सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT
Phone No.02838-271165/66/67/68
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A	**FILE NO.** फ़ाइल संख्या	GEN/ADJ/ADC/2772/2024-Adjn-O/o Pr. Commr-Cus-Mundra
B	**OIO NO.** आदेश संख्या	MCH/ADC/ZDC/433/2025-26
C	**PASSED BY** जारीकर्ता	**Dipak Zala,** Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क,Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	**DATE OF ORDER** आदेश की तारीख	10.12.2025
E	**DATE OF ISSUE** जारी करने की तिथि	10.12.2025
F	**SCN No. & Date** कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/2772/2024-Adjn-O/o Pr. Commr-Cus-Mundra dated 30.12.2024
G	**NOTICEE/ PARTY/ IMPORTER** नोटिसकर्ता/पार्टी/आयातक	M/s. NIJANAND STEEL (IEC: 2415003018)
H	**DIN/**दस्तावेज़ पहचान संख्या	20251271MO0000839478

1. यहआदेश 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 आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

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

"सीमाशुल्कआयुक्त) अपील(,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009"
**"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009."**

3. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

i. उक्त अपील की एक प्रति और A copy of the appeal, and
ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं° 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

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

6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क अधिनियम, 1962के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 %भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. NIJANAND STEEL (IEC: 2415003018) (*herein referred* to as *the importer*) having address as SURVEY NO. 287/1, PLOT NO. 3, OPP. PANCHPIPLA COMPLEX STREET, SHAPAR RD, SHAPAR-VERAVAL, RAJKOT, GUJARAT-360024, had imported "STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE) from Malaysia and availed the benefit of preferential duty treatment as provided under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No.968(I), as amended, by claiming the country of origin as Malaysia.

2 . Whereas, an investigation was initiated by the Directorate of Revenue Intelligence, Jamnagar Regional Unit on the basis of inputs received from DRI, HQ, New Delhi, that Country of Origin certificates issued in Malaysia in respect of certain suppliers/ manufacturers/ third party/ sellers were non authentic. Intelligence indicated that one of the importers **M/s. NIJANAND STEEL** (IEC: 2415003018), SURVEY NO. 287/1, PLOT NO. 3, OPP. PANCHPIPLA COMPLEX STREET, SHAPAR RD, SHAPAR-VERAVAL, RAJKOT, GUJARAT-360024 (hereinafter referred to as 'the Importer'), having IEC: 2415003018, had imported "STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE) from Malaysia and availed the benefit of preferential duty treatment as provided under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No.968(I), as amended, by claiming the country of origin as Malaysia although the COOs issued in Malaysia in r/o their suppliers/manufacturers/third-party/sellers were inauthentic. "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)" is classified under CTH 7306 of the first Schedule to the Customs Tariff Act and the effective rate of basic customs duty on this product is 10% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017, as amended (Sr. No. 377). However, by claiming the preferential duty treatment on the strength of inauthentic COO's, the importer had not paid any basic customs duty, leading to short payment of the applicable customs duty.

3. Accordingly, import data of M/s. Nijanand Steel, Rajkot was retrieved. The importer has imported "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)" vide 2 (two) Bills of Entry by availing duty exemption benefit of Customs Tariff Notification No. 46/2011-Cus dated 01.06.2011 under Sr. No. 968 (I) availing Country of Origin benefit on the basis of Country of Origin Certificates issued by the overseas suppliers i.e. M/s. Artfransi International Sdn Bhd. 5-3-2 Block A, Diamond Square Commercial Jalan Gombak 5300, Kuala Lumpur, Malaysia and M/s. Jentayu Industry Lot 6576 Jalan Hassan, Sungai Udang 41250 Klang, Selangor, Malaysia in which Country of Origin is mentioned as Malaysia. The details of such imports from Malaysia are tabulated below:-

TABLE-1

Sl. No.	Port of Import	Bill of Entry No.	Date of Bill of Entry	Chapter Heading/ Sub Heading	Description of Goods mentioned in Bill of Entry	Name and Address of the Supplier mentioned in Bill of Entry
1	INMUN1 (Mundra Sez Port, Mundra)	6720655	01-02-2020	73066100	STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)	M/S. ARTFRANSI INTERNATIONAL SDN BHD. 5-3-2 BLOCK A, DIAMOND SQUARE COMMERCIAL JALAN GOMBAK 5300, KUALA LUMPUR, MALAYSIA
2	INMUN1 (Mundra Sez Port Mundra)	8166753	14-07-2020	73064000	STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)	M/S JENTAYU INDUSTRY LOT 6576 JALAN HASSAN, SUNGAI UDANG 41250 KLANG, SELANGOR. MALAYSIA.

4. Whereas, the following two COO certificates produced by the importer for claiming the exemption from duty under Notification No. 46/2011-Cus dated 01.06.2011, appear to be inauthentic:-

TABLE-2

Sr. No.	**Bill of Entry No.**	**Date**	**No. of COO Certificate**	**Name of the Supplier**
1	6720655	01-02-2020	KL-2020-AI-21-0101184 dated 24.01.2020	M/s. Artfransi International SDNBHD. 5-3-2 Block A, Diamond Square Commercial Jalan Gombak 5300, Kuala Lumpur, Malaysia
2	8166753	14.07.2020	KL-2020-AI-21-057853 dated 20.01.2020	M/s. Jentayu Industry Lot 6576 Jalan Hassan, Sungai Udang 41250 Klang, Selangor, Malaysia

5 . The applicable Customs duties and the duties paid by the importer indicating comparison of duty paid and duty applicable is tabulated below:-

TABLE-3

Sl. No.	**Port of Import**	**Bill of Entry No./ Date**	**Declared Assessable Value**	**Duty paid at the time of import [BCD (@0%) + SWS (@10%) + IGST (@18%)]**	**Duty applicable [BCD (@10%) + SWS (@10%) + IGST (@18%)]**
1	INMUN1 (Mundra Sez Port)	6720655 01.02.2020	26,28,234/-	4,73,082/-	8,14,227/-

2	INMUN1 (Mundra Sez Port)	8166753 14.07.2020	28,40,687/-	5,11,324/-	8,80,045/-
	TOTAL			**9,84,406/-**	**16,94,272/-**

As it appeared that the importer had evaded Customs Duty on account of wrong claim of benefit of preferential duty treatment as provided under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No.968(I)), as amended, to M/s. Nijanand Steel, Rajkot was summoned to tender evidence in respect of above imports.

6. STATEMENT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962:

In response to summons dated 25.01.2023, 19.09.2023, 16.08.2024 and 04.09.2024, a voluntary statement was tendered by Shri Vijaybhai Vallabhai Savaliya, Partner of M/s. Nijanand Steel, Rajkot under Section 108 of Customs Act, 1962 on 12.09.2024 wherein he, interalia stated that:-

- He is well conversant with the day today activities and he looks after all the activities of the accounting work, import etc. of the firm.
- He is one of the Partner of firm M/s. Nijanand Steel Furniture, Rajkot. The other partners are Shri Kaushikbhai M. Khunt, Shri Hiralalbhai M. Ranpariya and Shri Shaileshbhai P. Ranpariya. M/s. Nijanand Steel was engaged in business of trading of Stainless Steel Welded Pipes since 2012; however, since, last four years their firm is closed and no import made by them.
- They have imported first consignment of Stainless Steel Welded Pipes in July, 2018 from Malaysia and imported total 17 consignments of Stainless Steel Welded Pipes from Malaysia and China from Hongkong Winner, Artfransi International SdnBhd and Jentayu Industry.
- Work of import of Stainless Steel Welded Pipes were handled by their CHAs viz. M/s. Bright Shiptrans P. Ltd. and M/s. Arihant Shipping Agencies at Mundra port.
- They have imported 2 consignments during the period from February 2020 to July 2020 from supplier M/s. Artfransi International Sdn Bhd and M/s. Jentayu Industry, Malaysia. He produced copies of 2 Bill of Entries and supporting documents viz. Bill of Lading, COO certificate, Invoice, Packing List etc., in connection to import from Malaysia.
- On being asked whether their firm possesses sufficient information as regards the manner in which country of Origin criteria, including the regional value content and product specific criteria, specified in Section 28DA(ii) of the Customs Act, 1962, he stated that they have received Country of Origin Certificate issued by respective supplier/manufacturer and the same were submitted at the time of clearance of the consignment.
- On being shown copy of letter F.No. DRI/HQ-CI/B Cell/50D/Enq-01/2020 dated 10.09.201 received from the Joint Director (CI), Directorate of Revenue Intelligence, New Delhi regarding verification of Country of Origin certificates

wherein at Annexure-A, the supplier M/s. Artfransi International SdnBhd and M/s. Jentayu Industry, Malaysia appears in the confirmed list whose Certificate of Origin were found to be non-authentic he perused the same and having token of read, understood and explained, put his dated signature on it.

- He also admitted to their firm liability arising out of misuse of non-authentic COO certificates and agreed to pay the entire outstanding customs duty along with interest and penalty.
- He also confirm that there is no other similar import other than 2 Bill of Entries mentioned at Table - 1.
- He submitted COOs which were supplier by their supplier to them. He did not know whether COO provided by their supplier was genuine or not. Hence, they had no intention to avail wrongful benefit of duty on the basis of COO provided by overseas supplier.
- He also requested to grant some time so that they can manage for payment of the differential customs duty along with interest and penalty.

7. Document examination in respect of consignments imported by the importer:

7.1 On scrutiny of documents submitted by the importer, it is observed that the importer has imported "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE) from a Malaysia based Supplier/Manufacturer viz., M/s. Artfransi International Sdn Bhd. 5-3-2 Block A, Diamond Square Commercial Jalan Gombak 5300, Kuala Lumpur, Malaysia and M/s. Jentayu Industry Lot 6576 Jalan Hassan, Sungai Udang 41250 Klang, Selangor, Malaysia and cleared the same through Mundra port by claiming the exemption from the duty of customs under Notification No. 46/2011-Cus dated 01.06.2011 (Sr. No. 968(I)).

7.2 From the email dated 18.05.2021, received from the Ministry of International Trade and Industry (MITI), Malaysia, it has been informed that they had never received any COO applications from the mentioned companies (exporters) in E-mail including the impugned overseas suppliers, i.e., M/s. Artfransi International Sdn Bhd., Malaysia and M/s. Jentayu Industry, Malaysia, via their ePCO System.

7.3 Further, in the Alert Circular No. 02/2021-CI dated 10.09.2021, issued by the Joint Director (CI) vide F. No. DRI/HQ-CI/B Cell/50D/Enq-01/2020/2916, it has been stated that several COO's pertaining to import of steel products under ASEAN-India Preferential Trade Agreements filed by a number of importers with the Customs authorities were referred to the issuing authorities in Malaysia and Thailand for verification. In response, the Ministry of International Trade and Industry, Malaysia (MITI) informed that the said COO's mainly from Malaysia & a few from Thailand from the suppliers as listed in the Annexure A have been reported to be non-authentic by the respective issuing authorities, thus rendering any consequential benefit availed under ASEAN-India Preferential Trade Agreement and/or India-Malaysia Preferential

Trade Agreement as ineligible. The goods imported by M/s Nijanand Steel, Rajkot against all of the aforesaid two Bills of Entry at Table – 1 supra had been supplied by the overseas suppliers, M/s. Artfransi International Sdn Bhd. 5-3-2 Block A, Diamond Square Commercial Jalan Gombak 5300, Kuala Lumpur, Malaysia and M/s. Jentayu Industry Lot 6576 Jalan Hassan, Sungai Udang 41250 Klang, Selangor, Malaysia. The mentioned suppliers were found to be amongst the list of overseas suppliers, all of which were reportedly found to have exported goods under non-authentic Country of Origin certificates as per Annexure – A to the aforementioned Alert Circular.

7.4 Besides above, in the letter dated 01.02.2022, issued by the FTA Cell, CBIC, it has been clearly stated that the COO issued to the overseas suppliers (exporters), i.e., M/s. Artfransi International Sdn Bhd Malaysia and M/s. Jentayu Industry, Malaysia prior to 18.05.2021 is non-authentic. The dates of the COO Certificates, as detailed at Table-2 supra, availed by the importer for the duty exemption benefit for the goods imported vide the aforesaid two Bills of Entry are 24.01.2020 and 20.01.2020, which are prior to the date of 18th May, 2021 and thus, nonauthentic as per the letter dated 01.02.2022, issued by the FTA Cell, CBIC.

7.5 Therefore, from the above facts as laid out in the relied-upon documents mentioned in the preceding paras, it is ostensible that the consignments imported by M/s Nijanand Steel, Rajkot vide the aforesaid two (02) Bills of Entry have been cleared by producing non-authentic Country of Origin Certificates and therefore, the duty exemption benefit claimed under the Indo-Malaysia Preferential Trade Agreement under Sl. No. 968(I) of Notification No. 46/2011-Customs dated 01.06.2011 is improper and illegitimate. It can be inferred that the said exporter had deliberately omitted the salient rules of origin criteria as wholly obtained in respect of their consignments as mandated for compliance under the India-Malaysia PTA by arranging fabricated COO certificates for their consignments to facilitate claims of duty exemption benefits for the consignees/importers at India, which in this instant case happens to the impugned importer. The tessellation of the above facts has highlighted substantial grounds and reasons for collusion, wilful mis-statement and suppression of facts on the part of the subject importer, where they have taken clearance of import consignments against import documents viz. COO Certificates, which are non-authentic and by claiming duty exemption benefit under Indo-Malaysia PTA against the non-authentic COOs, they have violated the conditions of rules of origin as required for compliance under the relevant clauses of Section 28DA of the Customs Act, 1962, thereby causing injury to Revenue for the short levied duty amounts as per the Basic Customs Duty exemption claimed by application of the Notification No. 46/2011-Customs dated 01.06.2011.

8. The government has inserted Section 28DA of the Customs Act, 1962 vide clause 110 of Finance Act, 2020 and has notified Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (hereafter referred to as the CAROTAR, 2020) issued vide Notification No. 81/2020-Customs (N.T.) dated 21st August, 2020, with aim to supplement the operational procedures related to implementation of Rules of Origin, as prescribed under the respective trade agreements (FTA/PTA/CECA/CEPA) and notified under the customs notifications issued in terms of section 5 of the Customs Tariff Act, 1975 for each agreement.

9 . Rule 6 of the CAROTAR Rules, 2020, provides for the retroactive verification of the certificates of country of origin. Further, sub-rule 7(c) of Rule 6 of the CAROTAR Rules, 2020 provides that if the information and documents furnished by the Verification Authority and records available provide sufficient evidence to prove that the goods do not meet the origin criteria prescribed in Rules of Origin, the proper officer may deny the claim of preferential duty treatment.

10. Accordingly, to claim the benefit of the Notification No. 46/2011-Cus dated 01.06.2011, the importer is required to prove to the satisfaction of the Customs Authority 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 to the Notification No. 046/2011-Cus dated 01.06.2011, 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 (hereinafter referred to as **"the said Rules of Origin, 2009"**), notified vide Notification No. 189/2009-Customs(N.T.) dated the 31st December, 2009.

1 1 . In terms of Rule 13 of Notification No. 189/2009-Customs (NT) dated 31.12.2009, any claim for a product to be eligible for preferential tariff treatment has to be supported by a Certificate of Origin issued by a Government authority of exporting party and the same needs to be issued in accordance with the Operational Certification Procedures as set out in Annexure-III annexed to the rules notified vide Notification No. 189/2009-Customs (NT) dated 31.12.2009. Further, Para-1 of the above referred Annexure-III (Operational Certification Procedures) stipulates that the AIFTA Certificate of Origin shall be issued by the Government authorities (issuing authority) of the exporting party.

1 2 . Rule-7 of CAROTAR, 2020 stipulates that if it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the

Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.

The terms "Identical goods" have been defined under the explanation provided under Section 28DA of Customs Act, 1962 as under:

> *"Identical goods"* means goods that are same in all respect with reference to the country of origin criteria under the trade agreement"

13. The retroactive verification of Country of Origin Certificate with respect to the product viz. "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)", by the issuing authority (Ministry of International Trade and Industry, Malaysia), has clearly revealed that the COO issuing authority has never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry. Thus, the COO certificates No. KL-2020-AI-21-0101184 dated 24.01.2020 of M/s, Artfransi International SDN BHD and KL-2020-AI-21-057853 dated 10.07.2020 of M/s Jentayu Industry produced by the importer at the time of import for claiming the exemption from duty under Notification No. 46/2011-Customs dated 01.06.2011 appear to be inauthentic and thus the exemption from duty claimed under Notification No. 46/2011-Cus dated 01.06.2011 becomes inadmissible for preferential tariff treatment, as the same is not issued by the issuing authority, in terms of Rule -13 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.

14. In the instant case, the subject import goods, viz. "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)", originating from exporters, namely, M/s. Artfransi International SDN BHD and M/s Jentayu Industry do not meet the origin criteria as revealed from verification (vide letter no. DRI/HQ-CI/B Cell/50D/Enq-01 dated 09/10.09.2021 issued by the Joint Director (CI), DRI, New Delhi), subject import goods viz. "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTIRAL USE) imported by the importer as per TABLE-1. Therefore, the claim of preferential rate of duty by the importer under Notification No. 46/2011-Cus dated 01.06.2011 as the COOs produced by them is inauthentic.

15. Further, as per Sub-Section 11 of Section 28DA of Customs Act, 1962, the non-compliance of the imported goods with the country of origin criteria appears to be applicable to all imports of identical goods from the same producer or exporter. Therefore, the claim of preferential rate of duty by the importer under Notification No. 46/2011-Cus dated 01.06.2011 appears to be liable for rejection in terms of Sub-Section 11 of Section 28DA of Customs Act,

1962, as the COO certificates produced by the importer are non authentic.

16. Shri Vijay Vallabhbhai Savaliya, Partner of M/s. Nijanand Steel in his statement recorded on 12.09.2024 under section 108 of Customs Act, 1962 he admitted that they have wrongly availed benefit of Notification No. 46/2011-Cus dated 01.06.20211 accepted that their firm was not eligible to avail the duty exemption under Notification No, 46/2011-Cus dated 01.06.2011 on import of "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE) from M/s.. Artfransi International SDN BHD and M/s. Jentayu Industry, Malaysia.

17. Obligations under self-assessment and demand invoking extended period:

17.1 The subject Bill of Entry as mentioned in TABLE-1 of this investigation report, filed by the importer, wherein they had declared the description, classification of goods and country of origin were self-assessed by them. However, the verification reports in respect of Certificates of Origin received from MITI established that the Certificate of Origin produced by importer are inauthentic. The importer has accepted that they have wrongly availed benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended. They required some time to manage for payment of the differential duty and applicable interest.

17.2 Vide Finance Act, 2011, "Self-Assessment" has been introduced from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill.

Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information as regards to the origin criteria. Therefore, by submitting inauthentic Certificate of Origin, it appears that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed the benefit of exemption Notification on the basis of inauthentic COO. The importer has failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

17.3 Therefore, it appears that the importer has knowingly and deliberately availed the exemption Notification on the goods declared to be of Malaysia

based origin. Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during the filing of the Bill of Entry at Mundra port, thereby caused evasion of Customs duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case.

18. Mis-declaration by the importer – liability of goods to confiscation, demand of differential Duty and liability to Penalties:-

18.1 Sub-section (4) of section 46 of the Customs Act, 1962, specifies that, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods. From the verification report discussed above, it appears that the importer has suppressed the relevant fact of the inauthentic nature of the submitted COO. In the process, the applicable Customs duty on the impugned goods was evaded and hence, the importer contravened the provisions of section 46 of the Customs Act, 1962. Therefore, it appears that the importer knowingly and deliberately availed the exemption Notification on the goods of Malaysia based origin. It appears to be indicative of their mens rea. Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra Port and thereby caused evasion of Customs duty to the tune of **Rs.7,09,866/- (Rupees Seven Lakh, Nine Thousand, Eight Hundred and Sixty Six Only)** as calculated in Annexure-A attached and as such loss to the Government exchequer.

18.2 As mentioned in the foregoing paras, the imported goods under the said Bills of Entry, as mentioned in TABLE-1 to this investigation report, have been found to be not corresponding the condition for claiming the exemption against Country of Origin (COO) Certificate in terms of Notification No. 46/2011-Cus dated 01.06.2011 read with Notification 189/2009-Cus (NT) dated 31.12.2009, as amended. Hence, the goods imported having assessable value of Rs. 54,68,921/- (Rupees Fifty Four LakhS Sixty Eight Thousand Nine Hundred and Twenty One Only) are liable for confiscation under Section 111 (m), 111 (o) & Section 111(q) of the Customs Act, 1962. Therefore, it appears that the importer has rendered himself liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

18.3 As discussed above, it appears that the importer has failed to provide any information consistent with the trade agreement (AIFTA) during the course

of investigation. The importer also failed to follow the procedure as prescribed under Notification 189/2009-Cus (NT) dated 31.12.2009 read with Section 28DA (1) of Customs Act, 1962, i.e., the importer failed to possess sufficient information as regards to authenticity of Certificate of Origin and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. Thus, the importer was not eligible for exemption benefit as provided under Notification No. 46/2011-Cus dated 01.06.2011, as amended leading to short levy of duty by his mis-statement of authenticity of Certificates of Country of Origin. Therefore, it appears that the importer has rendered himself liable for imposition of penalty under Section 114A & 114AA of the Customs Act, 1962.

19. Whereas, it appears that the import of the disputed goods viz. "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)" has taken place by way of filing of Bills of Entry at port of CH Mundra, (INMUN1) as detailed below:-

TABLE-4

Sr. No.	Bill of Entry No.	Date	Declared AV (in Rs.)	Declared Duty (in Rs.) [(BCD@0%), (SWS@10%) & (IGST@18%)]	Duty Payable (in Rs.) [(BCD@10%), (SWS@10%) & (IGST@18%)]	Differential Duty Payable (in Rs.)
1	6720655	01-02-2020	26,28,234/-	4,73,082/-	8,14,227/-	3,41,145/-
2	8166753	17-07-2020	28,40,687/-	5,11,324/-	8,80,045/-	3,68,721/-
		Total		**9,84,406/-**	**16,94,272/-**	**7,09,866/-**

20. In view of above, it appears that the Country of Origin Certificates in respect of Bills of Entry as mentioned in TABLE-1, purported to be issued by Ministry of International Trade and Industry (MITI) for the supplies made by M/s. Artfransi International SDN BHD and M/s. Jentayu Industry are inauthentic, in terms of Rule 7 of CAROTAR 2020 as discussed above.

21. Accordingly, Show Cause Notice F.no. GEN/ADJ/ADC/2772/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 30.12.2024 was issued to M/s. NIJANAND STEEL (IEC: 2415003018) wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra having office situated at O/o the Pr. Commissioner, Customs House Mundra, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 as to why: -

i. The exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the Importer against the import of goods under Bills of Entry filed at Mundra Port (as mentioned in Annexure –A to this SCN), should not be disallowed in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 or the Bills of Entry should not be re-assessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011.
ii. The impugned goods having total assessable value ofRs.54,68,921/- (Rupees Fifty Four Lakhs Sixty Eight Thousand Nine Hundred and Twenty One only) as mentioned in Annexure-A to this SCN should not be held liable for confiscation as per the provisions of Section 111(m), 111 (o) and 111(q) of the Customs Act, 1962.
iii. The differential Customs duty amounting to Rs.7,09,866/- (Rupees Seven Lakhs Nine Thousand Eight Hundred and Sixty Six Only) should not demanded and recovered from them under Section 28(4) of the Customs Act, 1962.
iv. The applicable interest should not be recovered from the Importerunder Section 28AA of the Customs Act, 1962.
v. Penalty should not be imposed on the Importer under Section 112(a) & (b) and/or 114A and 114AA of the Customs Act, 1962.

22. Written Submission and Personal Hearing

Personal Hearing in the subject matter was granted to M/s. Nijanand Steel to appear on 26.09.2025, 13.10.2025 and 07.11.2025 however the importer neither appeared for personal hearing nor submitted any documents.

Discussion and Findings

23. I have carefully gone through the facts of the case and Show Cause Notice dated 30.12.2024. I find that personal hearing was granted to M/s. Nijanand Steel to appear on 26.09.2025, 13.10.2025 and 07.11.2025, however the importer neither appeared for personal hearing nor submitted any documents. I find that in the present case principle of natural justice have been complied with and therefore, I proceed to decide the case on the basis of applicable laws/rules, written submissions and documentary evidences available on record.

24. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

(i) Whether the duty exemption benefit claimed under Notification No. 46/2011-Cus dated 01.06.2011, as amended, should be disallowed in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 and the Bills of Entry should be re-assessed by disallowing the benefit of

Notification No. 46/2011-Cus dated 01.06.2011 or otherwise.

(ii) Whether the impugned goods having total assessable value of Rs. Rs.54,68,921/- (Rupees Fifty Four Lakhs Sixty Eight Thousand Nine Hundred and Twenty One only) imported vide Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 should be held liable for confiscation as per the provisions of Section 111(m), 111(o) and 111 (q) of the Customs Act, 1962 or otherwise.

(iii) Whether the differential Customs duty amounting to Rs.7,09,866/- (Rupees Seven Lakhs Nine Thousand Eight Hundred and Sixty Six Only) should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under section 28 AA of The Custom Act, 1962 in respect of Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 or otherwise.

(iv) Whether the noticee is liable for penalty under Sections 112(a) and/or 112(b) and/or 114A and 114 AA of the Customs Act, 1962 or otherwise.

25. Now, I have to decide the above mentioned issued one by one:-

Duty exemption benefit claimed under Notification No. 46/2011-Cus dated 01.06.2011 should be disallowed in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962:-

25.1 I observe that M/s. **NIJANAND STEEL** having address at SURVEY NO. 287/1, PLOT NO. 3, OPP. PANCHPIPLA COMPLEX STREET, SHAPAR RD, SHAPAR-VERAVAL, RAJKOT, GUJARAT-360024, were importing "STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE)" falling under tariff heading 7306 of First Schedule to the Customs Tariff Act, 1975. The importer is engaged in import of "STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE)" from Malaysia by availing benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011(Sr. No.968(I)), as amended.

25.2 I find that investigation was initiated by DRI that various importer including M/s. Nijanand Steel were engaged in import of "STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE)" from Malaysia and availed benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011(Sr. No.968(I), as amended, although the COOs issued in Malaysia in r/o their suppliers/manufacturers/third-party/sellers were inauthentic.

I observe that importer had imported "STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE)" vide the Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 detailed above in Table-3 and wrongly claimed concessional duty of Nil BCD benefit under Sl. No. 968(I) of Notification no. 46/2011- Customs dated 01.06.2011, as amended and paid

the total duty of Rs. 9,84,405/- on the strength of duty structure of BCD(0%) + SWS (0%) + IGST(18%), whereas the actual duty required to be paid has been found to be as Rs. 16,94,272/- under duty structure of BCD (10%) + SWS (10% of BCD) + IGST(18%) (Effectively 30.98 %) Due to which there has been a short levy of duty to the tune of Rs. 7,09,866/- as worked out below:-.

Table-5 (Duty Calculation Sheet)

Bill of Entry no. & Date		6720655/01.02.2020	8166753/14.07.2020	**Total**
Assessable value (in Rupees)		26,28,234.26/-	28,40,686.86/-	**54,68,921.12/-**
Duty Paid(in Rupees)	BCD (0%)	0	0	
	SWS(10%)	0	0	
	IGST(18%)	4,73,082.2/-	5,11,323.60/-	
	Total duty paid	**4,73,082.2/-**	**5,11,323.60/-**	**9,84,405.80/-**
Duty Payable(in Rupees)	BCD (10%)	2,62,823/-	2,84,069/-	
	SWS(10%)	26,282/-	28,407/-	
	A.V. for IGST	29,17,340/-	31,53,162/-	
	IGST(18%)	5,25,121	5,67,569/-	
	Total duty payable	**8,14,227**	**8,80,045/-**	**16,94,272/-**
Differential duty (in Rupees)		**Rs. 3,41,145/-**	**3,68,721/-**	**7,09,866/-**

25.3 I find that Importer had been importing "STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE)" from Malaysia based manufacturer and cleared the same through Mundra SEZ Port, Mundra. The importer had imported goods by availing duty exemption benefit of Customs Tariff Notification No. 46/2011-Cus dated 01.06.2011 under Sr. No. 968 (I) availing Country of Origin benefit on the basis of Country of Origin Certificates issued by the overseas suppliers i.e. M/s. Artfransi International Sdn Bhd. 5-3-2 Block A, Diamond Square Commercial Jalan Gombak 5300, Kuala Lumpur, Malaysia(B/E no. 6720655/01.02.2020) and M/s. Jentayu Industry Lot 6576 Jalan Hassan, Sungai Udang 41250 Klang, Selangor, Malaysia(B/E no. 8166753/17.07.2020) in which Country of Origin is mentioned as Malaysia.

25.4 I find that goods of Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 were imported from Malaysia by availing the exemption from duty under Notification No. 46/2011-Cus dated 01.06.2011 on the basis of below mentioned COO Certificates, which are found to be inauthentic:

Sr.	**Bill of Entry**	**Date**	**No. of COO**	**Name of the Supplier**

No.	No.		Certificate	
1	6720655	01-02-2020	KL-2020-AI-21-0101184 dated 24.01.2020	M/s. Artfransi International SDNBHD. 5-3-2 Block A, Diamond Square Commercial Jalan Gombak 5300, Kuala Lumpur, Malaysia
2	8166753	14.07.2020	KL-2020-AI-21-057853 dated 20.01.2020	M/s. Jentayu Industry Lot 6576 Jalan Hassan, Sungai Udang 41250 Klang, Selangor, Malaysia

25.5 I find that email dated 18.05.2021, received from the Ministry of International Trade and Industry (MITI), Malaysia, wherein it has been informed that they had never received any COO applications from M/s. Artfransi International Sdn Bhd., Malaysia and M/s. Jentayu Industry, Malaysia and other companies (exporters) via their e-PCO system.

Further, as per Alert Circular No. 02/2021-CI dated 10.09.2021, issued by the Joint Director (CI) vide F. No. DRI/HQ-CI/B Cell/50D/Enq-01/2020/2916, it has been stated that several COO's pertaining to import of steel products under ASEAN-India Preferential Trade Agreements filed by a number of importers with the Customs authorities were referred to the issuing authorities in Malaysia and Thailand for verification. In response, the Ministry of International Trade and Industry, Malaysia (MITI) informed that the said COO's mainly from Malaysia & a few from Thailand from the suppliers as listed in the Annexure A have been reported to be non-authentic by the respective issuing authorities, thus rendering any consequential benefit availed under ASEAN-India Preferential Trade Agreement and/or India-Malaysia Preferential Trade Agreement as ineligible.

I find that the goods imported by M/s. Nijanand Steel, Rajkot against Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 had been supplied by the overseas suppliers, M/s. Artfransi International Sdn Bhd. 5-3-2 Block A, Diamond Square Commercial Jalan Gombak 5300, Kuala Lumpur, Malaysia and M/s. Jentayu Industry Lot 6576 Jalan Hassan, Sungai Udang 41250 Klang, Selangor, Malaysia. I find that these suppliers were found to be amongst the list of overseas suppliers, all of which were reportedly found to have exported goods under non-authentic Country of Origin certificates as per Annexure – A to the aforementioned Alert Circular.

Further, I also find that in the letter dated 01.02.2022, issued by the FTA Cell, CBIC, it has been clearly stated that the COO issued to the overseas suppliers (exporters), i.e., M/s. Artfransi International Sdn Bhd Malaysia and M/s. Jentayu Industry, Malaysia prior to 18.05.2021 are non-authentic. Accordingly, I find that in the instant case, the dates of the COO Certificates, as detailed above, availed by the importer for the duty exemption benefit for the goods imported vide the aforesaid two Bills of Entry are 24.01.2020 and 20.01.2020, which are prior to the date of 18th May, 2021 and thus, as per the letter dated 01.02.2022, issued by the FTA Cell, CBIC, COO certificates in the

subject case are un-authentic.

25.6 I observe that Government has inserted Section 28DA of the Customs Act, 1962 vide clause 110 of Finance Act, 2020 and has notified Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (hereafter referred to as the CAROTAR, 2020) issued vide Notification No. 81/2020-Customs (N.T.) dated 21st August, 2020, with aim to supplement the operational procedures related to implementation of Rules of Origin, as prescribed under the respective trade agreements (FTA/PTA/CECA/CEPA) and notified under the customs notifications issued in terms of section 5 of the Customs Tariff Act, 1975 for each agreement. Sec 28 DA of The Custom Act, 1962 is reproduced as under :-

***Section 28DA Procedure regarding claim of preferential rate of duty*.**

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -

(i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;

(ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;

(iii) furnish such information in such manner as may be provided by rules;

(iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.

(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may,-

(i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the

importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:-

Provided *that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.*

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

(i) the tariff item is not eligible for preferential tariff treatment;

(ii) complete description of goods is not contained in the certificate of origin;

(iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;

(iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(11) Where the verification under this section establishes non-compliance of

the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Explanation-For the purposes of this Chapter,-

(a)"certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;

(b)"identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;

(c)"Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;

(d)"trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.

25.7 Further, Rule 6 of the CAROTAR Rules, 2020, provides for the retroactive verification of the certificates of country of origin. Further, sub-rule 7(c) of Rule 6 of the CAROTAR Rules, 2020 provides that if the information and documents furnished by the Verification Authority and records available provide sufficient evidence to prove that the goods do not meet the origin criteria prescribed in Rules of Origin, the proper officer may deny the claim of preferential duty treatment. Rule 6 of CAROTAR Rules, 2020 is reproduced as under:-

Rule 6. Verification request .-

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

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

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

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

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

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

(3) When a verification request is made in terms of this rule, the following timeline

for furnishing the response shall be brought to the notice of the Verification Authority while sending the request:

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

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

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

(a) T he preferential tariff treatment of such goods may be suspended till conclusion of the verification;

(b) T he verification Authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification; and

(c) T he proper officer may, on the request of the importer, provisionally assess and clear the goods, subject to importer furnishing a security amount equal to the difference between the duty provisionally assessed under section 18 of the Act and the preferential duty claimed.

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

(6) Where the information requested in this rule is received within the prescribed timeline, the proper officer shall conclude the verification within forty five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs may allow:

***Provided** that where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer shall finalize the verification within such timeline.*

(7) The proper officer may deny claim of preferential rate of duty without further verification where:

(a) T he verification Authority fails to respond to verification request within prescribed timelines;

(b) The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or

(c) The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

25.8 Rule-7 of CAROTAR, 2020 stipulates that if it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer. The said Rule 7 is reproducer as under:

> ***"7. Identical goods. – (1) Where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer."***
>
> The terms "Identical goods" have been defined under the explanation provided under Section 28DA of Customs Act, 1962 as under:

"Identical goods" means goods that are same in all respect with reference to the country of origin criteria under the trade agreement"

25.9 Further, in terms of Rule 13 of Notification No. 189/2009-Customs (NT) dated 31.12.2009, any claim for a product to be eligible for preferential tariff treatment has to be supported by a Certificate of Origin issued by a Government authority of exporting party and the same needs to be issued in accordance with the Operational Certification Procedures as set out in Annexure-III annexed to the rules notified vide Notification No. 189/2009-Customs (NT) dated 31.12.2009. Further, Para-1 of the above referred Annexure-III (Operational Certification Procedures) stipulates that the AIFTA Certificate of Origin shall be issued by the Government authorities (issuing authority) of the exporting party. The provisions of retroactive check / verification areas stipulated vide Rule 16 of the notification No. 189/2009-Customs (NT) dated 31.12.2009, are as under:-

"16. (a) The importing party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on the producer/exporter's cost statement based on the current cost and prices within a six-months timeframe prior to the date of exportation subject to the following procedures:-

(i) the request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;

(ii) the Issuing Authority shall respond to the request promptly and reply within three months after receipt of the request for retroactive check;

(iii) In case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and

(iv) the retroactive check process, including the actual process and the determination of whether the subject good is originating or not, should be completed and the result communicated to the Issuing Authority within six months. While the process of the retroactive check is being undertaken, sub- paragraph (iii) shall be applied.

(b) The Customs Authority of the importing party may request an importer for information or documents relating to the origin of imported good in accordance with its domestic laws and regulations before requesting the retroactive pursuant to paragraph (a)."

25.10 I find that the importer is required to prove to the satisfaction of

the Customs Authority 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 to the Notification No. 046/2011-Cus dated 01.06.2011, 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 (hereinafter referred to as "the said Rules of Origin, 2009"), notified vide Notification No. 189/2009-Customs(N.T.) dated the 31st December, 2009.

25.11 I find that as per the provisions of Section 17 (1) of the Customs Act, 1962 read with Section 2 (2) of the Customs Act and CBIC Circular No. 17/2011-Customs dated 08.04.2011 lay down onus on the importer and the CHAs to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.

Further, as per Section 46(4) of the Customs Act the importer at the time of filing the Bill of Entry has to declare the truth of the contents of such entry and the authenticity of the documents attached. Further, in terms of Section 46 (4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, shall ensure the authenticity and validity of any document supporting it and shall ensure compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. The importer is thus legally bound to ensure that the declared description, classification, country of origin, and applicable rate of duty are correct and in conformity with the law. In the present case, M/s Nijanand Steel while filing the Bill of Entry, claimed Nil Basic Customs Duty under Notification No. 46/2011-Cus. dated 01.06.2011, as amended on the strength of Certificates of Origin that had been proved invalid as COO authority of Malaysia (Ministry of International Trade and Industry, Malaysia), has clearly revealed that the COO issuing authority has never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry. Thus, the COO certificates No. KL-2020-AI-21-0101184 dated 24.01.2020 of M/s, Artfransi International SDN BHD and KL-2020-AI-21-057853 dated 10.07.2020 of M/s Jentayu Industry produced by the importer at the time of import for claiming the exemption from duty under Notification No. 46/2011-Customs dated 01.06.2011 are inauthentic. By declaring the goods as of Malaysia origin and availing an exemption not lawfully due, the importer mis declared material particulars and incorrectly self-assessed the goods, in contravention of Sections 17, Section 46(4) and Section 46(4A) of the Customs Act, 1962. Such mis-

declaration directly resulted in short-payment of duty and renders the importer liable to demand of duty under Section 28(4) and to consequential penal action under the provisions of the Act.

25.12 I find that the during the course of retroactive verification of Country of Origin Certificate with respect to the product viz. "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)", COO issuing authority of Malaysia (Ministry of International Trade and Industry, Malaysia), has clearly revealed that they have never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry. As per Sub-Section 11 of Section 28DA of Customs Act, 1962, the non-compliance of the imported goods with the country of origin criteria appears to be applicable to all imports of identical goods from the same producer or exporter.

Thus, I find that the COO certificates No. KL-2020-AI-21-0101184 dated 24.01.2020 of M/s, Artfransi International SDN BHD and KL-2020-AI-21-057853 dated 10.07.2020 of M/s Jentayu Industry produced by the importer at the time of import for claiming the exemption from duty under Notification No. 46/2011-Customs dated 01.06.2011 are inauthentic and accordingly the exemption from duty claimed under Notification No. 46/2011-Cus dated 01.06.2011 is not allowed for preferential tariff treatment, as the same is not issued by the issuing authority, in terms of Rule -13 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.

Further, in the instant case, as per verification letter (vide letter no. DRI/HQ-CI/B Cell/50D/Enq-01 dated 09/10.09.2021) issued by the Joint Director (CI), DRI, the subject imported goods, viz. "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)", originating from exporters, namely, M/s. Artfransi International SDN BHD and M/s Jentayu Industry do not meet the origin criteria.

25.13 Further, I also find that Shri Vijay Vallabhbhai Savaliya, Partner of M/s. Nijanand Steel in his statement admitted that they had wrongly availed benefit of Notification No. 46/2011-Cus dated 01.06.20211 and their firm was not eligible to avail the duty exemption under Notification No, 46/2011-Cus dated 01.06.2011 on import of "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE) from M/s. Artfransi International SDN BHD and M/s. Jentayu Industry, Malaysia. Shri Vijay Vallabhbhai Savaliya also agreed to pay the entire outstanding customs duty along with interest and penalty.

25.14 In this regard, I find that in the ***5 Judge Bench Judgment in Dilip Kumar & Co. [2018] 9 SCC 1***, it was held that *Exemption notification should be interpreted strictly; the burden of proving applicability would be on the*

assessee to show that his case comes within the parameters of the exemption clause or exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.[Para 52]. I find in the instant case COO issuing authority of Malaysia(Ministry of International Trade and Industry, Malaysia), has clearly revealed that they have never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry. Further, as per letter dated 01.02.2022 issued by the FTA cell, CBIC, it has been clearly stated that the COO issued to the overseas suppliers (exporters), i.e., M/s. Artfransi International Sdn Bhd Malaysia and M/s. Jentayu Industry, Malaysia prior to 18.05.2021 is non-authentic. In the instant case COO issued were prior to 18.05.2021. The noticee cannot be allowed to use such illegal COO Certificates in order to claim the benefits of the exemption notification.

25.15 In view of above discussions in the preceding paras, it is ostensible that the consignments imported by M/s Nijanand Steel, Rajkot vide Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 were cleared by producing non-authentic Country of Origin Certificates and therefore, the duty exemption benefit claimed under the Indo-Malaysia Preferential Trade Agreement under Sl. No. 968(I) of Notification No. 46/2011-Customs dated 01.06.2011 is improper and illegitimate.

I find that the importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. Artfransi International SDN BHD and M/s. Jentayu Industry, Malaysia, It appears to be indicative of their mensrea. Furthermore, the importer appears to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra SEZ Port, Mundra, and accordingly evaded the applicable Customs duty.

Accordingly, in view of facts discussed above, it has been undisputedly established that that the "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)" exported by M/s. Artfransi International SDN BHD and M/s. Jentayu Industry, Malaysia, and imported by the noticee cannot be treated as originating goods of Malaysia origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011, as amended is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nijanand Steel is denied.

26. <u>CONFISCATION OF GOODS:</u>

26.1 I find that it is alleged in the SCN that the goods are liable for

confiscation under Section 111(m), 111(o) and 111(q) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m), 111(o) and 111(q) of the Customs Act, 1962 are reproduced below: -

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

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(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 provisions of Chapter VAA or any rule made there under;

26.2 I find that in this case the importer has classified their imported goods i.e. *"*STAINLESS STEEL WELDED PIPES J3 (INDUSTRIAL USE)*"* under tariff heading 7306 of the first schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended. During the course of retroactive verification of Country of Origin Certificate in terms of rule 6 of CAROTAR Rules, 2020 with respect to the product viz. "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)", COO issuing authority of Malaysia (Ministry of International Trade and Industry, Malaysia), has clearly revealed that they have never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry. As per rule 07 of CAROTAR Rules, 2020 and Sub-Section 11 of Section 28DA of Customs Act, 1962, the non-compliance of the imported goods with the country of origin criteria appears to be applicable to all imports of identical goods from the same producer or exporter. Thus, the COO certificates No. KL-2020-AI-21-0101184 dated 24.01.2020 of M/s, Artfransi International SDN BHD and KL-2020-AI-21-057853 dated 10.07.2020 of M/s Jentayu Industry produced by the importer at the time of import for claiming the exemption from duty under Notification No. 46/2011-Customs dated 01.06.2011 are inauthentic and accordingly the exemption from duty claimed

under Notification No. 46/2011-Cus dated 01.06.2011 is not allowed for preferential tariff treatment, as the same is not issued by the issuing authority, in terms of Rule -13 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.

Further, as discussed in para no. 25 also, wherein it has been undisputedly established that that the "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)" exported by M/s. Artfransi International SDN BHD and M/s. Jentayu Industry, Malaysia, and imported by the noticee cannot be treated as originating goods of Malaysia origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011, as amended is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nijanand Steel is denied.

26.3 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry made under this act. I have to restrict myself only to examine the words. "In respect any other particular with the entry made under this act" would also cover cases of suppression of facts of use of non-authentic COO Certificate resulting in short payment of applicable duty by the Importer. In the instant case M/s. Nijanand Steel had imported the goods with the benefit of preferential duty by way of producing un-authentic COO and submitted declaration certifying the facts are true and correct. Hence, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable.

26.4 I find that the goods are also liable to confiscation under Section 111(o) as the benefit of exemption under Notification No. 46/2011-Cus. was availed subject to fulfilment of specified conditions — namely, that the goods must originate from an ASEAN member country in accordance with the prescribed Rules of Origin and the Bills of entry were filed availing exemption from duty under the Notification No. 46/2011-Cus. dated 01.06.2011, and as the condition of Certificate of Origin is not fulfilled. Since the importer failed to fulfil these conditions and nevertheless availed the exemption, the goods have become liable to confiscation under Section 111(o) of the Act, which specifically covers goods imported in violation of a condition of exemption granted under Section 25 of the Act.

26.5 **Section 28DA. Procedure regarding claim of preferential rate of duty rule clause 11 is reproduced as under:-**

"Where the verification under this section establishes non-compliance of

the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria"

Further, the impugned goods were imported under claim of preferential rate of duty which was actually not available for the impugned goods as per Rule 13 of the notification no. 189/2009- Customs (NT) dated 31.12.2009 of the said Rules of Origin read with Rule-7 of CAROTAR, 2020 and Sub-Section 11 of Section 28DA of the Finance Act, 1962, hence, I find that the confiscation of the imported goods invoking Section 111(q) is justified & sustainable.

26.6 I also find that the case is established on documentary evidences as detailed in Paras above in respect of past imports, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the ***Hon'ble Supreme Courtin CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]***. Further in the case of **K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. – Chennai)** the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under:

"Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means."

26.7 **Imposition of Redemption Fine**:

As I have already held in previous paras, that the said imported goods are liable for confiscation under the provisions of Section 111(m), 111(o) and 111(q) of the Customs Act, 1962, as proposed in the Show Cause Notice. I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:

"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

In the instant case, I find that the subject goods imported are not available for confiscation, I find that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, I refrain from imposing redemption fine in respect of goods imported under Bills of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020.

26.8 From the above discussions, I find that the goods imported by the Importer do not qualify the requirement as of Origin of Goods as laid out under Notification No. 189/2009-Cus (N.T.) dated 31.12.2009 and the importer had not correctly declared the facts before the Customs authorities, thereby wrongly availing the benefits of concessional rate of customs duty under Notification No. 46/2011 dated 01.06.2011. Therefore, I find that the impugned goods declared as "STAINLESS STEEL WELDED PIPE J3 GRADE (INDUSTRIAL USE)" imported vide Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 having total assessable value of Rs. 54,68,921.12/- are liable for confiscation under the provisions of Section 111(m), 111(o) and 111(q) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts by the importer with regard to the description and Country of Origin of the import goods by way of submitting false and incorrect Country of Origin certificate as Malaysia leading to unlawful, illegal and wrong availment of concessional Customs duty benefit under Notification No. 46/2011 dated 01.06.2011 by importer. Accordingly, I find that confiscation of goods is legal and proper in the subject case under the said provisions of Section 111(m), 111(o) and 111(q) of the Customs Act, 1962.

27. **Applicability of extended period under Section 28 (4) of the Customs Act, 1962.**

27.1 The Impugned Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the Section 28(4) of the Customs Act, 1962 has been rightly invoked or not. I find that after introduction of self-assessment and consequent upon amendment to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is incumbent on the part of the Importer to declare the correct country of origin of impugned goods

and make true and correct declaration in all aspects like classification, valuation, including calculation of duty and claim of benefit etc. Onus is on the noticee to comply with the various laws, determine his tax liability correctly and discharge the same. The Importers are required to declare the correct description, value, classification, notification number if any, on the imported goods. Self-Assessment is supported by section 17, 18 and 46 of the Customs Act 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Importer is squarely responsible for Self-Assessment of the duty on the imported goods and filing all declaration and related documents and confirming these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act 1962 or the allied acts.

27.2 From the facts and evidences placed before me, I find that that the Importer was wilfully indulged in availing the wrong benefit of Serial No. 968(I) of Notification No. 046/2011 dated 01.06.2011 as amended, which was not actually available for the said goods at the time of their importation. The act of suppression of facts was unearthed during the course of retroactive verification of Country of Origin Certificate with respect to the product viz. “STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)”, COO issuing authority of Malaysia (Ministry of International Trade and Industry, Malaysia), has clearly revealed that they have never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry. The Importer had wrongly used non-authentic COO certificate of such goods covered under the said Bills of Entry. The Importer knowingly and deliberately had suppressed the material facts of the Country of Origin Certificate from the department and misused the same in the Bills of Entry with a clear intention to evade the Customs duty. Had the department not initiated investigation into the matter, the Importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed.

In the present case, the importer has failed to provide any information consistent with the trade agreement (AIFTA). The importer also failed to follow the procedure as prescribed under Notification 189/2009-Cus (NT) dated 31.12.2009 read with Section 28DA (1) of Customs Act, 1962, i.e., the importer failed to possess sufficient information as regards to authenticity of Certificate of Origin and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. Importer has wrongly availed the benefit of exemption Notification on the basis of inauthentic COO. The importer has failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

The importer has also accepted that they have wrongly availed benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and requested for time to manage for payment of the differential duty and applicable interest.

27. 3 I find that the importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. Artfransi International SDN BHD and from M/s Jentayu Industry, Malaysia. It appears to be indicative of their mensrea. Furthermore, the importer appears to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra SEZ Port, Mundra and accordingly evaded the applicable Customs duty.

27.4 Further, I find that As per section 17(1) of the Act, "An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods." However, in the present case, the Importer for the purpose of evasion of duty had knowingly suppressed the fact that the COO Certificate was not proper. Thus I find that they willfully and knowingly availed the COO benefit on the imported goods despite knowing very well the nature of documents that the same was not just and proper and not applicable for duty exemption for shipment under importation. Further, the Importer was indeed under statutory obligation for correct self-assessment. Therefore, the provision of section 28(4) of the Act, is found to be applicable in this case towards demand and recovery of the differential duty from the Importer. Hence I strongly hold that the differential duty amount of Rs. 7,09,866/- is recoverable along with applicable interest from the importer under the provisions extended period of Section 28(4) of the Customs Act, 1962 read with Section 28AA of the Customs Act, 1962, for the reasons brought out in foregoing paras.

28. **Demand of Differential duty and interest**:-

2 8 . 1 I observe that the Show Cause Notice proposed the demand and recovery of differential duty of amount Rs. 7,09,866/- based on ineligible Basic Customs Duty exemption benefit under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962.

The relevant legal provision is as under:

SECTION 28(4) of the Customs Act 1962.

Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. (4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, - (a) Collusion; or

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

2 8 . 2 As discussed in above paras, wherein it has been undisputedly established that the "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)" exported by M/s. Artfransi International SDN BHD and M/s Jentayu Industry and imported by the noticee cannot be treated as originating goods of Malaysia origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011 is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nijanand Steel is denied.

In this case the importer has classified their imported goods i.e. "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)" under tariff heading 7306 of the first schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended. The verification of Origin criteria was conducted by DRI with the Malaysia authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. During the course of retroactive verification of Country of Origin Certificate with respect to the product viz. "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)", COO issuing authority of Malaysia (Ministry of International Trade and Industry, Malaysia), has clearly revealed that they have never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry. In this case the goods imported by the importer are from same supplier/exporter i.e. M/s. Artfransi International SDN BHD and M/s Jentayu Industry and vide letter dated 01.02.2022, FTA Cell, CBIC, informed that the COO issued to the overseas suppliers (exporters), i.e., M/s. Artfransi International Sdn Bhd Malaysia and M/s. Jentayu Industry, Malaysia prior to 18.05.2021 are non-authentic and in the instant case COO issued are prior to 18.05.2021. Thus, on the basis of the provisions of Section 28DA of Customs Act, 1962, it appears that non-compliance of the imported goods with the country of origin criteria apply to identical goods i.e "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)", from same manufacturer M/s. Artfransi International SDN BHD and M/s Jentayu Industry and exported to the importer during material period. The importer has also accepted that they have wrongly availed benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and requested for time to manage for payment of the differential duty and applicable interest.

28.3 In view of above, I find that notice has failed to discharge their burden of possessing sufficient information and ensuring reasonable care under Section 28DA. They have also failed to discharge their burden of making a true and correct declaration in terms of Section 28DA(1)(i) and Section 46(4). They also failed to correctly self-assess the duty as required under Section 17(1). Since the noticee are the only beneficiary of the whole fraudulent arrangement, they cannot now claim that they are not responsible for the said defects and fraudulent nature of the subject COO. I find that consequent to non-fulfilment of obligations under Section 28DA, the preferential rate of duty claimed under the said notification becomes inadmissible, and the goods are liable to assessment at the normal rate of Basic Customs Duty. The short-payment of duty resulting therefrom has arisen on account of the importer's wilful misstatement and suppression of material facts relating to the true origin and value content of the goods. Therefore, the case squarely attracts the provisions of Section 28(4) and Section 28AA of the Customs Act, 1962, which provides for demand of duty and interest not levied or short-levied by reason of collusion, wilful misstatement, or suppression of facts.

Further, as per Section 28DA, the importer claiming preferential duty must ensure the authenticity of the Certificate of Origin. The importer failed to discharge these obligations, resulting in incorrect self-assessment and short-payment of customs duty.

In view of the above, I find that the differential customs duty amounting to Rs. 7,09,866/- is recoverable from M/s Nijanand Steel under Section 28(4) of the Customs Act, 1962, being duty short-levied by reason of incorrect claim of exemption under Notification No. 46/2011-Cus. dated 01.06.2011, as amended.

28.4 Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

Section 28AA.

Interest on delayed payment of duty—

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

(2) Interest at such rate not below ten per cent. And not exceeding thirty-six per cent. Per annum, as the Central Government may, by notification in the

Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

In this regard, the ratio laid down by Hon'ble Supreme Court in the case of **CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)]** wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that:-

"….It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

28.5 In view of the facts and findings in above paras, I hold that total differential duty of Rs. 7,09,866/- should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from M/s Nijanand Steel along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

29. LIABILITY OF PENALTY ON IMPORTER UNDER SECTION 112 (a)& (b)/ 114A AND 114AA OF THE CUSTOMS ACT, 1962.

29.1 As discussed in above paras, wherein it has been undisputedly established that the COO certificates issued to M/s. Artfransi International SDN BHD and M/s Jentayu Industry are un-authentic as COO issuing authority of Malaysia(Ministry of International Trade and Industry, Malaysia), has clearly revealed that they have never received any COO application neither from M/s. Artfransi International SDN BHD nor from M/s Jentayu Industry . Therefore goods "STAINLESS STEEL WELDED PIPE J3 (INDUSTRIAL USE)" exported by M/s. Artfransi International SDN BHD and M/s Jentayu Industry and imported by the noticee cannot be treated as originating goods of Malaysia origin, and therefore, the scope of Notification No. 46/2011-Cus. dated 01.06.2011, as amended is not applicable and the concessional rate of NIL Basic Customs Duty claimed by the M/s. Nijanand Steel is denied. The Goods imported by M/s. Nijanand Steel are liable for confiscation under the provisions of Section

111(m), 111(o) and 111(q) of the Customs Act, 1962 and differential duty of Rs. 7,09,866/- should be demanded under Section 28 (4) of the Customs Act, 1962 and along with applicable interest in terms of section 28AA of the Customs Act, 1962. The penalty provisions under section 112,114A and 114AA is reproduced as under:

SECTION 112. Penalty for improper importation of goods, etc.-

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

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

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

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

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

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

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

Section 114A of the Customs Act, 1962 read as :-

Penalty for short-levy or non-levy of duty in certain cases. –
Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or

suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

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

Provided *further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

Provided *also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

Provided *also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:*

Provided *also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

Explanation *- For the removal of doubts, it is hereby declared that -*

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

Section 114 AA of the Customs Act, 1962 read as –

Penalty for use of false and incorrect material. -

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

I had already decided that the fact that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 for the reasons explained under foregoing paras. I find that the element of

suppression of material facts and wilful mis-statement has been discussed in various para's above. It is apparently clear that Noticee's intent was to evade duty by suppression of material facts by way of incomplete declaration and keep the suppression. Hence, on the basis of the facts of the cases, I find that the penalty under section 114A of customs act, 1962 is applicable as the element of suppression of material facts and wilful mis-statement in this case has been found beyond doubt.

Now, I come to examine the penalty imposable on the Noticee under Section 112(a), 112(b) and 114A of the Customs Act, 1962. I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. I find that there is a mandatory provision of penalty under Section 114A of the Customs Act, 1962 where duty is determined under section 28 of the Customs act, 1962. Therefore, I find that when penalty under Section 114A is imposed then penalty under Section 112 of Customs Act, 1962 cannot be imposed.

2 9 . 2 As regards the penalty on Importer 114AA of the Customs Act, 1962 is concerned, I find that penalty under Section 114AA is imposable for intentional usage of false and incorrect material. Further, I find that the importer had used fake and forged Country of Origin Certificate/documents to avail undue benefit to evade the legitimate Customs Duty. In view of the deliberate and intentional submission of fraudulently obtained unauthentic preferential Certificates of origin for availing exemption under AIFTA, I hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962.

30. In view of foregoing discussion and findings, I pass the following order:

ORDER

(i) I order to reject/deny the benefit of Notification No. 46/2011-Cus. dated 01.06.2011, as amended, availed by the importer against the import of goods under Bills of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 14.07.2020 filed at Mundra Port, in terms of Rule 13 of the said Rules of Origin read with Section 28DA of the Customs Act, 1962 .

(ii) I order for confiscation of the impugned goods having total assessable value of Rs. 54,68,921/- (Rupees Fifty Four Lakhs Sixty Eight Thousand Nine Hundred and Twenty One only) imported vide Bill of Entry no. 6720655 dated 01.02.2020 and 8166753 dated 17.07.2020 under Section 111(m), 111(o) and 111(q) of the Customs Act, 1962. However, the goods covered under above said Bills of Entry are not physically available for confiscation, I refrain from imposing redemption fine in respect of the subject goods under Section 125(1) of the Customs Act, 1962.

(iii) I order to confirm and recover the differential duty of Rs. 7,09,866/- (Rupees Seven Lakhs Nine Thousand Eight Hundred and Sixty Six Only) under Section 28(4) of Customs Act, 1962.

(iv) I confirm and order to recover applicable interest on the differential duty mentioned above under Section 28AA of Customs Act, 1962.

(v) I impose a penalty of Rs. 7,09,866/- (Rupees Seven Lakhs Nine Thousand Eight Hundred and Sixty Six Only) on the Importer M/s. Nijanand Steel under Section 114A of Customs Act, 1962.

(vi) I impose a penalty of Rs.1,00,000 (Rupees One Lakh only) on the Importer M/s. Nijanand Steel under Section 114AA of Customs Act, 1962.

(vii) I refrain to impose penalty under Section 112(a) & 112(b) of the Customs Act, 1962 on the Importer M/s. Nijanand Steel.

31. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

32. The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/2772/2024-Adjn. dated 30.12.2024 is hereby disposed off on above terms.

Digitally signed by Dipakbhai Zalavadiya
Date: 10-12-2025 18:53:33

Dipakbhai Zalavadiya
ADDITIONAL COMMISSIONER
ADC/JC-III O/o Pr Commissioner-customs-mundra

To:

1. **M/s. NIJANAND STEEL** (IEC: 2415003018),
   SURVEY NO. 287/1, PLOT NO. 3,
   OPP. PANCHPIPLA COMPLEX STREET,
   SHAPAR RD, SHAPAR-VERAVAL,
   RAJKOT, GUJARAT-360024

Copy to:

1. The Deputy Director, Directorate of Revenue Intelligence, Jamnagar Regional Unit, 45, Jampuri Estate, Opp. Deep Bhawan, Jamnagar- (E-mail- drijamru@nic.in).
2. The Dy. Commissioner of Customs, Group-4, CH, Mundra.....(for information and keep a copy in records).
3. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately).*
5. Guard File.