIN

(SOUTH ASIAN FREE TRADE AREA)

1. Goods consigned from (exporter's business name, address, country) EPB REG.NO: NT00436

ASHA TRADING
BTC GATE, PORT LINK, BHATIARY,
SITAKUNDA, CHATTOGRAM, BANGLADESH

Reference No. EPB(C)32819

SOUTH ASIAN FREE TRADE AREA (SAFTA)
(combined declaration and certificate)

Issued in BANGLADESH
(country)

see notes overleaf

2. Goods consigned to (Consignee's name, address, country) G.K STEEL
PLOT NO: 47 BLOCK NO: 59 OPP PEGHODA
ROLLING MILL, MANSA, DIST: BHAVNAGAR,
INDIA. GST NO: 24AMTPK1153A1ZO

3. Means of Transport and route (as far as known)
BY SEA- CHITTAGONG SEAPORT, BANGLADESH
TO MUNDRA SEAPORT, INDIA
VESSEL: CELSIUS NELSON V-927W
B/L NO: GLNCGPMUN522702 DT: 28-05-2022

4. For Official use

ISSUED RETROSPECTIVELY

5. HS code	6. Marks and numbers of packages	7. Number and kind of packages : description of goods	8. Origin criterion (see notes overleaf)	9. Gross Weight or other quantity	10. Number and date of invoices	11. f.o.b value in US $
7326 90 90 7326 90 80		IRON & STEEL SHAFT T/T NO: 202204260024240 DATED : 26-04-2022 EXP.NO: 2962-008188-2022 DATED : 17-05-2022 SB NO : 873994 DATED : 17-05-2022	"A"	GROSS WT: 101.00 M/TONS NET WT: 100.00 M/TONS	ATGK/01/22 DATED: 17-05-2022	CNF MUNDRA $ 98,000.00 (U.S.DOLLAR NINETY EIGHT THOUSAND ONLY)

12. Declaration by the exporter :
The undersigned hereby declares that the above details and statements are correct : that all the goods were produced in

BANGLADESH
(country)

and that they comply with the origin requirements specified for those goods in SAFTA for goods exported to

INDIA
(importing country)

CHITTAGONG
29-05-2022

ASHA TRADING
Proprietor

Place and date, signature of authorized signatory

13. Certificate
It is hereby certified on the basis of control carried out, that the declaration by the exporter is correct

Murshidul Haque
Information Officer
Export Promotion Bureau
Chattogram, Bangladesh

29 MAY 2022

Place and date, signature and stamp of certifying authority

> **"A"** in the box of COO certificate denotes for products which meet the origin criteria according to **Rule 5 Determination of origin of goods under the agreement of South Asian Free Trade Area (SAFTA)"** under Notification No.75/2006-Cus (NT) dated 30.06.2006."

19. Whereas, on careful examination of **Form No.1 (RUD No.07)** in respect of COO certificate No.EPB(C) 32819 dated 29.05.2022 (juxtaposed above), against Sl. No. 2(d) **is the originating criteria based on value content**, the information furnished states as ***'Yes'*** *and (i)* ***percentage of local value content****: Material price is shown as 50%, (ii) Components which constitute value addition were shown as labour charges 25%, Gas Expenses 13%, Yard rent 7% and Machinery/equipment cost 5%, also, against Srl No.2(e)* ***HSN of Non-originating material/components*** *used in production of goods was given as '7326 9080' (CTH '7326 9080' which covers 'parts of ship, floating structure and vessels).*

20. Whereas, the imported goods are old & used shaft obtained from dismantling of ships (which can be re-used or for extraction of metals) and it is well-known fact that these ships were imported/acquired by ship-breakers from international market. Also, the importer has admitted that goods were recovered from Bangladesh Ship Breaking, Chattogram. The information relating to origin criteria in country of origin certificate does not match with that of information available on Form – I.

Legal Provisions:-

21. In accordance with the relevant portion of Chapter V-AA, Administration of Rules of Origin Under Trade Agreement, Section 28DA of the Customs Act, 1962, states that:-

> ***"Section 28DA. Procedure regarding claim of preferential rate of duty.***
>
> *……*
>
> *(4) Where importer fails to provide the requisite information for any reason, the proper officer may.-*
>
> *(i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;*
>
> *(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:*
>
> *Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty be the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in*

writing, disallow the claim for preferential rate of duty, without further verification.

22. On the basis of statement recorded of Shri Abdul Gafar Abdul Kadarbhai Kaliwala on 02.02.2023, M/s. G. K. Steel had imported consignments during the period from March, 2021 to August, 2022 under 06 Bills of Entry wherein, they have availed the benefits of Notification No. 99/2011-Cus dated 09.11.2011 and all of them were assessed. The details of import of goods under all the Bills of Entries imported for the period from March, 2021 to August, 2022 and its duty calculation are annexed as **Annexure – 'A'** to Investigation Report.

23. Retroactive check of the true origin –

In a similar case of M/s. R. K. Traders involving the same suppliers as well as the commodity, the Department has carried out verification of COO **vide letter F. No. DRI/AZU/JaRU/ENQ-02/22-23/2374 dated November 23,2022 (RUD No. 9)**. The compliance report received was not confirming the details of the COO unambiguously. Therefore, it appears that the benefit of concessional rate of duty as provided in the notification ibid is not available to the importer. In a similar case of another importer M/s. R. K. Traders, Show Cause Notice has already been issued by the jurisdictional Customs Commissionerate, the relevant paragraphs relating the verification of COO are reproduced hereunder:

23.1 CBIC Instruction No.31/2016-Customs dated 12.09.2016 stipulates that the country of origin verification may also be undertaken on random basis as a measure of due diligence. For this purpose, factors such as the quantum of duty being foregone, the nature of goods, viz-a-viz the country of origin, commodities that are prone to mis-declaration of country of origin, compliance record of the importer etc. may be given regard while selecting Certificate of Origin for random verification.

23.2. Considering the intelligence and the facts which emerged during investigation, reference for verification of the Certificate of Origin was made to the Board in respect of the imports made by the M/s. R.K. Traders, Bhavnagar, as per the Rules of Origin for determining the origin of products eligible for the preferential tariff concessions. As per para 2(b) of the instructions regarding implementation of Rules of Origin under Free/Preferential Trade Agreements and the verification of preferential Certificates of Origin, the following Preferential Certificates of Origin, were forwarded to the Director (International Customs Division), CBIC for verification.

Name of the Free/Preferential Trade Agreement	South Asian Free Trade Area (SAFTA
Relevant Custom Notification (Tariff & Non-Tariff)	Notification No. 99/2011-Customs dated 09.11.2011.

	Notification No. 75/2006-Customs (NT) dated 30.06.2006.
Reference No. of the Certificate of Origin	(i) EPB(C) 33837 dated 16.08.2022. (ii) EPB(C) 33841 dated 24.08.2022 (iii) EPB(C) 29105 dated 18.07.2021
Issuing Authority	Export Promotion Bureau, Chattogram, Bangladesh.
Name of the consignee	M/s. R. K. Traders, Bhavnagar
Name of the consignor	1. M/s. Anan Enterprise, BTC Gate, Port Link, Bhatiary, Sitakunda, Chattogram, Bangladesh. 2. M/s. Asha Trading, BTC Gate, Port Link, Bhatiary, Sitakunda, Chattogram, Bangladesh. 3. M/s. S.S. Corporation, Shitalpur, Sitakunda, Chattogram, Bangladesh
Description of Goods	'Iron & Steel Shaft'
Origin criteria as mentioned in the certificates	'Wholly owned'

23.3. The above certificates, purportedly issued by the Export Promotion Bureau, Chattogram, Bangladesh were forwarded by OSD (FTS Cell -1), Directorate of International Customs, New Delhi to Bangladesh Authorities, for retroactive verification in respect of genuineness, authenticity, cost of raw material and to verify the originating criteria along with the sample country of origin certificates with the issuing Authority in terms of Article 15(a) of Annex II "Operational Certification Procedures" for SAFTA Rules of Origin.

23.4. The Ministry of Foreign Affairs, Dhaka got the questionnaire answered from the exporter viz. M/s. Anan Enterprise, Chattorgram, M/s. Asha Trading, Chattorgram,& M/s. S. S. Corporation, Chittagong and forwarded the same vide e-mail dated 10.12.2023 to FTA Cell, Directorate of International Custom (DIC) , CBIC, New Delhi **(RUD No.10),** who in turn, vide their F. NO. 456/59/2022-FTA CELL –I dated 12.12.2023 **(RUD No.11)**, conveyed the same to this Directorate. In the said questionnaire, the questions to ascertain the originating criteria mentioned in the COO have been answered as "N/A" by the said exporters. The reply in response to the production process carried out on the subject goods have also been given as "N/A". Moreover, all the three exporters, in the replies to the questionnaire, have stated that they are exporting various kinds of Ferrous & Non Ferrous Metal Scrap, whereas M/s. R. K. Traders have imported the goods falling under CTH 73269080 which is not for scrap. Thus, in view of the overseas enquiry carried out in the matter, it appears that the goods imported by the importer do not qualify for exemption in absence of verification by the

competent authority especially when the verification was sought.

In view of above, it appears that the goods covered under the aforesaid COO do not qualify under Rule 4(a) i.e. wholly produced or obtained in the territory of exporting country as defined in Rule 5 Determination of Origin of goods under the Agreement on South Asian Free Trade Area (SAFTA), hence, importer is not eligible for availing the benefit of preferential duty vide aforesaid COO.

CONTRAVENTIONS AND CHARGES

24. Willful Mis-declaration of the imported goods

24.1. Further, CBIC vide Circular No.43/2005-Cus. Dated 24.11.2005 has introduced the 'Risk Management System' (RMS) in major Customs locations, where the Indian Customs EDI System (ICES) is operational. The purpose of RMS is to facilitate a large number of Bills of Entry, which are perceived to be compliant with the Customs Laws and Regulations. Such self-assessed Bills of Entry will be processed by the RMS to evaluate the risk in the Bill of Entry, if any, duty will be calculated and challan will be generated by ICES based on declaration/self-assessment made by the importer. The goods will be ready for out of charge on the basis of the importers declaration/self-assessment 'and without any assessment/examination by the officers, with the objective to strike an optimal balance between facilitation and enforcement and to enable low risk consignments to be cleared based on the acceptance of the importer's self-assessment and without examination. In RMS system, the stress is on self-assessment of the Bills of Entry which will be processed by the system based on declaration and if found compliant, such Bills may be sent to out of charge without any action and it is expected from all importers that they have suitable mechanisms in place to ensure that their declarations are accurate, sufficient and factually correct, while filing the fields in the Bill of Entry.

24.2. Therefore, it appears that the importer has knowingly and deliberately availed undue benefit of exemption Notification on the goods imported from (i) M/s. Anan Enterprise, Chattogram, Bangladesh, (ii) M/s. Asha Trading, Chattogram, Bangladesh. It appears to be indicative of their *mensrea.* Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also willfully availed undue benefit of exemption Notification No. 99/2011-Cus dated 09.11.2011 (as amended), during filling of the Bill of entry at Mundra Port and thereby caused evasion of Customs duty.

24.3. Whereas, M/s. G. K. Steel had also failed to file correct and factual fact that the goods imported by them were 'old/used iron and steel shafts' and requires DGFT authorization to import the same, and by declaring goods as 'Iron and Steel Shafts' in place of 'old/Used Iron &

Steel Shafts', they have suppressed the fact from the Customs authorities and have imported the said goods which are liable for confiscation in absence of valid authorization. The fact that the imported goods are 'old/used iron and steel shafts' were obtained from ship breaking activity at Chattogram, Bangladesh was emerged only during the investigation initiated by DRI authorities. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962, are invokable in this case. For the same reasons, the importer also appears liable to penalty under Section 114A of the Customs Act, 1962.

24.4. From the foregoing paras, it appears that M/s. G. K. Steel, Bhavnagar was always aware that the imported goods were not eligible for the imports without proper DGFT authorization in accordance with Para 2.31 (II) of the Foreign Trade Policy 2015-2020, but had deliberately suppressed these facts at the material time of import. They were also aware of the fact that the goods imported by them were recovered from ship breaking activity at Chattogram, Bangladesh and does not fulfil the origin criterion as specified in the Rules of Origin of the Notification No.99/2011-Cus dated 09.11.2011 i.e. "Determination of origin of goods under the agreement of South Asian Free Trade Area (SAFTA)" under Notification No.75/2006-Cus (NT) dated 30.06.2006 as amended. However, they have availed the benefit of preferential rate of duty under Notification No. 99/2011-Cus dated 09.11.2011 on the basis of fraudulently obtained/issued country of origin certificates.

24.5. In view of the above, it appears that act of mis-declaration in the description of the goods as "Iron and Steel Shaft" under CTH 73269080 instead of "Old/Used Iron & Steel Shaft" is wilful mis-statement so as to avail benefit of exemption notification No. 99/2011-Cus. dated 09.11.2011 on the strength of Country of Origin Certificate. Further, the said mis-declaration in the description of the goods have also been made to hide the vital fact that the goods under import is a second hand in nature so as to circumvent from the restriction of import envisaged as per Para 2.31 (II) of the Foreign Trade Policy, 2015-20. In the era of Self-assessment, it was incumbent upon the importer to declare the true and correct description of the goods in the Bill of Entry irrespective of the fact as to what is the description mentioned in the documents furnished by the supplier. The importer cannot escape from the charge of wilful mis-statement under the pretext that declaration is based on the description given in the supplier invoices, packing list etc.

Therefore, in view of the above, the duties evaded by wrongly availing the benefit of exemption Notification No. 99/2011-Cus dated 09.11.2011 by way of suppression of facts and willful mis-statement, are liable to be demanded and recovered from M/s. G. K. Steel, Bhavnagar, under **Section 28(4)** of Customs Act, 1962 along with applicable interest under **Section 28AA** of Customs Act, 1962. The relevant legal provisions are as under:

24.6. As per **Section 11A(a) of the Customs Act, 1962**, 'illegal import' means the import of any goods in contraventions of the provisions of this Act or any other law for the time being in force. In event of the country of origin having been fraudulently obtained, the short payments of duties would become liable to be recovered from the importer under **Section 28(4)** along with applicable interest under **Section 28AA** of the Customs Act, 1962. The relevant legal provisions are as under:

SECTION 28(4). Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded —

(1) ….
(2) ….
(3) ….
(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, —

(a) collusion; or
(b) wilful misstatement; or
(c) suppression of facts,

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

24.7. SECTION 28AA. Interest on delayed payment of duty. —

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

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

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

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

25. Improper Import:

25.1. Since the goods were imported by importer on the basis of fraudulently obtained country of origin certificates and also without any proper authorization/license issued by the DGFT, therefore, the goods are liable to be confiscated under Section 111(d), 111 (m), 111(o) & 111(q) of the Customs Act, 1962. By these acts of omission and commission, the importer has rendered themselves liable to penalty under Section 112(a) and 114A of the Customs Act, 1962 for the goods imported by them. The relevant legal provisions are as under:

SECTION 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable to confiscation: -
(a) …
(b)…
(c)…

(d)any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
…
…

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

(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; …

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

Sections 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,

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

shall be liable, -

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

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

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

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

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference

between the declared value and the value thereof or five thousand rupees, whichever is the highest;

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

Section 114A. Penalty for short-levy or non-levy of duty in certain cases:

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of the section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

26. <u>Mis-declaration:</u>

26.1. Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. **Section 17** of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bills of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bills of Entry or Shipping Bill. In the present case, it appears that the importer, have deliberately contravened the above said provisions with a malafide intention to avail the benefit of exemption Notification No 99/2011-Customs on fraudulently obtained COO certificate and imported 'Old & used Iron and Steel Shaft' without any authorization issued by DGFT.

26.2. Since the importer have violated the provisions of Sections 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under **Section 117** of Customs Act, 1962 which reads as under:

SECTION 117. Penalties for contravention, etc., not expressly mentioned. *- Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.*

26.3. Whereas from the foregoing paras, it also appears that the importer have intentionally and wilfully made declarations, statements, documents etc., which are false and incorrect in nature. This act of mis-declaration by the Importer during the transactions of their business has rendered them liable for penalty under **Section 114AA** too which reads as under:

> ***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.*

27. <u>Personal Penalty</u>:

27.1. From the investigations, it appears that Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of the firm was responsible for all the matters related to the said firm and he, in his statement dated 02.02.2023, had admitted that he was looking after all the work of M/s. G. K. Steel, Bhavnagar and was responsible for all the matters related to the said firm. By this act, Shri Abdul Gafar Abdul Kadarbhai Kaliwala had knowingly and intentionally made or caused to be made documents which were false or incorrect in material particulars in the export of goods and contravened the Customs Act, 1962 as stated in para(s)-supra. Therefore, Shri Abdul Gafar Abdul kadarbhai Kaliwalahas rendered himself liable for penalty under **Section 114AA** of the Customs Act, 1962.

27.2. It further appears that Shri Abdul Gafar Abdul Kadarbhai Kaliwala, acting as Proprietor of M/s. G. K. Steel, Bhavnagar had consciously and deliberately dealt with the goods which he knew or had reasons to believe were liable to confiscation under the provisions of Section 111(d), Section 111(m), Section 111(o) and Section 111(q) of the Customs Act, 1962 in respect of imports made by them without any valid DGFT authorization and also by availing the undue benefit of exemption Notification No. 99/2011-Cus. dated 09.11.2011. He also played an important role in availing undue benefit of exemption under Notification No.99/2011-Cus dated 09.11.2011 with read Notification No.75/2006-Cus (NT), and such acts and omissions on the part of Shri Abdul GafarAbdul Kadarbhai Kaliwala, acting as Proprietor of M/s. G. K. Steel, Bhavnagar have rendered him liable for penalty under **Section 112(a)** of the Customs Act, 1962 against the import goods.

27.3. Since, Abdul Gafar Abdul Kadarbhai Kaliwala has also violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under **Section 117** of the Customs Act, 1962.

28. As per Section 110AA(a)(i) of the Customs Act, 1962, inserted vide Finance Act, 2022 the proper officer for exercising the powers under Section 28 of the Customs Act, 1962 in the instant case would be the Principal Commissioner of Customs or Commissioner of Customs Mundra.

CHARGING SECTION-

29. Now, therefore, M/s. G. K. Steel, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat (IEC: AMKPK1153A), are hereby called upon to show cause to the Principal Commissioner or Commissioner of Customs, Mundra within 30 days of receipt of the show cause notice, so as to why –

(i) The concessional rate of duty under Notification No. 99/2011-Customs dated 09.11.2011, should not be denied to them in respect of Bills of Entry shown in Annexure –A attached.

(ii) The goods valued at Rs.4,37,26,323/- (Rupees Four Crores Thirty Seven Lakhs Twenty Six Thousand Three Hundred and Twenty Three Only) imported under the Bills of Entry mentioned at Annexure-A, where the goods are not available for seizure should not be held liable to confiscation under Section 111(d), Section 111(m) Section 111(o) and Section 111(q) of the Customs Act, 1962.

(iii) The duty exemption as detailed in Annexure-A to the tune of Rs.56,75,676/-(Rupees Fifty Six Lakhs Seventy Five Thousand Six Hundred and Seventy Six Only) availed by the importer vide Notification No. 99/2011 dated 09.11.2011 (SAFTA) should not be denied and the same should not be demanded & recovered from them under Section 28(4) of the Customs Act, 1962.

(vi) Interest leviable under Section 28AA of the Customs Act, 1962, on the differential duty of Rs. 56,75,676/- should not be recovered from the importer.

(ix) Penalties under Section 112(a), 114A, 114AA and 117 of the Customs Act, 1962, should not be imposed upon the Importer.

30. Further Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G.K. Steel is hereby called upon to show cause as to why penalties under Section 112(a), 114A, 114AA and 117 of the Customs Act, 1962, should not be imposed upon him.

WRITTEN SUBMISSION AND PERSONAL HEARING

31. Following the principles of natural justice, opportunities of personal hearing were granted to all the Noticees. During the personal hearing

through virtual mode, Adv. Pankaj Rachchh on behalf of M/s G.K. Steel (Noticee no. 1) and Shri Abdul Gafar Abdul Kadarbhaikaliwala, Proprietor of M/s G.K. Steel (Noticee no. 2), re-iterated their written submission dated 07.09.2026 wherein they interalia stated as below:

i. Goods are waste and scrap and not second-hand goods: The noticee submitted that the imported goods are pieces of old and used iron and steel shafts obtained from the breaking of ships in Bangladesh, which are nothing but waste and scrap. It relied on Section Note 8 to Section XV, under which "waste and scrap" covers metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons. It submitted that waste and scrap cannot be considered second-hand goods by any standard, as the two are governed differently under the FTP and the Customs Tariff, and that metallic waste and scrap is freely importable under Para 2.32 of the FTP. It further submitted that the description of the goods and the tariff item in all six Bills of Entry were the same as in the supplier's invoices, packing lists and other documents, and that the goods are therefore not covered by Para 2.31 of the FTP and require no authorisation.

ii. Chartered Engineer certificate shows that the goods are not usable as such: The noticee submitted that the Chartered Engineer certificate relied upon by the investigation in the case of M/s R.K. Traders itself states that the goods are old and used, rusted, uneven cut pieces of "Iron & Steel Shaft" of different sizes and shapes, which may be used after further processing. According to the noticee, the certificate nowhere opines that the goods can be used as shafts. It added that the proprietor had stated that the goods were sold as scrap only, which shows that they cannot be used as shafts as such.

iii. Breaking up of ships amounted to manufacture under Section Note 9 to Section XV of the erstwhile Central Excise Tariff: The noticee submitted that under Section Note 9 to Section XV of the erstwhile Central Excise Tariff, the process of obtaining goods and materials by breaking up of ships amounted to "manufacture", and that the goods so obtained in India were treated as manufactured and classifiable as waste and scrap till 30.06.2017. According to the noticee, the same goods, when imported into India, cannot be considered second-hand goods other than capital goods.

iv. Reliance on decisions holding similar goods to be scrap: In support of its contention that the goods are waste and scrap, the noticee relied on the decisions in Sujana Steels Ltd. v. Commissioner of C. Ex., Hyderabad, 2000 (115) ELT 539 (Tri.), Hemani Industries v. Commissioner of Customs, Calcutta, 1996 (83) ELT 617 (Tri.) and Pooja Circular Saw v. Commissioner of Customs, Kandla, 2003 (158) ELT 466 (Tri.-Mum.).

v. Confession on law in the statement has no evidentiary value: The noticee submitted that the so-called confession on law made by the proprietor in his statement only reflects the intention of the investigation to implicate him, and that it is settled law that a confession on law has no evidentiary value.

vi. Goods obtained from ship-breaking were correctly certified as wholly obtained: The noticee submitted that the investigation failed to understand the nature of ship-breaking activity and the goods recovered from it. As breaking of ships amounts to manufacture, the cut pieces of iron and steel shafts are wholly obtained in Bangladesh from the breaking of ships, being waste and scrap resulting from manufacturing operations conducted there under Rule 5 of the SAFTA Rules of Origin. The origin criterion "wholly obtained" mentioned in the certificates of origin was therefore correct.

vii. Form I does not contradict the certificate of origin: The noticee submitted that there is no dispute about the origin criteria in the Form I, and that the investigation failed to read item 2(e) of the Form I. According to the noticee, the answer "No" was ticked against item 2(e), which asks whether the CTC rule has been applied for meeting the originating criteria, and the HS code of non-originating material given against that item was therefore not required to be read. It added that the exporter is a trader and not a manufacturer of the goods, and therefore rightly ticked "No" against that item. The finding in the SCN that the origin information in the certificates does not match the Form I is, according to the noticee, baseless.

viii. Genuineness of the certificates was never in doubt: The noticee submitted that there is no dispute about the genuineness of the certificates of origin. It referred to the replies of the exporters to the questionnaire in the verification, in which they stated that the

exported products are collected or purchased from various iron and steel factories and ship-breaking yards and are "fully originated as Bangladesh Products". It submitted that, being traders, the exporters carried out no production process, which is why "N/A" was written against the questions on production processes. The goods, therefore, fully qualified under Rule 4(a) and Rule 5 of the SAFTA Rules of Origin.

ix. No suppression or wilful mis-statement, and the demand is time-barred: The noticee submitted that it had rightly self-assessed the duty, that there was no wilful mis-statement or suppression of facts, and that the department was therefore required to issue the demand, if any, within two years from the relevant date under Section 28(1). The SCN dated 28.11.2025, received on 01.12.2025, was issued beyond that period in respect of all six Bills of Entry, and the demand is therefore time-barred.

x. Goods not available cannot be confiscated: The noticee submitted that the goods were never seized, and that goods which have been cleared and are not available cannot be held liable to confiscation, nor can a redemption fine be imposed. It relied on T.N. Khambati, 1988 (37) ELT 37 (AP), Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc., 2009 (248) ELT 122 (Bom.), Shiv Kripa Ispat Pvt. Ltd. v. Commissioner of C. Ex. & Cus., Nasik, 2009 (235) ELT 623 (Tri.-LB), Commissioner of C. Ex., Amritsar v. Garg Forging & Casting Ltd., 2009 (235) ELT 472 (Tri.-Del.) and Commissioner of Customs, Kandla v. M.S. International Ltd., 2004 (174) ELT 101 (Tri.-Del.).

xi. No separate penalty on the proprietor: The proprietor submitted that when a penalty is proposed on the firm, no separate penalty can be imposed on the proprietor for the same offence, as a proprietor is not a separate entity in law. He relied on Commissioner of Customs, CSI Airport, Mumbai v. Gyanchand Jain, 2015 (321) ELT 199 (Bom.) and Amit Nagi v. Principal Commissioner of Customs, New Delhi, (2024) 21 Centax 265 (Tri.-Del.).

DISCUSSION AND FINDINGS

32. I have carefully gone through the Show Cause Notice , the relied upon documents and the submissions of the noticee made in writing

and during the course of personal hearing. The principles of natural justice, particularly audi alteram partem, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided.

(i) Whether the concessional rate of duty under Notification No. 99/2011-Customs dated 09.11.2011 is liable to be denied to M/s G.K. Steel in respect of the Bills of Entry shown in Annexure-A to the SCN;

(ii) Whether the goods valued at Rs. 4,37,26,323/- imported under the Bills of Entry mentioned in Annexure-A, which are not available for seizure, are liable to confiscation under Sections 111(d), 111(m), 111(o) and 111(q) of the Customs Act, 1962;

(iii) Whether the duty exemption of Rs. 56,75,676/- availed under Notification No. 99/2011-Cus dated 09.11.2011 (SAFTA), as detailed in Annexure-A, is liable to be denied and demanded and recovered from M/s G.K. Steel under Section 28(4) of the Customs Act, 1962;

(iv) Whether interest under Section 28AA of the Customs Act, 1962 is recoverable from M/s G.K. Steel;

(v) Whether penalties under Sections 112(a), 114A, 114AA and 117 of the Customs Act, 1962 are imposable on M/s G.K. Steel;

(vi) Whether penalties under Sections 112(a), 114A, 114AA and 117 of the Customs Act, 1962 are imposable on Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s G.K. Steel.

Brief facts

33.1 M/s G.K. Steel is a proprietary concern of Shri Abdul Gafar Abdul Kadarbhai Kaliwala, who is also a partner in M/s R.K. Traders, Bhavnagar. During the DRI investigation against M/s R.K. Traders, it emerged that M/s G.K. Steel occupied part of the same premises and was importing similar goods. Under six Bills of Entry filed at Mundra between March 2021 and August 2022, M/s G.K. Steel imported goods declared as "Iron and Steel Shafts" under CTH 7326 9080, valued at Rs. 4,37,26,323/-. The goods were supplied by M/s Anan Enterprise and M/s Asha Trading, Chattogram, Bangladesh. The noticee claimed

preferential duty under Notification No. 99/2011-Cus dated 09.11.2011 (SAFTA) on the strength of Certificates of Origin issued by the Export Promotion Bureau, Chattogram, each declaring origin criterion "A" (wholly obtained).

33.2 The goods were shafts recovered from the breaking of ships at Chattogram, Bangladesh, but were declared in the Bills of Entry only as "Iron and Steel Shafts". The declaration did not disclose that they were old and used. Their old and used nature came to light only during the DRI investigation. Old and used shafts recovered from ship-breaking are not plant, machinery, equipment or accessories required for manufacture or for rendering services. They therefore fall outside the definition of "Capital Goods" in FTP 2015-20 and are *"Second Hand Goods other than Capital Goods"*. Such goods are "Restricted" under Para 2.31(II) of FTP 2015-20 and importable only against an authorisation from DGFT. The noticee held no such authorisation for any of the six consignments.

33.3 In his statement under Section 108 recorded on 02.02.2023, the proprietor stated that he was aware that the goods were pieces of old and used iron and steel shafts obtained from ship-breaking and the goods were sold as scrap, and that the firm held no DGFT authorisation. The Form I under Rule 4 of CAROTAR, 2020 for COO No. EPB(C) 32819 dated 29.05.2022 declared origin on a value-content basis, with 50% material content and the balance as value addition through labour, gas, yard rent and machinery. The SCN alleges that the goods are old and used shafts from dismantled ships acquired from the international market. It therefore alleges that the Form I is inconsistent with the origin criterion "A" (wholly obtained) claimed in the Certificates of Origin.

34. Having set out the facts of the case, I now proceed to examine the questions framed above. I find that the nature of the goods imported is the foundation of the entire case. It bears on whether their import was restricted, whether they qualify for the SAFTA preference, and whether the extended period is invocable. I therefore first examine whether the goods were old and used goods requiring an authorisation from DGFT.

Nature of the imported goods:

35. The SCN alleges that the imported goods are *"Second Hand Goods other than Capital Goods"*, restricted under Para 2.31(II) of the Foreign Trade Policy 2015-20, and that they were imported without the requisite authorisation. Entry II of Para 2.31 places *"Second Hand Goods other*

than Capital Goods" under the import policy *"Restricted"*, with the condition *"Importable against Authorization"*. The full text of Para 2.31 is reproduced at para 35.7 below. The noticee contends that the goods are metallic waste and scrap, freely importable, and outside Para 2.31 altogether. The question to be decided is therefore twofold. The first question is whether the goods are second-hand goods at all, so as to attract Para 2.31, or metallic waste and scrap, as claimed by the noticee. The second arises only if they are second-hand goods, and is whether they are capital goods, falling under Entry I, or goods other than capital goods, restricted under Entry II. I take up these questions in that order, beginning with the facts on record.

35.1 Before examining the nature of the goods, it is necessary to ascertain what the noticee declared at the time of import and what the investigation revealed about the goods. In this regard, I find from the records the facts set out below.

- In all six Bills of Entry, the goods were declared as "Iron and Steel Shafts" under CTH 7326 9080, an article of iron or steel falling under Chapter 73. The declaration did not describe the goods as "old", "used", "second-hand" or "scrap".
- In his statement dated 02.02.2023 (RUD-08), the proprietor stated that the goods were "pieces of old and used iron and steel shafts", that they were obtained from ship-breaking activities, and that he was aware of this. He also admitted that the firm held no DGFT authorisation.

35.2 Against these facts, the noticee has sought to take the goods outside Para 2.31 altogether. The noticee has contended that the goods are "waste and scrap" within Section Note 8(a) to Section XV of the Customs Tariff, freely importable under Para 2.32 of the FTP, and not second-hand goods. Section Note 8(a) to Section XV of the Customs Tariff is reproduced below.

> *"(a) Waste and scrap*
>
> *(i) All metal waste and scrap;*
>
> *(ii) Metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons."*

Para 2.32 of the FTP 2015-20 is reproduced below.

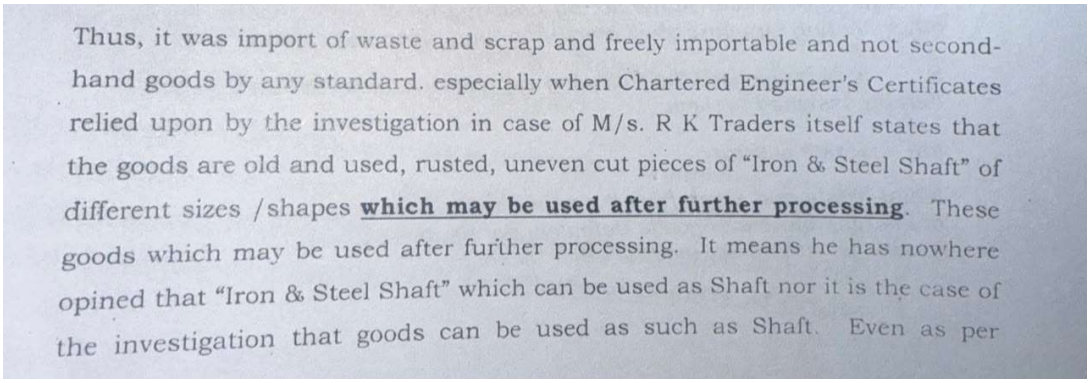
> *"2.32 Import of Metallic Waste and Scrap (a) Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated*

waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise as detailed in Para 2.51 of Handbook of Procedures. (b) The types of metallic waste and scrap which can be imported freely, and the Procedures of import in the shredded form; un-shredded, compressed and loose form is laid in Para 2.51 of Handbook of Procedures."

Having regard to these provisions, I do not find merit in the noticee's contention, for the reasons set out below.

- The noticee itself declared the goods as "Iron and Steel Shafts", articles of Chapter 73, and not as waste and scrap of Heading 7204. The noticee has itself stated in its submissions that it separately imports "Re-rollable Scrap (Heavy Iron & Steel Scrap/Broken Shaft & Crank Shaft)" under 7204 4900. The noticee was therefore conscious of the distinction between scrap and articles, and chose to declare these consignments as articles. Having declared the goods as articles at the time of import, the noticee cannot now recharacterise them as scrap to escape the restriction.
- Section Note 8(a)(ii) covers *"metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons"*. The noticee itself, at the time of import, did not declare the goods as waste and scrap under Heading 7204 but as “Iron and Steel Shafts” under CTH 7326 9080, that is, as articles usable as such. Further, the noticee has produced no examination report, test report or Chartered Engineer certificate for its own consignments showing that the shafts were definitely not usable as such.

35.3 The noticee has also contended that the Chartered Engineer certificate relied upon in the case of M/s R.K. Traders describes the goods as rusted, uneven cut pieces which may be used after further processing. The relevant para in noticee's reply is produced below.



Thus, it was import of waste and scrap and freely importable and not second-hand goods by any standard. especially when Chartered Engineer's Certificates relied upon by the investigation in case of M/s. R K Traders itself states that the goods are old and used, rusted, uneven cut pieces of “Iron & Steel Shaft” of different sizes /shapes **which may be used after further processing**. These goods which may be used after further processing. It means he has nowhere opined that “Iron & Steel Shaft” which can be used as Shaft nor it is the case of the investigation that goods can be used as such as Shaft. Even as per

I find that the certificate was issued in another importer's case and does not relate to the noticee's consignments.

35.4 The noticee has further contended that under Section Note 9 to Section XV of the erstwhile Central Excise Tariff, breaking up of ships amounted to "manufacture", and that the goods so obtained are waste and scrap. The said Note reads *"In relation to the products of this Section, the process of obtaining goods and materials by breaking up of ships, boats and other floating structure shall amount to 'manufacture'."* I find that this Note was a deeming provision enacted for the levy of Central Excise duty. It has no application to the Customs Tariff or to the FTP. In any case, breaking ships was treated as manufacture till 30.06.2017 whereas import has taken place in year 2021 and 2022.

35.5 The noticee has also contended that the proprietor's statement dt. 02.02.2023 contains a confession on law and has no evidentiary value. I find that the proprietor's acceptance that he “violated" Para 2.31(II) and Section 46” is an admission on a point of law, which does not bind him. Therefore, I place no reliance on this part of the statement. His statements of fact, however, stand on a different footing. He stated that the goods were old and used, came from ship-breaking, were known to him to be so, and were imported without authorisation. These statements are voluntary and are also corroborated by the noticee's submissions, which accept that the goods were pieces of old and used iron and steel shafts obtained from the breaking of ships. I, therefore, rely on them.

35.6 From the foregoing, I find that the goods imported by the noticee were not waste and scrap. They were declared as "Iron and Steel Shafts", articles of Chapter 73. The proprietor admitted that they were pieces of old and used iron and steel shafts obtained from ship-breaking, and the noticee accepts this in its submissions. There is no evidence that they were scrap or definitely not usable as such. The goods were, therefore, old and used goods, that is, second-hand goods.

35.7 Having found that the goods are second-hand goods and not waste and scrap, it is necessary to determine the category of Para 2.31 of FTP into which they fall. Para 2.31 of the Foreign Trade Policy 2015-20 is reproduced below for ready reference.

Sl. No.	**Categories of Second Hand Goods**	**Import Policy**	**Conditions, if any**
I	**Second Hand Capital Goods**		
(a)	(i) Desktop computers, (ii)	Restricted	Importable against

	Refurbished/reconditioned spares of re-furbished parts of Personal Computers/Laptops		Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods Order 2012	Restricted	Importable against authorization.
(c)	Refurbished/re-conditioned spares of Capital goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
(d)	All other second hand capital goods {other than (a), (b) & (c) above}.	Free	
II	**Second Hand Goods other than Capital Goods**	**Restricted**	**Importable against Authorization.**

The definition of "Capital Goods" as given in the Foreign Trade Policy 2015-20 is reproduced below for ready reference.

> *"Capital Goods' means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly of goods or for rendering services, including those required for replacement, modernization, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing research and development, quality and pollution control."*

35.8 The next question is whether the goods, being second-hand goods, are capital goods falling under Entry I of Para 2.31. Applying the definition reproduced above, old and used shafts recovered from dismantled ships are not plant, machinery, equipment or accessories required for manufacture or production of goods or for rendering services. The noticee has also not claimed, at any stage, that the goods were capital goods, nor placed any material to that effect. Entry I of Para 2.31 is therefore not available, and the goods rightly fall under Entry II above.

35.9 In view of the above, I hold that the goods imported under the six Bills of Entry are old and used iron and steel shafts, that is, *"Second Hand Goods other than Capital Goods"*. Their import is restricted under Para 2.31(II) of FTP 2015-20 and permitted only against an authorisation, and admittedly no authorisation was held by the importer. The goods were, therefore, imported in contravention of the restriction imposed under Para 2.31(II) of the Foreign Trade Policy 2015-20, as alleged in the SCN.

Eligibility of the imported goods for the SAFTA preference under Notification No. 99/2011-Cus:

36. Having held that the goods are second-hand goods, other than capital goods, imported without the requisite authorisation, I now take up the claim of the noticee to the preferential rate of duty under Notification No. 99/2011-Cus (SAFTA). The SCN alleges that the goods, being shafts recovered from ships broken up at Chattogram, do not satisfy the origin criterion "A" (wholly obtained) declared in the Certificates of Origin. It further alleges that the Form I under CAROTAR, held by the importer, itself declares origin on a value-content basis, which is inconsistent with the claim of wholly obtained origin, and that the benefit was therefore wrongly availed. The noticee contends that the goods are waste and scrap resulting from ship-breaking in Bangladesh and were correctly certified as wholly obtained. The question for decision is whether the goods qualify as originating goods so as to be eligible for the preference. To answer it, I first examine the governing provisions.

36.1 Legal position. The preference under Notification No. 99/2011-Cus is available only to goods which originate in a SAFTA Contracting State, as determined under the Rules of Origin notified under Notification No. 75/2006-Cus (NT) dated 30.06.2006. Rule 5 of these Rules, referred to in Rule 4(a), defines the goods which shall be considered as wholly produced or obtained in the territory of the exporting Contracting State, and is reproduced below for ready reference.

> *"Rule 5 : Wholly produced or obtained. Within the meaning of Rule 4(a), the following shall be considered as wholly produced or obtained in the territory of the exporting Contracting State.*
>
> *(a) raw or mineral products extracted from its soil, its water extending up to its Exclusive Economic Zone (EEZ), or its sea bed extending up to its seabed or continental shelf;*

(b) Agriculture, vegetable and forestry products harvested there;

(c) Animal born and raised there;

(d) products obtained from animals referred to in clause (c) above;

(e) products obtained by hunting or fishing conducted there,

(f) products of sea fishing and other marine products from the high seas by its vessels;

(g) products processed and/or made on board its factory ships exclusively from products referred to in clause (f) above;

(h) raw materials recovered from used articles collected there;

(i) waste and scrap resulting from manufacturing operations conducted there;

(j) products taken from the seabed, ocean floor or subsoil thereof beyond the limits of national jurisdiction, provided it has the exclusive rights to exploit that sea bed, ocean floor or subsoil thereof;

(k) goods produced there exclusively from the products referred to in clauses (a) to (j) above."

The obligations of an importer claiming a preferential rate of duty are laid down in Rule 4 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR), which is reproduced below.

"4. Origin related information to be possessed by importer.

The importer claiming the preferential rate of duty shall

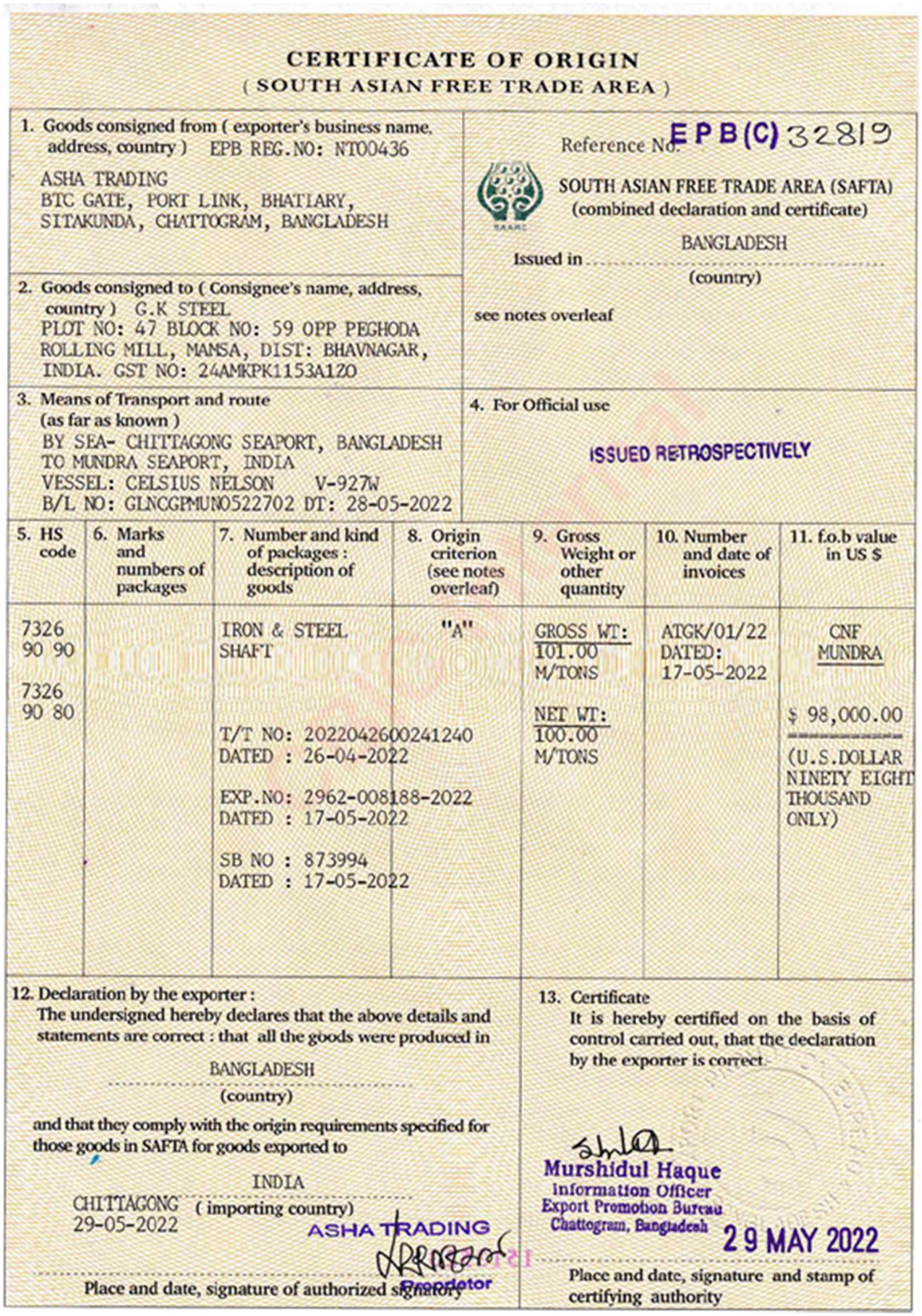
(a) possess information, as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request;

(b) keep all supporting documents related to Form I for at least five years from date of filing bill of entry and submit the same to the proper officer on request;

(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents."

Where the information so furnished or available does not support the claim, the proviso to Section 28DA(4) empowers the Principal Commissioner or Commissioner to disallow the claim without further verification, for reasons recorded in writing. The proviso reads *"Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification."*

36.2 Facts on record. In respect of all six Bills of Entry, as detailed in Annexure-A to the SCN, the noticee claimed the benefit of Notification No. 99/2011-Cus on the strength of Certificates of Origin, each declaring the origin criterion as "A" (wholly obtained). For the sake of reference, I have taken one such certificate, COO No. EPB(C) 32819 dated 29.05.2022, submitted under B/E No. 9108386 dated 14.06.2022, along with its corresponding Form I. The certificate is reproduced below:



CERTIFICATE OF ORIGIN
(SOUTH ASIAN FREE TRADE AREA)

1. Goods consigned from (exporter's business name, address, country) EPB REG.NO: NT00436

ASHA TRADING
BTC GATE, PORT LINK, BHATIARY,
SITAKUNDA, CHATTOGRAM, BANGLADESH

Reference No. EPB(C) 32819

SOUTH ASIAN FREE TRADE AREA (SAFTA)
(combined declaration and certificate)

Issued in BANGLADESH
(country)

see notes overleaf

2. Goods consigned to (Consignee's name, address, country) G.K STEEL
PLOT NO: 47 BLOCK NO: 59 OPP PEGHODA
ROLLING MILL, MANSA, DIST: BHAVNAGAR,
INDIA. GST NO: 24AMKPK1153A1ZO

3. Means of Transport and route (as far as known)
BY SEA- CHITTAGONG SEAPORT, BANGLADESH
TO MUNDRA SEAPORT, INDIA
VESSEL: CELSIUS NELSON V-927W
B/L NO: GLNCGPMUN0522702 DT: 28-05-2022

4. For Official use
ISSUED RETROSPECTIVELY

5. HS code	6. Marks and numbers of packages	7. Number and kind of packages : description of goods	8. Origin criterion (see notes overleaf)	9. Gross Weight or other quantity	10. Number and date of invoices	11. f.o.b value in US $
7326 90 90 7326 90 80		IRON & STEEL SHAFT T/T NO: 2022042600241240 DATED : 26-04-2022 EXP.NO: 2962-008188-2022 DATED : 17-05-2022 SB NO : 873994 DATED : 17-05-2022	"A"	GROSS WT: 101.00 M/TONS NET WT: 100.00 M/TONS	ATGK/01/22 DATED: 17-05-2022	CNF MUNDRA $ 98,000.00 (U.S.DOLLAR NINETY EIGHT THOUSAND ONLY)

12. Declaration by the exporter :
The undersigned hereby declares that the above details and statements are correct : that all the goods were produced in

BANGLADESH
(country)

and that they comply with the origin requirements specified for those goods in SAFTA for goods exported to

INDIA
(importing country)

CHITTAGONG
29-05-2022

ASHA TRADING
Proprietor

Place and date, signature of authorized signatory

13. Certificate
It is hereby certified on the basis of control carried out, that the declaration by the exporter is correct.

Murshidul Haque
Information Officer
Export Promotion Bureau
Chattogram, Bangladesh

29 MAY 2022

Place and date, signature and stamp of certifying authority

The certificate was issued by the Export Promotion Bureau, Chattogram, Bangladesh on 29.05.2022, with M/s Asha Trading as exporter and M/s G.K. Steel as consignee, for "Iron & Steel Shaft", and declares the origin criterion as "A", that is, wholly obtained.

I now turn to the Form I relating to the same certificate, which is available with the importer and has also been uploaded in e-Sanchit. The relevant part of the Form I is reproduced below.

d.	Is the originating criteria based on value content?	✓ Yes No If Yes, provide the following: (i)Percentage of local value content: Material price 50% (ii)Components which constitute value addition Labour Charges (25%), Gas Expenses (13%), Yard Rent (7%), Machinery & Equipment Cost (5%).
e.	Has CTC rule been applied for meeting originating criteria?	✓ Yes No If Yes, provide HS of Non-originating material/components used in production of goods: 7326.90.80

On a perusal of the above extract of the Form I, I find that item 2(d) asks "Is the originating criteria based on value content?". Against this item, the answer given is "Yes". The Form I then gives the details of the value content, showing the local value content as material price 50%, and the components of value addition as labour charges 25%, gas expenses 13%, yard rent 7% and machinery/equipment cost 5%. Further, against item 2(e), which asks whether the CTC rule has been applied for meeting the originating criteria, the answer "Yes" is ticked, and the HS code of the non-originating material used in production of the goods is given as 7326 9080. Thus, while the certificate claims that the goods are wholly obtained, the Form I for the same certificate computes their origin on a value-content basis.

36.3 Against the above facts, the noticee has defended its claim to the preference under Notification No. 99/2011-Cus. It contends that the certificates of origin correctly declared the goods as wholly obtained, that the Form I does not contradict them, and that the investigation misread the documents. I examine each of its submissions in following paras.

36.4 Goods obtained from ship-breaking are not wholly obtained under Rule 5(i) or 5(h). The noticee first contends that breaking up of ships amounts to manufacture, so that the shafts obtained from such breaking are *"waste and scrap resulting from manufacturing operations conducted there"* under Rule 5(i), as mentioned in para 36.1 above, and were correctly certified as wholly obtained. I do not find merit in this contention. The noticee's argument rests on Section Note 9 to Section XV of the erstwhile Central Excise Tariff, reproduced at para 35.4 above, which provided that, in relation to the products of that Section, the process of obtaining goods and materials by breaking up of ships,

boats and other floating structures shall amount to "manufacture". This deeming provision was confined to the levy of excise duty in India. It cannot be imported into the SAFTA Rules of Origin, which are a self-contained code. Moreover, by the noticee's submission, breaking up of ships was treated as manufacture only till 30.06.2017, whereas the imports in question were made between March 2021 and August 2022. In any event, Rule 5(i) covers *"waste and scrap"*, and the noticee declared the goods at the time of import not as scrap but as "Iron and Steel Shafts", articles of CTH 7326 9080, as held at para 35.2 above. The noticee cannot claim the character of an article for classification and the character of scrap for origin. Nor do the goods fall under Rule 5(h), which covers *"raw materials recovered from used articles collected there"*. The noticee has not invoked this clause, and the goods as declared are shafts, that is, articles and not raw materials.

36.5 Form-I contradicts the claim of wholly obtained origin. The noticee further contends that there is no dispute about the origin criteria in the Form-I, and that since the answer "No" was ticked against item 2(e), the HS code entry against that item was not required to be read. I find that this submission does not answer the inconsistency brought out at para 36.2 above. Origin under Rule 5 is a status and a wholly obtained product involves no non-originating material and requires no computation of value content. The Form I held by the noticee, however, declares against item 2(d) that origin was determined on a value-content basis, with "material price" accounting for 50% and the balance made up of labour, gas, yard rent and machinery. Such a computation is relevant only to goods that are not wholly obtained. The certificate states that the goods are wholly obtained, whereas the Form I for the same certificate states that their origin depends on value addition. The two documents therefore contradict each other. The "material" constituting 50% of the value is evidently the vessel broken up, and nothing has been placed on record by the noticee, on whom the obligation lies under Rule 4 of CAROTAR, to show that the vessel itself was wholly obtained in Bangladesh. The noticee's submission that the answer "No" was ticked against item 2(e) is also factually incorrect. As seen from the extract of the Form I reproduced at para 36.2 above, the answer "Yes" is ticked against item 2(e), which asks whether the CTC rule has been applied for meeting the originating criteria, and the HS code of the non-originating material used in production of the goods is given as 7326 9080. The Form I thus not only computes origin on a value-content basis but also declares the use of non-originating material in the production of the goods. Both declarations are wholly inconsistent with the claim that the goods are wholly obtained.

36.6 Genuineness of the certificates is not in issue, claim disallowable without verification. The noticee also contends that the genuineness of the certificates was never doubted. It relies on the replies given by the same exporters, M/s Anan Enterprise and M/s Asha Trading, to the questionnaire in the verification of certificates issued to M/s R.K. Traders. In those replies they stated that the goods were collected from iron and steel factories and ship-breaking yards and were “fully originated as Bangladesh Products”. These replies do not relate to the certificates in the present case. Even otherwise, I find that the present case does not turn on the genuineness of the certificates as documents, but on whether the origin criterion declared in them is correct. The status of the exporters as traders, on which the noticee relies to explain the "N/A" replies against the production process, does not alter the requirement that the goods must satisfy the origin criterion declared in the certificate. A bare statement that the goods were "fully originated as Bangladesh Products" does not show how the Rule 5 criterion is met. The proviso to Section 28DA(4) permits the claim to be disallowed without further verification, for reasons recorded in writing, on the basis of the information furnished by or available with the importer. The Form I relating to the certificate, which is available with the noticee and has been uploaded in e-Sanchit, is such information. The reasons for disallowing the claim on its basis are recorded at paras 36.4 and 36.5 above. No further verification of the certificates is, therefore, required.

36.7 Goods do not qualify for the SAFTA preference. In view of the above, I hold that the goods do not satisfy origin criterion "A" under Rule 4(a) read with Rule 5 of the SAFTA Rules of Origin, and that the noticee did not possess information establishing their originating status, as required by Rule 4 of CAROTAR, 2020. The benefit of Notification No. 99/2011-Cus is, therefore, disallowed for all six Bills of Entry.

Invocation of the extended period under Section 28(4):

37. Having held that the noticee was not eligible for the benefit of Notification No. 99/2011-Cus, the duty foregone on the imported goods becomes recoverable from it. The question that remains is whether such duty can be demanded by invoking the extended period under Section 28(4). The SCN invokes the extended period, alleging that the noticee suppressed the old and used nature of the goods and wilfully mis-stated their description and eligibility to the preference while filing the Bills of Entry. The noticee contends that there was no suppression or wilful mis-statement.

37.1 In all six Bills of Entry, the noticee declared the goods only as "Iron and Steel Shafts". It did not disclose that they were old and used shafts recovered from ship-breaking. This was not a minor omission, as the nature of the goods went to the root of the exemption claimed. As held above, goods recovered from the breaking of a ship cannot be wholly obtained in Bangladesh and therefore cannot qualify under criterion "A", on which the benefit of Notification No. 99/2011-Cus was claimed. Had the goods been declared as old and used shafts obtained from ship-breaking, the description in the Bill of Entry would itself have contradicted the certificate of origin, and the exemption could not have been extended. It was incumbent on the noticee to declare the true description of the goods, irrespective of the description in the supplier's documents. The fact that the goods were old and used shafts obtained from ship-breaking came to light only during the investigation by DRI. I find that this material fact was suppressed from the Customs authorities and that the short levy of duty is a direct result of such suppression.

37.2 The suppression was also not inadvertent. In his statement dated 02.02.2023, the proprietor admitted that he was aware that the goods were old and used and obtained from ship-breaking activities. This was a fact within his knowledge at the time of import, and it was not disclosed in any of the six Bills of Entry. An importer who knows the true nature of the goods and still leaves it out of every Bill of Entry cannot be said to have omitted it by oversight. I, therefore, find that the omission was deliberate and amounts to suppression of facts.

37.3 Lastly, in each Bill of Entry, the noticee claimed the preference on certificates declaring the goods to be wholly obtained. As found above, the Form I supporting COO No. EPB(C) 32819 dated 29.05.2022, taken for reference and available with the noticee, records under item 2(d) that origin was determined on the basis of value content, and under item 2(e) that non-originating material classifiable under 7326 9080 was used in the goods. Therefore, I find that the claim of preference amounts to a wilful mis-statement.

37.4 In view of the above, I hold that the short-levy arose by reason of suppression of facts and wilful mis-statement by the noticee, and that the extended period under Section 28(4) has been rightly invoked. The differential duty of Rs. 56,75,676/-, being the duty foregone under Notification No. 99/2011-Cus as computed in Annexure-A to the SCN, is liable to be recovered from the noticee under Section 28(4), along with interest under Section 28AA.

Confiscation and Penalties:

38. The SCN proposes confiscation under Section 111(d), 111(m), 111(o) and 111(q) of the Customs Act, 1962. Therefore, I take up each section invoked in the SCN separately.

38.1 Goods imported without authorisation are liable to confiscation under Section 111(d): As held above, the imported goods are second-hand goods other than capital goods, which can be imported under Para 2.31(II) of the FTP only against an authorisation. Admittedly, no authorisation was held by the noticee for any of the six consignments. The goods were thus brought into India without fulfilling the condition subject to which alone their import was permitted, and their import was therefore contrary to the prohibition imposed under the FTP. I find that the goods are liable to confiscation under Section 111(d) of the Customs Act, 1962.

38.2 Goods not corresponding with the entry in a material particular are liable to confiscation under Section 111(m): In all six Bills of Entry, the goods were declared only as "Iron and Steel Shafts". The goods actually imported were old and used shafts recovered from ship-breaking, as found above. This was not a matter of detail, as the old and used nature of the goods determined both whether they could be imported without an authorisation and whether they could qualify as wholly obtained for the preference claimed. The goods, therefore, did not correspond with the entry in a material particular. I find that the goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

38.3 Goods cleared under a conditional exemption, the condition of which was not observed, are liable to confiscation under Section 111(o): The exemption under Notification No. 99/2011-Cus is available only to goods originating in a SAFTA member country in accordance with the Rules of Origin notified under Notification No. 75/2006-Cus (NT), and the goods were cleared at the preferential rate on that basis. As held above, the goods do not satisfy criterion "A" of wholly obtained origin claimed in the certificates. The condition subject to which the exemption was granted was therefore not observed, and its non-observance was never sanctioned by the proper officer. I find that the goods are liable to confiscation under Section 111(o) of the Customs Act, 1962.

38.4 Goods imported on a preferential claim contravening Chapter VAA are liable to confiscation under Section 111(q). The noticee claimed the

preferential rate of duty in all six Bills of Entry on certificates declaring the goods to be wholly obtained. As held above, the Form I available with the noticee recorded origin on the basis of value content and the use of non-originating material. The information in the noticee's possession thus did not support, and in fact contradicted, the origin criterion claimed. The claim was therefore made in contravention of Rule 4 of CAROTAR, 2020, framed under Chapter VAA. I find that the goods are liable to confiscation under Section 111(q) of the Customs Act, 1962.

38.5 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of the Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

> *"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."*

38.6 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements, I find that goods are liable for confiscation and redemption fine can be imposed.

39. Penalty on M/s G.K. Steel under Section 114A: In para 37 above, I have found that the short levy of duty of Rs. 56,75,676/- arose by reason of suppression of facts and wilful mis-statement by the noticee, and the duty has been confirmed under Section 28(4). The ingredients of Section 114A are, therefore, satisfied and the penalty follows as a statutory consequence. I, therefore, hold M/s G.K. Steel liable to a penalty equal to the duty of Rs. 56,75,676/- under Section 114A. Further, in view of the fifth proviso to Section 114A, which bars a penalty under Section 112 where a penalty has been levied under Section 114A, I do not impose any penalty on M/s G.K. Steel under Section 112(a) of the Customs Act, 1962.

39.1 Penalty on M/s G.K. Steel under Section 114AA: Section 114AA provides for a penalty on a person who 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 the Customs Act. In the present case, the noticee filed six Bills of Entry declaring the goods only as "Iron and Steel Shafts", though, as admitted by the proprietor in his statement dated 02.02.2023, it knew that the goods were old and used and obtained from ship-breaking. In the same Bills of Entry, it claimed the preference under Notification No. 99/2011-Cus on certificates declaring the goods to be wholly obtained, while the Form I available with it recorded origin on the basis of value content and the use of non-originating material. The Bills of Entry were thus false and incorrect in material particulars, both as to the nature of

the goods and as to their eligibility to the preference, and they were made and used by the noticee with full knowledge of the true facts, as found in paras 37.1 to 37.3 above. These declarations were made in the transaction of business for the purposes of the Customs Act, namely the import and assessment of the goods. I, therefore, hold M/s G.K. Steel liable to a penalty under Section 114AA of the Customs Act, 1962.

39.2 No penalty under Section 117. Section 117 applies only where no express penalty is elsewhere provided for the contravention. As the noticee has already been penalised under Sections 114A and 114AA for the same acts, no penalty is imposed under Section 117.

39.3 No penalty on the proprietor. The SCN proposes separate penalties on Shri Abdul Gafar Abdul Kadarbhai Kaliwala. M/s G.K. Steel is a sole proprietorship of Shri Abdul Gafar Abdul Kadarbhai Kaliwala. A proprietary concern has no legal existence separate from its proprietor, and a penalty imposed on the firm is a penalty on the proprietor. Separate penalties on the firm and its proprietor for the same contravention are not sustainable, as held in *Commissioner of Customs v. Gyanchand Jain*, 2015 (321) ELT 199 (Bom.); *Amit Nagi v. Pr. Commissioner of Customs*, (2024) 21 Centax 265 (Tri.-Del.). The penalties imposed on M/s G.K. Steel are therefore not imposed again on Shri Abdul Gafar Abdul Kadarbhai Kaliwala, and the proposals in the SCN for imposing separate penalties on Shri Abdul Gafar Abdul Kadarbhai Kaliwala, proprietor of M/s G.K. Steel, are accordingly dropped.

40. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

i. I deny the concessional rate of duty under Notification No. 99/2011-Customs dated 09.11.2011, in respect of Bills of Entry shown in Annexure –A to the SCN.

ii. I hold the goods valued at **Rs. 4,37,26,323/-** (Rupees Four Crores Thirty Seven Lakhs Twenty Six Thousand Three Hundred and Twenty Three Only) imported under the Bills of Entry mentioned at Annexure-A to the SCN, liable to confiscation under Section 111(d), Section 111(m) Section 111(o) and Section 111(q) of the Customs Act, 1962. I impose redemption fine of **Rs. 20,00,000/-** (Rupees Twenty Lakh only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

iii. I deny the duty exemption of **Rs. 56,75,676/-** (Rupees Fifty Six Lakhs Seventy Five Thousand Six Hundred and Seventy Six Only), as detailed in Annexure-A to the SCN, availed by the importer vide Notification No. 99/2011 dated 09.11.2011 (SAFTA) and order to recover the amount of **Rs. 56,75,676/-** from M/s G.K. Steel under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

iv. I impose penalty of **Rs. 56,75,676/-** (Rupees Fifty Six Lakhs Seventy Five Thousand Six Hundred and Seventy Six Only) on M/s G.K. Steel under Section 114A of the Customs Act, 1962. However, I do not impose any penalty on M/s G.K. Steel under Section 112(a) of the Customs Act, 1962 as discussed in para 39 above.

v. I impose penalty of **Rs. 5,00,000/-** (Rupees Five Lakh Only) on M/s G.K. Steel under Section 114AA of the Customs Act, 1962.

vi. I do not impose any penalty on M/s G.K. Steel under Section 117 of the Customs Act, 1962, as discussed in para 39.2 above.

vii. I do not impose any penalty on Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G.K. Steel under Section 112(a), 114A, 114AA and 117 of the Customs Act, 1962, as discussed in para 39.3 above.

41. This order is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

Digitally signed by
Nitin Saini
Date: 13-11-2026
15:25:07

(**Nitin Saini**)
Commissioner of Customs,
Mundra

F.No. GEN/ADJ/COMM/709/2025-Adjn

To:

(i) **M/s. G. K. Steel**, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat (IEC: AMKPK1153A)

(ii) **Shri Abdul Gafar Abdul Kadarbhai Kaliwala**, Proprietor of M/s. G.K. Steel, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat.

Copy To-

(i) The Deputy Director, DRI, Jamnagar Regional Unit
(ii) The Superintendent (EDI), Customs Mundra for uploading on the website.
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