

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT&amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68</b> <b>FAX.No.02838-271169/62</b>	
<b>A.</b> File No.	:	F. No GEN/ADJ/COMM/41/2021-Adjn-O/o Pr. Commr- Cus-Mundra
<b>B.</b> Order-in-Original No.	:	MUN-CUSTM-000-COM-031-24-25
<b>C.</b> Passed by	:	<b>K. Engineer</b> Pr. Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>D.</b> Date of order and Date of issue:	:	26.12.2024 26.12.2024
<b>E.</b> SCN No. & Date	:	VIII/48-1306/WORLDFA/Gr-IV/GRIV/MCH/2020-21 dated 30.12.2020.
<b>F.</b> Noticee(s) / Party / Importer	:	M/s Worldfa Exports Pvt. Ltd. (IEC 05053068675), 449-450, Industrial Estate, EPIP Kundli, Distt. Sonepat, Haryana- 131028
<b>G. DIN</b>	:	<b>20241271M0000000A5FB</b>

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 सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-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, 2<sup>nd</sup> 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, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”**

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

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

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

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

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

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

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

## **BRIEF FACTS OF THE CASE**

**M/s Worldfa Exports Pvt. Ltd. (IEC 05053068675)**, 449-450, Industrial Estate, EPIP Kundli, Distt. Sonepat, Haryana presented Bill of Entries as detailed in annexure attached to show notice under adjudication, through their Customs Broker M/s SSS Sai Forwarders Pvt. Ltd. Ratnakar Arcade, Opp. Shubham Petroleum, Adani Port Road, Mundra at Custom House, Mundra, for clearance of imported goods declared as "Cold-rolled Flat product of stainless steel" classifying under tariff CTH 72199090 of first schedule of the Custom Tariff Act, 1975.

**2.** The importer have imported subject consignment of "Cold-rolled Flat products of stainless steel" (SIZE RANGING from 600 MM to 1250 MM). The subject consignments are originated in CHINA; the goods have been classified under Chapter heading 7219; availing exemption under Advance Authorization Scheme- Notification No. 18/2015-Cus. Dated 01.04.2015 in the subject Bills of Entries.

**3.** Whereas "Cold-Rolled Flat products of Stainless Steel of size ranging from 600MM to 1250mm, covered under CTH 7219 and originating in or exported from China attracts anti-dumping duty at specified percentage of Landed Value (AV+BCD) as mentioned in the table of the Notification No. 61/2015-Customs (ADD) dated 11.12.2015. Further, the Notification No. 18/2015-Cus dated 01.04.2015 grants exemption subject to certain conditions. The condition No.(iv) provides, "that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty liable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with". The quantum of debiting of bond depends on the amount of duty foregone/ exemption under Advance Authorization.

**4.** On scrutiny of the subject Bills of Entry, it is found that the subject goods covered under CTH 7219 (which covers "Cold-Rolled Flat product of Stainless Steel"), are originating and exported from People's Republic of China. Therefore, it appears that Anti-Dumping Duty (ADD) as per Notification No. 61/2015-Customs (ADD) dated 11.12.2015 is leviable on the same. Relevant part of the notification is reproduced below:

*".....Now, therefore, in exercise of the powers conferred by sub- sections (1), (1A) and (5) of section 9A of the Customs Tariff Act, read with rule 27 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, the specification of which is specified in column (4), falling under tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries/territories as specified in the corresponding entry in column (5), exported from the countries/territories as specified in the corresponding entry in column (6), produced by the producers as specified in the corresponding entry in column (7), exported by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti- dumping duty at the rate to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (9) of the said Table, namely.....*

Sl No	Tariff heading	Description of goods	Specification	Countries/Territories of Origin	Countries /Territories Export	Producer	Exporter	Duty Amount
1	2	3	4	5	6	7	8	9
1	7219	Cold-rolled Flat products of	All Grades, All Series except the exclusions as per Note below	People's Republic of China	Any	Any	Any	57.39%

(Only relevant entry i.e. Sl. No. 1 reproduced above)

**4.1** Further, as per section 3(7) of Customs Tariff Act, 1975, any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Sub-section (9).

**5.** As per above said notification, Anti-dumping duty at the rate equal to the amount calculated at the rate mentioned in the corresponding entry in column (9) of the table of the notification mentioned above is levied. Further, IGST on corresponding antidumping duty is also levied. However, from the subject Bills of Entry, it appears that the importer cleared the imported Cold-Rolled Flat product of Stainless Steel classifiable under CTH 7219 without payment of Anti-Dumping Duty and IGST leviable thereon. This has resulted in non-levy of Anti-dumping duty of Rs. 56,83,58,661/- and short levy of IGST of Rs.10,23,04,559/-, total amounting to Rs. 67,06,63,220/- (As detailed in Annexure to this notice). Therefore, it appears that the said amount of duty of Rs. 67,06,63,220/- is liable to be demanded and recovered from the importer under Section 28(1) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA ibid.

**6.** Under the provision of Section 17(1) of the Customs Act, 1962 an importer entering any imported goods shall self-assess the duty leviable on such goods. However, in the instant case the importer has self-assessed the subject Bills of Entry without imposing anti-dumping duty and IGST thereon, as discussed above. Thus, it appears that they have contravened the provision of Section 17(1) ibid. For the said act, they have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962,

**7.** Now, therefore, M/s. WORLDFA Exports Pvt Ltd. 449-450, Industrial Estate, EPIP Kundli Distt. Sonepat, Haryana were called upon to show cause to the Commissioner of Customs, Custom House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:

(i) Anti-dumping duty amounting **Rs. 56,83,58,661 /-** and short levy of IGST amounting to **Rs. 10,23,04,559/-**, totally amounting to **Rs. 67,06,63,220/-** in respect of the subject Bills of Entry, detailed in Annexure to this notice, should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.

(ii) Penalty should not be imposed on them under section 117 of the Customs Act, 1962.

**8.** Pending issuance of redemption/EODC, the case was kept on call book on approval of competent authority on 09.06.2021. Further, on communication made by Noticee about issuance of EODC/redemption, the case was retrieved from call book on 04.07.2024.

**9. SUBMISSION OF THE NOTICEES AGAINST THE INSTANT SCN:**

**9.1** I find that the noticee i.e. M/s Worldfa Exports Pvt. Ltd (IEC No. 05053068675) has submitted the defense submission and the same is being reproduced below:

**A. Anti-dumping is exempted in terms of Notification No.18/2015-CUS dated 01.04.2015**

**A.1.** It is submitted that Notification No. 18/2015 Cus dated 01.04.2015 grants exemption to materials imported into India against a valid Advance Authorization from all of the customs duties leviable thereon, including Anti-Dumping Duty. The relevant extract of the notification is reproduced hereunder for ease of reference:

*"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti- dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act"*

**A.2.** From a perusal of the aforesaid notification, it is evident that when goods are imported under the cover of an Advance Authorization, the importer, along with the whole of the duty of customs leviable thereon as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), is also eligible to avail exemption from the anti-dumping duty leviable on such imports, provided all the conditions stipulated in the said notification are complied with.

**A.3.** It is submitted that the company has been complying with all the conditions laid down under the aforesaid notification and the same has not been disputed by your office as well. Thus, by virtue of the said notification, the entire anti-dumping duty imposed on the company under the aforesaid notices is liable to be exempted.

**A.4.** Therefore, there arises no liability on the company to deposit the differential anti-dumping duty with respect to the said imports and the same should be debited from the bond submitted by the company.

**B. Proper Officer is liable to debit the bond at the time of clearance**

**B.1.** Notification No. 18/2015-Cus dated 01.04.2015 lays down the fact that the proper officer has to debit the bond at the time of clearance of the imported goods. The relevant portion is reproduced hereunder:

*"...subject to the following conditions, namely: -*

*(i) that the said authorization is produced before the proper officer of customs at the time of clearance for debit;"*

**B.2.** It is submitted that by virtue of the aforesaid notification, the responsibility to debit the bond lies with the proper officer. The company is only responsible for producing the authorization and the bond before him at the time of clearance. Therefore, whatever duties were liable to be debited, the officer could have debited at the relevant time. The debit had to be made by him and not us.

**B.3.** It is submitted that the company has been duly producing the bond before the proper officer, at the time of clearance, for debiting the same. The anti-dumping duty leviable on the imported goods was liable to be debited by the proper officer. The company had neither disputed nor disagreed to the fact that their product attracts anti-dumping duty in terms of Notification No. 61/2015-Cus dated 11.12.2015.

**B.4.** It is further submitted, that subsequent to the post clearance audit, wherein it was observed by your office that the product of the company is liable to anti-dumping duty, the proper officer was debiting the same from the bond, along with other applicable customs duties.

**B.5.** The company does not deny the fact that anti-dumping duty is leviable on its product however the proper officer was to debit the same at the time of clearance of imported goods.

**B.6.** It is submitted that the company is willing to get the amount of ADD+IGST debited from the bond account and the same was also communicated to your office vide our letter.

**C. The Bond is nothing but a commitment to pay the duty/interest/penalty in case of non-discharge of export obligation**

**C.1.** As all of us know and if we go by the language of the bond, it is nothing but a commitment to pay the duty/interest/penalty in case of non-discharge of export obligation. In the present case, the goods were imported against the advance authorization/s which are exempted from duties in terms of Notification No. 18/2015-Cus as amended. As stated above, they are ready to get the amount of the ADD debited from the bond amount in order to satisfy the condition of the Notification NO. 18/2015-Cus dated 1.4.2015.

**C.2.** Independently, vide this reply itself, they bind themselves that they will pay the applicable duties (of course including ADD) in case the export obligation against the Advance Authorizations could not be discharged in terms of the Foreign Trade Policy, 2015-2020 read with Notification NO. 18/2015-Cus dated 1.4.2015, they will pay all the applicable customs duty viz Basic customs duty, Surcharge, ADD, IGST etc along with applicable interest in case of failure to fulfil the export obligation.

**D. Substantial benefit cannot be denied on the basis of procedural infractions**

**D.1.** It is submitted that debiting the duty from the bond with respect to imports made under Advance Authorizations is the responsibility of the proper officer and is merely a procedural exercise. The failure to debit the same from the bond at the time of clearance is a procedure lapse on the part of the department and should not deprive the company from claiming the benefits under Notification No. 18/2015 Cus dated 01.04.2015, especially when all other substantial conditions of the notification have been complied with.

**D.2.** It is a well settled principle of law that the substantial benefit of a notification should not be denied to a company on account of procedural lapses and infractions. The company has complied with all the conditions stipulated in the aforesaid notification and the same has not been disputed by your office as well. Therefore, the company should not be held liable to pay the differential duty

along with interest on the said imports. Reliance in this is placed on the following decisions:

- **N.S. Publicity India Pvt Ltd v. CCE [2019 (27) G.S.T.L. 687 (Tri.-Del.)]**
- **Dhampur Sugar Mills Ltd v. CCE [2010 (260) E.L.T. 106 (Tri.-Del.)]**
- **Hindustan Coca-Cola Beverages Pvt Ltd v. CCE [2009 (242) 45 (Tri.- Mum.)]**

**E. Without prejudice to the above, once the EODC has been issued in respect of the AA, there can be no proposal to demand duty.**

**E.1** In the present case, the Noticee wishes to submit that for 3 AAs obtained by them, the Noticee has already fulfilled EO and obtained Export Obligation Discharge Certificate (hereinafter referred to as "EODC") from the DGFT. The Noticee submits for imports under these AA, where EODC has been issued by the DGFT, there can be no demand and to that extent the SCN should be dropped. Hence, so much of demand of duty is liable to be dropped. Further Noticee has submitted the redemption certificate/EODC in respect of 12AAs vide letter dated 12.10.2023 and one redemption certificate in respect of one more Advance License vide email dated 24.12.2024 was also submitted.

**E.2** Reliance is placed on the decision in the case of **Aditya Birla Nuvo Ltd. vs. CC, 2010 (249) E.L.T. 273 (Tri. - Bang.)**, wherein the Hon'ble Tribunal had held that after completion of the EO as stipulated in the advance license and where the issuance of the EODC, the demand of duty on the imported material is not sustainable.

**E.3** Further, reliance is placed on the decision in the case of **Hindustan Lever Limited vs. CC, 2012 (281) E.L.T. 241 (Tri. - Mumbai)**, it has been held by the Hon'ble Tribunal that where EO fulfilled has been duly accepted by the licensing authority and the EODC has been issued, the Customs Authorities cannot deny the benefit of the notification to the imported materials.

**E.4** It is further submitted that at the time of importation of the impugned goods against the AA, all the necessary documents have been submitted and the goods were subject to examination. It is to be noted that no objection was raised by the department at the time of importation. The input imported by the Noticee was duly assessed to duty and cleared against the AAs.

**E.5** In the case of **CC vs. Hindustan Unilever Ltd., 2012 (285) E.L.T. 500 (Bom.)**, the Hon'ble High Court of Bombay had held that if objections are not raised by the Department at time of import, they are not justified in raising them after fulfilment of EO to satisfaction of Licensing Authorities.

**F. No interest is liable to be paid on the differential duty**

**F.1** It is submitted that the differential duty demanded from the company is to be debited from the bond submitted with the department. The company is not liable to pay the same in cash as it is exempt in terms of Notification No. 18/2015-Cus dated 01.04.2015.

**F.2** Therefore, based on the well settled position of law, since no physical exchange of currency is ensuing in this transaction, the demand for interest on the differential duty as per the notice, is liable to be dropped. Only the duty amount should be debited from the bond and no interest is liable to be recovered from the company.

**G. Penalty under Section 117 of the Customs Act is not imposable**

**G.1** It is submitted that the SCN seeks to impose penalty under Section 117 of the Customs Act. It is submitted that this proposal is completely incorrect and bad in law on account of the reasons mentioned hereinafter. For ready reference, the relevant portion of Section 112 is being reproduced below:

**"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.

**Penalty cannot be imposed where duty demand is not sustainable.**

**G.2** In the foregoing paragraphs, it has been submitted in detail that no duty is payable. For the same reasons, no penalty is imposable on the Noticee. In the case of Collector of Central Excise vs. H.M.M. Limited, 1995 (76) E.L.T. 497 (SC), the Hon'ble Supreme Court held that the question of penalty would arise only if the department is able to sustain the demand. Similarly, in the case of Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC), the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.

**G.3** For the sake of brevity and in order to avoid unnecessary repetition, the Noticee requests that the submissions made with regard to the duty portion may be considered as part of the submissions relating to the imposition of penalty.. Therefore, for the same ground no penalty is sustainable. It is humbly submitted that penalty is not imposable as the demand itself is not sustainable.

Further, the Noticee prayed to drop the proceedings initiated vide the Subject Show Cause Notice. To hold that no differential duty in terms of ADD or IGST or interest is payable under Section 28(1) of the Customs Act;. To hold that the differential duty ADD and IGST demanded should not be demanded/ debited from the bond submitted by the company where Advance Authorizations has already been redeemed by the DGFT or Application filed for EODC to the DGFT. To hold that the differential duty ADD and IGST demanded should be debited from the bond submitted by the company, if required. To hold that no penalty is imposable on the Noticee under Section 117 of the Customs Act;

**9.2** Noticee vide letter dated 10.12.2024 submitted the additional submission and stated that they have already submitted detailed reply to SCN and also submitted EODC against 12 AA (and one EODC against one more license vide email dated 24.12.2024) which was used for imports covered under the said SCN. The SCN was issued on the same matter to various other importers from this office and the same has been adjudicated by dropping of demands. Details of few OIO are as under-

1. OIO No. MCH/ADC/PMR/76/2022-23/23.08.2022 passed by Additional Customs of Customs, Mundra in case of M/s Kumar Engineering Works: The entire demand has been dropped and no penalty under Section 117 has been imposed. Copy of OIO is enclosed.
2. OIO No. MCH/ADC/RKC/47/2022-23/17.06.2022 passed by Additional Customs of Customs, Mundra in case of M/s Worldfa Exports P Ltd: The entire demand has been dropped and no penalty under Section 117 has been imposed. Copy of OIO is enclosed.
3. OIO No. MUN-CUSTM-000-COM-04-21-22 dated 07.06.2021 passed by Commissioner of Customs, Mundra in case of M/s Trishul Exotic P Ltd: The entire demand has been dropped and a penalty of Rs. 4.00 Lacs was imposed under section 117 of Customs Act.

Against the said penalty of Rs. 4.00 Lacs imposed under section 117 of the Customs Act, the importers have filed appeals to the CESTAT, Ahmedabad and

the Hon'ble Tribunal vide common order dated 28.03.2023 allowed the appeal and set aside the penalty under section 117 of the Customs Act as the appellant has no mensrea or any wilful intention to evade payment of anti-dumping duty. Copy of Order dated 28.03.2023 of Hon'ble Tribunal is enclosed. They also submitted that they don't want any personal hearing in this case.

## **10. PERSONAL HEARING**

'*Audi alteram partem*', is an important principal of natural justice that dictates to hear the other side before passing any order, However, Noticee vide letter dated 12.10.2023 informed that they do not want any personal hearing in the matter and the case may be adjudicated on the basis of their reply to SCN and EODC submitted to the department.

## **11. DISCUSSION AND FINDINGS**

I have carefully gone through both the impugned **Show Cause Notices** SCN No. VIII/48-1306/WORLDFA/Gr-IV/MCH/2020-21 dated 30.12.2020-O/o Pr. Commr- Cus-Mundra dated 02.08.2024 issued by the Pr. Commissioner of Customs, Custom House, Mundra, relied upon documents, legal provisions and the records available before me. The main issues involved in the case which are to be decided in the present adjudication are as below whether:

- (i) Anti-dumping duty amounting **Rs. 56,83,58,661/-** and short levy of IGST amounting to Rs. **10,23,04,559/-**, totally amounting to Rs. **67,06,63,220/-** in respect of the subject Bills of Entry, detailed in Annexure to this notice, is to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.
- (ii) Penalty is imposable on them under section 117 of the Customs Act, 1962.

**11.2** I find that the Noticee has imported subject consignment of "Cold-rolled Flat products of stainless steel" (SIZE RANGING from 600 MM to 1250 MM). The subject consignments were originated in CHINA; the goods have been classified under Chapter heading 7219; availing exemption under Advance Authorization Scheme- Notification No. 18/2015-Cus. Dated 01.04.2015 in the subject Bills of Entries.

**11.3** I find that the subject goods "Cold-Rolled Flat products of Stainless Steel of size ranging from 600MM to 1250mm, covered under CTH 7219 and originating in or exported from China attracts anti-dumping duty at specified percentage of Landed Value (AV+BCD) as mentioned in the table of the Notification No. 61/2015-Customs (ADD) dated 11.12.2015. Further, the Notification No. 18/2015-Cus dated 01.04.2015 grants exemption subject to certain conditions. The condition No.(iv) provides, "that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty liable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with". The

quantum of debiting of bond depends on the amount of duty foregone/exemption under Advance Authorization.

**11.4** I find that as per above said notification, Anti-dumping duty at the rate equal to the amount calculated at the rate mentioned in the corresponding entry in column (9) of the table of the notification mentioned above in para 4 is levied. Further, IGST on corresponding antidumping duty is also levied. However, from the subject Bills of Entry, it appears that the importer cleared the imported Cold-Rolled Flat product of Stainless Steel classifiable under CTH 7219 without payment of Anti-Dumping Duty and IGST leviable thereon. This has resulted in non-levy of Anti-dumping duty of Rs. 56,83,58,661/- and short levy of IGST of Rs.10,23,04,559/-, total amounting to Rs. 67,06,63,220/- (As detailed in Annexure to this notice).

**11.5** Before discussing the main issue to be decided in the case as elaborated in para 10, I proceed to examine the written submission of the Noticee i.e. M/s Worldfa Exports Pvt Ltd. in detail which is mandatory for determining the case.

**(i) In para A of the submission,** the Noticee has stated that from perusal of the aforesaid notification, it is evident that when goods are imported under the cover of an Advance Authorization ; the importer, along with the whole of the duty of customs leviable thereon as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), is also eligible to avail exemption from the anti-dumping duty leviable on such imports, provided all the conditions stipulated in the said notification are complied with. Further, noticee submitted that the company has been complying with all the conditions laid down under the aforesaid notification and the same has not been disputed by Customs as well. Thus, by virtue of the said notification, the entire anti- dumping duty imposed on the company under the aforesaid notices is liable to be exempted. Therefore, there arises no liability on the company to deposit the differential anti-dumping duty with respect to the said imports and the same should be debited from the bond submitted by the company. **In para B of the submission,** it has been mentioned that by virtue of the aforesaid notification, the responsibility to debit the bond lies with the proper officer. The company is only responsible for producing the authorization and the bond before him at the time of clearance. Therefore, whatever duties were liable to be debited, the officer could have debited at the relevant time. The debit had to be made by him and not us. Noticee submitted that the company has been duly producing the bond before the proper officer, at the time of clearance, for debiting the same. The anti- dumping duty leviable on the imported goods was liable to be debited by the proper officer. The company had neither disputed nor disagreed to the fact that their product attracts anti-dumping duty in terms of Notification No. 61/2015-Cus dated 11.12.2015. Noticee further submitted, that subsequent to the post clearance audit, wherein it was observed by this office that the product of the company is liable to anti- dumping duty, the proper officer was debiting the same from the bond, along with other applicable customs duties. The company does not deny the fact that anti-dumping duty is leviable on its product, however, the proper officer was to debit the same at the time clearance of imported goods. Noticee submitted that the company is willing to get the amount of ADD+IGST debited from the bond account and the same was also communicated to your office vide our letter.

I find that it is undisputed fact in this case that the subject goods (those goods which met the condition specified in the notification)were imported from China and thus the same attracted Anti-dumping duty under Notification No. 61/2015- Customs(ADD) dated 11.12.2015. However, the subject goods were cleared against Advance Authorizations availing exemption under Notification No.

18/2015-Cus. dated 01.04.2015 which grants exemption from the levy of duties of Customs, including Anti-dumping duty. Therefore, I find that in normal course, Anti-dumping duty is also exempted in respect of imports under Advance Authorization. However, the said exemption is conditional exemption and various conditions have been stipulated in Notification No. 18/2015-Cus. dated 01.04.2015. In this case, the Anti-dumping duty has been demanded on the ground of violation of a condition of the said Notification which is in respect of execution/ debiting of bond. I find that the quantum of debiting of bond depends on the amount of duty foregone/ exempted but in the instant case, as Anti-dumping duty was not fed in system, the amount of duty foregone/ exempted remained less by the amount of Anti-dumping duty and IGST thereon, leviable on the goods. I find that the said Notification provides for execution of a bond with such surety/ security and in the form and for the amount specified by the Deputy Commissioner/ Assistant Commissioner of Customs. The purpose is executing bond is also apparent from the language of the said condition No. (iv), to undertake making payment of duty leviable, but for the exemption, on the imported materials in respect of which the conditions specified in the notification are not complied with. It also provides for payment with interest at the rate of fifteen percent annum. Execution of bond is covered under condition No. (iv) of the notification, which reads:

*(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials,*

The above condition is alleged to be violated by the noticee. I find that as per the above condition, an importer availing exemption has to execute a bond with such surety or security for such sum as specified by the Deputy Commissioner/ Assistant Commissioner of Customs. Vide the bond, the importer has to bind himself to pay duty on demand equal to duty leviable, but for exemption contained therein, on the imported material in respect of which the conditions specified in the notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials. In the instant case, bonds were executed by the noticee and I find that bonds were also debited at the time of clearance against the subject Bills of Entry. However, the issue involved in this case relates to quantum of debiting of bonds. In order to secure revenue, bonds are debited by the amounts equal to the amount of duty foregone/ exempted under Advance Authorization. In this case the bonds were debited by amounts, less than the amounts of actual duty foregone/ exempted in the subject Bills of Entry, as the quantum of exemption of Anti-dumping duty and IGST thereon was not covered. On the basis of the condition No (iv) of Notification No. 18/2015-Cus, the noticee have contended that whatever duties were liable to be debited, the officer could have debited at the relevant time and that the Anti-dumping duty leviable on the imported goods was liable to be debited by the proper officer. I find that as per the Notification No. 18/2015-Cus., the quantum of bond amount has to be specified by the concerned Deputy/ Assistant Commissioner of Customs. It is not a case where the noticee has executed bonds of sums less than the quantum specified by the Deputy/ Assistant Commissioner of Customs. However, the quantum of bond depends on the amount of exemption availed under the said notification. It is

admitted fact that while self-assessing Bills of Entry, details of bond are required to be fed in the Customs Automated System and the system calculates the amount to be debited as per the amount of duty foregone/ exempted under the said Notification of Advance Authorization. The subject Bills of Entry were self-assessed by the noticee as provided under Section 17(1) of the Customs Act, 1962. Though Anti-dumping duty was exempted under Advance Authorization but the noticee was required to correctly self-assess the Bills of Entry by feeding the details of the Notification No. 61/2015-Customs (ADD) dated 11.12.2015 for the purpose of calculation of the quantum of the Anti- dumping duty and IGST thereon. Only on self-assessing correctly, by feeding such details in the Bills of Entry, the quantum of exemption may incorporate the leviable Anti- dumping duty and IGST thereon. Only then correct amount of duty foregone/ exempted under Advance Authorization may appear in Bills of Entry in the Customs Automated System and accordingly quantum of amount to be debited from the Bonds may be ascertained by the officers. However, in this case, no such details of Anti-dumping duty were incorporated in the subject Bills of Entry by the noticee while self-assessing the subject Bills of Entry and the same has resulted in debiting of less amounts from respective DE Bonds. The noticee have contended that as per letter issued subsequently, the Assistant Commissioner of Customs (PCA) also agreed for payment of the differential duty through debiting of Bond as per Notification No. 18/2015-Cus dated 04.04.2015. I find that they have not submitted copy of any such letter of the Assistant Commissioner of Customs (PCA) in support of their submission.

**ii) In para C of the submission,** Noticee has submitted that as all of us know and if we go by the language of the bond, it is nothing but a commitment to pay the duty/interest/penalty in case of non-discharge of export obligation. In the present case, the goods were imported against the advance authorization/s which are exempted from duties in terms of Notification No. 18/2015-Cus as amended. As stated above, they are ready to get the amount of the ADD debited from the bond amount in order to satisfy the condition of the Notification NO. 18/2015-Cus dated 1.4.2015. Independently, vide this reply itself, they bind themselves that they will pay the applicable duties (of course including ADD) in case the export obligation against the Advance Authorizations could not be discharged in terms of the Foreign Trade Policy, 2015-2020 read with Notification NO. 18/2015-Cus dated 1.4.2015, they will pay all the applicable customs duty viz Basic customs duty, Surcharge, ADD, IGST etc along with applicable interest in case of failure to fulfil the export obligation.

In this regard, I find that in case of ***Kopran Ltd vs Commissioner of Customs (E), Nhava Sheva, 2019 (370) E.L.T. 1014 (Tri. - Mumbai)***, Anti-dumping duty was not covered under LUT/Bond and B/E , assesee appealed the order of Commissioner appeal before Hon'ble Tribunal who have confirmed the anti-dumping demand vide Order-in-Appeal No. 3(Gr VII D)/2010(JNCH)/EXP-0-3, dated 6-1-2011 of the Commissioner of Customs (Appeal) Mumbai-II. In the order, Hon'ble Tribunal held that

*From the plain reading of the notification it is quite evident that the exemption has been granted from the payment of “whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty, safeguard duty and anti-dumping duty leviable thereon respectively under Sections 3, 8 and 9A of the said Customs Tariff Act.” For availing the said exemption importer is required to execute a bond “binding himself to pay on demand an amount equal to the duty leviable, but for the exemption, on the imported materials in respect of which the conditions specified in this notification have not been complied with,”*

*The Bond that is thus executed, binds the importer to pay an amount equal to the duty leviable, but for exemption, on the imported material in respect which conditions as specified in the notification has not been complied with. The bond executed does not make any distinction between the duty*

leviable, but prescribes that what so ever duties that have been exempted in terms of this notification including the anti-dumping duty is required to be paid in case the conditions of notification are not fulfilled.

The para 4 of the bond executed reads

*“4. In the event of failure to fulfil full or part of the Export obligation as specified in the said notification and the License, we the obligor, herein undertake to pay the customs duty but for the exemption and also interest @ 15% per Annum thereon forthwith from the date of clearance of the imported goods till the date of payment of duty and without demur, to the Government.”*

From the bond also it is quite evident that appellants have bind themselves to pay all the duty that have been exempted at the time of clearance.

Thus we are not in position to agree with the contention of the appellant that the Bond/LUT executed by them do not cover the anti-dumping duty leviable on the imported material at the time of importation/clearance of the imported material.

Hence, from above, it appears that Tribunal is of the view despite the anti-dumping duty was not covered in B/E or LUT, the Noticee was bound to pay all the foregone duty.

iii) **In para D of the submission**, Noticee has submitted that debiting the duty from the bond with respect to imports made under Advance Authorizations is the responsibility of the proper officer and is merely a procedural exercise. The failure to debit the same from the bond at the time of clearance is a procedural lapse on the part of the department and should not deprive the company from claiming the benefits under Notification No. 18/2015-Cus dated 01.04.2015, especially when all other substantial conditions of the notification have been complied with. It is a well settled principle of law that the substantial benefit of a notification should not be denied to a company on account of procedural lapses and infractions. The company has complied with all the conditions stipulated in the aforesaid notification and the same has not been disputed by Customs as well. Therefore, the company should not be held liable to pay the differential duty along with interest on the said imports. Reliance in this is placed on the following decisions:

- **N.S. Publicity India Pvt Ltd v. CCE [2019 (27) G.S.T.L. 687 (Tri.-Del.)]**
- **Dhampur Sugar Mills Ltd v. CCE [2010 (260) E.L.T. 106 (Tri.-Del.)]**
- **Hindustan Coca-Cola Beverages Pvt Ltd v. CCE [2009 (242) 45 (Tri.- Mum.)]**

I find that though the facts and circumstances of the cited judicial decisions are different, however, I agree that it has been repeatedly held and thus, it is a settled law that substantial benefit of a notification is not liable to be denied on account of procedural lapses and infractions.

Some of the judgements are mentioned below which affirms my belief that substantial benefit of a notification is not liable to be denied on account of procedural lapses and infractions:

i) **Punjab National Bank vs Commissioner, CGST Division H, Jaipur 2023 (71) G.S.T.L. 290 (Tri. - Del.) / (2023) 4 centax 61 (Tri. - Del.)** wherein it has held that substantial benefit can't be disallowed due to procedural lapses.

ii) **Bridal Jewellery Mfg. Co. vs Commissioner of Customs, Cex, ST (Noida) 2018 (10) G.S.T.L. 70 (Tri. - All.)** wherein it was held that substantial benefit cannot be denied for mere technical or venial breach of the procedural law.

In the instant case, I find that the Anti-dumping duty and IGST thereon were exempted under Advance Authorization vide Notification No. 18/2015-Cus. The

same has been demanded only on the grounds of debiting of bond by less amount and non-declaration of Anti-Dumping Duty in Bills of Entry (although exempted through Notification No. 18/2015-Cus). I agree with the contention of the noticee that as per language of the bond, it is nothing but a commitment to pay the duty with interest. In the facts and circumstances of the case, I find that debiting of bond is a procedural issue and following the above discussed settled position, substantial benefit of a notification is not liable to be denied on account of procedural lapses and infractions. Further, as EODC has been given by DGFT, the duty liability has also got vanished at this point of time. Accordingly, I find that the exemption of Anti-dumping duty and IGST thereon cannot be denied on the impugned ground.

iv) **In para E of the submission,** Noticee has submitted that in the present case, the Noticee wishes to submit that for 3 AAs obtained by them, the Noticee has already fulfilled EO and obtained Export Obligation Discharge Certificate (hereinafter referred to as "EODC") from the DGFT. The Noticee submits for imports under these AA, where EODC has been issued by the DGFT, there can be no demand and to that extent the SCN should be dropped. Hence, so much of demand of duty is liable to be dropped. Further vide letter dated 12.10.2023, and email dated 24.12.2024, Noticee has submitted all the EODC/redemption certificates issued by DGFT in respect of the licenses used in the impugned Bills of Entry. The said redemption letter, issued by Foreign Trade Development Officer, New Delhi clearly state that export obligation has been met in full in respect of value as well as quantity, in proportion to imports. These evidences clearly show that the noticee has fulfilled export obligation against the subject imports and the competent authority has issued EODC/redemption certification under para 4.26 of the Handbook of Procedures 2004-09. After issuance of Redemption letter by the licensing authority, the above finding that debiting of bond is a procedural issue gets further support. Further, Noticee has placed reliance on the decision in the case of **Aditya Birla Nuvo Ltd. vs. CC, 2010 (249) E.L.T. 273 (Tri. - Bang.)**, wherein the Hon'ble Tribunal had held that after completion of the EO as stipulated in the advance license and where the issuance of the EODC, the demand of duty on the imported material is not sustainable. Further, reliance is placed by noticee on the decision in the case of **Hindustan Lever Limited vs. CC, 2012 (281) E.L.T. 241 (Tri. - Mumbai)**, it has been held by the Hon'ble Tribunal that where EO fulfilled has been duly accepted by the licensing authority and the EODC has been issued, the Customs Authorities cannot deny the benefit of the notification to the imported materials. Noticee has further submitted that at the time of importation of the impugned goods against the AA, all the necessary documents have been submitted and the goods were subject to examination. It is to be noted that no objection was raised by the department at the time of importation. The input imported by the Noticee was duly assessed to duty and cleared against the AAs. Noticee further submitted that in the case of **CC vs. Hindustan Unilever Ltd., 2012 (285) E.L.T. 500 (Bom.)**, the Hon'ble High Court of Bombay had held that if objections are not raised by the Department at time of import, they are not justified in raising them after fulfilment of EO to satisfaction of Licensing Authorities.

I have gone through these judgements, and find them supportive in the current case, despite that the fact of the cases are not similar. However, the contention of the noticee gets supported by these judgements. In the current case, the EODC has been granted by DGFT, the duty demand was based on the non-entry of particulars of anti-dumping notifications in Bills of Entry and non-debit of the Anti-dumping duty in the bond amount. As the EODC has been issued, **the duty liability also gets vanished at this point of time**. In simple word, the procedural mistake of the Noticee has to be seen in the whole case. Further, as discussed in para 2 in case of **Kopran Ltd vs Commissioner of Customs (E), Nava**

**Sheva, 2019 (370) E.L.T. 1014 (Tri. - Mumbai)**, even though the Noticee has not declared the anti-dumping duty in B/E and LUT/Bond, the Hon'ble Tribunal has held that they are liable to pay all the exempted duty if the export obligations are not fulfilled.

In view of the fact that export obligation has been fulfilled by the noticee in respect of goods imported under subject Bills of Entry and the Licensing Authority has issued Redemption Letter, I find force in the contention of the noticee that the issue involved in the matter, i.e. quantum of bond amount, is only a procedural/ technical issue. I find that in view of above facts, the substantial benefit of exemption notification cannot be denied on account of above discussed procedural lapse. I rely judgment of the **Hon'ble High Court of Bombay in Bhilwara Spinners Vs. Union of India [2011 (267) E.L.T. 49 (Bom.)]** wherein it was held:

*"22. Once the licencing authority has found that the licencing conditions have been fulfilled, it would not be open to the customs authorities to contend that the imports under the licence are contrary to law and take action against the licence holder."*

In view of the above discussed facts and circumstances of the case, I find that the Anti-dumping duty and IGST thereon exempted under Advance Authorization (Notification No 18/2015-Cus) cannot be demanded and recovered after issuance of EODC/ redemption letter, on the ground of debiting of less amount in the bond.

v) **In para f and g of the submission**, Noticee has submitted that the differential duty demanded from the company is to be debited from the bond submitted with the department. The company is not liable to pay the same in cash as it is exempt in terms of Notification No. 18/2015-Cus dated 01.04.2015. Therefore, based on the well settled position of law, since no physical exchange of currency is ensuing in this transaction, the demand for interest on the differential duty as per the notice, is liable to dropped. Only the duty amount should be debited from the bond and no interest is liable to be recovered from the company. Noticee submitted that the SCN seeks to impose penalty under Section 117 of the Customs Act. It is submitted that this proposal is completely incorrect and bad in law on account of the reasons mentioned hereinafter. For ready references, the relevant portion of Section 117 is being reproduced below:

**"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.

**Noticee further submitted** that in the foregoing paragraphs, it has been submitted in detail that no duty is payable. For the same reasons, no penalty is imposable on the Noticee. In the case of Collector of Central Excise vs. H.M.M. Limited, 1995 (76) E.L.T. 497 (SC), the Hon'ble Supreme Court held that the question of penalty would arise only if the department is able to sustain the demand. Similarly, in the case of Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC), the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable. For the sake of brevity and in order to avoid unnecessary repetition, the Noticee requests that the submissions made with regard to the duty portion may be considered as part of the submissions relating to the imposition of penalty. Therefore, for the same ground no penalty is sustainable. It is humbly submitted that penalty is not imposable as the demand itself is not sustainable. Further, the Noticee prayed to drop the proceedings initiated vide the Subject Show Cause Notice. To

hold that no differential duty in terms of ADD or IGST or interest is payable under Section 28(1) of the Customs Act;. To hold that the differential duty ADD and IGST demanded should not be demanded/ debited from the bond submitted by the company where Advance Authorizations has already been redeemed by the DGFT or Application filed for EODC to the DGFT. To hold that the differential duty ADD and IGST demanded should be debited from the bond submitted by the company, if required. To hold that no penalty is imposable on the Noticee under Section 117 of the Customs Act.

I find that Noticee have contended that since no duty is payable, no penalty is imposable on them. They have relied judgments in Collector of Central Excise Vs HMM. Limited (1995 (76) ELI 497 (SC)) and Commissioner of Central Excise, Aurangabad Vs Balakrishna Industries [2006 (201) ELT 325 (SC)) I find that the judgment in the case of H M.M. Limited was delivered in respect of Rule 9(2) and Rule 173Q of the erstwhile Central Excise Rules 1944 The Rule 9(2) provided for time and manner of payment of Central Excise Duty and the Rule 1730 provided for confiscation and penalty in cases of removal of excisable goods in contravention of any of the provisions of the said Rules and in the cases of non-accounting of excisable goods manufactured, produced or stored Further the judgment in the matter of Balakrishna Industries was delivered in respect of Section 11AC of the Central Excise Act, 1944 which provided for penalty in cases of short payment or non-payment of Central Excise Duty. However, in the present case there is proposal of penalty under Section 117 of the Customs Act, 1962 which provides for penalty in cases of contravention of any provision of the Customs Act, 1962 where no penalty is provided elsewhere in the Act. Therefore, I find that the cited judgments are in contexts of provisions of other laws and are not applicable in the instant case. Further, it has been requested that the submissions made with regard to the duty portion may be considered as part of the submissions relating to the imposition of penalty I find that in the instant case, while self-assessing the subject Bills of Entry as provided under Section 17(1) of the Customs Act, 1962. the noticee was bound to self- assess the subject Bills of Entry correctly by imposing Anti-dumping duty under Notification No 61/2015-Customs (ADD) dated 11.12.2015, by feeding the said notification in the Customs Automated System. However, the noticee failed to do the same which has resulted in incorrect calculation of quantum of exemption under Advance Authorization and consequently debiting of less amounts from the bonds Thus, I find that by making wrong self-assessment, the noticee has violated Section 17(1) of the Customs Act, 1962. Since there is no express provision in the Customs Act, penalty has been proposed under section 117 of the Customs Act, 1962. Noticee vide letter dated 10.12.2024 has stated that penalty imposed on them under section 117 of the customs act, 1962 on similar issue has been set aside by Hon'ble Tribunal Ahmedabad.

In case of **Ashish Foils Pvt Ltd vs Commissioner of Customs, Mundra, Customs Appeal No. 10917 of 2021**-SM Hon'ble Tribunal relied on the para 2.2 of the self-assessment manual of CBIC reads as under:

*"Penal provisions would not be invoked in cases of bonafide errors in Self-Assessment where mens rea and wilful intention to evade duty or non-compliance of a condition cannot be proved."*

5. Considering the overall facts as discussed above, there is no iota of doubt that appellant has no mensrea or any wilful intention to evade payment of anti-dumping duty therefore, in view of the self-assessment manual of CBIC, penal action was not warranted against the appellants. The judgments cited by the appellant support their case. It is also worth mentioning that on the similar nature of cases, the lower authorities in various cases have not imposed any penalty under Section 117. Therefore, considering discussions made herein above, I do not find these cases as fit for imposition of penalty under Section 117 of the Customs Act, 1962. Accordingly, the impugned orders are modified to the above

*extent, penalties under Section 117 are set aside. Appeals are allowed with consequential relief.*

In the current case, there is no dispute that procedural lapse has been observed on part of Noticee as they have not declared the anti-dumping duty in B/E (although exempted by notification 18/2015-Cus dated 01.04.2015) and has not debited this amount in the bond, however mens-rea or wilful intent has never been alleged in the Show Cause Notice at any point.

Accordingly, as held by Hon'ble Tribunal that in case no mensrea or any wilful intention to evade payment of anti-dumping duty has been found, penal action is not warranted as per self-assessment manual of CBIC. The tribunal decision is binding on me as a judicial discipline as the judgement was held in the similar issue.

In view of the above, I find that as no mens-rea or wilful intent to evade duty has been alleged in the Show Cause Notice, penalty under section 117 is not warranted in the current case.

**11.6** Now I proceed to examine the main issues which are to be decided in the case:

**a) Demand of Anti-dumping duty amounting Rs. 56,83,58,661 / - and short levy of IGST amounting to Rs. 10,23,04,559/-, totally amounting to Rs. 67,06,63,220/- along with interest at appropriate rate under Section 28AA *ibid.***

I find that the issue has been discussed in length in the para 11.5 (i), (ii), (iii) & (iv). I don't repeat the extended arguments for the sake of brevity. I find that in the current case, the EODC/redemption has been granted by DGFT, the duty demand was based on the non-entry of particulars of anti-dumping notifications in Bills of Entry and non-debit of the Anti-dumping duty in the bond amount. As the EODC has been issued, the duty liability **also gets vanished at this point of time.** In simple word, the procedural mistake of the Noticee is the basis of the whole case. There are plethora of judgement wherein hon'ble courts has ruled that substantial benefits can't be denied on the basis of procedural lapse. Some of these have already been discussed in para 11.5 (iii). Further, as discussed in para 11.5 (ii) in case of **Kopran Ltd vs Commissioner of Customs (E), Nhava Sheva, 2019 (370) E.L.T. 1014 (Tri. - Mumbai)**, even though the Noticee has not declared the anti-dumping duty in B/E and LUT/Bond, the Hon'ble Tribunal has held that they are liable to pay all the exempted duty if the export obligations are not fulfilled. It is a settled law that substantial benefit of notification is not liable to be denied on account of procedural lapses and infractions. In the instant case, I find that the Anti-dumping duty and IGST thereon were exempted under Advance Authorization vide Notification No. 18/2015-Cus (amended from time to time). The same has been demanded only on the ground of debiting of bond by less amount. I agree with the contention of the notice that as per language of the bond, it is nothing but a commitment to pay the duty with interest. In the facts and circumstances of the case. I find that debiting of bond is a procedural issue and following the above discussed settled proposition that substantial benefit of a notification is not liable to be denied on account of procedural lapses and infractions, I hold that the exemption of Anti-dumping duty and IGST thereon cannot be denied on the impugned ground.

In view of the fact that export obligation has been fulfilled by the noticee in respect of goods imported under subject Bills of Entry and the Licensing Authority has issued Redemption Letter. The said redemption letter, issued by

FTDO clearly states that export obligation has been met in full in respect of value as well as quantity, in proportion to imports. These evidences clearly show that the noticee has fulfilled export obligation against the subject imports and the competent authority has issued EODC/redemption certificate. I find force in the contention of the noticee that the issue involved in the matter, i.e. quantum of bond amount, is only a procedural/ technical issue. I find that in view of above facts, the substantial benefit of exemption notification cannot be denied on account of above discussed procedural lapse. I rely judgment of the **Hon'ble High Court of Bombay in Bhilwara Spinners Vs. Union of India [2011 (267) E.L.T. 49 (Bom.)]** wherein it was held:

*"22. Once the licencing authority has found that the licencing conditions have been fulfilled, it would not be open to the customs authorities to contend that the imports under the licence are contrary to law and take action against the licence holder."*

In view of the above discussed facts and circumstances of the case, I find that the demand of Anti-dumping duty and IGST thereon exempted under Advance Authorization (Notification No 18/2015-Cus) cannot be confirmed and recovered after issuance of EODC/ redemption letter.

#### **b) Imposition of Penalty under section 117 of the Customs Act, 1962**

I find that in the instant case, while self-assessing the subject Bills of Entry as provided under Section 17(1) of the Customs Act, 1962. the noticee was bound to self-assess the subject Bills of Entry correctly by imposing Anti-dumping duty under Notification No 61/2015-Customs (ADD) dated 11 12 2015, by feeding the said notification in the Customs Automated System. However, the noticee failed to do the same which has resulted in incorrect calculation of quantum of exemption under Advance Authorization and consequently debiting of less amounts from the bonds. Thus, I find that by making wrong self-assessment, the noticee has violated Section 17(1) of the Customs Act, 1962. Since there is no express provision of penalty in the Customs Act, penalty under Section 117 has been proposed.

There is no iota of doubt that Noticee has made procedural lapses and has not correctly self-assessed the Bills by not entering the anti-dumping amount (although exempted) and not debiting the actual amount of duty foregone amount in the bond. However, there is no allegation in the Show Cause Notice regarding mens-reas or wilful intent to evade customs duty.

In case of similar issue **Ashish Foils Pvt Ltd vs Commissioner of Customs, Mundra, Customs Appeal No. 10917 of 2021**-SM Hon'ble Tribunal relied on the para 2.2 of the self-assessment manual of CBIC reads as under:

*"Penal provisions would not be invoked in cases of bonafide errors in Self-Assessment where mens rea and wilful intention to evade duty or non-compliance of a condition cannot be proved."*

5. Considering the overall facts as discussed above, there is no iota of doubt that appellant has no mensrea or any wilful intention to evade payment of anti-dumping duty therefore, in view of the self-assessment manual of CBIC, penal action was not warranted against the appellants. The judgments cited by the appellant support their case. It is also worth mentioning that on the similar nature of cases, the lower authorities in various cases have not imposed any penalty under Section 117. Therefore, considering discussions made herein above, I do not find these cases as fit for imposition of penalty under Section 117 of the Customs Act, 1962. Accordingly, the impugned orders are modified to the above extent, penalties under Section 117 are set aside. Appeals are allowed with consequential relief.

In the current case, there is no dispute that procedural lapse has been observed on part of Noticee as they have not declared the anti-dumping duty in B/E

(although exempted by notification 18/2015-Cus dated 01.04.2015) and has not debited this amount in the bond, however mens-rea or wilful intent has never been alleged in the Show Cause Notice at any point.

Accordingly, as held by Hon'ble Tribunal that in case no mensrea or any wilful intention to evade payment of anti-dumping duty has been found, penal action is not warranted as per self-assessment manual of CBIC. The tribunal decision is binding on me as part of judicial discipline as the judgement was given in the similar issue.

In view of the above, I find that penalty under section 117 is not warranted in the current case.

### Order

**12.1** I drop the proposal of demand of Anti-dumping duty amounting to **Rs. 56,83,58,661/-** (*Fifty Six Crore Eighty Three Lakh Fifty Eight Thousand Six Hundred Sixty One Only*) and short levy of IGST amounting to **Rs. 10,23,04,559/-** (*Ten Crore Twenty Three Lakh Four Thousand Five Hundred Fifty Nine Only*) totally amounting to **Rs. 67,06,63,220/-** (*Sixty Seven Crore Six Lakh Sixty Three Thousand Two Hundred Twenty Only*) in respect of the subject Bills of Entry, detailed in Annexure to the impugned Show Cause Notice and interest thereon.

**12.2** I refrain from imposing any penalty under Section 117 of the Customs Act, 1962.

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



(K. Engineer)

Principal Commissioner of Customs,  
Custom House, Mundra

To,

M/s WORLDFA Exports Pvt Ltd  
449-450, Industrial Estate,  
EPIP Kundli Distt-Sonipat,  
Haryana-131028

**Copy to:- for information and necessary action, if any.**

1. The Chief Commissioner of Customs, CCO, Ahmedabad
2. The Additional Commissioner of Customs, Gr-IV, Mundra

3. The Deputy Commissioner (EDI), Custom House, Mundra.
4. Notice Board.
5. Guard File