
	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
A FILE NO. फाइल संख्या	GEN/ADJ/ADC/1198/2024-Adjn-O/o Pr. Commr-Cus-Mundra	
B OIO NO. आदेश संख्या	MCH/ADC/ZDC/653/2025-26	
C PASSED BY जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुन्द्रा।	
D DATE OF ORDER आदेश की तारीख	17.02.2026	
E DATE OF ISSUE जारी करने की तिथि	17.02.2026	
F SCN No. & Date कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/1198/2024-Adjn-O/o Pr. Commr-Cus-Mundra dated 20.02.2025	
G NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	i. M/s AVN Commodities Private Limited (having IEC No.-0811014665) ii. Shri Anand Netanand Choudhary, iii. Shri Rajan A M,	
H DIN/दस्तावेज पहचान संख्या	20260271MO0000888BFB	

1. यह आदेश संबन्धित को निःशुल्क 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 धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्क आयुक्त) 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. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन 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 सं० 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 ड्यूटी / 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, 1982 और सीमाशुल्क अधिनियम, 1962 के 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. AVN Commodities Private Limited (IEC- 0811014665)(*herein referred to as the importer*) having registered office at No. 23-24, Tirth Industrial Park, Village Paldi Kankaj, Ahmedabad Gholka Highway, Off Kamod Circle, SP Ring Road, Taluka Daskroi, Ahmedabad – 382425, is engaged in import of ‘Cold Rolled Stainless Steel Coils’ used in manufacturing of the finished goods, from overseas suppliers based in China.

2. Intelligence received by the officers of Directorate of Revenue Intelligence, Headquarters, New Delhi (hereinafter referred to as “The DRI, HQ” indicated that “M/s AVN” was importing the goods namely “**Non-magnetic Cold Rolled Stainless Steel Strips/Coils Grade J3 (Ex-Stock)**” by mis-classifying the same

under CTH 72209022 and wrongly availing the benefit (at Sr No. 734) under Notification No. 50/2018-Customs dated 30.06.2018 to avail the tariff concession of 45% of applied rate of Customs duty on the goods falling under CTH 72209022, i.e. of Nickel Chromium Austenitic Type. CTH 7220 is appended below for reference:

7220	Flat-rolled products of stainless steel, of a width of less than 600 mm <i>- Not further worked than hot-rolled :</i>			
7220 11	<i>-- Of a thickness of 4.75 mm or more :</i>			
7220 11 10	--- Skelp for pipes and tubes	kg.	15%	-
7220 11 21	--- Strips for pipes and tubes (other than skelp) : ---- Chromium type	kg.	15%	-
7220 11 22	---- Nickel chromium austenitic type	kg.	15%	-
7220 11 29	---- Other	kg.	15%	-
7220 11 90	--- Other	kg.	15%	-
7220 12	<i>-- Of a thickness of less than 4.75 mm :</i>			
7220 12 10	--- Skelp for pipes and tubes	kg.	15%	-
7220 12 21	--- Strips for pipes and tubes (other than skelp) : ---- Chromium type	kg.	15%	-
7220 12 22	---- Nickel chromium austenitic type	kg.	15%	-
7220 12 29	---- Other	kg.	15%	-
7220 12 90	--- Other	kg.	15%	-
7220 20	<i>- Not further worked than cold-rolled (cold-reduced) :</i>			
7220 20 10	--- Skelp for pipes and tubes	kg.	15%	-
	--- Strips for pipes and tubes (other than skelp) :			
7220 20 21	---- Chromium type	kg.	15%	-
7220 20 22	---- Nickel chromium austenitic type	kg.	15%	-

is alloyed with other elements like Nickel and Chromium. The addition of these elements further divided Austenitic Steel in to two subgroups i.e. 200 and 300 series (International Grade). This differentiation is primarily based on partial replacement of Nickel (Ni) with Manganese (Mn) and Nitrogen (N). When Ni content in Series 300 Austenitic Steel is further partially replaced with Mn and N then it is classified as Series 200 Austenitic Steel. Composition of different grades of Austenitic Steel with respect to different alloying elements as specified in IS 6911:1992 are as follows:

Table 1 Chemical Composition
(Clauses 7.1 and 7.2)

IS 6911 : 1992

Grade Designation		C	Si Max	Mn	Ni	Cr	Mo	S Max	P Max	Others
Letter Symbol [see IS 1762 (Part 1)]	Numerical Symbol ISS	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Ferritic Steels										
X 04Cr12	405	0.08 Max	1.0	1.0 Max	—	11.5-13.5	—	0.030	0.040	Al 0.10-0.30
X 07Cr17	430	0.12 Max	1.0	1.0 Max	0.50 Max	16.0-18.0	—	0.030	0.040	
Martensite Steel										
X 12Cr12	410	0.08-0.15	1.0	1.0 Max	1.0 Max	11.5-13.5	—	0.030	0.040	
X 20Cr13	420 S1	0.16-0.25	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 30Cr13	420 S2	0.26-0.35	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 40Cr13	420 S3	0.35-0.45	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 15Cr16Ni2	431	0.10-0.20	1.0	1.0 Max	1.25-2.50	15.0-17.0	—	0.030	0.045	
X 108Cr17Mo	440	0.95-1.20	1.0	1.0 Max	0.50 Max	16.0-18.0	0.75 Max	0.030	0.045	
Austenitic Steels										
X 10Cr17Mn6Ni4N20	201	0.20 Max	1.0	4.0-8.0	3.5-5.5	16.0-18.0	—	0.030	0.045	N 0.05-0.20
X 07Cr17Mn12Ni4	201 A	0.12 Max	1.0	10.0-14.0	3.5-5.5	16.0-18.0	—	0.030	0.045	
X 10Cr18Mn9Ni5	202	0.15 Max	1.0	8.0-10.0	4.0-6.0	17.0-19.0	—	0.030	0.045	
X 10Cr17Ni7	301	0.15 Max	1.0	2.0 Max	6.0-8.0	16.0-18.0	—	0.030	0.045	
X 07Cr18Ni9	302	0.15 Max	1.0	2.0 Max	8.0-10.0	17.0-19.0	—	0.030	0.045	
X 04Cr19Ni9	304 S1	0.08 Max	1.0	2.0 Max	8.0-10.0	17.5-20.0	—	0.03	0.045	
X 02Cr19Ni10	304 S2	0.03 Max	1.0	2.0 Max	8.0-12.0	17.5-20.0	—	0.030	0.045	
X 15Cr24Ni13	309	0.20 Max	1.5	2.0 Max	11.0-15.0	22.0-25.0	—	0.030	0.045	
X 20Cr25Ni20	310	0.25 Max	2.5	2.0 Max	18.0-21.0	24.0-26.0	—	0.030	0.045	
X 04Cr17Ni12Mo2	316	0.03 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	
X 02Cr17Ni12Mo2	316 L	0.08 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	
X 04Cr17Ni12Mo2Ti	316 Ti	0.08 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	Ti Min-5 (C + N) Ti Max-0.80
X 04Cr18Ni10Ti	321	0.08 Max	1.0	2.0 Max	9.0-12.0	17.0-19.0	—	0.030	0.045	Ti Min-5 (C + N) Ti Max-0.8
X 04Cr18Ni10Nb	347	0.08 Max	1.0	2.0 Max	9.0-12.0	17.0-19.0	—	0.030	0.045	Nb Min-10C Nb Max-1.0

In view of the above, it is clearly evident that the **Austenitic Stainless-Steel grades** have essentially content by weight (%) of alloying elements Chromium (Cr) and Nickel (Ni) as per table below:

Subgroups of Austenitic stainless	Minimum-Maximum range of Nickel (Ni)	Minimum-Maximum range of
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steel	(% by weight)	Chromium (Cr) (% by weight)
300 Series	6 - 21	16 - 25
200 Series	3.5 - 6	16-19

3B. Whereas, few samples of Mill Test Report/Certificate (MTC/MTR) of the imported “Cold Rolled Stainless Steel of J3 grade” are appended below:

A. Sample MTC/MTR in respect of Supplier M/s. Yong Steel Co. Ltd, China:

<p align="center">YONG STEEL CO., LTD Room 905, Qiangsheng Building, No.145, Fujian Road, Pudong Area, Shanghai, China. Factory address: No. 10, Keda Middle Road, zone 2, science and Technology Industrial Park, Shitshan town, Nankai District, Foshan City, Guangdong Province</p> <p align="center">MILL TEST CERTIFICATE</p> <p align="right">CERTIFICATE NO.: YS202112162170-218</p>																		
CUSTOMER	AYN COMMODITIES PVT. LTD 11-14, Tirth Industrial Park, Village Paldi- Kankaj, Ahmedabad- Dholka Road, Gujarat-382425			ORIGIN	CHINA	Invoice No.	JYS11232170- 2/10212188	Date	2021/12/16									
NON MAGNETIC STAINLESS STEEL COLD ROLLED COILS GRADE J3, EX STOCK (DIM SIZES)						Chemical Composition(%)						Mechanical Test						
Heat no.	Specification		Quantity (kg)	Finish	Length (m)	C	Si	Mn	P	S	Ni	Cr	Cu	Grade	T.S(Rm) N/mm ²	Elongation(%)	Y.S(Rp)0.2 N/mm ²	Hardness
	WIDTH(mm)	THICKNESS(mm)																
A215432	0.48*487		3050	2B	/	0.144	0.462	9.460	0.036	0.002	0.752	14.080	0.680	J3	560	38	294	92
	0.48*510		3326	2B	/													
	0.48*585		4106	2B	/													
A215433	0.48*585		4010	2B	/	0.140	0.464	9.480	0.031	0.001	0.780	14.400	0.660	J3	575	36	290	94
	0.48*585		4524	2B	/													
	0.48*585		3826	2B	/													
A215434	0.38*387		2698	2B	/	0.149	0.470	9.470	0.038	0.002	0.760	14.090	0.680	J3	555	35	294	93
	0.38*465		2632	2B	/													
	0.38*510		3712	2B	/													
A215435	0.38*585		4312	2B	/	0.139	0.466	9.450	0.035	0.002	0.740	14.100	0.690	J3	560	37	294	90
	0.38*585		3994	2B	/													
	0.38*585		4096	2B	/													
A215436	0.48*460		2624	2B	/	0.147	0.467	9.380	0.039	0.003	0.770	14.210	0.650	J3	570	36	296	92
	0.38*410		2323	2B	/													
	0.33*585		3810	2B	/													
A215437	0.33*79*8		4603	2B	/	0.145	0.468	9.350	0.037	0.002	0.750	14.320	0.670	J3	560	38	292	93
	0.33*79*8		3518	2B	/													
	0.3*510		3092	2BA	/													
	0.3*360*2		5090	2BA	/													
	0.38*485		3706	2B	/													
			82408															
Inspector: ZAYDEN																		

B. Sample MTC/MTR in respect of Supplier M/s. Foshan Juli Steel Co. Ltd, China:

佛山市聚力钢业有限公司 FOSHAN JULI STEEL CO.,LTD ADD: HUIQUAN TECHNOLOGY INDUSTRY CENTER, SHISHAN,NANHAI, FOSHAN, CHINA 产品质量证明书 INSPECTION CERTIFICATE														
订货单位 Order unit	AVN COMMODITIES PVT. LTD													
收货地点 Receiving place	23-24, TIRTH INDUSTRIAL PARK,VILL: PALDI KANKAJ ,AHMEDABAD DHOLKA ROAD,Gujarat-382425,IEC No. 08110-14665													
产品名称 Product	NON MAGNETIC STAINLESS STEEL COLD ROLLED COILS													
TYPE	Grade J3													
证书号 Certificate No	ZCD5877													
发票号 Invoice No.:	AVN002-3													
发票日期 Invoice Date:	Oct. 27th, 2022													
炉号 HEAT NO.	规格 (厚度x宽度)	重量	化学成分 Chemical Composition, Wt%								Mechanical Test			
Heat No	Size(MM)	Weight (KGS)	C	Si	Mn	P	S	Ni	Cr	Cu	T.S(Rm) N/m ²	Elongation (%)	Y.S(Rp)0.2 % N/m ²	Hardness
10-009B	0.3*510/BA	3462	0.142	0.461	9.535	0.037	0.002	0.782	14.19	0.677	553	37	293	97
09-136A	0.3*510/BA	4206	0.141	0.463	9.531	0.038	0.003	0.787	14.15	0.672	556	36	296	90
09-136B	0.3*510/BA	4174	0.131	0.465	9.576	0.032	0.001	0.787	14.08	0.642	565	37	281	91
RLYJ2209006-1	0.43*550/BA	3504	0.137	0.464	9.573	0.034	0.003	0.788	14.07	0.635	563	37	286	91
RLYJ2209006-2	0.43*550/BA	3680	0.141	0.461	9.535	0.037	0.002	0.782	14.19	0.677	553	38	293	97
102566-1	0.45*650/2B	4189	0.143	0.462	9.501	0.036	0.001	0.792	13.95	0.630	566	39	286	93
102566-2	0.45*650/2B	4171	0.136	0.467	9.531	0.041	0.002	0.761	14.12	0.686	556	38	292	95
TOTAL		27386												
附注 Remarks: 1、尺寸公差 Size tolerance:合格 OK 2、表面质量 Surface quality :合格 OK 1、兹证明所列产品经检验均符合合同和标准要求。 The material listed above has been tested and complies with the terms of the contract & The standard 2、产品实验包括化学成分分析 Product experiments include chemical analysis 3、本证明书需盖章生效，复印无效。 This certificate needs to be put into effect by the official seal, and the copy is invalid 4、如有质量异议，请来电来函说明情况，并告知质量证明书编号。 If any quality query please clarify Via phone call of fax, indicating the certificate numbet.														



Examination of the above Mill Test Certificates (MTC) uploaded by M/s ACM; issued by the overseas suppliers, for “Cold Rolled Stainless Steel strips/ Coil Grade J3”, contained Nickel content less than 1.5% and Chromium is less than 16% which in comparison with the chemical composition of Austenitic Stainless Steel of Nickel Chromium type is much less. Therefore, Cold Rolled Stainless Steel of J3 grade cannot be classified as Nickel Chromium Austenitic type.

4. Examination of Statements recorded under Section 108 of the Customs Act, 1962:

During the course of investigation, the statements of responsible/authorized persons of “M/s AVN” and concerned CHA/CB were recorded under Section 108 of Customs Act, 1962. The gist of their statements is below:

S. No.	Name of Proprietor of firm/Authorized Signatory of CHA/Customs Broker	Dt. of Statement
1	Shri Anand Netanand Choudhary, Director of “M/s AVN”	23.01.2023 ,21.03.2023 and 07.02.2024
2	Shri Rajan A M , Partner of M/s Suraj Forwarders and Shipping Agencies	22.06.2023

4A. Shri Anand Netanand Choudhary, Director of “M/s AVN” in his voluntary statements recorded under Section 108 of the Customs Act, 1962 stated that:

- his firm “M/s AVN” engaged in manufacturing of stainless-steel utensils for domestic sale and for export; “M/s AVN” imported “Cold Rolled Stainless Steel Coil/strips J3 grade” from China and also “stainless steel scrap/ingots” from Vietnam; they also used to sell the imported goods in local market. He further stated that their Major Chinese Suppliers are Yong Metals, China, JBL Metal Limited and Mamba Trading Co in Hong Kong, Huaye International Development (HK) Limited, Hong Kong etc.
- that he decided the classification of the imported goods i.e. “Cold Rolled Stainless Steel strips/ Coil Grade J3” under CTH 72209022 (*the same has been confirmed by Shri Rajan A. M, Partner of M/s Suraj Forwarders and Shipping Agencies in his voluntary statement*); that he knew that Government is providing SAPTA concessional benefit in import of ‘Nickel Chromium Austenitic Type’ under CTH 72209022 @ 45% of applied rate of Customs duty, under Notification no. 50/2018 dated 30.06.2018;
- He further stated that on the basis of CTH mentioned in the Country of Origin Certificate (COO) received from Chinese supplier, he used to classify “Cold Rolled Stainless Steel strips/ Coil Grade J3” under CTH-72209022 to avail SAPTA benefit under Notification 50/2018-Cus dated 30.06.2018.
- That “M/s AVN” started to classify the imported goods under CTH-72209022 instead of 72209090 to avail further concession of 45% on Customs duty under notification no.50/2018 dated 30.06.2018. He further stated that other Director in “M/s AVN” is his younger brother who works as per his directions.
- that “Cold Rolled Stainless Steel strips/Coil Grade J3” is a low quality alloy of Stainless Steel consisting of Nickel below 1%, Copper below 1%, Chromium below 15%, Manganese Below 9% and rest of the portion is iron;
- On being shown the copy of Custom Tariff Chapter-72, Section -XV and Stainless Steel Plate, Sheet and Strip specification (first revision)” issued by Bureau of Indian standards (IS 6911:1992)- (prescribing Chemical Composition for “201-International grade” as 3.5-5.5 percentage of Nickel and 16-18 %, he acknowledged that “Cold Rolled Stainless Steel strips/ Coil Grade J3” should not be classified under CTH-72209022 and should have been classified under CTH 72209090 or 72209029; and due to the low Nickel contents of goods that are not Nickel Chromium Austenitic Type. He also put his dated signature on each page of Custom Tariff Chapter-72, Section -XV & “Stainless Steel Plate, Sheet and Strip specification (first revision)” issued by Bureau of Indian standards (IS 6911:1992), as a token of having seen and understood the same.
- On being asked about the reason why the classification of “Cold Rolled Stainless Steel J3 Grade (Ex-Stock) or Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)” under CTH-72209022 was discontinued after November, 2022, he stated that on suggestion of Mr. Anurag, Branch Manager of CHA M/s Suraj Forwarders & Shipping Agencies., Mundra, he stopped classifying the “Cold Rolled Stainless Steel strips/ Coil Grade J3” under CTH-72209022 and started to classifying it under CTH 72209090/ 72202090.
- He further stated that “stainless-steel coil” imported by his firm is “cold-rolled stainless steel coil” (less than 600MM), which is produced by taking hot rolled steel and letting it cool to room temperature and then passing it through a series of rollers. Thus, it goes through processing of Hot Rolling and Cold Rolling both.
- That “Stainless-steel coil” imported by his firm are used for manufacturing of utensils.
- That by going through the above that as imported goods are manufactured by

both Hot Rolling and Cold Rolling, therefore they shall be classified under subheading of “others” in CTH 7220, i.e. 7220 90. Further, within the sub-heading 7220 90, there are further categories based on the shape of goods (i.e. skelp or strips) and end use (i.e. used for pipes and tubes). In the instant case the goods imported are in Strip form and suitable for manufacturing of utensils not for pipes and tubes. Therefore, they shall be classified under CTH 7220 9090 of “others” category of CTH 7220 90.

4B. Shri Rajan A M, Partner of M/s Suraj Forwarders and Shipping Agencies” in his voluntary statement dated 22.06.2023 recorded under Section 108 of Customs Act, 1962 stated that:

- that the decision to classify the imported goods under CTH 72209022 was taken on directions of Shri Anand Netanand Choudhary, Director of “M/s AVN”, who, claimed the CTH-72209022 based on Preferential Certificate issued by the supplier;
- Further, in the consignments where “M/s AVN” did not have the Preferential Certificate, they preferred to classify imported goods i.e. “Cold Rolled Stainless Steel J3 Grade (Ex-Stock) or Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)” under CTH-72209029-Others.
- He further admitted that goods imported i.e. “J3 Grade” is low standard stainless steel having low value of Nickel (below 1.5%) and Chromium.

5. Outcome of the Investigation:

On Examination of Mill Test Certificates as discussed in Para 3 supra and Statements recorded in Para 4, it is ascertained that “M/s AVN” imported goods i.e. “Cold Rolled Stainless Steel strips/ Coil grade J3” which do not contain Ni and Cr as prescribed under IS 6911:1992 do not merit classification under Tariff heading of Austenitic Stainless Steel of Chromium and Nickel type. Further, these cold-rolled stainless steels are gone through Hot Rolling and Cold Rolling both, therefore based on its manufacturing processes, these coils appear to be classifiable under subheading of “7220 90 -other” under heading 7220.

Now, within the sub-heading “7220 90 -other”, further classification is based on shape of the imported goods (i.e. skelp or strips) and its end use (i.e. used for pipes and tubes). In the instant matter the goods imported are in Strip form and suitable for manufacturing of utensils only, as stated by the importer in his voluntary statement recorded under Section 108 of the Customs Act 1962. Therefore, the imported goods appears to be further classifiable under CTH 7220 9090 - “other” category of CTH 7220 90. Thus, the correct classification of the impugned goods i.e. “Cold Rolled Stainless Steel strips/Coil grade J3” appears to be under CTH 7220 9090 and not under CTH 7220 9022, as declared by the importer.

Further, concessional rate of Basic Customs Duty as availed by the

importer under S. No.734 of Notification No.50/2018-Customs dated 30.06.2018 available for Austenitic Stainless Steel of Chromium and Nickel type under CTH 7220 9022, appears not available for the impugned imported goods i.e. “Cold Rolled Stainless Steel strips/Coil grade J3” as the same have been re-classified under its correct CTH 7220 9090. Therefore, benefit of concessional rate of Basic Customs Duty availed by the importer under S. No.734 of Notification No.50/2018-Customs dated 30.06.2018 appears to be taken incorrectly.

6. Calculation of Differential Duty:

Scrutiny of records and investigation conducted revealed that during the period from 01.01.2020 to 31.12.2022 the importer “M/s AVN” imported/cleared consignments of “*Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)*” having Assessable value of Rs. 9,05,55,983/-, by classifying the same under CTH 7220 9022 and claimed SAPTA benefits under Notification no. 50/2018 dated 30.06.2018 (S.No.734). The differential duty on account of such imports has been worked out as under:

Table-A

Year	Assessable Value (in INR)	Customs Duty short paid (in INR)
2020	4592836.27	201200.6749
2021	69997810.07	3066429.065
2022	15965336.98	699401.4998
TOTAL	9,05,55,983/-	39,67,031/-

7. Voluntary Payment against differential Customs Duty:

During the course of investigation, the importer “M/s AVN” has voluntarily made part payment of differential duty arose due to mis-classification of goods imported by them, amounting to Rs.10,00,000/- vide DD No. 005895 dated 06.03.2023 which has been deposited to the Govt. Exchequer vide TR-6 Challan No.89 dated 12.04.2023.

8. Applicability of Sec 28(4) of the Customs Act, 1962 and Role Played:

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In the present case, it is evident that the actual facts about the impugned goods i.e. end use of goods, whether for pipes and tubes or utensils manufacturing etc. were only known to the importer and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI, HQ. From the aforesaid, it appears that the importer had knowingly and deliberately indulged in suppression of facts and wilfully misrepresented/mis-stated the material facts in contravention of the provisions of Section 46(4) of the Customs Act, 1962 read with other provisions mentioned at para 7 above; that the “Cold

Rolled Stainless Steel strips/Coil Grade J3” are rightly classifiable under CTH 7220 9090. In terms of Section 46(4) of Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. For these contraventions and violations, the goods fall under the ambit of ‘smuggled goods’ within the meaning of Section 2(39) of the Customs Act, 1962, and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

9.1 It further appears that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by “M/s AVN” before the Customs authorities, was done on the directions of Shri Anand Netanand Choudhary, Director of “M/s AVN”. Shri Anand Netanand Choudhary, Director of “M/s AVN” was aware that the consignments, imported by “M/s AVN” were actually Cold Rolled Stainless Steel/strips Coils falling under CTH 7220 9090, which is evident from his voluntary statements recorded before the DRI, HQ. Further, “M/s AVN” received the Mill Test Report (MTC), wherein the elemental composition of Stainless Steel was given as per the compositions of Stainless Steel under CTH 72209090 but Shri Anand Netanand Choudhary, Director of “M/s AVN” instructed Customs Broker to file the Bills of Entry under CTH 72209022 to avail concessional benefits illegally under Notification No. 50/2018-Customs dated 30.06.2018(S.No.734), which was otherwise not available for the impugned goods.

9.2 In addition to above, it is pertinent to mention here that initially “M/s AVN” was classifying the impugned goods i.e. “*Cold Rolled Stainless Steel strips/Coil Grade J3*” under CTH 72209022 in order to claim the undue duty benefits, however, later on they started classifying these goods under CTH 72209090, but neither preferred to intimate the same to Customs Authorities, nor paid differential Customs Duty voluntarily. This clearly suggests that “M/s AVN” and associated persons knowingly and intentionally committed acts of mis-declaration and mis-classification to avail ineligible benefits illegally, in contravention of the provisions of the Customs Act, 1962 as mentioned in Para 7 above.

9.3 All the aforesaid acts of omissions and commissions on the part of Shri Anand Netanand Choudhary, Director of “M/s AVN” have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and/or (b) of the Customs Act, 1962. Further, acts of Shri Anand Netanand Choudhary, Director of “M/s AVN” that he had knowingly and intentionally prepared/got prepared; signed/got signed and used the declaration, statements and/or documents; presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual

classification of the imported goods, has therefore, rendered himself liable for penalty under section 114AA of the Customs Act, 1962. Shri Anand Netanand Choudhary, Director of “M/s AVN” has also violated the provisions of Section 17 and Section 46 of the Customs Act, 1962. Therefore, the duty not paid/short paid is liable to be recovered from “M/s AVN” by invoking the extended period of five years as per Section 28(4) of the Customs Act, 1962, in as much as the duty is short paid on account of wilful mis-statement as narrated above.

9.4 Further, Shri Rajan A M, Partner of M/s Suraj Forwarders and Shipping Agencies (CHA) who was the authorized Customs Broker and filed Bills of Entries for “M/s AVN” also assisted “M/s AVN” in mis-classification of the imported goods as Austenitic Stainless Steel of Chromium and Nickel type under CTH 72209022 to avail in-eligible benefits under S. No.734 of Notification No.50/2018-Customs dated 30.06.2018.

In addition, Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies (Customs Broker) failed to examine the description and classification of the imported goods thoroughly vis-à-vis documents provided by the importer viz. Mill Test Certificates etc.). Moreover, Shri Rajan A. M., admitted in his voluntary statement that the imported goods i.e. “J3 Grade” were of low standard stainless steel having low value of Nickel (below 1.5%) and Chromium. Therefore, even after being aware in advance, he failed to fulfil his duties and obligations under provisions of Section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2018 (CBLR, 2018). Thus, Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies (CB) also rendered himself liable to penalty under the Customs Act, 1962 read with of the CBLR, 2018.

10. The Port/ICD/SEZ wise details of the impugned goods i.e. “*Non-magnetic Cold Rolled Stainless Steel J3 Grade (Ex-Stock)*” by “M/s AVN” (IEC No.0811014665) by suppressing the description and Classification of the goods, along with assessable value and Differential Duty calculated is as detailed below:

Table-B

Sr. No.	Bills of Entry No. & Date	Ports / ICDs/ SEZ of imports	Assessable Value of goods imported (Rs.)	Customs Duty Short paid/ to be recovered (Rs.)	Competent Authority at Port of Imports
1	As shown in Annexure-A to the	Mundra port (INMUN1), Gujarat	8,12,60,802	35,59,833	Additional Commissioner O/o the Principal Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra,

	notice				Kutch
2	As shown in Annexure-B to the notice	ICD Sabarmati (INSBI6), Ahmedabad, Gujarat	92,95,182	4,07,199	Assistant Commissioner O/o the Principal Commissioner of Customs, New Custom House, Nr. All India Radio, Ahmedabad
Grand Total			9,05,55,983/-	39,67,031/-	

10.2 Accordingly, the differential Customs duty amounting to Rs. 39,67,031/- in respect of the imports made at various Ports/ICD's viz. Mundra port (INMUN1) & ICD SABARMATI (INSBI6) as indicated in Annexure-A & B to the SCN (Rs. 35,59,833/- in respect of the imports at Mundra port (INMUN1) as detailed in Annexure-A and Rs. 4,07,199/- in respect of the imports at ICD SABARMATI (INSBI6) as detailed in Annexure-B), is liable to be recovered from the importer "M/s AVN", under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

11.1 Accordingly, Show Cause Notice F.no. Gen/Adj/ADC/1198/2024-Adjn-O/o Pr Commr-Cus-Mundra dated 20.02.2025 issued to M/s. AVN Commodities Private Limited" (IEC-0811014665), wherein they were called upon to Show Cause in writing to the Additional Commissioner of Customs O/o the Principal Commissioner of Customs, Custom House, Mundra as to why:

i) the impugned goods valued at Rs. 9,05,55,983/- (Rs. Nine Crore Five Lakhs Fifty-Five Thousand Nine Hundred Eighty Three only) as per Column No. 4 of the Table-B in Para 10 and as detailed in Annexure-A and B attached to this SCN, should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962; however, the same have been cleared and are not physically available for confiscation.

ii) The classification of the impugned goods under CTI 72209022 should not be rejected and the same should not be re-classified under CTI 7220 9090.

iii) The benefits of Serial No. 734 of Notification No. 50/2018-Customs dated 30.06.2018 (detailed in Annexure-A) as claimed on the impugned goods should not be rejected and the subject Bills of Entry should not be re-assessed without any notification benefit.

iv) the differential Customs duty amounting to Rs 39,67,031/- (rupees Thirty Nine Lakhs Sixty seven thousand thirty one only) as per Column No.5 of the Table in Para 10 above and as detailed in Annexure-A & B attached to this SCN, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the act ibid;

v) Differential duty amounting to Rs. 10,00,000/- (Ten- Lakh Only)

voluntarily paid by “M/s AVN Commodities Private Limited”, should not be appropriated towards their Duty Liabilities mentioned at point no. iv above;

vi) Penalty should not be imposed upon “M/s AVN Commodities Private Limited” under the provisions of Section 112(a) and/or 112(b) and/or 114AA and/or Section 117 of the Customs Act, 1962 for their act of omissions and commissions as discussed in foregoing paras.

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11.2 Vide SCN dated 20.02.2025, Shri Anand Netanand Choudhary, Director of M/s. AVN Commodities Private Limited” was called upon to Show Cause in writing to the Additional Commissioner of Customs, Custom House, Mundra Port, as to why:

- i. Penalty should not be imposed upon Shri Anand Netanand Choudhary, Director of “M/s AVN” under Section 112(a) and/or 112(b) and/or 114AA and/or 117 of the Customs Act, 1962 separately for his act of omissions and commissions and role played, as discussed in para supra.

11.3 Further vide SCN dated 20.02.2025, “Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping”, authorized Customs Broker, was called upon to Show Cause in writing to the Additional Commissioner of Customs, Custom House, Mundra Port as to why:

- i. The Penalty should not be imposed under Section 112(a) and/or 112(b) and/or 114AA and/or 117 of the Customs Act, 1962 read with the Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) separately for his act of omission and commission and role played, as discussed in the foregoing paras.

12. Written Submissions:-

12.1 M/s. AVN Commodities Private Limited submitted their reply dated 18.04.2025 wherein they have, *inter alia*, submitted that:

12.1.1 The Noticee submitted that there is no substance in the allegations leveled in the show cause notice because we have rightly declared and classified the goods under CTH 7220 9022 as the goods imported by us are rightly classified as Nickel chromium austenitic type stainless steel. Further, we are entitled to claim concessional rate of duty under Entry No. 734 of Notification No. 50/2018-Customs dated 30.06.2018 because the goods are Nickel chromium austenitic type stainless steel falling under CTH 7220 9022. Moreover, the allegations of suppression of facts with the intent to evade duty are also bogus and unfounded because the goods were classified in accordance with the Country of Origin Certificate (COO) received by us from Chinese supplier wherein it was clearly mentioned that the goods are classifiable under

CTH 7220 9022 and eligible for SAPTA benefit under Notification No. 50/2018-Customs dated 30.06.2018. The show cause notice has invoked extended period of limitation, but demand for extended period of limitation is unsustainable in the facts of the present case. The entire case made out against us regarding misclassification and mis-declaration is without any basis and the show cause notice deserves to be withdrawn in the interest of justice.

12.1.2 The Noticee submitted that issue that whether stainless steel having less amount of Nickel and chromium is covered under CTH 7220 902_2 is already decided by the Hon'ble Tribunal in identical case of M/s. Shah Foils Ltd. vs. C.C. - Mundra reported in **2024 (5) TMI 336 - CESTAT AHMEDABAD**. In this case, the importer had imported "Hot/Cold Rolled Stainless Steel Coils Grade 13" and classified under CTH 7220 90 22 claiming benefit of SI. No. 734 of the Notification No. 50/2018-Cus dated 30.06.2018. It was the case of the department that imported goods did not have the sufficient amount of nickel content to be classified as Nickel-Chromium Austenite Steel. According to department, to qualify as nickel austenitic stainless steel the nickel content should be ranging from 4.5% to 12%. Since in the present case nickel content is approx. 1%, according to department imported goods are not nickel austenitic stainless steel. The Hon'ble Tribunal referred to Indian Standard IS 15997: 2012 and also to E-mail clarification given by India Stainless Steel Development Association and held that in austenitic stainless steel, the Nickel content can vary as low as 0.2% to 14%, whereas in the said case, the goods contain 1.010-1.060% and Chromium was 2.5% and therefore, it was clearly in compliance to the specification for classifying the product as "Austenitic Nickel Chromium stainless Steel". The Hon'ble Tribunal held that even low content Nickel in Stainless Steel would also fall under Austenitic Stainless Steel and correctly classifiable under Chapter Tariff Heading 7220 9022 as Nickel Chromium Austenitic Type. On limitation, the Hon'ble Tribunal held that the entire case is based upon Mill Test Certificate or the documents produced by the assessee. The Nickel content was very much available in the Mill Test Certificate, therefore there is no suppression on the part of the assessee. Since the case was made out on the basis of Nickel content which was available before the department, the department could have taken the action within the normal period. The Hon'ble Tribunal held that the entire demand is time barred in the said case. The Noticee submitted that the above decision rendered by the Hon'ble Tribunal in case of Shah Foils (Supra) is squarely applicable in the facts of the present case because in the present case also, the entire basis of demand is that goods imported by us are not having sufficient amount of Nickel and Chromium. However, as the Hon' ble Tribunal has held in the above case that in austenitic stainless steel, the Nickel content can vary as low as 0.2% to 14% and that less amount of Nickel or Chromium cannot be the basis to hold that the goods are not covered under Chapter Tariff Heading 7220 9022 as Nickel

Chromium Austenitic Type. Moreover, in the present case also, the demand is entirely time barred as the imports have been taken place during 01.01.2020 to 31.12.2022, whereas the show cause notice has been issued to us on 18.02.2025. Therefore, the entire demand is time barred. In view of the above decision, we submit that the demand proposed in the present show cause notice deserves to be dropped in the interest of justice.

12.1.3 The Noticee submitted that the Country of Origin certificates provided by the suppliers clearly mentioned that the goods are classified under CTH 7220 9022. In fact, all the documents provided by the suppliers in relation to these goods clearly provided that the goods have been classified from the supplier's end under CTH 7220 9022. Therefore, the appellant had also classified the goods under CTH 7220 9022 and claimed the benefit of the concessional rate of duty under Sr. No. 734 of Notification No. 50/2018-Customs dated 30.06.2018. For reference, the specimen Country of Origin certificates along with connected bill of lading and other documents are enclosed and marked as **ANNEXURE - "1"(Colly)**. It is not the case of the department that documents like COO, bill of lading, packing list etc. provided by the supplier were having a description and classification of the goods different than what the appellant has mentioned in the Bills of entry while importing the goods into India. In fact, the above COO certificates submitted by us clearly shows that the supplier has classified the goods under CTH 7220 9022 because the goods are Nickel Chromium Austenitic Type stainless steel. The show cause notice has not alle.ged that we have asked the suppliers to change the classification in the COO or other documents like bill of lading and it is also not alleged that the COO was forged or manipulated. In the absence of any of such allegations, the revenue cannot hold that we have intentionally misclassified the goods under CTH 7220 9022 to claim benefit of exemption notification. Also, we could not have changed the classification of the goods from recipient end when the supplier's documents clearly show that the goods are classifiable under CTH 7220 9022. Further, the concessional rate of duty under Sr.No. 734 of Notification No. 50/2018-Customs ddted 30.06.2018 is applicable for the goods falling under CTH 7220 9022, and therefore, we have rightly claimed the benefit of concessional rate of duty under the said notification. We submit that there is no substance in the allegations leveled in the show cause notice and therefore, the show cause notice issued to us deserves to be withdrawn and the proposals leveled in the show cause notice deserve to be dropped in the interest of justice.

12.1.4 The Noticee submitted that while issuing the show cause notice, the revenue has lost sight of IS standard 15997: 2012 which is standard for nickel austenitic stainless steel and according to the chemical composition of nickel austenitic stainless steel in terms of this standard, percentage of Nickel

in low nickel austenitic stainless steel may vary from 0.20% to 0.95%. Thus, there is no straightjacket formula for the nickel austenitic stainless steel that it must contain nickel above 3.5% and IS 6911: 1992 only does not prescribe the parameters of nickel chromium austenitic stainless steel. Therefore, the show cause notice has not considered the fact that even the low volume of Nickel in nickel chromium austenitic stainless steel does not take away the nature of goods and goods still remain nickel chromium austenitic stainless steel and are classifiable under CTH 7220 9022. Therefore, the entire basis of the show cause notice is illusive and incorrect and the allegations leveled in the show cause notice deserve to be withdrawn on this ground alone.

Factual infirmities in the notice

12.1.5 The Noticee submitted that there are certain factual infirmities in the show cause notice because some of the bills of entry which are already assessed to full rate of duty were also taken into consideration while calculating the demand of differential duty in the show cause notice. Also a canceled bill of entry against which no imports have been made by us was also taken into consideration while demanding duty in the present show cause notice.

Errors in annexure - A of the show cause notice :

- a. We would like to refer to "Annexure-A" of the show cause notice in which details of certain nos. of bills of entry are given and differential duty of Rs. 35,59,382.57 /- has been calculated. We submit that in this Annexure-A, duty demand against following bills of entry is also taken into consideration:
 - A. B/E No. 3832510 dated 05/05/2021
 - B. B/E No. 7161857 dated 20/01/2022
 - C. B/E No. 6984673 dated 07/01/2022

b} The Noticee submitted that against the above bills of entry, we have already discharged customs duty at full rate without availing the benefit of the exemption Notification No. 50/2018-Customs. Therefore, the show cause notice has wrongly mentioned these bills of entry in the Annexure-A of the show cause notice and wrongly demanded differential duty against the said bills of entry. Copies of the above bills of entry are enclosed marked as **ANNEXURE** - "II".

c} There is another infirmity in the Annexure-A of the show cause notice that the bill of Entry No. 4438109 dated 24.06.2021 has also been taken for calculating the differential amount of customs duty whereas this bill of entry was canceled by the department in view of the fact that the supplier has sold these goods to another importer in India and the bill of entry filed by us was canceled by the department in the absence of original documents being available with us.

d) In this connection, the office of Principle Commissioner of Customs, Mundra had issued us a letter dated 05.08.2021 and informed us that another importer namely M/s. Goel Exim, Delhi had approached their office with the original documents related to the imported goods and requested the department to allow clearances of these goods to the said importer. Since, we were not in possession of the original import documents and goods were subsequently sold by the supplier to another importer, the bill of entry filed by us was canceled by the Customs Department and therefore we are not liable to pay deferential duty against this bill of entry.

e } The Noticee submitted that when the goods were not cleared for home consumption by us against the said bill of entry, and the goods are actually cleared for home consumption by another importer, we cannot be held reliable for payment of differential Customs duty.

Therefore, the demand of Customs duty against bill of Entry No. 4438109 dated 24.06.2021 deserves to be discarded and deserves to be dropped in the interest of justice. A copy of the letter dated 05.08.2021 issued by the office of Principle Commissioner of Customs, Mundra is enclosed and marked as **ANNEXURE-"III"**.

- f. The Noticee like to point out the Customs department had initially issued us a letter dated 21.07.2022 in respect of one Bill of Entry being B/E No. 4523422 dated 01.07.2021 (Qart of annexure - B of the show cause notice) wherein the allegation was that we had wrongly claimed the benefit of exemption Notification No. 50/2018-Customs under Serial No. 734 by classifying the imported goods namely "Non magnetic cold rolled stainless steel strips/coils Grade J3 (Ex-stock)" under CTH 7220 9022. According to the department, instead of Serial No. 734 of the notification, the goods imported by us were classifiable under CTH 7220 9029 and we were entitled to claim exemption only under Serial No. 735 of the notification. It was the case of the department that the exemption @ 15% under Serial No. 735 was admissible to us and not under Serial No. 734 which provides for exemption @45%. Accordingly, it was alleged that the basic customs duty paid @ 4.12% was incorrect and the basic customs duty actually payable was @ 6.38% by applying 15% abetment under the notification.
- g. However, in the show cause notice, the revenue has calculated the duty@ 7.5% (BCD) which is otherwise inconsistent with the earlier letter dated 21.07.2022 issued by the department in respect of the same goods. On one hand, the revenue has granted the exemption under serial no. 735 of the notification by holding that the goods are classifiable under CTH 7220 9029, and on the other hand, show cause notice has alleged that the goods are classifiable under 7220 9090 and exemption is not available under the notification no. 50/2018 - Cus. Therefore, there is a clear error in the show cause notice regarding classification of the goods as well as the applicability of the exemption notification.
- h. Be that as it may, duty liability in any case can be at the rate of 6.375% (BCD) and not @7.5% as per the revenue's own case as is mentioned in the letter dated 21.07.2022. In the present case, wherever, we have paid BCD at full rate, we have paid BCD at@ 7.5% BCD as demanded by the department at the time of filing bill of entry, dnd therefore, we are entitled to get the amount so paid in

excess returned to us as per the department's own calculation of duty communicated to us vide letter dated 21.07.2022. In respect of the other bills of entry in which the exemption @ 45% is claimed under serial no. 734 of the notification, even if any differential duty is payable, it has to be calculated @ 6.375% (BCD). Therefore, the calculation of demand proposed in the show cause notice is incorrect and illegal.

Copy of letter dated 21.07.2022 issue to us by the Customs department, ICD Khodiyar, Ahmedabad is enclosed and marked as **ANNEXURE - "IV"**. We are also enclosing our working in form of a statement in relation to the demand proposed under "Annexure-A" of the show cause notice which is enclosed and marked as **ANNEXURE- "V"**.

Errors in annexure - B of the show cause notice :

- i. The show cause notice has provided Annexure - "B" in which differential duty has been calculated and proposed to be demanded from us against the imports made at ICD Sabarmati. In this annexure, the customs duty of Rs. 4,07,199/- has been calculated and proposed to be recovered against two bills of entry being B/E No. 4523422 dated 01.07.2021 and B/E No. 9026312 dated 01.10.2020.
- j. We submit that against B/E No. 4523422 dated 01.07.2021, a total quantity of 7.252 Metric Tons was imported under advance authorization having License No. 0811001518 and no duty was paid by us as these goods imported by us were used in the manufacture of the goods exported by us. We have also fulfilled the export obligation against this advance authorization. Therefore, the show cause notice could not have assumed that this partial quantity of goods imported against the said bill of entry was having claim of exemption under serial no. 734 of Notification No. 50/2018-Customs and no demand of duty can be raised against the said quantity imported by us against B/E No. 4523422 dated 01.07.2021.
- k. For the remaining quantity of 34.508 MTs, the department had issued us the letter dated 21.07.2022 wherein the department had calculated the short levy of duty totaling to Rs. 4,69,692/- along with interest. Pursuant to this letter, we have already paid amount of duty liability of Rs. 91,556/-, Rs.10,855/- and Rs.9,353/- vide challan No. 2041834657 dated 30.12.2022. Thus, we have already paid the amount of duty along with interest as communicated to us by the department vide letter dated 21.07.2022 and the recovery of differential duty again for the same bill of entry is not permissible under law. We are submitting documents related to import of goods made under advance authorization, letter dated 21.07.2022 issued by customs, copy of challan dated 30.12.2022 and reconciled statement of "Annexure - B" which are enclosed as marked **ANNEXURE - "VI" (Colly)**.
- l. In view of the above, The Noticee submitted that no differential duty demand can be proposed against us in respect of bill of entry No. 4523422 dated 01.07.2021 as partial quantity of goods were imported against advance authorization and the duty on remaining quantity is already discharged along with interest. Therefore, the demand of differential duty in the respect of bill of entry dated 01.07.2021 deserves to be dropped in the interest of justice.

m) As regards to the B/E No. 9026312 dated 01.10.2020, we have paid IGST in excess of what is required to be paid even if full rate of basic customs duty is charged on the goods. We submit that against the assessable value of Rs. 45,92,836.27 /- , BCD if charged @7.5%, still we have paid excess IGST of Rs. 1,32,430.85/- and if the exemption notification is available to us and we are required to pay BCD @4.5%, then the excess IGST paid comes to Rs. 1,62,122/- . Thus, the show cause notice has not considered this relevant fact that the IGST on import was already paid in excess which ought to have been adjusted even if BCD is demanded at full rate of 7.5%. Therefore, there is a clear error which has crept in while issuing the show cause notice to us.

In view of the above infirmities pointed out, The Noticee submitted that the show cause notice has been issued on wrong appreciation of facts and therefore, the show cause notice demanding duty deserves to be dropped in the interest of justice.

12.1.6 The Noticee submitted that the demand of differential duty is otherwise barred by the limitation of time because the present case is related to the classification of the goods and applicability of the exemption notification. It is important to note that even the departmental officers were not clear on the classification of the goods imported by the appellant which is clear from the letter dated 21.07.2022 issued by the customs department to us. In the letter dated 21.07.2022 issued from the office of Deputy Commissioner of Customs, ICD Khodiyar, It was case of the department that the goods are classifiable under CTH 7220 9029 but in the show cause notice, the department has alleged that goods are classifiable under completely new chapter heading i.e. CTH 7220 9090. In the letter dated 21.07.2022, the revenue's case was that we are entitled to the benefit of exemption notification 50/2018 under Serial No. 735 which provides abetment of 15%. However, in the present show cause notice, the department has alleged that we are not entitled to claim benefit of exemption notification under any of the serial no. provided under the said notification. Therefore, there is a clear case of confusion regarding classification and applicability of exemption notification and in such circumstances, it cannot be assumed that we have intentionally misclassified the goods or mis-declared anything while importing the said goods. Therefore, the extended period of limitation is otherwise not invocable in the facts of the present case and the demand which is barred by the limitation of time deserves to be dropped in the interest of justice.

12.1.7 Without prejudice to the aforesaid submissions that the goods imported by the appellant are Nickel Chromium Austenitic Type stainless steel falling under CTH 7220 9022, we submit that the demand of duty is barred by the limitation of time because the entire case is based on the Mill Test Reports which have been reproduced at para 38 of the show cause notice. On the basis

of these Mill Test Reports, the case has been made out against us that according to Mill Test Reports, the cold rolled stainless steel strips/coil grade J3 imported by us contained less than 1.5% Nickel and Chromium less than 16% which is less than minimum range of Nickel and Chromium as per IS 6911: 1992.

- b. We submit that the entire case is made out on the basis of Mill Test Reports which were available with the department even at the time when the goods were imported by us. The appellant had submitted Mill Test Reports and other documents like Origin certificates etc. at the time of import and the imports were allowed by the customs officers at the charge of port at the time of clearance of goods for home consumption. No new evidence has been brought on record in the show cause notice to prove that we had intentionally suppressed any material information with intent to evade payment of duty. Since the case is made out on the basis of Nickel content which was available before the department, the department could have issued show cause notice within the normal period. In these facts, since no suppression of fact is there and the show cause notice has been issued beyond two years from the import, the entire demand is time barred. The Hon'ble Tribunal in case of M/s. Shah Foils Ltd. vs. C.C. - Mundra reported in **2024 (5) TMI 336 - CESTAT AHMEDABAD** in identical case has held that extended period of limitation cannot be invoked in case where the mill test report was available with the department even at the time of import and the entire case was based on such Mill Test Report. Therefore, we submit that in the facts and circumstances of the present case, the demand is time barred and the show cause notice deserves to be withdrawn in the interest of justice.
- c. We also submit that the show cause notice has not disputed the fact that we have correctly described the goods as "Non magnetic Cold rolled stainless steel strips/coils Grade J3 (Ex-stock)" in the bills of entry and there is no allegation regarding wrong declaration of value of the goods. Thus, by giving the correct description on the documents relating to import clearance, we have discharged the burden of making correct declaration on the Bill of Entry. Hence any error in classification or the exemption claimed on Bill of Entry cannot be mis-declaration with the intention to evade payment of duty for the purpose of invoking extended period of limitation. Hence demand proposed by invoking extended period of limitation needs to be withdrawn in the interest of justice. In this regard, we rely upon the decision of Sirthai Superware India Ltd. vs. Commr. of Customs, Nhava Sheva-111 reported in **2020 (371) E.L.T. 324 (Tri. - Mumbai)** wherein the Hon' ble Tribunal held that the assessee had correctly provided description of the goods and the value thereof. Only because classification and exemption notification was wrong for the goods, the department cannot hold that the assessee had misdeclared the goods with the intention to evade payment of customs duty. The Hon' ble Tribunal also held that section 111 (o) of the Customs Act, 1962 which was invoked by the Commissioner for holding that the goods are liable for confiscation was not applicable to cases where the classification of claim of exemption is found to be erroneous. The Hon'ble Tribunal held that the fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the

application of section 111 (o) of the customs act. Therefore, the Hon'ble Tribunal also set aside the confiscation and penalty. In case of Northern Plastics Ltd. v. Collector reported in **1998 (101) E.L.T. 549 (S.C.)**, the Hon' ble Supreme Court in para 22 of the Judgment held that any declaration made in the import document is in the nature of a claim made on the basis of the belief entertained by the assessee and therefore, cannot be said to be a mis-declaration as contemplated by Section 111 (m) of the Customs Act. The Hon'ble Supreme Court held that the assessee had given full and correct particulars as regards the nature and size of the goods; it was difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.

- d. We submit that the show cause notice has alleged that we have wrongly classified the goods and such misclassification was done deliberately with the intention to evade payment of differential customs duty. However, such allegations leveled against us in the show cause notice are baseless because no evidence is provided in the show cause notice to show as to how we have deliberately misclassified the goods. No evidence is produced in the show cause notice to show that we were aware that the goods are classifiable under CTH 7220 9090, but we had intentionally misclassified the goods under CTH 7220 9022 of the first schedule of Customs Tariff Act. We submit that the classification of the goods declared by us is based on our bonafide understanding of the nature of goods as Grade J3 stainless steel is commonly sold as chromium-nickel austenitic stainless steel and therefore, no intention to evade duty can be attributed to us in the facts and circumstances of the present case. Further, the show cause notice has proposed to classify the imported goods under CTH 7220 9090. Chapter heading 7220 9090 is related to the goods which fall under category of "Other" which is not a specific heading for any particular type of stainless steel product. Therefore, the revenue cannot allege that we were aware that the goods have to be classified under CTH 7220 9090 because of the very nature of the product. In view of the CTH proposed in the show cause notice, it cannot be assumed that we were aware that the goods imported by us were not classifiable under any of the other chapter heading provided under 7220, but were necessarily classifiable under general heading of "other". This CTH 7220 9090 is not related to any specific category of goods which the assessee could presume with basic understanding of classification that the goods imported by them would have to be classified under this chapter heading. Therefore, we submit that no malafide cannot be attributed to us in the present case and the allegation of deliberate misclassification is devoid of merits and deserves to be withdrawn in the interest of justice.

It is a settled legal position that mis-declaration or wrong declaration in terms of classification of goods is not a case where any malafide intention could be attributed to the assessee unless there was any positive evidence showing that the assessee had deliberately resorted to subterfuge and that the assessee harbored ill-intention. Classification is otherwise a case where larger period of limitation cannot be invoked because claiming a wrong classification would not show malafide intention, and also because classification of goods is an issue of interpretation where an assessee may be claiming classification favourable to

him, even if not applicable. The Hon'ble Allahabad High Court in case of Shahnaz Ayurvedic Products **2004 (173) ELT 337 (All.)** has also held that classification being a question of interpretation, mala fide intention could not be alleged against the assessee for claiming wrong classification and extended period of limitation cannot be invoked in case of alleged mis-classification. In case of Commissioner, Delhi V/s. Ishaan Research Lab. (P) Ltd. **2008 (230) ELT 7 (SC)**, the Hon'ble Supreme Court has held that when dispute between the assessee and the Department was in the matter of classification of products then the assessee could not be held guilty of suppression of facts or misstatement. In the present case also, the show cause notice has merely alleged us for deliberate misclassification, but no positive evidence has been brought on record to suggest that we have intentionally misclassified the imported goods. Also, the show cause notice has invoked the larger period of limitation to demand duty from us on the basis of such frivolous allegations and therefore, in view of the above submissions, the show cause notice issued to us deserves to be withdrawn in the interest of justice.

12.1.8 The Noticee submitted that the show cause notice has proposed to reject the classification of the goods under bills of entry and proposed to re-assess the goods under CTH 7220 9090. However, no reasons are given in the show cause notice as to why the classification of the goods declared in the bills of entry was incorrect and why the classification of goods proposed in the show cause notice is correct. We submit that in case of dispute regarding classification, the onus to prove that the goods are not classifiable under a particular chapter heading declared by assessee and are classifiable under other chapter heading is on the department. In the present case, the department has not discharged this burden and therefore, the show cause notice issued to us for re-classification of goods is illegal and unsustainable in the eyes of law.

The Hon'ble Supreme Court in case of Hindustan Ferodo Limited v. Collector of Central Excise, Bombay reported in **1997 (89) E.L.T. 16 (S.C.)** held that the onus to prove that the item is classifiable under a particular tariff heading is on the revenue and no demand can be sustained if such onus to prove is not discharged by revenue. The Hon' ble Supreme Court in HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh **2006 (197) E.L.T. 324 (S.C.)** held that classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. Similar view was taken in various other judgments rendered by the Hon' ble Supreme Court in cases like Collector Of Central Excise vs. Calcutta Steel Industries and Others

1989 (39) E.L.T. 175 (S.C.) and Commissioner of Customs & C. Ex., Amritsar vs. D.L. Steels **2022 (381) E.L.T. 289 (S.C.)** wherein the Hon'ble Supreme Court has held that When Revenue challenges classification made by assesseees, onus lies on Revenue to establish that item in question falls in taxing category as claimed by them. In the present case, the revenue has not discharged the burden of proof that the goods imported by us are not classifiable under chapter heading declared by us in bills of entry, but are classifiable under CTH 7220 9090. Therefore, the show cause notice issued to us is without basis and the proposals leveled in the show cause notice deserve to be dropped in the interest of justice.

The Noticee submitted that the show cause notice has invoked extended period of limitation without providing any reasons for invocation of extended period for proposing the demand. We submit that it was nowhere pointed out in the show cause notice that we had suppressed or concealed any material facts from the department or we had knowingly paid lesser customs duty by misclassifying the goods. Therefore, we submit that the demand of customs duty proposed in the show cause notice is clearly barred by the limitation of time and the show cause notice deserves to be withdrawn in the interest of justice.

The Noticee submitted that the import in the present case was made during 01.01.2020 to 31.12.2022 and the goods were allowed to be cleared by the customs authorities in charge of port after proper assessment. There is no mis-declaration of goods in terms of description, quantity etc. However, the show cause notice under Section 28(4) of the Customs Act is issued on 18.02.2025 invoking extended period of limitation without any allegations of suppression of facts or willful mis-statement. Therefore, when there are no allegations regarding suppression of facts or any misstatement in the show cause notice, the show cause notice could not have been issued under section 28 (4) of the customs act. We submit that the invocation of extended period of limitation is illegal in the facts of the present case and the show cause notice invoking extended period of limitation deserves to be withdrawn in the interest of justice.

12.1.9 The Noticee submitted that the proposals to confiscate the goods under section 111 (m) of the act are also unsustainable because when the imported materials are not available for confiscation, or for being redeemed, no confiscation of such goods which are already cleared for home consumption, can be proposed. Any imported goods could be confiscated if they are physically available for confiscation at the time of making the order, or where the goods were initially seized and then allowed to be removed/cleared on provisional basis upon the importer (or the owner of the goods) having furnished a specific provisional release Bond for the seized goods. But if the imported goods are

assessed to custom duties in the normal course of assessment, and the imported goods are allowed to be cleared for home consumption upon payment of custom duties assessed by the proper Custom officer on the Bills of Entry, then no order for confiscation of such goods could be made in law because the goods are not available for confiscation. In the present case also, all the imported goods were assessed to duties in the normal course and the bills of entry for all the goods were finally assessed by proper Custom officer, and thereupon the goods were allowed to be cleared for home consumption. Therefore, the proposal for confiscation of such goods which were not available and were not seized or provisionally released, is wholly illegal and without jurisdiction. The Hon' ble Supreme Court has settled the principle about confiscation of goods in case of *Weston Components Ltd. Vs. Commissioner of Customs, New Delhi*, reported in **2000 (115) ELT 278 (S.C)**; by conclusively holding that confiscation was permissible only if the goods were released on an application made by the assessee and on the assessee executing a Bond. It therefore follows that confiscation was impermissible when there was no seizure of the goods and the goods were not released in favour of the assessee on execution of a provisional release bond. The Hon'ble Punjab & Haryana High Court has also considered this question in case of *Commissioner of Customs V/s. Raja Impex (P) Ltd.* reported in **2008 (229) ELT 185 (P&H)** by conclusively holding that if the goods were released on a Bond, the position was as if the goods were available, but the ratio of the judgment of the Hon'ble Supreme Court could not be understood that in all cases the goods were permitted to be cleared initially and later proceedings were taken for any irregularity, even then redemption fine could be imposed. In case of *Commissioner of Customs V/s. Finesse Creation Inc.* reported in **2009 (248) ELT 122 (Born.)**, the Hon'ble Bombay High Court has also held that the question of confiscating the goods would not arise if there were no goods available for confiscation nor for consequent redemption. In *Shiv Kripa Ispat Pvt. Ltd.* reported in **2009 (235) ELT 623 (Tri.-LB)**, *Commissioner V/s. Asoj Soft Caps Pvt. Ltd.* reported in **2012 (280) ELT 88 (Tri.-Ahmd.)** and *Munjal Showa Ltd.* Reported in **2008 (227) ELT 330 (Tri.-Del.)** also, the Appellate Tribunal has considered such cases and held that if the goods had been seized and released provisionally after execution of Bond, then confiscation order could be made and fine could be imposed, but not otherwise. Thus, it is a settled legal position that confiscation of goods could be legally ordered if the goods were physically available for being confiscated; and confiscation could also be legally ordered if the goods were initially seized but provisionally released on execution of a specific bond for such provisional release.

In the present case, admittedly, the imported goods were not seized by any Custom officers, and we have not executed any Bond/s seeking provisional release of the goods. We have admittedly not made any application for

provisional release of the imported goods as the imported goods were never seized. The imported goods have been, as a matter of fact, allowed to be cleared for home consumption in the normal course of assessment. Therefore, the show cause notice proposing to confiscate imported goods is without jurisdiction and deserves to be withdrawn in the interest of justice.

12.1.10 The Noticee submitted that the provisions confiscation as proposed under section 111 (m) of the Customs Act, 1962 is otherwise not applicable in the present case. Section 111 (m) is applicable in cases where any goods which do not correspond in respect of value or in any other particular with the entry made under the Act. However, the provisions of section 111 (m) of the customs act are not applicable in the present case because at the time of filing the bill of entry, we have duly mentioned the value of the goods and other material particulars which were never disputed by the department at any point of time. The customs officer at the charge of port have assessed the bill of entry and allowed clearance of the goods on payment of basic customs duties. We submit that when the customs officers have not raised any objection at the time of import and allowed clearance of the goods, the revenue cannot now take a U - turn and hold that the goods imported by us do not correspond with any material particular. In fact, the customs officer at port passed examination orders in respect of bills of entry filed by us and only after such examination of goods; we were allowed to clear the goods for home consumption. Thus, departmental officers have not disputed the nature of goods or its classification, the show cause notice now issued to us cannot allege that we have brought into India the goods which were not corresponding to the value or any material particular and were liable for confiscation under section 111 (m) of the act. Thus, the proposals for confiscation of imported goods are unsustainable in the eyes of law and deserve to be withdrawn in the interest of justice.

12.1.11 The Noticee submitted that there is no dispute over the quantity, value or description of the goods. The entire matter relates only to the classification of the imported goods. It is submitted herein that onus of classification is on the department, and not on the assessee. In these cases, there can be no fault attributed on part of the assessee, and hence, goods cannot be held to liable to confiscation. Reliance herein is placed on the judgment of the Hon'ble Supreme Court in *Hindustan Ferodo Limited v. Collector of Central Excise, Bombay* reported in **1997 (89) E.L.T. 16 (S.C.)**.

It is a settled position of law that the goods are not liable to confiscation in a case where only classification is in dispute. Reliance in this regard is placed on the following judgments:

- i. CCE v. Jas International **2011 (272) ELT 282 (Tri.-Del)**
- ii. In Re: Golden Peacock Overseas Ltd. **2012 (278) ELT 545 (GOI)**

- iii. CC v. Rajdhani Timbers Products P. Ltd. **2009 (239) ELT 188 (Tri.-Ahmd)**
- iv. Surbhit Impex P. Ltd. v. CC **2012 (283) ELT 556 (Tri.-Mum)**

Affirmed by the Hon'ble High Court of Bombay at **2012**

(286) ELT 500 (Born.)

- v. Marque Impex v. CC CESTAT **Final Order No. A/831/WZB/25/C-I dated 19.05.2005**

Further reliance is placed on the Order of the Hon'ble CESTAT in Kirti Sales Corpn. v. CC, Faridabad reported at **2008 (232) ELT 151 (Tri.-Del.)** & Alstom Transport Ltd. v. CC, Chennai reported at **2007 (220) ELT 312 (Tri.-Chennai)** wherein it is held that merely indicating wrong classification does not mean that the goods are liable to confiscation automatically. There has to be some evidence proving the same. Hence, in view of the above, it is settled that merely for alleged wrong classification, none of the provisions for confiscation in the Customs Act can be pressed into service. Therefore, the goods imported by us are not liable to confiscation under Section 111 (m) of the Customs Act and the show cause notice deserves to be withdrawn in the interest of justice.

12.1.12 The show cause notice has wrongly proposed to impose penalty under section 112 or 114A of the customs act because both these provisions cannot be applied as alternative to each other. Section 112 provides for imposition of penalty for improper importation and section 114A is invoked for imposition of penalty for short levy or non levy of duty. Thus, these provisions are not alternatives of each other and the show cause notice cannot suggest imposition of penalty under "**section 112 or 114A**". We submit that when these penal provisions operate in different scenarios, both the provisions cannot be invoked simultaneously.

We submit that the show cause notice has merely proposed penalty under section 112 without specifying as under which such section i.e. 112 (a) or 112 (b), the penalty is imposable on us. In this regard, we rely upon the decision in case of B. Lakshmidhand vs. Government of India reported in **1983 (12) Ell 322 (Mad.)** wherein the department had issued show cause notice proposing to impose penalty under section 112 without specifying parcular clause. The Hon'ble High Court held that specific clause of section 112 of the customs act has to be quoted in the show cause notice so as to enable the assessee to defend case against him and therefore, the penal provisions cannot be vague or camouflaged. Similar view was taken various cases like Balvir Singh vs. Collector of Customs - **1991 (56) ELT 64 (Tri)**, CCE vs Fenner (India) LTD.- **2014 (313) Ell 3 (Mad.)** and Amrit Foods vs. CCE, UP - **2005 (190) Ell 433 (SC)**. We submit that the ratio laid down in these case laws is squarely

applicable in the facts of the present case because in the present case also, the show cause notice has merely quoted Section 112 , but has not quoted specific clause [112(a) or 112(b)]. Therefore, the penal provisions invoked in the show cause notice are vague and proposal to impose penalty under section 112 deserves to be dropped in the interest of justice.

Furthermore section 112(a) provides for penalty on any person 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 doing or omission of such act. But it is nowhere pointed out in the show cause notice that we have done anything or omitted to do anything which had rendered the goods liable for confiscation. When Section 111 of the Act itself is not attracted in the present case, the whole basis for imposing penalty on us has no legs to stand. Provisions of Section 112(b) of the Customs Act is also inapplicable because penalty under 112(b) is imposed on a person 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. In the present case, we have not acquired possession of such goods and have not concerned ourselves in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which we knew or had reason to believe that these goods are liable to confiscation. Therefore, penalty under section 112 (b) is also not imposable on us.

Proposal to impose penalty under section 114A of the Customs act is also because when the proposals to demand differential duty are not sustainable, the penalty under section 114A is also not sustainable in the eyes of law. Penalty under Section 114A of the Customs Act can be imposed where the duty has not been levied or has not been short-levied by reason of collusion or any wilful mis-statement or suppression of facts. We submit that in the present case, the suppression of facts with the intent to evade the payment of duty has not been established by the department, and therefore, the penalty under section 114A is otherwise not imposable on us. We also submit that the duty has been rightly paid for the goods and goods were correctly classified by us. Therefore, there is no short payment of duty and consequently, no penalty is imposable on us.

12.1.13 Proposals to impose penalty under section 114AA is also unwarranted in the facts of the present case because section 114AA is invocable in cases where 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 present case, there is no dispute that the goods were correctly described by us along

with correct value of the goods. The dispute in the present case is related to classification of the goods, but we have classified the goods in accordance with the classification mentioned in the Country of Origin certificate and other documents provided by the supplier and therefore, there is no case of any false or incorrect material. Therefore, penalty under section 11 4AA is not imposable in the facts of the present case.

12.1.14 Penalty under section 117 of the act is proposed in the show cause notice but penalties under various section like 11 2(a)/11 2(b)/11 4A/11 4AA are already proposed in the show cause notice which are invoked in specific instances. Therefore, further proposals to impose penalty under section 117 which is applicable for contraventions not expressly mentioned in the act is otherwise illegal and unwarranted. The show cause notice has also failed to point out the contraventions committed by us for which penalty is not prescribed under the act. Therefore, proposals to impose penalty under section 117 of the act deserves to be dropped in the interest of justice.

12.1.15 It is also pertinent to note that the present case has been made out against the appellant on the basis of classification of goods. The Hon'ble Supreme Court has in numerous cases has held that all cases of classification dispute would essentially fall under the purview of interpretation of law and therefore it would not be appropriate to impose penalty on an assessee. We refer to rely upon the decisions in this regard:

- e. Ishaan Research - **2008 (230) ELT 7 SC**
- f. Joi Research Foundation - **2019 (25) GSTL 473**
- g. Aarti Drugs -**2015 (324) ELT 594**
- h. MR Utility Products **2017 (7) GSTL 248**

Applying the ratio of the above referred case laws, since the present dispute pertains to classification and dispute would be considered as cases involving interpretation of law where contrary opinions are likely to be expressed, it is not appropriate to impose penalty on us and the penalty proposed to be imposed on us under section 11 4 A deserves to be set aside in the interest of justice.

12.1.16 The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messers Hindustan Steel Limited reported in **1978 ELT (J159)** wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the assessee was guilty of conduct contumacious or dishonest and the error committed by the assessee was not bonafide but was with a knowledge that the assessee was required to act otherwise, penalty might be

imposed. Under the circumstances, no dishonest or contumacious conduct on our part having been proved, even a token penalty would not be justified in the facts of the present case.

12.1.17 The proposal for recovery of interest under Section 28AA of the said Act is also an action *de-hors* of any merit in law. The present one is not a case of any duty not levied or short levied or erroneously refunded and hence Section 28AA of the Act is not applicable. Since the goods imported by the appellant were correctly classified, and duties leviable thereon have been assessed and paid, there is no non-levy or short levy as regards importation of the goods in question. Interest liability would arise only when any duty was liable to be paid as determined under Section 28 of the said Act, and therefore Section 28AA of the Act for interest is also not applicable in the present case.

12.1.18 The Noticee submitted that we have paid Rs. 10,00,000/- under protest during investigation vide DD No. 005 895 dated 06.03.2023 in favour of Customs, Mundra and informed the department regarding payment of the said amount vide letter dated 02.02.2023. We submit that since there is no liability on us to pay duty as demanded in the show cause notice, the amount of Rs. 10,00,000/- paid by us by way of Demand Draft No. 005 895 dated 06.03.2023 may be returned to us.

In the above premises, The Noticee submitted that there is no justification nor any merits in any of the proposals leveled in the subject show cause notice. We therefore request you to withdraw this show cause notice, and we also request you to drop all the demands and proposals leveled against us in this case.

12.2 **Shri Rajan A M, authorized Customs Broker, Partner of M/s Suraj Forwarders and Shipping Agencies submitted his reply dated 10.10.2025 wherein he had, *inter alia*, submitted that:-**

12.2.1 The Noticee submitted that the proposals to impose penalty on me is *ex-facie* illegal and unsustainable in the eyes of law. There are only bald allegations leveled against me that I have assisted the importer in misclassifying the imported goods. No evidence has been brought on record to even remotely suggest that I knew that the goods are not classifiable under CTH 7220 90 22 and were actually classifiable under CTH 7220 90 90 and I have intentionally assisted the importer in mis-classifying the goods to claim benefit of the exemption notification. In fact, all the import documents such as supplier's invoice, bill of lading, Country of Origin certificate etc. had clearly mentioned the classification of goods under CTH 7220 90 22 as the goods are actually classifiable under the same chapter heading. The case of the department that the goods are classifiable under CTH 7220 90 90 is also not substantiated with

any cogent evidence or any literature. Therefore, when the case of the department regarding misclassification has no legs to stand, the proposals to impose penalty on me for alleged assistance provided by me to the importer in mis-declaring the goods does not hold any water and the impugned show cause notice issued to me deserves to be withdrawn in the interest of justice.

12.2.2 The Hon'ble Supreme Court in case of Hindustan Ferodo Limited v. Collector of Central Excise, Bombay reported in **1997 (89) E.L.T. 16 (S.C.)** held that the onus to prove that the item is classifiable under a particular tariff heading is on the revenue and no demand can be sustained if such onus to prove is not discharged by revenue. The Hon'ble Supreme Court in HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh **2006 (197) E.L.T. 324 (S.C.)** held that classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. Similar view was taken in various other judgments rendered by the Hon'ble Supreme Court in cases like Collector of Central Excise vs. Calcutta Steel Industries and Others **1989 (39) E.L.T. 175 (S.C.)** and Commissioner of Customs & C. Ex., Amritsar vs. D.L. Steels **2022 (381) E.L.T. 289 (S.C.)** wherein the Hon'ble Supreme Court has held that When Revenue challenges classification made by assessee, onus lies on Revenue to establish that item in question falls in taxing category as claimed by them.

12.2.3 The Noticee submitted in the present case, the revenue has not discharged the burden of proof that the goods imported by us are not classifiable under chapter heading declared by us in bills of entry, but are classifiable under CTH 7220 9090. Therefore, the show cause notice issued to me is without basis and the proposals leveled in the show cause notice deserve to be dropped in the interest of justice. The SCN at para 4B has referred to exacts of my statement dated 22.06.2023 in which I had deposed that the decision to classify the goods under CTH 7220 90 22 was taken on the direction of Shri Anand Netanand Chaoudhary of M/s. AVN Commodities. It is also mentioned that I have admitted that "J3 grade" is low standard stainless steel having low value of Nickel and chromium. Solely on the basis of my statement, the show cause notice has invoked the provisions of section 146 of the act and also Rule 10 of CBLR 2018 and alleged that I had assisted M/s. AVN in mis-classification of goods as Austenitic Stainless Steel of Chromium and Nickel Type under CTH 7220 90 22.

12.2.4 The Noticee submitted that allegations against him are referred to only at para 9.4 wherein it is alleged that I had assisted M/s. AVN in mis-classification of goods. It is also alleged that I had failed to examine the description and

classification of goods. It is also alleged that I was aware that J3 grade has low value of Nickel and Chromium and therefore I had failed to fulfill my duties and obligations under the provisions of Section 146 of the act read with Customs Brokers Licensing Regulations, 2018. The Noticee submitted that the allegations leveled under para 9.4 of the show cause notice are all based on assumptions and presumptions. I submit that nothing in my statement recorded on 22.06.2023 can be construed as an admission of my liability. I have only acted in bonafide manner in filing Bill of Entry on behalf of the importer because the import documents nowhere mentioned that the goods are classifiable under any other CTH than CTH 7220 90 22. In fact, the Commercial Invoices and Country of Origin certificates clearly provided that the goods are classifiable under CTH 7220 90 22. In my statement, I have nowhere stated that I was aware that the goods are classifiable under CTH 7220 90 90 and not under CTH 7220 90 22, but despite knowing that I have not advised my clients to correctly classify the goods. In fact, there is no evidence on record to suggest that I have assisted M/s. AVN in mis-classification of goods. Therefore, no penalty can be imposed on me on the basis of mere assumptions and presumptions.

Moreover, the content of Nickel and Chromium cannot be a determinative factor for the classification of the said goods which has already been held by the Hon'ble Tribunal in case of M/s. Shah Foils Ltd. vs. C.C. - Mundra reported in **2024 (5) TMI 336 - CESTAT AHMEDABAD**. Therefore, merely because I have stated that there was low content of Nickel and Chromium in the imported goods, it cannot be assumed that the goods are not classifiable under the category of Austenitic Stainless Steel falling under CTH 7220 90 22.

12.2.5 The Noticee submitted that he had fulfilled all the duties as a customs broker and I have not done anything nor have I omitted to do anything, which act or omission has rendered the goods, (namely, "Non magnetic cold rolled stainless steel strips /coils Grade J3 (Ex-stock)") liable for confiscation. Therefore, the basis for proposing to impose personal penalty on me as summarised in para 13 of the show cause notice is not justified in facts nor in law, for imposing personal penalty on me as a partner of M/s. Suraj Forwarders and Shipping Agency. The proposal to impose penalty on me deserves to be withdrawn on this ground itself.

The law about imposition of penalty on a Custom Broker and under what circumstances penalty under Section 112 and 114AA can be imposed has come up for consideration before the Hon'ble Tribunal and various High Courts on many occasions. The Hon'ble Tribunal, Mumbai in the case of M/s. Savithri Jewellers Pvt. Ltd. reported at **2020 (374) ELT 754** has held that when the department has not produced any evidence to establish that the CHA had any knowledge about mis-declaration, and when the Custom Broker has prepared

documents in a bona-fide manner based upon the declaration made by the exporter, the CHA cannot be penalized under Sections 114(iii) and 114AA of the Customs Act, 1962. In another case of M/s. Apson Enterprises reported at **2017(358) ELT 817**, the Hon'ble Tribunal, Mumbai has again held that when the department has nothing to show that the CHA was concerned with or aware about the valuation of goods, the CHA cannot be penalized under Section 114(iii) of the Customs Act, 1962. In the case of Nirmal Kumar Agarwal reported at **2013 (298) ELT 133** the Hon'ble Tribunal has again held that until and unless it is proven that the CHA was aware of the mis-declaration and the ingredients of Section 114(iii) are complete, no penalty can be imposed on the CHA. The Hon'ble Tribunal, Chennai in the case of M/s. Moriks Shipping and Trading Pvt. Ltd. reported at **2008 (227) ELT 577** has categorically held that the customs house agent is not required to go into the authenticity of the declaration made by the exporter in the export documents and in absence of any evidence to show that the CHA not only participated in mis-declaration, penalty under Section 114(iii) cannot be imposed. The department went in appeal against the decision of the Hon'ble CESTAT and the Madras High Court in its decision reported at **2015 (317) ELT 3** has vide a detailed order confirmed the findings given by the Hon'ble Tribunal and has held that in absence of any positive evidence that the CHA was actually involved in mis-declaration, penalty under Section 114 of the Customs Act, 1962 cannot be imposed. Thus the law about imposition of penalty on the CHA is very clear that only when the CHA was well aware and actually participated in facilitating the mis-declaration of goods or value, can the CHA be held accountable. Furthermore, it is also clear that the CHA is not supposed to go into and verify each and every detail provided by the importer about description and value of goods.

12.2.6 The Noticee submitted that the show cause notice has merely proposed penalty under section 112 without specifying as under which such section i.e. 112 (a) or 112 (b), the penalty is imposable on me. In this regard, I rely upon the decision in case of B. Lakshmi chand vs. Government of India reported in **1983 (12) ELT 322 (Mad)** wherein the department had issued show cause notice proposing to impose penalty under section 112 without specifying particular clause. The Hon'ble High Court held that specific clause of section 112 of the customs act has to be quoted in the show cause notice so as to enable the assessee to defend case against him and therefore, the penal provisions cannot be vague or camouflaged. Similar view was taken various cases like Balvir Singh vs. Collector of Customs - **1991 (56) ELT 64 (Tri)**, CCE vs Fenner (India) LTD. - **2014 (313) ELT 3 (Mad.)** and Amrit Foods vs. CCE , UP - **2005 (190) ELT 433 (SC)**. We submit that the ratio laid down in these case laws is squarely applicable in the facts of the present case because in the present case also, the show cause notice has merely quoted Section 112 , but has not quoted specific clause [112(a) or 112(b)]. Therefore, the penal provisions invoked in the

show cause notice are vague and proposal to impose penalty under section 112 deserves to be dropped in the interest of justice.

The penalty proposed under section 114AA is also unjustified and unwarranted in the facts of the present case. It is nowhere substantiated in the show cause notice that I had knowledge that the goods are not declared correctly or about me knowing about the nature of the goods. In absence of any evidence the proposal of penalty is unjustified. Section 114AA of the Act provides for penalty 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 the Act. However, it is not established in this case that I had knowingly or intentionally made, signed or used or caused to be made, signed or used any declaration, statement or document which was false or incorrect in any material particular. Thus, it is clear that the said provision comes into play only in cases where material particulars have been found to be incorrect and false. However, as has been substantiated earlier, there has been no deliberate mis-declaration, and therefore, the same could not be the basis for imposing any penalty under Section 114AA of the Customs Act. This being the case, Section 114AA is not at all applicable in the facts of the present case and hence such proposal is liable to be vacated in the interest of justice. In view of the above, it is clear that in absence of any specific evidence about the voluntary contravention of law by the Custom Broker, no penalty can be imposed.

12.2.7 The Noticee submitted that penalty under section 117 of the act is not imposable on him because it is a general provision applicable where no penalty under any other section is applicable for any omission or commission in contravention of the act. However, no such allegation are leveled against me in the show cause notice for proposing to impose penalty on me under this section. Therefore, the proposals to impose penalty on me under section 117 of the act deserves to. be withdrawn in the interest of justice.

The show cause notice has wrongly proposed to impose penalty under section 112 or 114AA or 117 of the customs act because these provisions cannot be applied as alternative to each other. Section 112 provides for imposition of penalty for improper importation and section 114AA is invoked for imposition of penalty for use of false and incorrect material. Section 117 applies where no separate penalty is prescribed under the statute. Thus, these provisions are not alternatives of each other and the show cause notice cannot suggest imposition of penalty under "**section 112 or 114A or 117**". I submit that when these penal provisions operate in different scenarios, the provisions cannot be invoked simultaneously and therefore, the show cause notice is vague and impermissible.

It is also pertinent to note that the present case has been made out against me on the basis of classification of goods. The Hon'ble Supreme Court has in numerous cases has held that all cases of classification dispute would essentially fall under the purview of interpretation of law and therefore it would not be appropriate to impose penalty. I refer to rely upon the decisions in this regard:

Ishaan Research - **2008 (230) ELT 7 SC**

Joi Research Foundation - **2019 (25) GSTL 473**

Aarti Drugs - **2015 (324) ELT 594**

MR Utility Products **2017 (7) GSTL 248**

Applying the ratio of the above referred case laws, since the present dispute pertains to classification and dispute would be considered as cases involving interpretation of law where contrary opinions are likely to be expressed, it is not appropriate to impose penalty on me and the penalty proposed to be imposed on us under section 114 AA deserves to be set aside in the interest of justice.

The whole basis of the case of mis-declaration is that Nickel was replaced by Manganese in a particular series of S.S. Coils. Now it is too much to expect an employee of a CHA firm to have knowledge of such technical information about metallurgy; and it is unjustified to allege full knowledge of any mis-declaration or mis-classification based on such highly technical information not easily accessible to a layman. In any case, there is no evidence at all on record to show that I knew about replacement of Nickel by Manganese in S.S. Coils imported by M/s. AVN, and there is no evidence also to show that I had any knowledge or information that the description of the goods in the import documents like country of origin certificate was incorrect. Therefore, there is no merit nor any justification in the allegation leveled in the subject Notice that I was aware that the imported goods were not classifiable under CTH 7220 90 22 and that the goods were not eligible for the concessional rate under Notification No.50/2018-Cus. There is no failure by me in this case, which would mandate imposition of penalty, and therefore the entire basis of the case now made out against me is fallacious and the show cause notice issued to me deserves to be withdrawn in the interest of justice.

In the above premises The Noticee requested to drop the proposals to impose penalty on me in the interest of justice. I also request you for a personal hearing before taking any final decision in this case, and before finalizing the proposals levelled under the subject show cause notice, in the interest of justice.

Personal Hearing

13. Shri Sudhanshu Bissa, Advocate appeared for personal hearing on 13.10.2025 in virtual mode on behalf of M/s AVN Commodities Private Limited, Shri Anand Netanand Choudhary, Director of "M/s AVN Commodities Private Limited and Shri Rajan A.M. Partner of M/s Suraj Forwarders and Shipping Agencies. He has reiterated submission dated 18.04.2025 and 13.10.2025 with regard to M/s. AVN Commodities and Shri Anand Netanand Choudhary.

He further submitted that the issue regarding classification of "Grade J3" Stainless steel strips is covered by the decision of CESTAT, Ahmedabad in case of Shah Coils - 2024 (5) TMI 336 -CESTAT AHMEDABAD. He has also submitted that the demand is barred by the limitation of time because the issue involved is regarding classification of goods. He has contested the proposals to confiscate the goods as the goods are not available for confiscation. He has submitted that no penalty on M/s AVN Commodities Private Limited or Shri Anand Netanand Choudhary can be imposed in the facts of the present case. As regards to Shri Rajan A.M. of M/s Suraj Forwarders and Shipping Agencies, he has re-iterated the submissions made vide 10.10.2025.

Discussion and Findings

14. I have carefully gone through the facts of the case, Show Cause Notice dated 20.02.2025 and the noticee submissions both, in written and in person. 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.

15. 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 imported goods can be considered as 'Nickel Chromium Austenitic' type of Stainless Steel and classification of the imported goods under CTI 72209022 is rejected and the same is re-classified under CTI 7220 9090 or otherwise.

(ii) Whether the benefits of Serial No. 734 of Notification No. 50/2018-Customs dated 30.06.2018 as claimed on the impugned goods is rejected and the subject Bills of Entry are re-assessed without any notification benefit or otherwise.

(iii) Whether the impugned goods valued at Rs. 9,05,55,983/- (Rs. Nine Crore Five Lakhs Fifty-Five Thousand Nine Hundred Eighty Three only) are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 or

otherwise.

(iv) Whether the differential Customs duty amounting to Rs 39,67,031/- (rupees Thirty Nine Lakhs Sixty seven thousand thirty one only) is demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the act ibid or otherwise

(v) Whether Differential duty amounting to Rs. 10,00,000/- (Rupees Ten Lakh Only) voluntarily paid by "M/s AVN Commodities Private Limited", is appropriated towards their Duty Liabilities mentioned at Point no. iv above or otherwise.

(vi) Whether the noticees are liable for penalty under Sections 112(a) and/or 112(b) and/or 114AA and/or 117 of the Customs Act, 1962 or otherwise.

1 6 . 1 I observe that M/s AVN Commodities Private Limited having registered office at No.23-24, Tirth Industrial Park, Village Paldi Kankaj, Ahmedabad Gholka Highway, Off Kamod Circle, SP Ring Road, Taluka Daskroi, Ahmedabad – 382425, is engaged in import of 'Cold Rolled Stainless Steel Coils' from overseas suppliers based in China.

The investigation was initiated by DRI indicated that M/s AVN Commodities Private Limited was importing the goods namely "Non-magnetic Cold Rolled Stainless Steel Strips/Coils Grade J3 (Ex-Stock)" by mis-classifying the same under CTH 72209022 and wrongly availing the benefit (at sr. no. 734) under Notification No. 50/2018-Customs dated 30.06.2018 to avail the tariff concession of 45% of applied rate of Customs duty on the goods falling under CTH 72209022, i.e. of Nickel Chromium Austenitic Type.

1 6 . 2 It is important to understand the chemical composition of Stainless steels specifically Nickel Chromium Austenitic type (CTH 72209022). As per chapter Note (e) of Chapter 72, Stainless steel is defined as Alloy steels containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements. Clearly, the imported goods are stainless steel as they contain more than 10.5% of Chromium and less than 1.2% of Carbon as evident from the Mill test Certificates, referred in the next paragraphs. Further, the nature of goods being Stainless Steel is neither disputed by the importers nor by the department. Stainless Steels are broadly categorized in five categories namely Austenitic, Ferritic, Martensitic, Duplex and Precipitation hardening stainless steel grades. These categories are defined based on the atomic structure and alloying elements resulting in range of properties required for various end use. Austenitic is the most widely used type of stainless steel. It has excellent corrosion and heat resistance with good mechanical properties over a wide range of temperatures. These are further categorized as 300 and

200 (also known as J3 grade) series grades which are non-magnetic in nature. The main difference is that the 300 series stainless steel has higher nickel content, providing superior corrosion resistance and durability, while the 200 series (also known as J3 grade) replaces much of the nickel with manganese and nitrogen to lower cost, resulting in lower corrosion resistance and suitability for less demanding applications. Both are austenitic stainless steels and are non-magnetic in nature. The importers have declared their goods i.e. non-magnetic stainless steel cold rolled coils grade J3. During the recording of statement, Shri Anand Netanand Choudhary, Director of “M/s AVN, stated that “Cold Rolled Stainless Steel strips/Coil Grade J3” is a low quality alloy of Stainless Steel consisting of Nickel below 1%, Copper below 1%, Chromium below 15%, Manganese Below 9% and rest of the portion is iron. Composition of different grades of Austenitic Steel with respect to different alloying elements as specified in IS 6911:1992 is reproduced as below:-

Table 1 Chemical Composition
(Clauses 7.1 and 7.2)

IS 6911 : 1992

Grade Designation			C	Si	Mn	Ni	Cr	Mo	S	P	Others
Letter Symbol [see IS 1762 (Part 1)]	Numerical Symbol ISS			Max					Max	Max	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
Ferritic Steels											
X 04Cr12	405		0.08 Max	1.0	1.0 Max	—	11.5-13.5	—	0.030	0.040	Al 0.10-0.30
X 07Cr17	430		0.12 Max	1.0	1.0 Max	0.50 Max	16.0-18.0	—	0.030	0.040	
Martensite Steel											
X 12Cr12	410		0.08-0.15	1.0	1.0 Max	1.0 Max	11.5-13.5	—	0.030	0.040	
X 20Cr13	420 S1		0.16-0.25	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 30Cr13	420 S2		0.26-0.35	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 40Cr13	420 S3		0.35-0.45	1.0	1.0 Max	1.0 Max	12.0-14.0	—	0.030	0.040	
X 15Cr16Ni2	431		0.10-0.20	1.0	1.0 Max	1.25-2.50	15.0-17.0	—	0.030	0.045	
X 108Cr17Mo	440		0.95-1.20	1.0	1.0 Max	0.50 Max	16.0-18.0	0.75 Max	0.030	0.045	
Austenitic Steels											
X 10Cr17Mn6Ni4N20	201		0.20 Max	1.0	4.0-8.0	3.5-5.5	16.0-18.0	—	0.030	0.045	N 0.05-0.20
X 07Cr17Mn12Ni4	201 A		0.12 Max	1.0	10.0-14.0	3.5-5.5	16.0-18.0	—	0.030	0.045	
X 10Cr18Mn9Ni5	202		0.15 Max	1.0	8.0-10.0	4.0-6.0	17.0-19.0	—	0.030	0.045	
X 10Cr17Ni7	301		0.15 Max	1.0	2.0 Max	6.0-8.0	16.0-18.0	—	0.030	0.045	
X 07Cr18Ni9	302		0.15 Max	1.0	2.0 Max	8.0-10.0	17.0-19.0	—	0.030	0.045	
X 04Cr19Ni9	304 S1		0.08 Max	1.0	2.0 Max	8.0-10.0	17.5-20.0	—	0.03	0.045	
X 02Cr19Ni10	304 S2		0.03 Max	1.0	2.0 Max	8.0-12.0	17.5-20.0	—	0.030	0.045	
X 15Cr24Ni13	309		0.20 Max	1.5	2.0 Max	11.0-15.0	22.0-25.0	—	0.030	0.045	
X 20Cr25Ni20	310		0.25 Max	2.5	2.0 Max	18.0-21.0	24.0-26.0	—	0.030	0.045	
X 04Cr17Ni12Mo2	316		0.03 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	
X 02Cr17Ni12Mo2	316 L		0.08 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	
X 04Cr17Ni12Mo2Ti	316 Ti		0.08 Max	1.0	2.0 Max	10.0-14.0	16.0-18.0	2.0-3.0	0.030	0.045	Ti Min-5 (C + N) Ti Max-0.80
X 04Cr18Ni10Ti	321		0.08 Max	1.0	2.0 Max	9.0-12.0	17.0-19.0	—	0.030	0.045	Ti Min-5 (C + N) Ti Max-0.8
X 04Cr18Ni10Nb	347		0.08 Max	1.0	2.0 Max	9.0-12.0	17.0-19.0	—	0.030	0.045	Nb Min-10C Nb Max-1.0

16.3 Therefore, it is clearly evident that the **Austenitic Stainless-Steel grades** have essentially content by weight (%) of alloying elements

Chromium (Cr) and Nickel (Ni) as per table below:


Subgroups of Austenitic stainless steel	Minimum-Maximum range of Nickel (Ni) (% by weight)	Minimum-Maximum range of Chromium (Cr) (% by weight)
300 Series	6 - 21	16 - 26
200 Series	3.5 - 6	16-19

16.4 However, on examination of the sample Mill Test Report/Certificate (MTC/MTR) of the imported “Cold Rolled Stainless Steel of J3 grade”, the content of Nickel (Ni) and Chromium (Cr) in the imported goods (Non-magnetic Cold Rolled Stainless Steel Strips/Coils Grade J3 (Ex-Stock)) was not found as per specification required to qualify in any of the two subgroups (200 & 300) of Austenitic stainless steel, the sample MTC/MTR are reproduced as below:

A. Sample MTC/MTR in respect of Supplier M/s. Yong Steel Co. Ltd, China:

<p align="center">YONG STEEL CO., LTD Room 905, Qiangsheng Building, No.145, Fajian Road, Pudong Area, Shanghai, China. Factory address: No. 10, Keda Middle Road, zone a, science and Technology Industrial Park, Shikhan town, Nanshai District, Foshan City, Guangdong Province</p> <p align="center">MILL TEST CERTIFICATE</p> <p align="right">CERTIFICATE NO.: YS202112162170-2188</p>																	
CUSTOMER	AVN COMMODITIES PVT. LTD J3-24, Tirth Industrial Park, Village Padli- Kankaj, Ahmedabad- Dholka Road, Gujarat-382425		ORIGIN	CHINA	Invoice No.	JYS11232170- 230212158	Date	2021/12/16									
NON MAGNETIC STAINLESS STEEL, COLD ROLLED COILS GRADE J3, EX STOCK (MAX SIZES)										Chemical Composition(%)				Mechanical Test			
Heat no.	Specification	Quantity	Finish	Length (m)	C	Si	Mn	P	S	Ni	Cr	Cu	Grade	T.S(Rm) N/mm ²	Elongation(%)	Y.S(Rp)0.2 % N/mm ²	Hardness
	WIDTH(mm)	THICKNESS(mm)															
A215432	0.48*487	3050	2B	/	0.144	0.462	9.460	0.036	0.002	0.752	14.080	0.680	J3	560	38	294	92
	0.48*510	3326	2B	/													
	0.48*585	4106	2B	/													
A215433	0.48*585	4010	2B	/	0.140	0.464	9.480	0.031	0.001	0.780	14.400	0.660	J3	575	36	290	94
	0.48*585	4524	2B	/													
	0.48*585	3826	2B	/													
	0.48*585	5168	2B	/													
A215434	0.38*387	2698	2B	/	0.149	0.470	9.470	0.038	0.002	0.760	14.090	0.680	J3	555	35	294	93
	0.38*465	2632	2B	/													
	0.38*510	3712	2B	/													
	0.38*585	4312	2B	/													
A215435	0.38*585	3994	2B	/	0.139	0.466	9.450	0.035	0.002	0.740	14.100	0.690	J3	560	37	294	90
	0.38*585	4096	2B	/													
	0.48*460	2624	2B	/													
	0.38*410	2323	2B	/													
A215436	0.38*585	3810	2B	/	0.147	0.467	9.380	0.039	0.003	0.770	14.210	0.650	J3	570	36	296	92
	0.33*79*8	4603	2B	/													
	0.33*79*8	3518	2B	/													
	0.3*510	3092	2BA	/													
A215437	0.3*360*2	5090	2BA	/	0.145	0.468	9.350	0.037	0.002	0.750	14.320	0.670	J3	560	38	292	93
	0.38*485	3706	2B	/													
		82408															
Inspector: JAYDEN																	

B. Sample MTC/MTR in respect of Supplier M/s. Foshan Juli Steel Co. Ltd, China:

佛山市聚力钢业有限公司 FOSHAN JULI STEEL CO.,LTD ADD: HUIQUAN TECHNOLOGY INDUSTRY CENTER, SHISHAN,NANHAI, FOSHAN, CHINA 产品质量证明书 INSPECTION CERTIFICATE														
订货单位 Order unit	AVN COMMODITIES PVT. LTD													
收货地点 Receiving place	23-24, TIRTH INDUSTRIAL PARK,VILL: PALDI KANKAJ ,AHMEDABAD DHOLKA ROAD,Gujarat-382425,IEC No. 08110-14665													
产品名称 Product	NON MAGNETIC STAINLESS STEEL COLD ROLLED COILS													
TYPE	Grade J3													
证书号 Certificate No	ZCD5877													
发票号 Invoice No.:	AVN002-3													
发票日期 Invoice Date:	Oct. 27th. 2022													
炉号 HEAT NO.	规格 (厚度x宽度)	重量	化学成分 Chemical Composition, Wt%								Mechanical Test			
Heat No	Size(MM)	Weight (KGS)	C	Si	Mn	P	S	Ni	Cr	Cu	T.S(Rm) N/m ²	Elongation (%)	Y.S(Rp)0.2 % N/m ²	Hardness
10-009B	0.3*510/BA	3462	0.142	0.461	9.535	0.037	0.002	0.782	14.19	0.677	553	37	293	97
09-136A	0.3*510/BA	4206	0.141	0.463	9.531	0.038	0.003	0.787	14.15	0.672	556	36	296	90
09-136B	0.3*510/BA	4174	0.131	0.465	9.576	0.032	0.001	0.787	14.08	0.642	565	37	281	91
RLYJ2209006-1	0.43*550/BA	3504	0.137	0.464	9.573	0.034	0.003	0.788	14.07	0.635	563	37	286	91
RLYJ2209006-2	0.43*550/BA	3680	0.141	0.461	9.535	0.037	0.002	0.782	14.19	0.677	553	38	293	97
102566-1	0.45*650/2B	4189	0.143	0.462	9.501	0.036	0.001	0.792	13.95	0.630	566	39	286	93
102566-2	0.45*650/2B	4171	0.136	0.467	9.531	0.041	0.002	0.761	14.12	0.686	556	38	292	95
TOTAL		27386												
附注 Remarks: 1、尺寸公差 Size tolerance:合格 OK 2、表面质量 Surface quality :合格 OK 1、 兹证明所列产品经检验均符合合同和标准要求。 The material listed above has been tested and complies with the terms of the contract & The standard 2、 产品实验包括化学成分分析 Product experiments include chemical analysis 3、 本证明书需盖章生效，复印无效。 This certificate needs to be put into effect by the official seal, and the copy is invalid 4、 如有质量异议，请来电来函说明情况，并告知质量证明书编号。 If any quality query please clarify Via phone call of fax, indicating the certificate mmbet.														
											盖章(stamp) Date: Oct. 27th. 2022 质量负责人: Quality Manager			

16.5 On perusal of the Mill Test Certificates reproduced above, it is evident that the chemical composition of the imported coils reflects Chromium content less than 16 % and Nickel content less than 1.5%. In contrast, IS 6911:1992 prescribes that Chromium must be within 16-26% and Nickel within 3.5-21% for the relevant Austenitic grades, therefore, it is amply clear that the chemical composition of Austenitic Stainless Steel of Nickel Chromium type is much less. Therefore, Cold Rolled Stainless Steel of J3 grade cannot be classified as Nickel Chromium Austenitic type.

16.6 On examining the chemical composition parameters of the various categories of stainless steel—namely Ferritic, Martensitic and Austenitic—it is noted that stainless steel can be characterised as ‘Austenitic’ only where the Chromium content exceeds 16 %. Where the Chromium content falls below this threshold, the material would ordinarily fall within the Ferritic or Martensitic categories, as the case may be. It is pertinent to mention here that Chromium is essential for austenitic stainless steel because it creates a passive, protective oxide layer on the surface, providing exceptional corrosion resistance. This layer, composed mainly of chromium oxide, prevents rust and oxidation even in extreme environments. Therefore, the chemical composition of Chromium as per IS 6911:1992 is a crucial factor in categorizing any stainless steel to be “Austenitic”. In view of the foregoing findings, the imported goods cannot be regarded as ‘Austenitic’; consequently, the question of treating them

as 'Nickel Chromium Austenitic type' does not arise.

16.7 Further, it is also noticed that initially "M/s AVN" was classifying the impugned goods i.e. "Cold Rolled Stainless Steel strips/ Coil Grade J3" under CTH 72209022(*Nickel Chromium Austenitic type*), however, later on they started classifying the same goods under CTH 72209090(*others*). During the course of investigation, Shri Anand Netanand Chaudhary admitted in his statement that "Cold Rolled Stainless Steel strips/ Coil Grade J3" should not be classified under CTH-72209022 and should have been classified under CTH 72209090 or 72209029 due to the low Nickel contents of goods and goods are not Nickel Chromium Austenitic Type.

I also consider statements of noticees as evidence in this case. It is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability and evidentiary value of statements recorded under provisions of section 108 of the Act.

- i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**^[1] and in the case of **Percy Rustomji Basta**^[2] has held "*that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence*".
- ii. The Hon'ble Supreme Court in the case of **Badaku Jyoti Svant**^[3] has decided that "*statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct*".
- iii. Hon'ble Punjab and Haryana High Court in the case of **Jagjit Singh**^[4] has decided that "*It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh*^[5], in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence".

16.8 Therefore, it is crystal clear that the imported goods were mis-classified under CTI 72209022 in order to wrongly avail the benefit of

Notification No. 50/2018-Cus dated 30.06.2018.

In view of the above discussion, I hold that the imported goods were not "Nickel Chromium Austenitic" classifiable under 72209022.

17. Classification:-

For determining the correct classification of the imported goods, the relevant extract of customs tariff is reproduced below for ease of reference:-

7220	Flat-rolled products of stainless steel, of a width of less than 600 mm <i>- Not further worked than hot-rolled :</i>			
7220 11	<i>-- Of a thickness of 4.75 mm or more :</i>			
7220 11 10	--- Skelp for pipes and tubes	kg.	15%	-
7220 11 21	--- Strips for pipes and tubes (other than skelp) : ---- Chromium type	kg.	15%	-
7220 11 22	---- Nickel chromium austenitic type	kg.	15%	-
7220 11 29	---- Other	kg.	15%	-
7220 11 90	--- Other	kg.	15%	-
7220 12	<i>-- Of a thickness of less than 4.75 mm :</i>			
7220 12 10	--- Skelp for pipes and tubes	kg.	15%	-
7220 12 21	--- Strips for pipes and tubes (other than skelp) : ---- Chromium type	kg.	15%	-
7220 12 22	---- Nickel chromium austenitic type	kg.	15%	-
7220 12 29	---- Other	kg.	15%	-
7220 12 90	--- Other	kg.	15%	-
7220 20	<i>- Not further worked than cold-rolled (cold-reduced) :</i>			
7220 20 10	--- Skelp for pipes and tubes	kg.	15%	-
	--- Strips for pipes and tubes (other than skelp) :			
7220 20 21	---- Chromium type	kg.	15%	-
7220 20 22	---- Nickel chromium austenitic type	kg.	15%	-
7220 20 29	---- Other	kg.	15%	-
7220 20 90	--- Other	kg.	15%	-
7220 90	<i>- Other :</i>			
7220 90 10	--- Skelp (strips for pipes and tubes)	kg.	15%	-

	--- Strips for pipes and tubes (other than skelp) :			
7220 90 21	---- Chromium type	kg.	15%	-
7220 90 22	---- Nickel chromium austenitic type	kg.	15%	-
7220 90 29	---- Other	kg.	15%	-
7220 90 90	--- Other	kg.	15%	-

As discussed earlier, in terms of chapter Note (e) of Chapter 72, Stainless steel is defined as Alloy steels containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements. Clearly, the imported goods are stainless steel as they have more than 10.5% of Chromium and less than 1.2% of Carbon as evident from the Mill test Certificates, referred in the foregoing paragraphs. Further, the nature of goods being stainless steel is neither disputed by the importers nor by the department.

Further on perusal of the Mill test certificates as discussed above and as per Statements recorded, it is ascertained that "M/s AVN" imported goods *i.e.* "Cold Rolled Stainless Steel strips/ Coil grade J3" -which do not contain Ni and Cr as prescribed under IS 6911:1992, therefore, do not merit classification under Tariff heading of Austenitic Stainless Steel of Chromium and Nickel type. Further, these cold-rolled stainless steels are gone through Hot Rolling and Cold Rolling both, therefore based on its manufacturing processes, these coils are classifiable under subheading of "7220 90 -other" under heading 7220.

Now, within the sub-heading "7220 90 -other", further classification is based on shape of the imported goods (*i.e.* skelp or strips) and its end use (*i.e.* used for pipes and tubes). In the instant matter the goods imported are in Strip form and suitable for manufacturing of utensils only, as stated by the importer in his voluntary statement recorded under Section 108 of the Customs Act 1962. As discussed above, goods were not "Nickel Chromium Austenitic" classifiable under 72209022. Therefore, the imported goods are further classifiable under CTH 7220 9090 - "other" category of CTH 7220 90. Since there is no specific tariff entry covering cold Rolled products of stainless steel of a width of less than 600 mm, the goods are correctly classifiable under CTH 7220 9090 as "Others". Thus, the impugned goods *i.e.* "Cold Rolled Stainless Steel strips/Coil grade J3" are correctly classifiable under CTH 7220 9090 instead of CTH 7220 9022, as declared by the importer.

18. Whether the importers are eligible for the benefit of Notification No. 50/2018-Cus dated 30.06.2018-

In this regard, I find that concessional rate of Basic Customs Duty as availed by the importer under sr. no. 734 of Notification No. 50/2018-Customs dated 30.06.2018 are available for Austenitic Stainless Steel of Chromium and Nickel type classifiable under CTH 7220 9022. In the instant case the impugned goods i.e. "Cold Rolled Stainless Steel strips/Coil grade J3" are correctly classifiable under CTH 7220 9090 instead of CTH 7220 9022. Therefore, benefit of concessional rate of Basic Customs Duty availed by the importer under sr. no. 734 of Notification No. 50/2018-Customs dated 30.06.2018 is not applicable as the said Notification does not provide concessional benefit of BCD to those good which are classified under CTH 72209090.

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

I find that the noticee's contented that the extended period under Section 28(4) is not invocable on the ground that goods were allowed to be cleared by the customs authorities in charge of port after proper assessment. There is no mis-declaration of goods in terms of description, quantity etc.

I find that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by "M/s AVN" before the Customs authorities, was done on the directions of Shri Anand Netanand Choudhary, Director of "M/s AVN". Shri Anand Netanand Choudhary was aware that the consignments, imported by "M/s AVN" were actually Cold Rolled Stainless Steel/strips Coils falling under CTH 7220 9090, which is evident from his voluntary statements recorded before the DRI, HQ. Further, "M/s AVN" received the Mill Test Report (MTC), wherein the elemental composition of Stainless Steel was given as per the compositions of Stainless Steel under CTH 72209090 however Shri Anand Netanand Choudhary instructed Customs Broker to file the Bills of Entry under CTH 72209022 to avail concessional benefits illegally under Notification No. 50/2018-Customs dated 30.06.2018 (sr. no. 734), which was not available for the impugned goods.

Further, I also find that initially "M/s AVN" was classifying the impugned goods i.e. "*Cold Rolled Stainless Steel strips/ Coil Grade J3*" under CTH 72209022 in order to claim the undue duty benefits, however, later on they started classifying the same goods under CTH 72209090, but importer neither preferred to intimate the same to Customs Authorities, nor paid differential Customs Duty voluntarily. This clearly indicated that "M/s AVN" and associated persons knowingly and intentionally committed acts of mis-declaration and mis-classification to avail ineligible benefits illegally, in contravention of the provisions of the Customs Act, 1962.

In view of above, the deliberate adoption of an incorrect classification with the malafide intent to evade Customs duties amounts to positive suppression of facts and constitutes a valid ground for invoking the extended period under Section 28(4) of the Customs Act, 1962. Under the regime of self-assessment, a substantial onus rests upon the importer to correctly declare all particulars in the Bills of Entry, accordingly, the noticee cannot contend that mere presentation of documents before Customs absolves them of this responsibility. The mis-declaration and mis-classification are intentional and designed to obtain inadmissible duty benefits, squarely attracting the extended period under Section 28(4). Thus, only when the issue was investigated by DRI, the duty evasion came to light. Hence, I find that Section 28(4) is rightly invocable in the present case.

20. Demand of Differential duty and interest:-

20.1 I observe that the Show Cause Notice proposed the demand and recovery of differential duty of amount Rs. 39,67,031/- based on illegal benefit of sr. no. 734 of notification no. 50/2018-Customs dated 30.06.2018 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

20.2 As discussed in above paras, wherein it has been undisputedly established that the impugned goods i.e. "cold rolled stainless strips/coils Grade J3" are correctly classifiable under CTH 72209090 instead of CTH 72209022 as declared by the importer. Therefore, the benefit under sr. no. 734 of the notification no. 50/2018-Customs dated 30.06.2018 is not applicable on the impugned goods.

20.3 The importer vide submission dated 18.04.2025 submitted that Bills of Entry nos. 3832510 dated 05/05/2021, 7164857 dated 20/01/2022 and 6984673 dated 07/01/2022 as mentioned in Annexure-A were already assessed at full rate of duty without availing the benefit exemption under notification no. 50/2018-Customs dated 30.06.2018. Further, importer had also submitted that they had cancelled the Bill of Entry no. 4438109 dated 24.06.2021 as mentioned in Annexure-A as supplier has sold the goods of subject bill of entry to other supplier.

The importer submission in reference of above mentioned bills of entry has been verified from the ICES system and accordingly the duty liability has been re-calculated in Table-C mentioned (summary of Annexure-A & B) below:-

Table-C (Summary of Annexure-A & B)

Details of Bill of Entry filed at Mundra Port					
Description:- Non Magnetic cold rolled stainless strips/coils Grade J3					
Sr. no.	Bill of Entry no.	B/E date	Quantity (in KGS)	Assessable Value(in Rs.)	Differential duty(in Rs.)
1	4691116	15.07.2021	54996	56,32,030/-	2,46,725/-
2.	4692229	15.07.2021	112004	1,15,54,613/-	5,06,179/-
3.	4698374	16.07.2021	110255	1,15,16,138/-	5,04,493/-
4.	4692296	15.07.2021	54814	55,72,117/-	2,44,101/-
5.	4868744	30.07.2021	55412	56,82,168/-	2,48,922/-
6.	5901241	19.10.2021	108671	1,39,16,136/-	6,09,631/-
7.	7165158	20.01.2022	48759	54,78,475/-	2,39,998/-
Total				5,93,51,677/-	26,00,049
Details of Bill of Entry filed at ICD Sabarmati (INSBI6)					
Description:- Non Magnetic cold rolled stainless strips/coils Grade J3					
Sr. no.	Bill of Entry no.	B/E date	Quantity (in KGS)	Assessable Value(in Rs.)	Differential duty (in Rs.)
1	4523422	01.07.2021	41760	47,02,345.37/-	2,05,998/-
2.	9026312	01.10.2020	57001	45,92,836.27/-	2,01,201/-
Total			98761	92,95,182/-	4,07,199/-

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From the above, it is seen that the total duty demand alleged in Show Cause Notice is Rs. 39,67,031/- but on recalculating the same, it is concluded that the total duty amount reduced by Rs. 9,59,783/- and the new total duty liability comes out as Rs. 30,07,248/-.

20.4 In view of above, I find that the short-payment of duty resulting therefrom has arisen on account of the importer's wilful misstatement and

suppression of material facts. 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.

In view of the above, I find that the differential customs duty amounting to Rs. 30,07,248/- (re-calculated in Table –C above) is recoverable from M/s AVN Commodities Private Limited under Section 28(4) of the Customs Act, 1962, being duty short-levied by reason of mis-declaration and misclassification of the goods by illegally claiming benefit of sr. no. 734 of the notification no. 50/2018-Customs dated 30.06.2018.

20.5 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.

20.6 In view of the facts and findings in above paras, I hold that total differential duty of Rs. 30,07,248/- (re-calculated in Table –C above) should be demanded under Section 28 (4) of the Customs Act, 1962 and the same is recovered from M/s. AVN Commodities Private Limited along with applicable interest in terms of section 28AA of the Customs Act, 1962.

20.7 I find that during the course of investigation, the importer M/s. AVN Commodities Private Limited had voluntarily paid the part payment of differential duty arose due to mis-classification of goods imported by them, amounting to Rs.10,00,000/- vide DD No. 005895 dated 06.03.2023 which has been deposited to the Govt. Exchequer vide TR-6 Challan No. 89 dated 12.04.2023.

21. **Confiscation of goods:-**

21.1 I observe that SCN has alleged that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

“(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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

21.2 On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962, it is clear that any goods, which don't correspond in respect of value or in any other particular with the entry made, will be liable to confiscation. In the present case, it is evident that the actual facts about the impugned goods i.e. end use of goods, whether for pipes and tubes or utensils manufacturing etc. were only known to the importer and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI, HQ.

From the aforesaid, I find that the importer had knowingly and deliberately indulged in suppression of facts and wilfully misrepresented/mis-stated the material facts in contravention of the provisions of Section 46(4) of the Customs Act, 1962 read with other provisions, that the “Cold Rolled Stainless Steel strips/Coil Grade J3” are rightly classifiable under CTH 7220 9090. In terms of Section 46(4) of Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bills of Entry

submitted for assessment of Customs duty.

As discussed in the foregoing paras, the importer has fraudulently evaded the customs duty on the imported goods by declaring incorrect or incomplete description and classification of the goods. For these contraventions and violations, the goods fall under the ambit of 'smuggled goods' also within the meaning of Section 2(39) of the Customs Act, 1962. Hence the impugned imported goods as imported vide Bills of Entry mentioned at Annexure A and B (Table-C) are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

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

“The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section

125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

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

22. PENALTY ON NOTICE:-

22.1 As discussed in above paras, wherein it has been undisputedly established that the impugned goods i.e. "*Cold Rolled Stainless Steel strips/ Coil Grade J3*" are correctly classifiable under HSN code 72209090 instead of HSN code 72209022 as declared by the importer. Therefore, benefit of concessional rate of Basic Customs Duty availed by the importer under sr. no. 734 of Notification No. 50/2018-Customs dated 30.06.2018 is not applicable as the said Notification does not provide concessional benefit of BCD to those good which are classified under CTH 72209090. The importer had knowingly and deliberately indulged in suppression of facts and wilfully misrepresented/mis-stated the material facts in contravention of the various provisions of The Customs Act, 1962. The importer has fraudulently evaded the customs duty on the imported goods by declaring incorrect or incomplete description and classification of the goods. For these contraventions and violations the imported goods are liable for confiscation under the provisions of Section 111(m) of the

Customs Act, 1962 and differential duty of Rs. 30,07,248/- (re-calculated in Table –C above) is 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 112,114AA and 117 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 :

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

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.

Section 117 of the Customs Act, 1962 read as –

Penalties for contravention, etc., not expressly mentioned.—

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

22.2 It is observed that importer through its director, Shri Anand Netanand Choudhary was responsible for all the activities of the firm including import and clearance of goods. Shri Anand Netanand Choudhary had full knowledge about the mis-declaration and mis-classification of the said imported goods. Shri Anand Netanand Choudhary in his statement had stated that they imported “Cold Rolled Stainless Steel Coil/strips J3 grade” from China and also “stainless steel scrap/ingots” from Vietnam and their Major Chinese Suppliers

are Yong Metals, China, JBL Metal Limited and Mamba Trading Co in Hong Kong, Huaye International Development (HK) Limited, Hong Kong. Shri Anand Netanand Choudhary had decided the classification of the imported goods i.e. "Cold Rolled Stainless Steel strips/ Coil Grade J3" under CTH 72209022 as he was aware about the SAPTA concessional benefit in import of 'Nickel Chromium Austenitic Type' under CTH 72209022 @ 45% of applied rate of Customs duty, under Notification no. 50/2018 dated 30.06.2018. He stated that "Cold Rolled Stainless Steel strips/Coil Grade J3" is a low quality alloy of Stainless Steel consisting of Nickel below 1%, Copper below 1%, Chromium below 15%, Manganese Below 9% and rest of the portion is iron. Further during the statement on being shown the copy of Custom Tariff Chapter-72, Section -XV and Stainless Steel Plate, Sheet and Strip specification (first revision)" issued by Bureau of Indian standards (IS 6911:1992)- (prescribing Chemical Composition for "201-International grade" as 3.5-5.5 percentage of Nickel and 16-18 %, he accepted that "Cold Rolled Stainless Steel strips/ Coil Grade J3" is not classified under CTH-72209022 and should have been classified under CTH 72209090 or 72209029 and due to the low Nickel contents of goods that are not Nickel Chromium Austenitic Type. Further, initially M/s AVN" was classifying the impugned goods i.e. "Cold Rolled Stainless Steel strips/ Coil Grade J3" under CTH 72209022 in order to claim the undue duty benefits, however, later on they started classifying these goods under CTH 72209090. They neither preferred to intimate the same to Customs Authorities, nor paid differential Customs Duty voluntarily. It clearly indicate that "M/s AVN" and associated persons knowingly and intentionally committed acts of mis-declaration and mis-classification to avail ineligible benefits illegally, in contravention of the provisions of the Customs Act, 1962 . Thus, their action has rendered the goods liable for confiscation under Section 111 of the Customs Act, 1962 and consequently importer is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

22.3 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on importer **M/s AVN Commodities Private Limited** under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

22.4 I find that M/s. AVN Commodities through its associated persons intentionally committed acts of mis-declaration to avail ineligible benefits illegally. Importer knowingly and intentionally prepared/got prepared; signed/got signed and used the declaration, statements and/or documents; presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, therefore, the importer is liable for penalty under section

114AA of the Customs Act, 1962.

23.1 I find that being the Director of the company, Shri Anand Netanand Choudhary was responsible for all the activities of the firm including import and clearance of goods. Shri Anand Netanand Choudhary had full knowledge about the mis-declaration and mis-classification of the said imported goods. He was in contact with custom brokers and handling all the work related to clearance of imported goods. Shri Anand Netanand Choudhary in his statement accepted that he had decided the classification of the imported goods i.e. "Cold Rolled Stainless Steel strips/ Coil Grade J3" under CTH 72209022 as he was aware about the SAPTA concessional benefit in import of 'Nickel Chromium Austenitic Type' under CTH 72209022 @ 45% of applied rate of Customs duty, under Notification no. 50/2018 dated 30.06.2018. In his voluntary statement, he accepted that "Cold Rolled Stainless Steel strips/ Coil Grade J3" is not classified under CTH-72209022 and should have been classified under CTH 72209090 or 72209029 and due to the low Nickel contents of goods that are not Nickel Chromium Austenitic Type. On the direction of Shri Anand Netanand Choudhary, the CTH of the impugned goods was changed. It clearly indicates that Shri Anand Netanand Choudhary, Director of "M/s AVN" knowingly and intentionally committed acts of mis-declaration and mis-classification to avail ineligible benefits illegally, in contravention of the provisions of the Customs Act, 1962. Thus, his action has rendered the goods liable for confiscation under Section 111 of the Customs Act, 1962 and therefore, Shri Anand Netanand Choudhary is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

23.2 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on Shri Anand Netanand Choudhary, under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

23.3 I find that Shri Anand Netanand Choudhary intentionally committed acts of mis-declaration to avail ineligible benefits illegally. On the direction of Shri Anand Netanand Choudhary, the CTH of the impugned goods was changed. It clearly indicates that Shri Anand Netanand Choudhary, knowingly and intentionally committed acts of mis-declaration and mis-classification to avail ineligible benefits illegally. Shri Anand Netanand Choudhary had knowingly and intentionally prepared/got prepared; signed/got signed and used the declaration, statements and/or documents; presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, therefore, Shri Anand Netanand Choudhary, director of M/s. AVN

Commodities Private Limited is liable for penalty under section 114AA of the Customs Act, 1962.

24.1 I find that Shri Rajan A M, Partner of M/s Suraj Forwarders and Shipping Agencies (CHA) filed Bills of Entries for "M/s AVN" and also assisted "M/s AVN" in mis-classification of the imported goods as Austenitic Stainless Steel of Chromium and Nickel type under CTH 72209022 to avail in-eligible benefits under sr. no. 734 of Notification No.50/2018-Customs dated 30.06.2018. Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies (Customs Broker) failed to examine the description and classification of the imported goods thoroughly vis-à-vis documents provided by the importer viz. Mill Test Certificates etc.). Further, Shri Rajan A. M., in his voluntary statement admitted that the imported goods i.e. "J3 Grade" were of low standard stainless steel having low value of Nickel (below 1.5%) and Chromium. Therefore, even after being aware in advance, he failed to fulfil his duties and obligations under provisions of Section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2018 (CBLR, 2018). Accordingly, Shri Rajan A. M., Partner of M/s Suraj Forwarders is liable to penalty under Section 112 a (ii) of the Customs Act, 1962.

24.2 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on Shri Rajan A. M., under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

24.3 I find that Shri Rajan A. M. assisted importer in mis-classification of the imported goods as Austenitic Stainless Steel of Chromium and Nickel type under CTH 72209022 to avail in-eligible benefits under sr. no. 734 of Notification No.50/2018-Customs dated 30.06.2018 and intentionally committed acts of mis-declaration for ineligible benefits illegally. Shri Rajan A. M. had knowingly and intentionally prepared/got prepared; signed/got signed and used the declaration, statements and/or documents; presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, therefore, Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies is liable for penalty under section 114AA of the Customs Act, 1962.

25. As regards to imposition of penalty under Section 117 of the Customs Act, 1962, I find that Section 117 proposes penalty where no express penalty elsewhere provided for such contravention or failure, As already penalty has been imposed under Section 112a (ii) and 114AA of the Customs Act, 1962, and nothing has been brought forth in the Show Cause Notices, which can justify

additional penalty under Section 117 of the Act, *ibid*, therefore, I do not find any reason to impose penalty on M/s. AVN Commodities Pvt Ltd, Shri Anand Netanand Choudhary, Director of “M/s AVN” and Shri Rajan A M, Partner of M/s Suraj Forwarders and Shipping Agencies under Section 117 of the Customs Act, 1962.

26. In view of discussion and findings *supra*, I hereby pass the following order:

ORDER

(i) I reject the declared classification of the subject goods under CTI 72209022 in the Bills of Entry as detailed in Annexure–A & B attached to the order and order to re-classify the goods under Customs Tariff Item 72209090 of the First Schedule to the Customs Tariff Act, 1975.

(ii) I reject the benefit of sr. no. 734 of notification no. 50/2018-Customs dated 30.06.2018 claimed on the goods of Bill of Entry as detailed in Annexure A & B and order to re-assess the subject Bills of Entry under section 17(4) of The Customs Act, 1962, accordingly without notification benefit.

(iii) I order for the confiscation of the impugned goods having total declared Assessable value of Rs. 6,86,46,860/- (Rupees Six Crore Eighty Six Lakh Forty Six Thousand Eight Hundred Sixty only) as detailed in Annexure A & B (Table-C) attached to this order under Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs. 40,00,000/- (Rupees Forty Lakh only)** in respect of the subject goods imported vide Bills of Entry mentioned in Annexure A & B under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

(iv) I confirm the demand of differential Customs duty amounting to Rs. 30,07,248/- (Rupees Thirty Lakhs Seven Thousand Two Hundred and Forty Eight only) (re-calculated in Table –C above) and the same is to be recovered from M/s AVN Commodities Private Limited under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

(v) I order to appropriate the amount of Rs. 10,00,000/- (Rupees Ten Lakh only) paid by M/s. AVN Commodities Pvt Ltd. against their differential duty and applicable interest confirmed at sr. no. iv above.

(vi) I impose a penalty of **Rs. 3,00,000/- (Rupees Three Lakh only)** on the Importer M/s. AVN Commodities Private Limited under Section 112 a(ii) of Customs Act, 1962.

(vii) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on the Importer M/s. AVN Commodities Private Limited under Section 114AA of Customs Act, 1962.

(viii) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on Shri Anand Netanand Choudhary, Director of M/s. AVN Commodities Private Limited under Section 112 a(ii) of Customs Act, 1962.

(ix) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand only)** on Shri Anand Netanand Choudhary, Director of M/s. AVN Commodities Private Limited under Section 114AA of Customs Act, 1962.

(x) I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on “Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies” under Section 112 a(ii) of Customs Act, 1962.

(xi) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand only)** on “Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies”, under Section 114AA of Customs Act, 1962.

(xii) I refrain from imposing penalty under Section 112 (b) and Section 117 of the Customs Act, 1962 on the Importer M/s. AVN Commodities Private Limited, Shri Anand Netanand Choudhary, Director of M/s. AVN Commodities Private Limited and Shri Rajan A. M., Partner of M/s Suraj Forwarders and Shipping Agencies for the reasons as discussed above.

27. 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.

28. The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/1198/2024-Adjn. dated 20.02.2025 is hereby disposed off on above terms.

Zala Dipakbhai Chimanbhai

ADDITIONAL COMMISSIONER

ADC/JC-III-O/o Pr Commissioner-customs-mundra

Encl:- Annexure A & B

फ़ाइल संख्या/F. No. GEN/ADJ/ADC/1198/2024

By Speed Post/ email

To:

- i. **M/s AVN Commodities Private Limited (IEC-0811014665)**
23-24, Tirth Industrial Park, Village Paldi Kankaj,
Ahmedabad Gholka Highway, Off Kamod Circle,
SP Ring Road, Taluka Daskroi,
Ahmedabad – 382425;
- ii. **Shri Anand Netanand Choudhary**, Director of “M/s AVN Commodities Private Limited”;
- iii. **Shri Rajan A M**, authorized Customs Broker, Partner of M/s Suraj Forwarders and Shipping Agencies

Copy to:-

1. Directorate of Revenue Intelligence, Headquarters, New Delhi
 2. The Deputy/Assistant Commissioner (RRA/TRC), Custom House, Mundra.
 3. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately).*
 4. Guard File
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