सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250471MN000000CEC1

क	फ़ाइल संख्या FILE NO.	CAAPL/COM/CUSP/1163/2023-APPEAL (S/49-239/CUS/AHD/2023-24)
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-015-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.04.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	27/ADC/VM/OA/2023-24, dated 02.05.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Laxcon Steels Ltd, Plot No.235, Sarkhej – Bavla NH No.8A, Village-Sari, Tal. - Sanand, Ahmedabad-382 220

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं

	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए–	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) In an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

M/s Laxcon Steels Ltd, Plot No. 235, Sarkhej - Bavla, NH No. 8A, Village-Sari, Tal. - Sanand, Ahmedabad - 382 220 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order – In – Original No. 27/ADC/VM/OA/2023-24, dated 02.05.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had vide Bill of Entry No. 5431360, dated 08.04.2023 imported 27000 Kgs. Of Manganese Metal Flakes having assessable value of Rs. 52,56,832/- falling under CTH 81110010 of the Customs Tariff Act, 1975. The Appellant had claimed benefit of concessional rate of duty as per Notification No. 46/2011 – Cus. (Sr. No. 1021), dated 1st June 2011. In terms of the provisions of the said Notification, the subject goods would be exempt from the whole of Customs Duty (BCD), if imported from Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia, Brunei Darussalam, Lao People's Democratic Republic, Cambodia or Philippines, subject to the condition that they prove that the goods were of the origin of the above said Countries in accordance with the provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India], Rules 2009 (hereinafter referred to as 'the said Rules').

2.1 In the instant case, on the basis of the inputs received, verification had been initiated with regard to Country of Origin. The Appellant had claimed the Country of Origin of the imported goods as Indonesia. However, the Bill of Lading No. COAL/8034294510, dated 11.03.2023 indicated that the goods had been loaded from Xiamen Port, China. Further, the said goods had been supplied by third party, viz., M/s Innovation Worldwide DMCC, Dubai, UAE under Invoice No. ET23/EMMH0202-F, dated 22.02.2023. Rule 3 of the said rules stipulates that the goods which are consigned directly under Rule 8 shall be eligible for Preferential Tariff treatment.

2.2 In the instant case, the goods had been loaded from a non – party, i.e., from China and as such the condition of Rule 8 (c) of the said Rules, would be required to be fulfilled. The transportation of goods originating from Indonesia were not justified by any geographical reasons owing to the geographical location of Indonesia, China and India. Thus, it appeared that the subject goods cannot be said to be consigned directly in terms of Rule 8 of the said Rules and as such the benefit of Preferential Tariff would not be admissible to the Appellant in terms of the provisions of Rule 3 (c) of the said Rules.

2.3 In view of the above, it appeared that the Appellant had wrongly claimed the benefit of exemption under Notification No. 46/2011 – Cus, dated 1st June 2011 despite

knowing that the subject goods did not qualify for Preferential Tariff treatment in terms of the provisions of the Rule 3 read with Rule 8 of the said Rules.

2.4 In the instant case, the Appellant had not fulfilled the condition of the exemption notification with respect to the said 27000 Kgs. of Manganese Metal Flakes, having assessable value of Rs. 52,52,832/- imported vide Bill of Entry No. 5431360, dated 08.04.2023. Thus, the said goods appeared to be liable to confiscation in terms of the provisions of Section 111 (o) and 111 (q) of the Customs Act, 1962. Further, it also appeared that the Appellant have rendered themselves liable to penalty in terms of the provisions of Section 112 (a) (ii) of the Customs Act, 1962 by wrongly claiming the exemption and thereby rendering such goods liable to confiscation.

2.5 The Appellant vide letter dated 29.04.2023 submitted that initially 2500 MTs of goods had been shipped from Bahodopi – Poso Port, Sulawesi Province of Indonesia to Xiamen, China for stuffing into containers for further transhipment to final destination and the subject consignment was shipped from the bonded warehouse in China. They have submitted Certificate of Re-export bearing No. TR23MA347FF000023, dated 16.03.2023, wherein it had been certified that the commodity had not been subjected to any processing during their stay / transhipment in China. They had also submitted that they do not desire a Show Cause Notice or Personal Hearing in the matter.

2.6 The Adjudicating Authority, vide the impugned order, has passed the order, as detailed below:-

i. He has disallowed the benefit of exemption under Notification No. 46/2011 – Cus, dated 1st June 2011 in respect of the goods imported under Bill of Entry No. 5431360, dated 08.04.2023. He has ordered that the Bill of Entry should be re-called and re-assessed by the proper officer for removing the benefit of Notification No. 46/2011 – Cus;

ii. He has ordered confiscation of 27000 Kgs. of Manganese Metal Flakes having assessable value of Rs. 52,56,832/- in terms of the provisions of Section 111 (o) and Section 111 (q) of the Customs Act, 1962. However, he gave an option to the Appellant to redeem the said imported goods on payment of fine in lieu of confiscation amounting to Rs. 50,000/- under Section 125 (1) of the Customs Act, 1962. In addition to redemption fine, the Appellant would be liable for payment of applicable duties and other levies / charges in terms of Section 125 (2) of the Customs Act, 1962;

iii. He has imposed penalty of Rs. 10,000/- upon the Appellant under Section 112 (a) (ii) of the Customs Act, 1962;

3. Being aggrieved with the impugned order passed by the Adjudicating Authority, the Appellant have filed present appeal. The Appellant have, *inter-alia*, submitted detailed submissions on following points in support of their contentions:

- As per the Agreement on Trade in Goods under the Framework Agreement on the Comprehensive Economic Co-operation between the Republic of India and the Association of Southeast Asian Nations (ASEAN) signed on the 13th day of August, 2009 between India and ASEAN countries, MFN Tariff rates were applied to specified goods. Accordingly, rules of origin were set out as per Article 7 of the agreement. Government of India has notified the said rule as published in the Notification No. 189/2009-Customs (N.T.), dated the 31st December 2009. The Government of India has issued Tariff Notification No.159/2009, dated 31.12 2009 granting concessional rate of duty to the goods specified therein. The said notification was suppressed by current Notification No. 46/2011, dated 1st June 2011 which exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in column *4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I, or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II;
- The notification provides that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31 st December 2009;
- The adjudicating authority has considered only the first part of the rule and has stressed only on the point which stipulates of products which are consigned directly under rule 8. A plain reading of the impugned order gives an impression that if any product is consigned directly to India from ASEAN country it shall be eligible for benefit of Notification No.46/2011-Cus. The adjudicating authority has failed to understand that the main requirement of getting the benefit of exemption notification is that the goods are required to be wholly or partially obtained or processed in an ASEAN country;
- They had produced ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TRAIFF CERTIFICATE OF ORIGINAL No.1000802/PLU/2023, dated 16th March 2023 issued by the issuing office in Provinsi Sulwesi Tengah of Republic of Indonesia which categorically stated that goods imported by them were originated from Indonesia;

- Rule 8 (c) clearly provides that if the products whose transport involves transit through one or more intermediate non-parties with or without transhipment or temporary storage in such non-parties is also considered as consigned directly from the exporting party subject to fulfilment of certain conditions. First condition stipulate that the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements. The finding of the adjudicating authority that transit entry to Xiamen Port, China is not justifiable considering the geographical location of both the places is fallacious in as much as he has considered the land route in the impugned order. The Goods under present case (Electrolytic Manganese Metal – Quality 99.85%) is produced by PT Indonesia Tsingshan Stainless Steel PT. It is located in Sulawesi, Morowali at the Indonesia Tsingshan Industrial Park (Special Economic Zone). The goods were first sent from Bahodopi-Poso Port, Indonesia (Is a Bulk Vessel Terminal and does not having container facility), to Xiamen, China in original packaging of 1MT bags for further transhipment to final destination in containers. Therefore, the goods were shipped from Bahodopi-Poso Port of Indonesia which is situated at the eastern side of Sulawesi Province and is not connection by land. Sulawesi Province is an island and the port of Bhadopi-Post and not having container facility. Therefore, the goods were transhipped to a bigger Port having transhipment facility and the port of Xiamen, China is considered as better option for such container transhipment facility and storage facility. Therefore, they have chosen Xiamen Port, China for such operation;
- The condition stipulated under rule 8 (c) clearly permits transit entry not only for geographical reasons but also by consideration related exclusively to transport requirements. The goods had been shipped from Bahodopi-Poso Port, Sulawesi Province of Indonesia to Xiamen, China for stuffing into containers for further transhipment to final destination. They referred to BL No. BHDD230103-11, dated 3101.2023 in this regard. The goods packed in 1 MT bags were unloaded at bonded port area of XIAMEN JIASHANG SUPPLY CHAIN MANAGEMENT CO., LTD at AREA OF PILOT FREE TRADE ZONE (FUJIAN) CHINA and stuffed into the container and shipped to final destination and referred to Re-export Certificate No. TR23MA347FF000023, dated 16.03.2023 issued by XIAMEN CUSTOMS, CHINA;
- The second condition also stand fulfilled as the products have not entered into trade or consumption there. The products packed in 1 MT bags were unloaded at bonded port area of XIAMEN JIASHANG SUPPLY CHAIN MANAGEMENT CO., LTD at AREA OF PILOT FREE TRADE ZONE (FUJIAN) CHINA and stuffed into the container and shipped to the destination;
- The third condition of rule 8 (c) has also not been violated in the present case as the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition. No activity has been taken place in China, other than unloading and loading and referred to

Re-export certificate No. TR23MA347FF000023 dated 16.03.2023 issued by XIAMEN CUSTOMS, CHINA;

- All the documents submitted by them have made it clear that the goods were originated in Indonesia, an ASEAN country and the goods were directly destined from there and thus the benefit of Notification No. 46/2011-Cus cannot be denied;
- They have not violated any conditions of Notification 46/2011-Cus as submitted in the foregoing paragraphs as the goods are originated in the country of Indonesia and are considered to be directly consigned from there within the frame work of Rule 3 and Rule 8 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. Hence the order confiscating the goods and imposing fine in lieu of confiscation under Section 125 of the Customs Act is not sustainable;
- Since they had not violated any provisions of law or imported any goods in contravention of Notification No. 46/2011-Cus, no penalty under Section 112(a) (ii) can be imposed.

3.1 The Appellant have further submitted that since the responsible person of their Company for filing the appeal was out of station, the appeal could not be filed within the period stipulated under Section 128 of the Customs Act, 1962. Hence, they have requested that the delay of 17 days in filing the appeal may be condoned as per the first proviso to Section 128 of the Customs Act, 1962.

4. Personal hearing in the matter was held on 07.03.2025 in virtual mode. Shri Joseph T.A, Consultant, appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the grounds of appeal.

5. Before going into the merits of the case, I find that as per appeal memorandum, the appeal have not been filed within statutory time limit of 60 days prescribed under Section 128 (1) of the Customs Act, 1962. In this regard, it is relevant to refer the legal provisions governing the filing of appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

> *SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.*
>
> *[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]*

5.1 Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.2 In light of the above provisions of law and considering the submissions of the Appellant and also considering the fact that delay is of less than thirty days, I allow the condonation of delay in filing the appeals, taking a lenient view in the interest of justice in the present appeal.

6. I have carefully gone through the appeal memorandum as well as records of the case and the submissions made by the Appellant during the course of hearing, oral as well as written. The issue to be decided in the present appeal are whether the impugned order passed by the adjudicating authority disallowing the benefit of exemption under Notification No. 46/2011 – Cus, dated 1st June 2011, confiscating the imported goods under Section 111 (o) and Section 111 (q) of the Customs Act, 1962, and imposing penalty under Section 112 (a) (ii) of the Customs Act, 1962 upon the Appellant, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 It is observed that the Appellant had filed Bill of Entry No. 5431360, dated 08.04.2023 for import of 27000 Kgs of Manganese Metal Flakes falling under CTH 81110010 having assessable value of Rs. 52,56,832/, by claiming the benefit of concessional rate of duty as per Notification No. 46/2011 – Cus, dated 1st June, 2011. It is observed that on the basis of the inputs received, verification had been initiated with regard to Country of Origin of the imported goods. The Appellant had claimed the Country of Origin of the imported goods as Indonesia. However, the Bill of Lading No. COAL/8034294510, dated 11.03.2023 indicated that the goods had been loaded from Xiamen Port, China. It is further observed that the said goods had been supplied by third party, viz., M/s Innovation Worldwide DMCC, Dubai, UAE under Invoice No. ET23/EMMH0202-F, dated 22.02.2023. In view of the above, it appeared that the Appellant had not fulfilled the condition of the exemption notification with respect to the 27000 Kgs. of Manganese Metal Flakes, having assessable value of Rs. 52,52,832/- imported vide Bill of Entry No. 5431360, dated 08.04.2023. Thus, the said goods appeared to be liable to confiscation under Section 111 (o) and 111 (q) of the Customs Act, 1962. Further, it also appeared that the Appellant rendered themselves liable to penalty in terms of the provisions of Section 112 (a) (ii) of the Customs Act, 1962 by wrongly claiming the exemption and thereby rendering such goods liable to confiscation. The adjudicating authority vide the impugned has ordered re-assessement of Bill of Entry No. 5431360, dated 08.04.2023 by denying exemption under Notification No. 46/2011 – Cus, dated 1st June, 2011, ordered confiscation of goods under Section 111 (o) and Section 111 (q) of the Customs Act, 1962, imposed redemption fine in lieu of confiscation

under Section 125 (1) of the Customs Act, 1962 and imposed penalty upon the Appellant under Section 112(a)(ii) of Customs Act, 1962.

7. It is observed that the adjudicating authority has denied the benefit of concessional rate of duty as per Notification No. 46/2011 – Cus on the ground that the goods were not consigned directly from the Country of Origin but were shipped from China. I find that the adjudicating authority has arrived at the said conclusion on the findings that the geographical locations of Indonesia, China and India are not conducive to tranship the goods through China. It is further observed by the adjudicating authority that it is not a case that China is enroute to India from Indonesia. The findings of the adjudicating authority is reproduced below:-

> *"9. The importer has submitted that initially 2500 MTs of goods had been shipped from Bahodopi-Poso Port, Sulawesi Province of Indonesia to Xiamen, China for stuffing into containers for further transhipment to final destination and the subject consignment was shipped from the bonded warehouse in China. They have submitted certificate of Re-export bearing No. TR23MA347FF000023 dated 16.2 2023 wherein it has been certified that the commodity had not been subjected to any processing during their stay/ transhipment in China. However, Rule. 8(c) of the said rules stipulates 3 conditions for qualifying as to having being directly consigned and the conjunction 'and' has been used after condition No. (ii) which connects it to condition No. (iii). The use of the conjunction 'and' indicates that all the three conditions are required to be fulfilled. In the instant case, the geographical locations of Indonesia, India and China are not conducive to tranship the goods through China. It is not the case that China is enroute to India from Indonesia. Thus, it is not palatable as to why the goods have been sent to China merely for stuffing into containers for further transmission to India.....*
>
> *In view of the above location, it is not justifiable that an entity intending go send the goods to India would firstly send the same to China merely for the purpose of stuffing he goods into containers. This would incur so much of unnecessary transportation expenses which would not be viable for any prudent business deal. Thus, I find that the condition at Rule 8(c)(iii) of the said rules is not fulfilled in this case and the importer's submission are not maintainable."*

7.1 However, the Appellant on the other hand submitted that Rule 8 (c) clearly provides that if the products whose transport involves transit through one or more intermediate non-parties with or without transhipment or temporary storage in such non-parties is also considered as consigned directly from the exporting party subject to fulfilment of certain conditions. The Appellant submitted that the finding of the adjudicating authority that transit entry to Xiamen Port, China is not justifiable considering the geographical location of both the places is fallacious inasmuch as he has considered the land route in the impugned order. The Appellant has further submitted that the goods were first sent from Bahodopi-Poso Port, Indonasia, which is a Bulk Vessel Terminal and does not have container facility, to Xiamen, China in original packaging of 1MT bags for further transhipment to final destination in containers. Therefore, the goods were shipped from

Bahodopi-Poso Port of Indonesia which is situated at the eastern side of Sulawesi Province and is not connected by land. Sulawesi Province is an island and the port of Bhadopi-Post is not having container facility. Therefore, the goods were transhipped to a bigger port having transhipment facility and the port of Xiamen, China is considered as better option for such container transhipment facility and storage facility. Therefore, the Appellant has chosen Xiamen Port, China for such operation. The appellant submitted that the condition stipulated under Rule 8 (c) clearly permits transit entry not only for geographical reasons but also by consideration related exclusively to transport requirements. The Appellant has submitted that goods had been shipped from Bahodopi-Poso Port, Sulawesi Province of Indonesia to Xiamen, China for stuffing into containers for further transhipment to final destination.

7.2 As the issue in hand pertains to eligibility of Preferential Tariff treatment, it is relevant to refer to Rule 3 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, which is reproduced below for ease of reference:

"Rule 3. Origin criteria. - The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-
(a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,
(b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6."

7.3 It is observed from the documents available on record that the Appellant had produced Asean-India Free Trade Area Preferential Tariff Certificate of Origin No.1000802/PLU/2023, dated 16th March 2023 issued by the issuing office in Provinsi Sulwesi Tengah of Republic of Indonesia before the adjudicating authority to prove that the goods imported by them had originated from Indonesia.

7.4 However, the adjudicating authority has rejected the said Certificate in the impugned order by holding that the goods were not consigned directly from the Country of Origin but were shipped from China. In this regard, I find that Rule 8 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 deals with such situation. Rule 8 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 reads as under:

"Rule 8. Direct Consignment. - The following shall be considered as consigned directly from the exporting party to the importing party. -

(a) if the products are transported passing through the territory of any other AIFTA parties;
(b) if the products are transported without passing through the territory of any non-AIFTA parties;
(c) if the products whose transport involves transit through one or more intermediate non parties with or without transhipment or temporary storage in such non-parties provided that –
(i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
(ii) the products have not entered into trade or consumption there; and
(iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition."

7.5 On perusal of the above legal provision, it emerges that Rule 8 (c) provides that if the products whose transport involves transit through one or more intermediate non-parties with or without transhipment or temporary storage in such non-parties is also considered as consigned directly from the exporting party subject to fulfilment of certain conditions prescribed therein.

7.6 The first condition stipulate that the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements. The Appellant have submitted that goods were produced by PT Indonesia Tsingshan Stainless Steel PT, located in Sulawesi, Morowali at the Indonesia Tsingshan Industrial Park (Special Economic Zone); that the goods were first sent from Bahodopi - Poso Port, Indonasia (Is a Bulk Vessel terminal and does not having container facility), to Xiamen, China in original packaging of 1MT bags for further transhipment to final destination in containers. Therefore, the goods were shipped from Bahodopi-Poso Port of Indonesia which is situated at the eastern side of Sulawesi Province and is not connection by land. Sulawesi Province is an island and the port of Bhadopi - Post and not having container facility. Therefore, the goods were transhipped to a bigger port having transhipment facility and the port of Xiamen, China is considered as better option for such container transhipment facility and storage facility. It is observed that the condition stipulated under Rule 8 (c) clearly permits transit entry not only for geographical reasons but also by consideration related exclusively to transport requirements. It is observed from Re-export Certificate No. TR23MA347FF000023, dated 16.03.2023 issued by XIAMEN CUSTOMS, CHINA BL No. BHDD230103-11, dated 31/1/2023 that the Goods packed in 1 MT bags were unloaded at bonded port area of XIAMEN JIASHANG SUPPLY CHAIN MANAGEMENT CO., LTD at AREA OF PILOT FREE TRADE ZONE (FUJIAN) CHINA and stuffed into the container and shipped to final destination. It is pertinent to mention that the Certificate of Origin dated March 16, 2023 mentions the Invoice No. ET23/EMMH0202-F, dated 22.02.2023 at Column No. 10, as mentioned in Column No. 14 of the Certificate of Re-Export issued by XIAMEN CUSTOMS. It is further observed that the contentions of the Appellant corroborate with the documents available on record. Thus, it is evident that the goods were transhipped to Xiamen Port in China only for transport requirement and not for any other reason.

7.7 As regards the second condition of Rule 8 (c), it provides that the products have not entered into trade or consumption there. From the Re-export certificate No. TR23MA347FF000023, dated 16.03.2023 issued by XIAMEN CUSTOMS, CHINA BL No. BHDD230103-11, dated 31.01.2023 it is evident that the products packed in 1 MT bags were unloaded at bonded port area of XIAMEN JIASHANG SUPPLY CHAIN MANAGEMENT CO., LTD at AREA OF PILOT FREE TRADE ZONE (FUJIAN) CHINA and stuffed into the container and shipped to the destination. Thus, the second condition of Rule 8 (c) is also satisfied.

7.8 As regards the third condition of Rule 8 (c), it provides that the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition. It is observed that in the Re-export Certificate No. TR23MA347FF000023, dated 16.03.2023 issued by XIAMEN CUSTOMS, CHINA it is also certified that no operation has been carried out there.

8. In view of above observations, I am of the considered view that the Rule of Origin and Direct Consignment conditions contained in Rule 3 and Rule 8 of the AIFTA (ASEAN-India Free Trade Area), as mentioned in the non-tariff notifications issued for AIFTA under Section 5 of the Customs Tariff, have been fulfilled in the present case as the goods in question were transhipped only for transport requirement and temporary storage at Xiamen Port and the products have neither entered into trade or consumption there, nor the products have undergone any operation there, other than unloading and reloading or any operation required to keep them in good condition. Therefore, the goods in question can be considered as consigned directly from the country of Indonesia within the meaning of Rule 8 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. Accordingly, I am of the considered view that the Appellant is eligible for the benefit of Notification No. 46/2011-Cus, dated 1st June 2011.

9. As regarding the confiscation of goods is concerned, I find that the adjudicating authority has ordered for confiscation of goods invoking provisions of Section 111(o) and (q) of Customs, Act, 1962. The said provisions read as under:

> ***"Section 111. Confiscation of improperly imported goods, etc.*** *- The following goods brought from a place outside India shall be liable to confiscation:-*
>
> *"(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*
>
> *[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]*

9.1 On perusal of the above legal provisions, it is clear that these provisions are not applicable to the facts of the present case. In fact Section 111 (o) deals with a situation where certain claim is claimed subject to some condition and subsequently the said condition is not followed. Section 111 (q) deals with a situation where any goods are imported on a claim of preferential rate of duty by contravening any provisions of any rule. As it has been already held in above paragraph that the Appellant has fulfilled the conditions of Notification No. 46/2011-Cus, dated 1st June 2011, I am of the considered view that the impugned order denying the benefit of Notification No. 46/2011 – Cus, dated 1st June 2011 and confiscation of goods under Section 111 (o) and 111 (q) of Customs Act 1962 is legally not sustainable. Since the Appellant had not violated any provisions of law or imported any goods in contravention of Notification *ibid*, I hold that no penalty under Section 112 (a) (ii) can be imposed.

10. In view of the discussion made above, I set aside the impugned order and allow the appeal filed by the Appellant with consequential benefits, if any.

11 & April, 2025

(Akhilesh Kumar)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. CAAPL/COM/CUSP/1163/2023-APPEAL 115
(S/49-239/CUS/AHD/2023-24)

Date: 11.04.2025

By Registered post A.D

To,
M/s Laxcon Steels Ltd,
Plot No.235, Sarkhej – Bavla
NH No.8A, Village-Sari,
Tal. - Sanand,
Ahmedabad-382 220

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Copy to:
1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Additional Commissioner, Customs, Customs House, Ahmedabad
4. Guard File.