

7926 & 7927

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>	
<b>A. File No.</b>	:	GEN/ADJ/COMM/155/2022-Adjn-O/o Pr. Commr. Cus-Mundra
<b>B. Order-in-Original No.</b>	:	MUN-CUSTM-000-COM-020-23-24
<b>C. Passed by</b>	:	K.Engineer Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>D. Date of order and Date of passing of Order</b>	:	01.02.2024 01.02.2024
<b>E. SCN No. &amp; Date</b>	:	GEN/ADJ/COMM/155/2022-Adjn-O/o Pr. Commr. Cus-Mundra dated 22.02.2023
<b>F. Noticee(s) / Party / Importer</b>	:	<b>M/s G. K. Enterprises(IEC-0507000048), 2746- Gali No. 6, Chuna Mandi, Mharganj, New Delhi-110055; and other.</b>
<b>G. DIN</b>	:	<b>20240171MO0000999A6B</b>

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

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

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

o/c

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

4. उक्त अपील के साथ - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ छूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

## BRIEF FACTS OF THE CASE

An information was received by the officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi (hereinafter referred to as "the DRI"), that **M/s. G. K. Enterprises (IEC-0507000048)**, (hereinafter referred to as 'M/s. G.K.' and also as 'the importer' for the sake of brevity), a **proprietorship firm** of Shri Gugan Kumar; located at 2746, Gali No.6, Chuna Mandi, Paharganj, Delhi-110055 were wrongly availing the benefit of the preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 (Indo-ASEAN FTA), in connivance with the supplier Mr. Sanjay Jain (an Indian Resident), through his firm/company M/s Excelvantage Global Ltd., (HK), M/s Excelvantage Global Ltd., British Virgin Island, China and M/s EVG Metals Industries SDN BHD, Malaysia as the items imported by M/s G. K. Enterprises, i.e., Cold Rolled Stainless-Steel Coils Grade 410S/Magnetic Stainless Steel Cold Rolled Coil Grade 410S (herein after referred to as "C.R.S.S. Coils") from Malaysia and declared to be of Malaysian origin, were, in fact, of Chinese origin and were routed through Malaysia to wrongly avail the benefit of preferential duty and other applicable duties, on the said items, at the time of import.

**2.** For better appreciation, the relevant extracts of the Notification No. 46/2011-Cus dated 01.06.2011 [AIFTA - INDO - ASEAN FTA] are reproduced below:

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 153/2009-Customs dated the 31st December, 2009 [G.S.R. 944 (E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II.*

*Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009.*

Provided further that the exemption specified in S.N.31A of the said Table shall not apply to the goods imported into the Republic of India from the countries listed in Appendix I other than Myanmar.

Table

S. No.	Chapter, Heading, Sub-heading and Tariff item	Description	Rate (in percentage unless otherwise specified)	
(1)	(2)	(3)	(4)	(5)
1	<b>0101</b>	All goods	0.0	0.0
:	:	:	:	:
967	72	All goods	0.0	0.0

Appendix I

S. No.	Name of the Country
1.	Malaysia
2.	Singapore
3.	Thailand
4.	Vietnam
5.	Myanmar
6.	Indonesia
7.	Brunei Darussalam
8.	Lao PDR
9.	Cambodia

**2.2** The relevant provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the Notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31<sup>st</sup> December 2019, are reproduced as under:

**3. Origin criteria:**

*The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:*

- a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,
- b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.

**4. Wholly produced or obtained products-**

*For the purpose of clause (a) of rule 3, the following shall be considered as wholly produced or obtained in a party:-*

- (a) plant and plant products grown and harvested in the party;

*Explanation- For the purpose of this clause, "plant" means all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants;*

- (b) live animals born and raised in the party;
- (c) products obtained from live animals referred to in clause (b);

*Explanation 1.- For the purpose of clauses (b) and (c), "animals" means all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.*

*Explanation 2.- For the purpose of this clause, "products" means those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;*

- (d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the party;
- (e) minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the party's soil, water, seabed or beneath the seabed;
- (f) products taken from the water, seabed or beneath the seabed outside the territorial water of the party, provided that that party has the right to exploit such water, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;
- (g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the party and entitled to fly the flag of that party;
- (h) products processed and/or made on board factory ships registered with the party and entitled to fly the flag of that party, exclusively from products referred to in clause (g);
- (i) articles collected in the party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes; and

*Explanation.- For the purpose of this clause, "article" means all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations;*

- (j) products obtained or produced in the party solely from products referred to in clauses (a) to (i).

##### *5. Not wholly produced or obtained products-*

- (1) For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if -

- (i) the AIFTA content is not less than 35 percent of the FOB value;

and

(ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digits of the Harmonized System:

Provided that the final process of the manufacture is performed within the territory of the exporting party.

(2) For the purpose of clause (i) of sub-rule (1), the formula for calculating the 35 per cent. AIFTA content is as follows:

.....

#### 6. Cumulative rule of origin-

Unless otherwise provided for, products which comply with origin requirements referred in rule 3 and which are used in a party as materials for a product which is eligible for preferential treatment under these rules shall be considered as products originating in that party where working or processing of the product has taken place.

#### 2.3 Certificate of Origin-

Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III annexed to these rules.

3. Acting on the said information, searches at the office-cum-godown premises of M/s G. K. were conducted, the details of which are as under:

(i) The search of the premises of M/s G. K Enterprises i.e., 2746, Gali No.6, Chuna Mandi, Paharganj, Delhi-110055 was conducted on 01.02.2023 and certain documents/ electronic devices considered relevant to the investigation were resumed. Some printouts were also taken from the email Id i.e. gkechachan@yahoo.co.in of Mr. Gugan Kumar Aggarwal, Prop. of M/s G. K. Enterprises. All the proceedings were recorded under Panchanama dated 01.02.2023, drawn on the spot.

(ii) The search of the premises of M/s G. K Enterprises i.e., Shop No. XV/1886, Gali No.10, Chuna Mandi, Paharganj, Delhi-110055 was conducted on 01.02.2023. It was found to be a godown of M/s G. K. Enterprises. All the proceedings were recorded under panchanama dated 01.02.2023 drawn on the spot.

4. Intelligence was gathered that Mr. Sanjay Jain, the China based supplier was currently in India. Thus, a search at his available address i.e. ZP-40, Maurya Enclave, Pitampura, New Delhi was conducted, simultaneously, on 01.02.2023. During the search it was gathered that it was his uncle's house and his uncle Shri Ram Kumar Jain informed that his brother Shri Inder Sain Jain (father of Shri Sanjay Jain) was residing at Flat No. 310, Sunrise Apartment, Sector-13, Rohini, New Delhi. Thus, a search was conducted at the said address of Rohini on the same day i.e. on 01.02.2023. Nothing incriminating or relevant to the investigation was found at the address. Shri Inder Sain Jain, father of Shri Sanjay Jain, informed that Shri Sanjay Jain was not presently residing with him, but, residing at the address i.e. D-153, Pocket-D, DLF Park Place, Sector-54,

Gurugram. Thereafter, a search was conducted, on 01.02.2023 it-self, at the address i.e. D-153, Pocket-D, DLF Park Place, Sector-54, Gurugram. During the search, nothing incriminating relevant to the investigation could be found. His mobile phone was resumed for further investigation. All the proceedings were recorded under panchanama dated 01.02.2023 drawn on the spot.

**5.** Statement of Mr. Sanjay Jain, R/o. D-153, DLF Park Place, Phase-V, Sector-54, Gurugram, was recorded under Section 108 of the Customs Act, 1962, on 02.02.2023. In his voluntary statement, Mr. Sanjay Jain, *inter alia*, stated that:

- (i) In 2005, he purchased a name i.e. **M/s Excelvantage Global Ltd., British Virgin Island** from Secretarial Office at Hongkong.
- (ii) in order to expand his business, he explored possibility of doing business, related to his family business i.e. export of C.R.S.S. Coils from China. So, somewhere in 2017, he established another company in the name of **M/s Excelvantage Global Ltd (HK), Hongkong**. Through that company he did trade / export of C.R.S.S. Coils to India.
- (iii) somewhere in 2017 or 2018 Indian Government brought CVD on SS Coils on imports from China to India. The Chinese suppliers started alluring Indian buyers to buy goods through the route of Malaysia or Indonesia so that they could save BCD and CVD on these goods. For that purpose, those Chinese suppliers / forwarders were arranging Certificate of Origin from Malaysia and Indonesia. Because of that he started losing his buyers from India.
- (iv) in the meantime, he came in the contact of Mr. Manish. Mr. Manish had established a company in Malaysia in the name of M/s Artfransi International SDN BHD. As Mr. Manish Goyal had established a manufacturing unit in Malaysia, he started sending coils to his (Mr. Manish) company. Mr. Manish (in his company/factory) used to cut these coils in 'Circles' and used to export to India. After sometime he (Mr. Sanjay Jain) came to know that Mr. Manish was exporting C.R.S.S Coils as such to India after purchasing through his company claiming these as of Malaysian origin under Preferential Trade Agreement. He also saw that his (Mr. Manish's) consignments were being cleared in India without any problem. Inspired from Mr. Manish, he thought of opening a company in Malaysia and does the same kind of business i.e. sending C.R.S.S Coils of Chinese Origin via Malaysia.
- (v) then he established a company in the name of **M/s EVG Metals Industries SDN BHD** in Malaysia, in which as per his thinking Md. Nadeem Shikoh put his two sons, namely Md. Umar Bin Nadeem Shikoh and Md. Usama Bin Nadeem Shikoh as Directors. He used to purchase C.R.S.S. coils under M/s EVG Metals, Malaysia from China, used to send to Malaysia and containers were then being changed in Malaysia. All documents like Invoice, packing list in the name of any Malaysian company was being arranged by Mr. Nadeem Shikoh. Mill reports of China were also being copied on letter heads of Malaysian companies. But payments were being received in the accounts of M/s EVG Metal Industries. Before the establishment of M/s EVG Metal Industries, some consignments were sent through his company M/s Excelvantage Global Ltd British Virgin Island.

(vi) he had supplied goods under these arrangements, in India, to M/s Aaryan Overseas, Shri Giriraj Metal Company, M/s Verdhman Trading Company, Shri Hanuman Metal, M/s Salasar Impex, M/s G. K. Enterprises, M/s SSN Steel Impex.

(vii) in respect of Panchnama dated 01.02.2023 drawn at the premise of M/s G. K. Enterprises, 2746, Gali No.6, Chuna Mandi, Paharganj, New Delhi and import documents related to imports made by M/s G. K. Enterprises through M/s DM Aluminium & Steel Manufacturing, Malaysia, wherein M/s Excelvantage Global Ltd., 510-511, Nan Fung Tower, 173 DES VODUX RD, Central, HK and M/s Excelvantage Global Ltd. British Virgin Island were shown as notified party. He admitted that the invoices and packing lists (in the name of M/s DM Aluminium) of all four imports made by M/s G. K. Enterprises, New Delhi were for the sake of routing coils through Malaysia, the coils under those documents were of Chinese origin. The Certificate of Origin and other documents were prepared in Malaysia. Payments for those goods were received in the bank account of M/s Excelvantage Global Ltd. The above mentioned both the companies were same.

(viii) in respect of printout of an email dated 05.06.2018, resumed from the premises of M/s G.K. Enterprises, sent from [tracy@excelvantage.com](mailto:tracy@excelvantage.com) to him and, with a copy to Viola, regarding shipment of M/s G. K. (2018EVG026), he admitted that Ms. Tracy and Ms Viola both were his employees at China in his companies.

(ix) in respect of printout of the email dated 07.06.2018, resumed from the premises of M/s G. K. Enterprises, from [sj@excelvantage.com](mailto:sj@excelvantage.com) to [gkchechan@yahoo.co.in](mailto:gkchechan@yahoo.co.in) and [saraswatihardware@yahoo.com](mailto:saraswatihardware@yahoo.com) and [sdjain73@gmail.com](mailto:sdjain73@gmail.com), he admitted that these emails were related to supplies through his Chinese companies to M/s G. K. Enterprises. Further he stated that there was one more firm of Mr. Gugan Kumar namely M/s GSR Metal Impex. Mr. Rajiv Jain and Mr. Sanjay were two more partners in M/s GSR Metal Impex and M/s Vardhaman Trading Company belongs to Mr. Rajiv Jain.

(x) **the goods supplied to M/s G. K. Enterprises under the four invoices were as per the will of Mr. Gugan Kumar and the entire process of routing of goods was in his knowledge.** The goods were supplied to M/s GSR Metal Impex and M/s Vardhaman also in the same fashion. **They were well aware that the goods were of Chinese origin and were routed through Malaysia.**

**6.** Mr. Gugan Kumar, Proprietor of M/s G. K. Enterprises, Chuna Mandi, Paharganj, New Delhi, in his voluntary statement, recorded on 03.02.2023, under Section 108 of the Customs Act, 1962, *inter alia*, stated that:

i. Mr. Sanjay Jain was exporting Magnetic C.R.S.S. Coils from China and was residing in China/Hong Kong. So, he came in contact with him and showed his interest in importing Magnetic CRSS Coils through him. Mr. Sanjay Jain quoted him the rates of the said coils and told him that the goods would come through Malaysia with all proper Government issued documents, so that he could get goods on cheaper rates as customs duty was not payable when the goods came from Malaysia. Mr. Sanjay Jain assured that there would be no problem in clearance of goods as all

documents would be proper. Mr. Sanjay Jain said that payments were to be sent in his company's account. **The proforma invoices used to come in his (Mr. Sanjay Jain's) company's name i.e. in the name of M/s Excelvantage Global Ltd., British Virgin Island or in the name of M/s Excelvantage Global Ltd., 510-511, Nan Fung Tower, 173 Des, Vodux Rd, Central HK.** He was not aware that through which company he would get invoices. Then, he started to receive invoices in the name of a Malaysian company i.e. M/s DM Aluminium & Steel Manufacturing, Malaysia. Further, **he admitted that he had never dealt with M/s DM Aluminium & Steel Malaysia, all his purchases were through the company of Mr. Sanjay Jain i.e. M/s Excelvantage Global Ltd. He had imported total four consignments through Mr. Jain's company and had made all payments to the account of M/s Excelvantage Global Ltd.** Further, he admitted that he was aware that the goods imported by him under **four Bills of Entry were of Chinese Origin and had been routed through Malaysia** as it was a prevalent practice in the market as various traders of Delhi were importing via that means through various suppliers from China / Malaysia.

- ii. that Mr. Sanjay Jain of M/s Excelvantage Global Ltd. took the responsibility of correctness of all the import documents including Certificates of Origin. Even for the first consignment for the invoice No. EVG171108-001 dated 08.12.2017 (**BE No. 5290295 Dated 20.02.2018**), forwarder in India i.e. M/s DFX Logistics, East Patel Nagar, Delhi was provided by Mr. Sanjay Jain. But for that Bill of Entry either the Certificate of Origin came late or the forwarder could not produce it timely in Customs, the Customs duty was paid on this Bill of Entry. The import documents were sent to M/s DFX Logistics directly, by Mr. Sanjay Jain for that consignment. He had no idea what happened at that time. Then, he changed the forwarder and appointed M/s Shakti Forwarder Pvt. Ltd., Gandhidham as CHA who looked after all the affairs. Then documents used to come to him from Mr. Sanjay Jain either through courier or by hand from Mr. Sanjay Jain and he used to forward it to M/s Shakti Forwarder Pvt. Ltd., Gandhidham. He had no idea about technicalities of those documents as he had not been into the business of imports earlier.
- iii. that they opened M/s GSR Metals partnership firm in 2018 and had imported Magnetic C.R.S.S Coils under that firm also through Mr. Sanjay Jain in the same fashion. They received a letter in that regard from Mundra Port regarding deposit of duty in respect of M/s GSR Metals. Upon receiving letter from port, they asked Shri Sanjay Jain about the correctness of Certificate of Origins (COOs), Mr. Sanjay Jain then sent a letter issued by MITI about the correctness of the COOs and they sent the letter to their forwarder/CHA M/s Shakti Forwarder Pvt. Ltd. The said forwarder later informed that he (forwarder/CHA) approached the Customs and came to know that the said letter issued by MITI was fake and they had to deposit the duty, so they deposited differential duty around Rs.32 Lakh in early 2022. Further, he did not deposit duty in respect of M/s G. K. Enterprises, because they could not believe that all Certificates of Origin were not genuine, as Mr. Sanjay Jain assured them for the correctness of all the documents.

7. Statement of Mr. Sanjay Jain, R/o. D-153, DLF Park Place, Phase-V, Sector-54, Gurugram, was again recorded under Section 108 of the Customs

Act, 1962, on 04.02.2023. In his voluntary statement, Mr. Sanjay Jain, *inter alia*, stated that:

- (i) in respect of Page No.20, 21 and 22 of a file resumed from the premises of M/s G. K. Enterprises, under Panchnama dated 01.02.2023 (S.No.5, Table-A), he stated that it was a 'Shipping Instruction form' taken from M/s G. K. Enterprises for delivery of goods and for filling information in all export documents to avoid any kind of mistake as it cost them if amendment was to be done in any export document. The form which is at page no 20, was sent by him and on page no 21&22 was the form filled by M/s G. K. Enterprises, which might have been received by them on email.
- (ii) In respect of Page Nos. 1, 3, 4 and 5 of the same file, he stated that the document at page no.1 was the proforma invoice dated 08.11.2017 for the order placed by M/s G. K. Enterprises. On confirmation of the same, Invoice No. EVG 171108-001 dated 08.12.2017 and packing list were issued to M/s G. K. Enterprises, which were at page no. 3-5. He confirmed that the bank account number mentioned on invoice itself at page no.3 was of his company i.e. M/s Excelvantage Global Ltd., HK. The signature on these documents was of my company's employee, i.e. Ms Tracy, at China office.
- (iii) in respect of Page No.12 of a file resumed from the premises of M/s G. K. Enterprises, under Panchnama dated 01.02.2023 (S.No.4, Table-A), he stated that it was a copy of Certificate of Origin in respect of invoice No. 171108-001 dated 08.12.2017 for M/s G.K. Enterprises, Chuna Mandi Paharganj. The image of copy of said Certificate of Origin which was unsigned.
- (iv) In respect of why there was no signature or stamp on this Certificate of Origin, he stated that documents like Invoices, packing lists, Bill of Lading, Insurance, Mill Test Certificate and Certificate of Origin, to be arranged from Malaysia was the responsibility of Mr. Nadeem Shikoh at Malaysia. They used to issue invoice, Packing list of their company in the name of any Malaysian company as suggested by Mr. Nadeem Shikoh. Sometimes Chinese suppliers themselves used to put names of any Malaysian company's name on the documents, they just used to handover the goods to those forwarders. He used to buy those Magnetic C.R.S.S. Coils from M/s Baojia Stainless Steel Co. Ltd, located in Jieyang, China and non-magnetic C.R.S.S. Coils, they used to purchase from some Mr. Lin (company's name not remembered), Ms Claire (M/s Leo Metals), Mr. Vicky (M/s MCH Stainless Steel Ltd., Foshan), M/s MFY (at Foshan, China), Mr. Payne (at Shandong, China, Company's name not remembered) and Ms. Elena (company's name not remembered). Most of those persons / companies were well connected with traders of Wazirpur / Paharganj, New Delhi. **Further, he stated that name of M/s DM Aluminium & Steel Manufacturing, Malaysia on all the invoices and packing lists sent to M/s G. K. Enterprises, Paharganj, New Delhi, was used only for the sake of showing that the goods were of Malaysian origin.**
- (v) **He used to pay Md. Nadeem Shikoh 100 USD per container along with all expenses incurred by him towards preparation of documents, shipments etc;** Mr. Nadeem Shikoh used to take 1000 Malaysian Ringgits (currency) per Certificate of Origin; Import documents were sent to Mr. Gugan Kumar through courier from Malaysia.

**(vi) that the forwarders had their godown at Klang Port in Malaysia so they used to facilitate in transferring of goods into another container.**  
All the work in Malaysia was being looked after by Md. Nadeem Shikoh.

(vii) that Cold Rolled SS Coils were manufactured from Hot Rolled SS Coils with the help of rolling machines. The HR Coils were generally of the thickness 1.7mm to 2.8 mm and width 1200-1225 mm. These are cold rolled to produce CR coil of desired thickness and width. Magnetic coils have very less % of Copper and Nickle whereas the non-magnetic coils have greater % of Copper and Nickle. As per his understanding Anti-Dumping duty was on the coils of width more than 1250 mm. further, he stated that he had never supplied / exported coils of breadth more than 1250 mm to India.

**8. From the above, it is evident that:**

- M/s G. K. Enterprises, New Delhi had imported Stainless-Steel Cold Rolled magnetic / non-magnetic C.R.S.S. Coils from Malaysia under the fake invoices (four) of M/s DM Aluminium & Steel Manufacturing, No.16, Jalan, PM 3, Taman Perindustrian Merdeka, 75350, Melaka, Malaysia and availed the benefit of the Notification No. 46/2011-Customs dated 01.06.2011, except for one where the effective Basic Customs duty had been paid under Notification No.50/2017.
- Mr. Gugan Kumar, Prop. of M/s G. K. Enterprises, stated in his statement that he had never dealt with the Malaysian supplier company i.e. M/s DM Aluminium & Steel Manufacturing, under the invoices of which the goods of four Bills of Entry were imported by him. His dealings were with Mr. Sanjay Jain only and payments in respect of all four Bills of Entry were sent to his (Mr. Sanjay Jain's) company M/s Excelvantage Global Ltd., Hong Kong. The details of payments (S.No. 6, Table-A of Panchanama) submitted to Indian Bank, Paharganj, New Delhi, by Mr. Gugan Kumar, Prop. of M/s G. K. Enterprises, New Delhi were resumed during the search of his office-cum godown premises at Paharganj, New Delhi, on 01.02.2023 under Panchanama dated 01.02.2023. For better appreciation of the fact, the images of ledger account of remittances sent and information sent to the Bank are reproduced below as Fig(5) to Fig(8):-

**Fig(5)**

Printed on 9-Dec-2019 at 11:57

1  
G.K. Enterprises  
2748B, Chuna Mandi,  
Paharganj, New Delhi-110058  
Delhi - 110058, India  
Contact: 011-49404583, 23586335, 9810709461

**EXCELVANTAGE GLOBAL LIMITED**

Ledger Account

510-511 NANFUNG TOWER 173 DES VODUX CENTRAL

Hong Kong

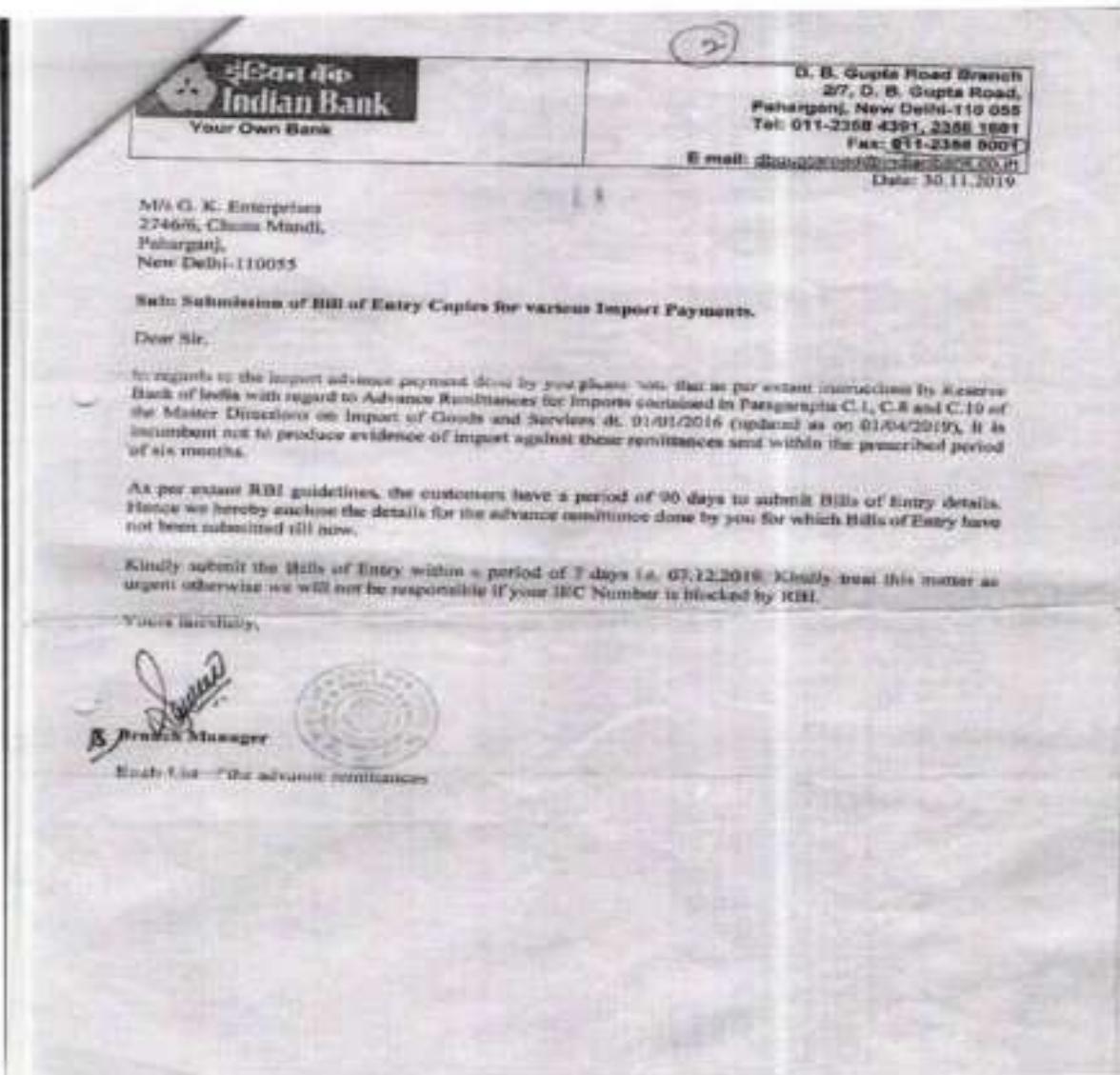
1-Apr-2017 to 7-Dec-2018

Date	Particulars	Vch Type	Vch No.	Debit	Credit	Page 1
13-11-2017	Cr INDIAN BANK C/A	Payment	293	5,64,472.00		
14-11-2017	Cr INDIAN BANK C/A	Payment	294	17,190.00		
12-12-2017	Cr INDIAN BANK C/A	Payment	338	22,45,843.00		
27-2-2018	Dr Purchase IGST	Purchase	227		38,11,538.00	
28-2-2018	Cr Customs Payment Gateway	Journal	84	7,84,436.00		
	Dr Exchange Gain & Loss	Journal	85		403.00	
27-3-2018	Cr INDIAN BANK C/A	Payment	519	5,67,301.00		
				41,79,242.00	38,11,041.00	
					5,67,301.00	
	Dr Closing Balance			41,79,242.00	41,79,242.00	
1-4-2018	Cr Opening Balance			5,67,301.00		
24-4-2018	Cr INDIAN BANK C/A	Payment	28	5,58,902.00		
	Cr INDIAN BANK C/A	Payment	29	5,73,626.00		
29-5-2018	Cr INDIAN BANK C/A	Payment	86	13,95,897.00		
4-6-2018	Cr INDIAN BANK C/A	Payment	102	5,36,375.00		
18-6-2018	Dr Purchase IGST	Purchase	78		34,12,180.86	
	Cr SHAKTI FORWARDERS PVT. LTD.	Journal	16	5,20,499.09		
5-7-2018	Dr Purchase IGST	Purchase	94		32,84,000.21	
7-7-2018	Cr INDIAN BANK C/A	Payment	154	13,33,373.00		
14-7-2018	Cr Exchange Gain & Loss	Journal	24	89,461.57		
	Cr SHAKTI FORWARDERS PVT. LTD.	Journal	25	5,00,944.59		
	Cr Exchange Gain & Loss	Journal	29	39,690.62		
28-8-2018	Cr INDIAN BANK C/A	Payment	237	5,21,452.00		
30-8-2018	Cr INDIAN BANK C/A	Payment	240	6,27,101.00		
4-9-2018	Cr INDIAN BANK C/A	Payment	275	11,18,420.00		
25-9-2018	Dr Purchase IGST	Purchase	178		34,01,944.00	
	Cr SHAKTI FORWARDERS PVT. LTD.	Journal	75	5,18,940.60		
	Cr Exchange Gain & Loss	Journal	76	1,16,020.40		
				1,00,98,113.87	1,00,98,113.87	

11 June  
1-2-23  
2018  
10 & 8087  
1-2-23

2018  
1-2-23

Fig(6)



Fig(7)

Fig(8)

Ph. : 011-23586335  
Cell : 9810709461

# G. K. ENTERPRISES

Deals in : Aluminium Section, Doors & Bus Body, Hardware Goods & Others

2746, Gall No. 8,  
Chuna Mandi, Pahar Ganj,  
New Delhi-110056

Ref. No. \_\_\_\_\_

Date: 07-13-14

To:

Indra Singh  
D. T. Corporation  
Pahar Ganj, New Delhi-110056

Sub: Submission of Bill of Entry for Import Part

Bill of Entry No. 21 dated 11-11-2014  
① 5240745 [ 850000 11/11/14 551752 ] ENR11108-001  
② 66657104 [ 850000 11/11/14 551752 ] ENR11108-006  
③ 70814415 [ 850000 11/11/14 551752 ] ENR11108-016  
④ 8111118 [ 850000 11/11/14 551752 ] ENR11108-018  
RE. 3975816/-

For G.K. Enterprises

2014-2015

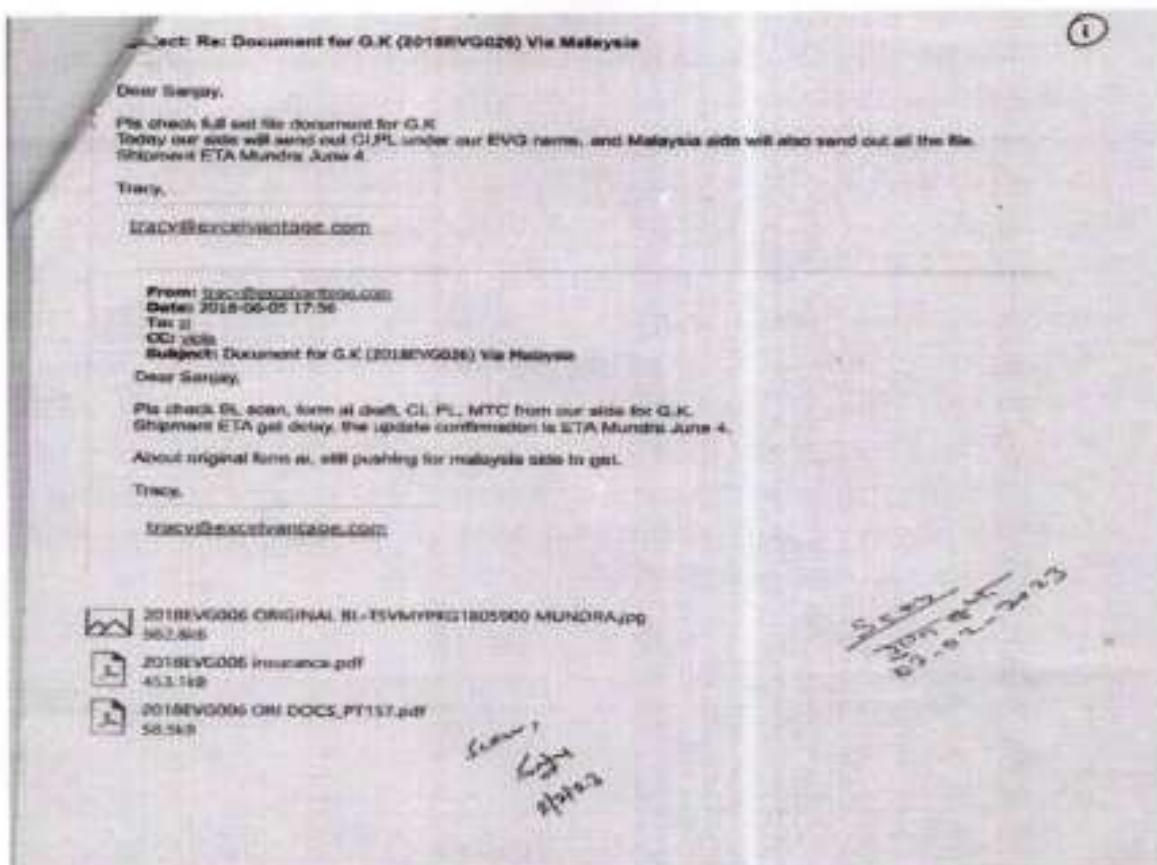
Proprietor

➤ Shri Sanjay Jain, Director of M/s Excelvantage Global Ltd. (HK) in his statements admitted that the goods under all four invoices of M/s DM Aluminium & Steel Manufacturing, Malaysia, exported to M/s G. K. Enterprises, were of Chinese origin, purchased by him in China and were routed through Malaysia. He also admitted that import documents like Invoice, Packing List, Mill Test report and Certificate of Origin were prepared at Malaysia by his associate Mr. Nadeem Shikoh at Malaysia. **The containers of goods in question, sent from China to Malaysia, were got changed in Malaysia, by his associate Mr. Nadeem Shikoh.** He also admitted that he used to pay Md. Nadeem Shikoh 100 USD per container along with all expenses incurred by him towards preparation of documents, shipments etc. and for arranging

**Certificates of Origin, he used to pay 1000 Malaysian Ringgits (currency) per Certificate of Origin, to Mr. Nadeem Shikoh.**

➤ Copy of trail-mails dated 05.06.2018 [Fig(9) below] and 07.06.2018 [Fig(10) below], between Mr. Gugan Kumar (at his email Id gkchachan@yahoo.co.in), Mr. Sanjay Jain (from his email Id sj@excelvantage.com), Ms Tracy and Ms Viola (both an employee of Mr. Sanjay Jain at China/HK), in relation to forwarding of documents in respect of invoice number 2018EVG026, meant for M/s G.K. Enterprises, via Malyasia confirm that the Chinese origin goods of this invoice were sent to M/s G. K. Enterprises, New Delhi at Mundra Port via Malaysia by Mr. Sanjay Jain. For better appreciation of the fact, the images of email are reproduced below:-

**Fig(9)**



**Fig(10)**



➤ In respect of invoice number EVG 171108-00108/12/2017 (Bill of Entry No.5290295 dated 20/02/2018), an unsigned / unstamped copy of Certificate of Origin has been resumed from the office-cum godown of M/s G. K. Enterprises during the search on 01.02.2023. The same invoice number was found mentioned on the said Bill of Entry. From perusal of assessed Bill of Entry (No.5290295 dated 20/02/2018) on ICES portal of the Customs, it has been observed that initially the documents were filed under notification 46/2011-customs dated dated 01.06.2011 which had been later amended to notification number 50/2017-Customs dated 30.06.2017 and BCD was paid on the goods @7.5%.

➤ M/s G. K. Enterprises had imported Stainless Steel Coils / Magnetic C.R.S.S. Coils 410S grade under four Bills of Entry (BE) under CTH 7219. Goods under BE No. 5290295 dated 20/02/2018 had been imported at ICD-Loni, Ghaziabad and Goods under Bills of Entry no. 6665754 dated 04.06.2018 (Invoice No. 2018EVG006 dated 26.04.2018); 7086415 dated 05.07.2018 (Invoice No. 2018EVG026 dated 28.06.2018) and 8111178 dated 19.09.2018(Invoice No.2018EVG066 dated 02.09.2018) had been imported at Mundra SEZ Port, Mundra (INMUN1). Copy of BsE, related Invoices/ Packing lists/Bills of Lading/COO/Mill Inspection Certificates are enclosed to this notice as. During the search, some proforma invoices (for invoice No. EVG 171108-001/**Fig (11) below**), parallel invoices and related packing lists (In respect of Invoice No. EVG 171108-001 **[Fig(12) below]** & 2018EVG026 **[Fig(13)] below**), raised by M/s Excelvantage Global Ltd., HK and / or Excelvantage Global Ltd., British Virgin Island to M/s G. K. Enterprises, in respect of consignments under above referred BE and invoice numbers were also resumed. For better appreciation of the fact, the image of said commercial invoices, packing lists and proforma invoice are reproduced below:-

Fig (13)

**Fig (12) - Commercial Invoice from Excelvantage Global Ltd., Malaysia:**

EXCELVANTAGE GLOBAL LTD.  
COMMERCIAL INVOICE

Customer: EXCELVANTAGE GLOBAL LTD. (2018EVG026)

Product: 410S STAINLESS STEEL COILS

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
1	410S COILS	11.00	USD	1100.00
2	410S COILS	11.00	USD	1100.00
<b>Total:</b>		<b>22.00</b>		<b>2200.00</b>

Buyer Information:  
Buyer Name: EXCELVANTAGE GLOBAL LTD.  
Buyer Address: 123, Jalan 1/123, Taman Desa, Kuala Lumpur, 50450 Kuala Lumpur, Malaysia  
Buyer City: Kuala Lumpur  
Buyer State/Province: Kuala Lumpur  
Buyer Zip/Postal Code: 50450  
Buyer Country: Malaysia  
Buyer Phone: +6012 3456789  
Buyer Email: info@excevantage.com.my

**Fig (13) - Commercial Invoice from Excelvantage Global Ltd., China:**

EXCELVANTAGE GLOBAL LTD.  
COMMERCIAL INVOICE

Customer: EXCELVANTAGE GLOBAL LTD. (2018EVG026)

Product: 410S STAINLESS STEEL COILS

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
1	410S COILS	11.00	USD	1100.00
2	410S COILS	11.00	USD	1100.00
<b>Total:</b>		<b>22.00</b>		<b>2200.00</b>

Buyer Information:  
Buyer Name: EXCELVANTAGE GLOBAL LTD.  
Buyer Address: 123, Jalan 1/123, Taman Desa, Kuala Lumpur, 50450 Kuala Lumpur, Malaysia  
Buyer City: Kuala Lumpur  
Buyer State/Province: Kuala Lumpur  
Buyer Zip/Postal Code: 50450  
Buyer Country: Malaysia  
Buyer Phone: +6012 3456789  
Buyer Email: info@excevantage.com.my

(These are two invoices for same commodity to the same importer bearing same invoice nos.-one from Malaysia and one from China)

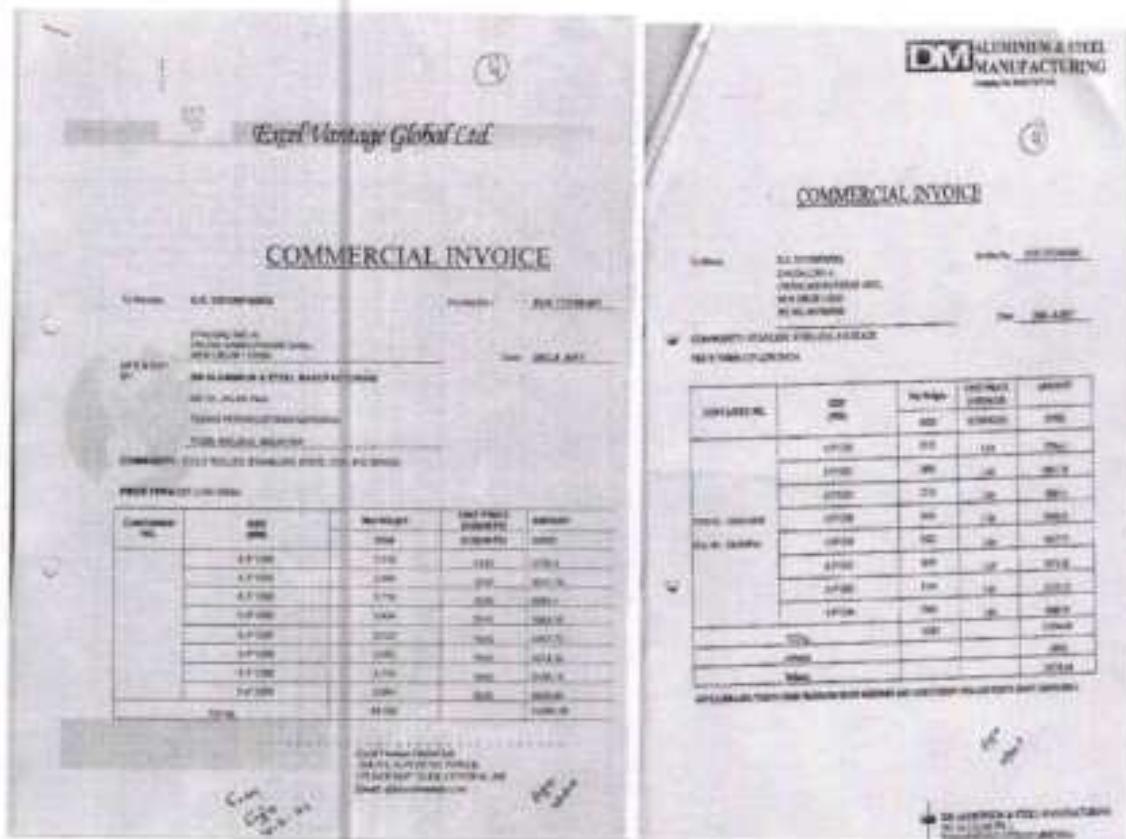
Fig (13)

(These are two Packing Lists for same commodity to the same importer bearing same invoice nos.-one from Malaysia and one from China)

Fig (12)

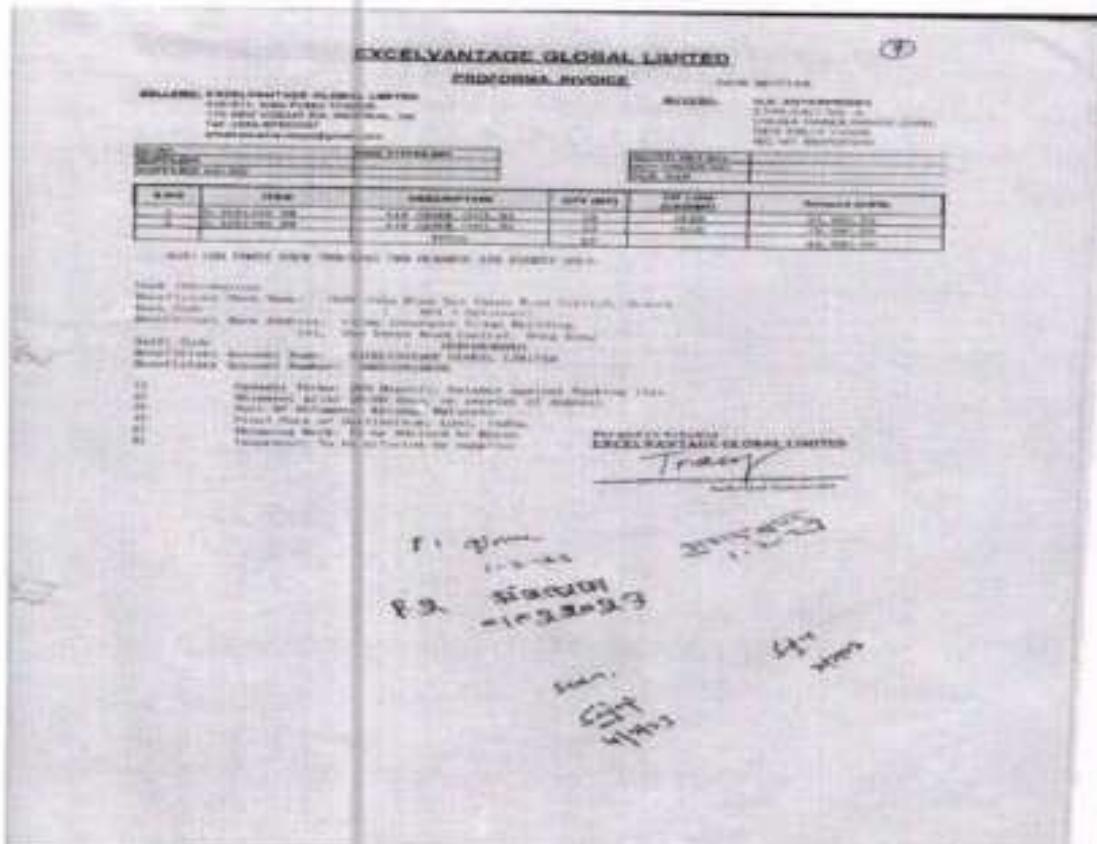
(These are two Packing Lists for same commodity to the same importer bearing same invoice nos.-one from Malaysia and one from China)

Fig (12)



(These are two invoices for same commodity to the same importer bearing same invoice nos.-one from Malaysia and one from China)

Fig (11)



(This is the Proforma Invoice from China based Supplier to the importer for supply of goods through Malaysia having same invoice number (Fig (12))

- From scrutiny of import documents, it has been observed that on the Bill of lading no. OBLPKGMUN18080684 [Fig(14) below]; GOSUPKL8038258 [Fig(15) below]; GOSUPKL8031958 [Fig(16) below] and

TSVMYPKG1805900 **[Fig(17) below]** and related to above referred invoices / BE, name of M/s Excelvantage Global Ltd., British virgin Island or M/s Excelvantage Global Ltd., HK was mentioned as 'Notify Party'. Mr. Sanjay Jain has admitted in his statement that these companies are owned by him. For better appreciation of the fact, the images of said Bills of Lading are reproduced below :-

Fig (14)



Fig (15)

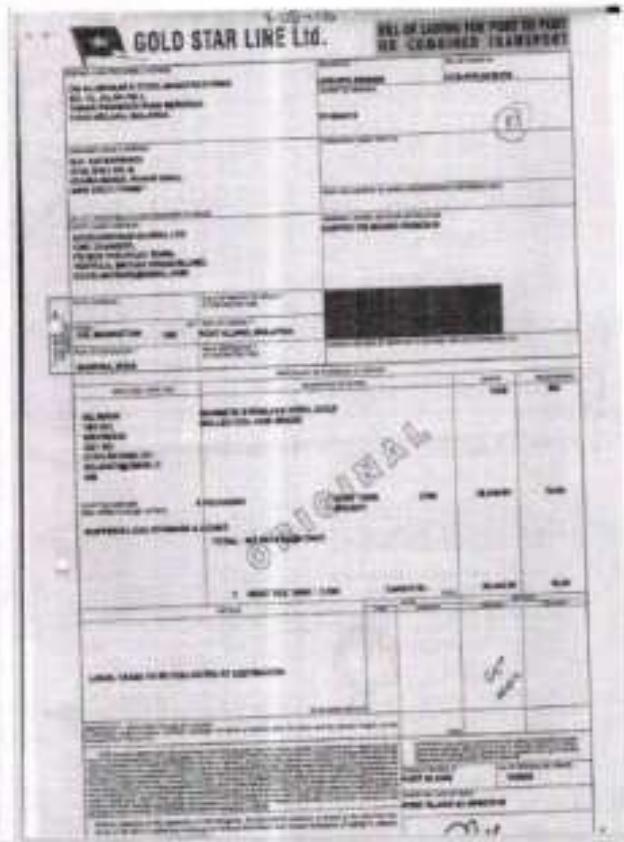


Fig (16)

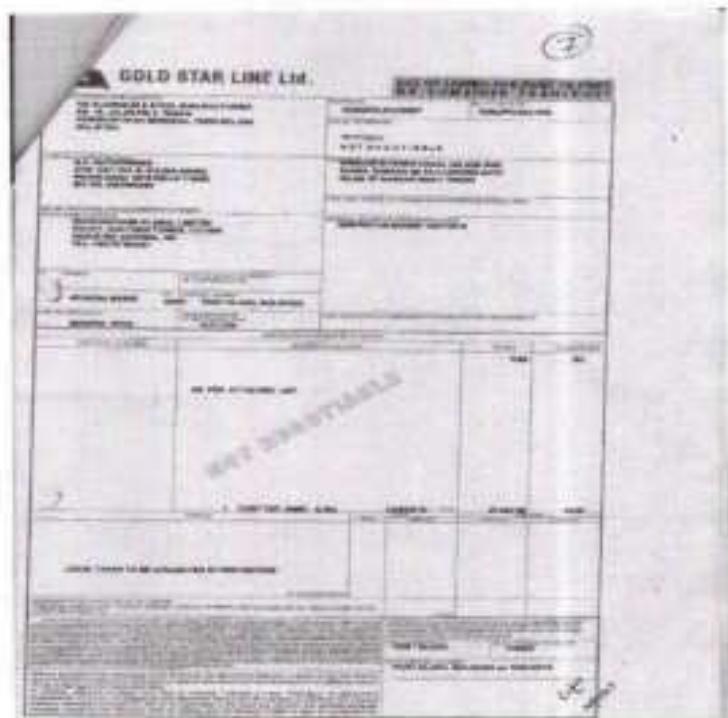


Fig (17)

Fig (18)

- Neither the goods supplied / sold to M/s G. K. Enterprises were produced in Malaysia nor any further processing were done in Malaysia as Mr.

Sanjay Jain has admitted in his statement that the goods were purchased in the name of his companies in China and later were routed through Malaysia. He also admitted that containers were being changed at the Klang port of Malaysia itself to show that the goods were of Malaysian origin. He also admitted that the Certificate of Origin were arranged by his Malaysian associate Mr. Nadeem Shikoh and he was paying for that purpose to Mr. Nadeem.

- The contents available on the website <http://www.aluminiumsteel.com> of M/s DM Aluminium & Steel Manufacturing indicate that they are manufacturers of Ball Bearing and Rollers Bearing. No other product was mentioned on their website. Nowhere in the website, it was mentioned that they were also engaged in manufacturing or processing of any type of Stainless-Steel Cold Rolled Coils. Mr. Gugan Kumar admitted in his statement that he had no dealing with M/s DM Aluminium & Steel Manufacturing, Malaysia. He had dealing with Mr. Sanjay Jain only and made payments in the account of M/s Excelvantage Global Ltd, HK a company of Mr. Sanjay Jain.
- Moreover, from the trail-mails dated 05.06.2018 and 07.06.2018 between Mr. Gugan Kumar (at his email Id gkchachan@yahoo.co.in), Mr. Sanjay Jain (from his email Id sj@excelvantage.com), Ms Tracy and Ms Viola (both an employee of Mr. Sanjay Jain at China/HK, in relation to forwarding of documents in respect of invoice number 2018EVG026 (BE No.7086415 dated 05.07.2018), meant for M/s G.K. Enterprises, via Malyasia, as discussed supra, it is clear that goods imported by M/s G. K. Enterprises were being routed through Malaysia.

**9.** It is was apparent that M/s G. K. Enterprises, Paharganj, New Delhi had availed the benefit of concessional / preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011, as amended, in respect of the Stainless Steel Coils / Magnetic Cold Rolled Stainless Steel Coils of 410S Grade imported from Malaysia, on the basis of fake documents prepared / issued in the name of M/s DM Aluminium & Steel Manufacturing, Malaysia. The Certificates of Origin submitted by M/s G. K. Enterprises in respect of three Bills of Entry at Mundra Port were not genuine as Mr. Sanjay Jain admitted in his statement that manufacturer's invoices and Certificate of Origin were arranged by Mr. Nadeem Shikoh and he paid for it. In respect of one Bill of Entry unsigned / unstamped COO was provided at ICD-Loni which did not work and only BCD was paid at that time for that Bill of Entry (No. 5290295 dated 20.02.2018).

**10.** From the above, it was apparent that Mr. Gugan Kumar, Prop. of M/s G. K. Enterprises in connivance with their China-based supplier Mr. Sanjay Jain, submitted fake Certificates of Origin of Malaysia and the goods claimed to be of Malaysia origin were actually of Chinese origin and the said goods did not qualify to be goods of Malaysia origin in terms of Rules 3, 5 & 6 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 as amended. It is also an admitted fact that Mr. Gugan Kumar, Prop. of M/s G. K. Enterprises was aware of the Chinese origin of the said Cold Rolled Stainless Steel Coils. Mr. Gugan Kumar submitted fake Certificates of Origin of Malaysia, in connivance

with Mr. Sanjay Jain, actual supplier from China to wrongfully claim ineligible benefits i.e. to evade Customs duties. **It, therefore, appears that Mr. Gugan Kumar, Prop. of M/s G. K. Enterprises had intentionally by misstatement and suppression of facts, wrongly availed the benefit of concessional / preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011, as amended, in respect of the Stainless-Steel / Magnetic Cold Rolled Coils imported by them under Bills of Entry supra. Further, the antidumping duty leviable under Notification No. 61/2015- Customs(ADD) dated 11.12.2015 and CVD leviable under Notification no. 01/2017- Customs (CVD) dated 07.09.2017 were also not paid.**

#### **11. LEGAL PROVISIONS:**

##### **11.1 SECTION 9 of the Customs Tariff Act, 1975 provides for Countervailing duty on subsidized articles:**

*(I) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.*

*Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if –*

*(a) there is financial contribution by a Government, or any public body in the exporting or producing country or territory, that is, where –*

*(i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;*

*(ii) Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);*

*(iii) a Government provides goods or services other than general infrastructure or purchases goods;*

*(iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or*

*(b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.*

##### **11.2 Notification No. 1/2017-Customs (CVD) dated 07.09.2017 –**

*Whereas, in the matter of "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" (hereinafter referred to as the subject goods) falling under tariff heading 7219 or 7220 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from, People's Republic of China (hereinafter referred to as the*

subject country), **and imported into India**, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 14/18/1015-DGAD, dated the 4th July, 2017 has come to the conclusion that-

- (i) the subject goods have been exported to India from subject country at subsidised value, thus resulting in subsidisation of the product;
- (ii) the domestic industry has suffered material injury due to subsidisation of the subject goods;
- (iii) the material injury has been caused by the subsidised imports of the subject goods originating in or exported from the subject country, and **has recommended the imposition of definitive countervailing duty on imports of the subject goods originating in, or exported, from the subject country.**

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, **hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, countervailing duty of an amount equivalent to the difference between the quantum of countervailing duty calculated at the rate mentioned in column (8) and anti-dumping duty payable, if any, of the said Table, namely:-**

Sl. No.	Heading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount as % of landed value
1	2	3	4	5	6	7	8
1	7219 or 7220	Fiat-rolled products of stainless steel- (Note below)	China PR	China PR	Any	Any	18.95%
2	-do	-do-	China PR	Any Country	Any	Any	18.95%
3	-do	-do-	Any Country	China PR	Any	Any	18.95%

**Note: - (i) Flat Rolled Products of Stainless Steel for the purpose of the present notification implies "Flat rolled products of stainless steel, whether hot rolled or cold rolled of all grades/series; whether or not in plates, sheets, or in coil form or in any shape, of any width, of thickness 1.2mm to 10.5mm in case of hot rolled coils; 3mm to 105mm in case of hot rolled plates & sheets; and up to 6.75**

*mm in case of cold rolled flat products. Product scope specifically excludes razor blade grade steel”.*

*(ii) The Anti-Dumping Duty is already in place on –*

*(a) Hot Rolled austenitic stainless steel flat products; whether or not plates, sheets or coils (hot rolled Annealed and pickled or Black) of rectangular shape; of grade either ASTM 304 or 304H or 304L or 304N or 304LN or EN 1.4311, EN 1.4301, EN1.4307 or X5CRNI1810 or X04Cr19Ni9, or equivalents thereof in any other standards such as UNS, DIN, JIS, BIS, EN, etc.; whether or not with number one or Black finish; whether or not of quality prime or non-prime; whether or not of edge condition with mill edge or trim edge; of thickness in the range of 1.2mm to 10.5mm in Coils and 3mm to 105mm in Plates and Sheets; of all widths up to 1650 mm (width tolerance of +20mm for mill edge and +5mm for trim edge). Custom Notification NO. 28/2015-Customs (ADD) dated 05.06.2015;*

*(b) Cold Rolled Flat Products of Stainless Steel of width of 600 mm up to 1250 mm of all series not further worked than Cold rolled (cold reduced) with a thickness of up to 4 mm (width tolerance of +30 mm for Mill Edged and +4 mm for Trimmed Edged), excluding the following: -*

*(i) the subject goods of width beyond 1250 mm (plus tolerances); (ii) Grades AISI 420 high carbon, 443, 441, EN 1.4835, 1.4547, 1.4539, 1.4438, 1.4318, 1.4833 and EN 1.4509;*

*(ii) Product supplied under Indian Patent No. 223848 in respect of goods comprising Low Nickel containing Chromium-Nickel Manganese-Copper Austenitic Stainless steel and representing Grades YU 1 and YU 4, produced and supplied by M/s Yieh United Steel Corp (Yusco) of Chinese Taipei (Taiwan)Custom Notification NO. 61/2015-Customs (ADD)dated 11.12.2015.*

*2. The countervailing duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.*

*Explanation. - For the purposes of this notification, "landed value" shall be the assessable value as determined under the Customs Act 1962, (52 of 1962) and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act.*

#### **11.3. Notification No. 61/2015-Customs (ADD) Dated 11.12.2015- –**

*Whereas, the designated authority, vide notification No. 15/04/2014-DGAD, dated the 17th April, 2014, published in the Gazette of India, Extraordinary, Part I, Section 1, had initiated a review in the matter of import of Cold Rolled Flat Products of Stainless Steel, (hereinafter referred to as the subject goods), falling under heading 7219 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) and originating in, or exported from the People's Republic of China, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and United States of America (USA) ( hereinafter referred to as the subject countries / territories), imposed vide notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 14/2010-CUSTOMS, dated the 20th February, 2010, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 95(E), dated the 20th February, 2010;*

And whereas, the Central Government had extended the anti-dumping duty on the subject goods, originating in or exported from the subject countries / territories upto and inclusive of the 21st April, 2015, vide notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 20/2014-Customs (ADD), dated the 12th May, 2014, published in Part II, Section 3, Sub-section (i) of the Gazette of India, Extraordinary, vide number G.S.R 337(E), dated the 12th May, 2014;

And whereas, in the matter of review of anti-dumping duty on import of the subject goods, originating in or exported from the subject countries / territories, the designated authority in its final findings, published vide notification No. 15/04/2014-DGAD, dated the 12th October, 2015, in the Gazette of India, Extraordinary, Part I, Section 1, has come to the conclusion that –

(i). there is continued dumping of the subject goods from the subject countries/territories though the volume of imports has declined after imposition of duties; (ii). the performance of the domestic industry has deteriorated in the current injury period due to the impact of the dumped imports from the subject country and diversion of imports to product ranges outside the scope of the product under consideration; (iii). the dumping is likely to continue and the performance of the domestic industry is likely to deteriorate, should the present anti-dumping duty is revoked.

and has recommended the imposition of definitive anti-dumping duty on imports of the subject goods originating in, or exported, from the subject countries / territories;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, the specification of which is specified in column (4), falling under tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries/territories as specified in the corresponding entry in column (5), exported from the countries/territories as specified in the corresponding entry in column (6), produced by the producers as specified in the corresponding entry in column (7), exported by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at the rate to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (9) of the said Table, namely:-

S.No	Tariff heading	Description of goods	Specification	Countries / Territories of origin	Countries / Territories of Export	Producer	Exporter	% of landed value

1	7219	Cold-rolled Flat product of stainless steel	All Grades, All Series except the exclusion as per Note below	Peoples Republic of China	Any	Any	Any	57.39 %
2.	-Do-	-Do-	-Do-	Any Country other than the subject countries/territories	Peoples Republic of China	Any	Any	57.39 %
3								
.								
.								
22								

*Note:*

*The subject goods include cold-rolled Flat products of stainless steel of width of 600 mm **upto 1250 mm** of all series not further worked than Cold rolled (cold reduced) with a thickness of up to 4 mm (width tolerance of +30 mm for Mill Edged and +4 mm for Trimmed Edged), excluding the following:*

- (i) the subject goods of width beyond 1250 mm (plus tolerances);
- (ii) (ii) Grades AISI 420 high carbon, 443, 441, EN 1.4835, 1.4547, 1.4539, 1.4438, 1.4318, 1.4833 and EN 1.4509;
- (iii) product supplied under Indian Patent No. 223848 in respect of goods comprising Low Nickel containing Chromium-Nickel Manganese-Copper Austenitic Stainless steel and representing Grades YU 1 and YU 4, produced and supplied by M/s Yieh United Steel Corp (Yusco) of Chinese Taipei (Taiwan).

2. The anti-dumping duty imposed under **this notification shall be levied for a period of five years** (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

*Explanation .- For the purposes of this notification, "Landed Value" shall be the assessable value as determined under the Customs Act 1962 (52 of 1962) and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act. [F. No. 354/87/2009-TRU*

**11.4.1. In terms of Section 2(2) of the Customs Act, 1962,**

**"assessment"** means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force, with reference to —

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or

under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;"

**11.4.2. Section 2(14) of the Customs Act, 1962:**

"dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

**11.4.3. Section 2(16) of the Customs Act, 1962:**

"entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under Section 84.

**11.4.4. Section 11A(a) of the Customs Act, 1962:**

"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

**11.5. In terms of Section 17 of the Customs Act, 1962, relating to assessment of duty, it is mandatory for the importer to self-assess the duty, and in case it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under the Act, re-assess the duty leviable on such goods.**

**11.6. Section 46 of the Customs Act, 1962-**

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;  
(b) the authenticity and validity of any document supporting it; and  
(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

**11.7 Section 28(4) of the Customs Act, 1962:**

*"Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid 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.*

**11.8 In terms of Section 28AA (1) of the Customs Act, 1962 -**

*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.*

**11.9 In terms of Section 111(m) of the Customs Act, 1962 -**

*any goods which do not correspond in respect of value or in any other particulars with the entry made under this Act are liable to confiscation.*

**11.10 In terms of Section 111(O) of the Customs Act, 1962 -**

*any goods exempted, subject to any condition, from duty, in respect of the import thereof, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, are liable for confiscation.*

**11.11 In terms of Section 112 of the Customs Act, 1962 -**

*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 to penalty.*

**11.12 In terms of Section 114A of the Customs Act, 1962 -**

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

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

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

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

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

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

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

*(i) .....*

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

#### **11.13 In terms of Section 114AA of the Customs Act, 1962 –**

*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.*

**12.1. As per Section 46(4) of the Customs Act, 1962**, it is mandatory for the importer to make a truthful declaration regarding the contents of the Bill of Entry. Also, as per Section 46(4A) of the Customs Act, 1962, it is mandatory for the importer to ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. Further, in terms of section 17 of the Customs Act, 1962, read with the definition of assessment specified under Section 2(2) *ibid*, it is obligatory for the importer to correctly self-assess the duty on the imported goods, with reference to the classification of the goods. It is specified that an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Customs Act, 1962. It is apparent that goods not corresponding in respect of value or in any other particular with the entry made under the Act, 1962, are liable to confiscation in terms of Section 111(m) and the consequent penalty is imposable in terms of Section 112, in the case of dutiable goods. Further, in cases where duty has not been levied

*on account of wilful misstatement or suppression of facts, the person liable to pay the duty determined under the provisions of Section 28 of the Customs Act, 1962, is liable to pay a penalty under Section 114A equal to the duty short paid/not paid.*

**12.2.** From the facts discussed hereinabove, it appears that Mr. Gugan Kumar Prop. of M/s G. K. Enterprises was aware that the goods imported by him from Malaysia were of Chinese origin. Mr. Gugan Kumar being Proprietor of the firm used to look after all the work related to the import of goods under the firm, was aware that the said goods imported by him under the Bills of Entry supra, were routed through Malaysia only for fraudulently showing their Malaysian origin. Mr. Gugan Kumar connived with his China based supplier Mr. Sanjay Jain, in routing the said goods via Malaysia. Certificates of Origin issued in terms of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 and submitted while filing Bills of Entry, apparently were fake.

**12.3.** It is further mentioned that the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 was notified on 21st September 2020 vide Notification No. 81/2020-Customs (N.T.) for detailed procedure for verification of Certificate of Origin. Rule 7(1) ibid reads as follows:-

*7. Identical goods.- (1) Where it is determined that **goods originating from an exporter or producer do not meet the origin criteria** prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, **without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.***

It can be seen from the above that if the goods originating from an exporter or producer do not meet the origin criteria, then claims of preferential rate of duty will be denied for prior imports of identical goods. In the instant case, for all the above mentioned four Bills of Entry, the actual supplier was M/s Excelvantage Global Ltd., China / Ms Excelvantage Global Ltd. (HK). Further, vide email dated 30.11.2021, MITI, the issuing agency for Certificates of Origin of Malaysia, has informed that Certificates of Origin were not authentic wherein the supplier was M/s Excelvantage Global Ltd. / Ms Excelvantage Global Ltd. (HK) and third party was M/s Artfransi International SDN BHD.

Hence, it is apparent that by application of Rule 7 ibid, the Certificates of Origin of the impugned imports are liable to be rejected.

**12.4.** Mr. Gugan Kumar had procured goods for M/s G. K. Enterprises and he was aware that the goods imported from Malaysia were of Chinese origin and the same were routed through Malaysia to wrongly avail the benefit of the Notification No. 46/2011-Customs dated 01.06.2011. He did not pay applicable Anti-dumping duty and CVD as stated above. He was instrumental in arranging the fake Certificates of Origin (COO) and other import documents in connivance with Mr. Sanjay Jain, a China based Supplier and the consequent evasion of duty by M/s G. K. Enterprises by declaration of wrong Certificate of Origin to the Customs. Therefore, **they have, by way of wilful misstatement and**

**suppression of facts, availed the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, though such benefit was not available to the goods of Chinese origin routed through Malaysia.** Thus, M/s G. K. Enterprises through its Proprietor, Mr. Gugan Kumar had wilfully and knowingly violated the provisions of Sections 46(4) and 46(A) of the Customs Act, 1962 and failed to discharge the obligation of proper 'self-assessment of duty' in terms of Section 17 of the Customs Act, 1962. Such wilful misstatement of material facts in the Bills of Entry filed by them before Customs with an intent to evade duty, justifies invocation of Section 28(4) of the Customs Act, 1962, to demand duty along with interest under Section 28AA of the Customs Act, 1962.

**12.5.** On perusal of concerned invoices of the Bills of Entry under investigation it has been observed that Stainless Steel coils of 410S Grades, imported by M/s G. K. Enterprises, under the said Bills of Entry were of varied sizes i.e. 0.3\*1250 mm, 0.4\*1250 mm, 0.3\*1240 mm and 0.4\*1240 mm under CTH 7219, of the Customs Tariff Act, 1975. The following duties were applicable along with Basic Customs Duty: -

- a) CVD as applicable vide Notification no. 01/2017-Customs (CVD) dated 07.09.2017 as amended vide Notification no. 05/2021 dated 30.09.2021;
- b) ADD as applicable vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 as amended vide Notification no. 44/2020-Cus (ADD) dated 03.12.2020.

Following is the brief regarding non-payment of duties by way of wilful misstatement and suppression of facts: -

- a) For Bills of Entry viz. 6665754 dated 04.06.2018, 7086415 dated 05.07.2018 and 8111178 dated 19.09.2018, M/s G. K. Enterprises
  - i. Did not pay Basic Custom Duty by way of wrong availment of benefit of Notification No. 46/2011-Customs dated 01.06.2011;
  - ii. Did not pay Anti-Dumping Duty as applicable vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 and amended vide notification no. 44/2020-Cus (ADD) dated 03.12.2020;
  - iii. Did not pay CVD as applicable vide Notification number 01/2017-Customs (CVD) dated 07.09.2017 and amended vide notification no. 05/2021 dated 30.09.2021;
- b) For Bill of Entry viz. 5290295 dated 20.02.2018, M/s G. K. Enterprises
  - i. Did not pay Anti-Dumping Duty as applicable vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 and amended vide notification no. 44/2020-Cus (ADD) dated 03.12.2020;
  - ii. Did not pay CVD as applicable vide Notification number 01/2017-Customs (CVD) dated 07.09.2017 and amended vide notification no. 05/2021 dated 30.09.2021;

The duty calculation worksheet is enclosed with the notice as **Annexure-A**.

**12.6.** In terms of Section 111(m) of the Customs Act, 1962, the goods not corresponding in respect of value or in any other particular with the entry made under the Customs Act, 1962, and in terms of Section 111(o) of the Customs

Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962, or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, are liable to confiscation. As discussed above, goods imported by M/s G. K. Enterprises under above referred Bills of Entry appear to be liable for confiscation under Section 111(m) and (o) ibid.

**12.7.** Further, in terms of Section 112 of the Customs Act, 1962, penalty is liable to be imposed on the persons in relation to the goods liable to confiscation under Section 111 of the Customs Act, 1962. Hence, M/s G. K. Enterprises appears to be liable for penalty under Section 112 ibid.

**12.8.** The above-said wilful mis-declarations and suppression of material facts, made by M/s G. K. Enterprises, had led to short-levy of duty and therefore, it appears that M/s G. K. Enterprises through its Prop. has rendered himself liable to penalty under Section 114A of the Customs Act, 1962.

**12.9.** M/s G. K. Enterprises has knowingly and intentionally used Certificates of Origin, invoices, packing lists etc. which were false. Hence M/s G. K. Enterprises also appears to be liable for penalty under Section 114AA of the Customs Act, 1962

**12.10.** Mr. Sanjay Jain, Director of M/s Excelvantage Global Ltd. China/ (HK), presently residing in India at Gurugram and running the same business in Delhi, was also concerned in carrying, harbouring of the said goods. He knowingly routed the Chinese origin goods via Malaysia, got arranged fake import documents including Certificates of Origin in relation to the goods supplied to M/s G. K. Enterprises, through one of his Malaysian associate Mr. Nadeem Shikoh, to whom he paid for arranging such documents. He knew that by sending goods via Malaysia would save various Customs Duties and he was also having knowledge that Anti-dumping duty and CVD was payable on the C.R.S.S. Coils when imported into India from China. Thus, his wilful acts supra had led to short levy of duties on the goods, supplied/sold by him to M/s G. K. Enterprises and imported in India via Malaysia and therefore, rendered the said imported goods liable to confiscation under Section 111(m) & (o) of the Customs Act, 1962 and rendered themselves liable to penalty in terms of Section 112 and 114AA of the Customs Act, 1962.

**13.** In the light of foregoing paras and in terms of Notification No.1/2017- Customs (CVD) dated 07.09.2017 and Notification No. 61/2015-Cus (ADD) dated 11.12.2015, as amended, the Countervailing duty (CVD) at the rate i.e. 38.44%, which is the difference of Anti-dumping duty @ 57.39% and CVD @ 18.95%, on the 'landed values', as defined under the said notifications and Anti-dumping duty @ 57.39% are payable by M/s G.K enterprises. Thus, differential duty in respect of four Bills of Entry of M/s G. K. Enterprises comes out as under –

S. No	BE No	Assessable Value (INR)	Duty Paid (INR)				Duty Payable (INR)						Total Diff. Duty (INR) (11) (10 - 4)
			BCD (1) (@7. 5%)	SW S (2)	IGS T (3) (@18 %)	Total Duty Paid (4) (1+2+ 3)	BCD (5) (@7.5 %)	SW S (6)	ADD (7) (@57. 39%)	CVD (8) (@38. 44)	IGST (9) (@18 %)	Total Duty payable (10) (5+6+ 7+8+9 )	
1	5290 295	282710 2.03	212 032. 60	212 03. 20	5508 60.8 9	7840 96.62	21203 3	212 03	1756 328	11763 94	1078 751	42447 09	3460612
2	6665 754	289166 1.57	0	0	5204 99.0 0	5204 99.00	21687 5	216 87	1796 435	12032 58	1103 385	43416 40	3821141
3	7086 415	278302 5.30	0	0	5009 44.5 9	5009 44.59	20872 7	208 73	1728 945	11580 53	1061 932	41785 30	3677586
4	8111 178	288300 3.51	0	0	5189 40.5 9	5189 40.59	21622 5	216 23	1791 057	11996 55	1100 081	43286 41	3809700
												<b>Total Diff. Payable</b>	<b>1,47,69,0 39/-</b>

**14.** Therefore, vide Show Cause Notice F.No. GEN/ADJ/COMM/155/2022-Adjn-O/o Pr. Commr- Cus-Mundra dated 22.02.2023, **M/s G. K. Enterprises (IEC-0507000048)**, 2746, Gali No.6, Chuna Mandi, Paharganj, New Delhi-110055, through its Proprietor Mr. Gugan Kumar, D-2, Flat no. T-4, Chandra Nagar, Ghaziabad was called upon to show cause to **the Commissioner of Customs, Customs House, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370 421** as to why:

- the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia under the bills of entry (03) detailed in Annexure-A to this notice, should not be denied;
- the differential duty amounting to **Rs. 1,47,69,039/- (Rupees One Crore Forty-Seven Lakh Sixty-Nine Thousand Thirty-Nine only)** short levied/short paid on the goods covered under bills of entry (4), as detailed in Annexure-A to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;
- the goods imported under the bills of entry, as detailed in Annexure-A, valued at Rs. 1,13,84,792/- should not be held liable to confiscation under Section 111(m) & 111(o) of the Customs Act, 1962;
- Penalty should not be imposed on them under Sections 112 and/or 114A and 114AA of the Customs, Act, 1962;

**15.** Further, vide the said SCN the Penalty was also imposed upon **Mr. Sanjay Jain**, Director of M/s Excelvantage Global Ltd. China/ (HK), under Section 112 and Section 114AA of the Customs Act, 1962.

#### **16. SUBMISSION OF THE NOTICEES AGAINST THE INSTANT SCN:**

**16.1. M/s G.K. Enterprises, vide their letter dated 15.05.2023**, made their submission to the notice, wherein they interalia submitted as under:

**(A) WHOLE CASE HAS BEEN MADE ONLY ON THE BASIS OF STATEMENTS. THERE IS NO EVIDENCE THAT SHRI GUGAN KUMAR AGARWAL WAS HAVING KNOWLEDGE THE ORIGIN OF GOODS OF CHINA:**

- that from the statement dated 03.02.2023 of Shri Gugan Kumar, proprietor of M/s. GK, it is clear that Shri Gugan Kumar had a bona fide belief that though Shri Sanjay Jain was residing at China but he would supply the goods from Malaysia with proper and authenticate documents. As he assured to supply the goods from Malaysia only.
- M/s. GK submits that in the International trade practise, it is open for all to supply the goods from any country irrespective of fact that the supplier of the goods may have resides and having his office in any country and receive the payment in country having his office. Thus, in the instant case Shri Sanjay Jain has received the payment at his bank in China does create a doubt in the mind of investigating authority that the goods were of China origin. Even, from the Bank Account Number, it can be ascertained by M/s. GK that it was pertaining to China or otherwise.
- The allegation that Shri Gugan Kumar has stated that he was aware that the goods were of China origin itself is not sufficient. The said statement is not supported with any evidence. Even if, Shri Gugan Kumar has admitted that the goods were of China Origin, no exercise has been made by the department to corroborate this fact with evidence.
- If it is presumed, without admitting the allegation, if Gugan Kumar has admitted that the goods were of China origin, the investigating authority were not supposed to stop their investigation at this end. Sub-Rule (5) of Rule 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, contemplates that if there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement; OR there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; OR verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed, the proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority through a nodal office as designated by the Board. In the instant case, no such verification has been done on the part of investigating authority to corroborate the admission of Shri Gugan Kumar. Thus, the investigation carried out by the investigating authority is half baked.
- that the email of MITI is not a part of relied upon documents to the Show Cause Notice, nor copy of this email has been provided to M/s. GK along with the notice. Therefore, reference of such email has no *locus standi* in the eye of law.
- In the instant case, the manufacturer and supplier of the goods is DM Aluminium SDN BHD, Malaysia and M/s. GK has only made payments for the goods in the account of M/s Excelvantage Global Ltd./ M/s. Excelvantage Global Ltd. (HK). When all the facts were open with the department to ascertain the genuineness of the country of origin and they

could easily verify the genuineness of the certificate from MITI. However, no such efforts were made by the department.

- As Shri Gugan Kumar has already stated in his statement dated 03.02.2023 that all the documents cannot be faked, even though the department has not extended their investigation with MITI to verify the genuineness of Certificate of Origin. Thus, from the half baked investigation, it cannot be proved that the Certificate of Origin obtained in the case of imports made by M/s. GK were fake except admission by Shri Gugan Kumar in his statement.
- Without prejudice to above, M/s. GK submits that whatever stated by Shri Sanjay Jain before the investigating authorities cannot be used against M/s. GK unless it is "accepted" by M/s. GK. Whatever averments stated by Shri Sanjay Jain are his own and Shri Sanjay Jain has also not given/ provided any corroborative evidence in support of his statements nor by the DRI.
- that the statements of Shri Sanjay Jain were never made available to Shri Gugan Kumar. Further, to verify the genuineness of contention made by Shri Sanjay Jain the investigating authority were supposed to cross checked by way of perusing by Shri Gugan Kumar. However, no such efforts were made by the investigating authority. Therefore, it is submitted that whatever averments made by Shri Sanjay Jain in his statements cannot be used against M/s. GK.
- In view of the above, they requested to drop the SCN proceedings on this sole ground, as the allegation is legally not sustainable in the eye of law.
- that if the department relies on the statements of Shri Sanjay Jain, then M/s. GK requested to cross examine Shri Sanjay Jain under Section 138 of the Customs Act, 1962, during the course of adjudication process. In this regard, they rely upon the judgment of Hon'ble Supreme Court in the case of ***Swadeshi Polytex Ltd. v. Collector reported in 2000 (122) E.L.T. 641 (S.C.)*** as well as on ***Lakshman Exports Limited v. Collector of Central Excise reported in 2002 (143) E.L.T. 21 (S.C.)*** for the proposition that whenever any statement is relied upon by the Revenue, an opportunity of cross-examining the maker of the statement should be given to the Noticee.

**(B) ORIGINAL COMMERCIAL INVOICE NEEDS NOT TO BE ISSUED ONLY BY EXPORTER IN ORIGINATING COUNTRY, BUT CAN BE ISSUED BY A COMPANY LOCATED IN THIRD COUNTRY.**

- It is alleged in the SCN that the goods imported by M/s G. K. Enterprises were being routed through Malaysia.
- Originally, M/s. GK placed the orders to purchase Cold Roll Coils to M/s. Excelvantage. On the basis of direction of Shri Sanjay Jain of M/s. Excelvantage, M/s. D M Alluminium, Malaysia shipped the coils to M/s. GK. This fact can also be corroborated with the statement of Shri Gugan Kumar Aggawrwal wherein he has stated that Shri Sanjay Jain has told him that the goods would come through Malaysia with all proper Government issued documents. All his purchases were through the company of Mr. Sanjay Jain i.e. M/s Excelvantage Global Ltd. As M/s. GK has placed the PO before M/s. Excelvantage, he had to pay for the same to the company of Shri Sanjay Jain. M/s. Excelvantage has also issued

the invoice to M/s. G K for the goods which were shipped by M/s. D M Aluminium to M/s. G K. In other words, M/s. GK has paid the amount for the import of Coils only to M/s. Excelvanatge only. It was the responsibility of M/s. Excelvantage to pay to M/s. D M Aluminium, Malaysia. It is not disputed that the goods have been directly consigned by M/s. D M Aluminum to M/s. GK.

- Reference is drawn to Article 22 of the AIFTA agreement "Operational Certification Procedures". As per the 'Operational Certification Procedure' (OCP) the Customs Authority in the importing Party shall accept an AIFTA Certificate of Origin where the sales invoice is issued either by a company located in a third country or an AIFTA exporter for the account of the said company, provided that the product meets the requirements of the AIFTA rules of origin. It is therefore, submitted that if invoice has been issued by M/s. Excelvantage Global to M/s. GK is in consonance with the provisions of OCP of AIFTA irrespective of the fact that both the invoices issued by M/s. D M Aluminium and M/s. Excelvantage Global had same invoice numbers.
- In support of above submission, they relied upon the decision of Hon'ble CESTAT Chennai in the case of **OLAM ENTERPRISES INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS, TUTICORIN**, reported in **2018 (362) E.L.T. 378 (Tri. - Chennai)**, and stated that the said case law squarely applicable in the instant case inasmuch as the supplier of the goods and shipper both had issued the invoices in the name of M/s. GK. Further, in the Bill of lading the Shipping line has also mentioned the name as D M Aluminum & Steel manufacturing, Melaka, Malaysia as consignor, and the name of notify party is mentioned as Excelvantage Global Ltd., 510-511, NAN FUNG TOWER, 173 DES VODUX RD, CENTRAL, HK.

**(C) APPLICABILITY OF ANTI-DUMPING DUTY UNDER NOTIFICATION No. 61/2015- Customs (ADD) DATED 11.12.2015 AND CVD UNDER NOTIFICATION No. 01/2017-Customs (CVD) DATED 07.09.2017**

- that the investigating authority has failed to prove that the goods were not origin of Malaysia, therefore, the conditions of Notification No. 01/2017-Cus. (CVD) dated 07.09.2017 will certainly not applicable to levy CVD on imports under impugned bills of entry.
- that the goods were neither originated in China nor exported through China, as required under the Notification No. 61/2015-Cus. (ADD), dated 11-12-2015 to levy the Anti Dumping duty.
- that they have already submitted all the relevant documents before the Customs authority at the time of assessment. The goods were also examined by the Customs as can be seen from the duly assessed bills of entry.
- Thus, the COO was verified by the Customs authority during the examination. However, the DRI raised doubt on authenticity of the COO. The DRI being the investigating authority failed to verify the same from MITI as per the CORATOR, 2020 (as discussed supra).
- In view of the above, the demand of Anti-Dumping duty and Countervailing duty is not sustainable in the instant case.

**(D) GOODS CANNOT BE HELD LIABLE FOR CONFISCATION UNDER SECTION 111(m) AND 111(o), THEREFORE PENALTY PROPOSED UNDER SECTION 112 AND/ OR 114A AND 114AA CANNOT BE IMPOSED.**

- that in the instant case there is no allegation in respect to mis-declaration of value of the goods. Further, as required under sub-section (4A) of the section 46, M/s. GK has furnished complete documents and information. Therefore, there is no such act on the part of M/s. GK under the Act which may make the goods liable for confiscation under this Act.
- that Section 111(o) contemplates that the goods are liable for confiscation if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;
- that M/s. GK has rightly claimed exemption under Notification No. 46/2011-Cus dated 01.06.2011. On the contrary, the investigating authority has failed to verify the correctness of the COO on their part as required under the CORATOR, 2020.
- In view of the above, no such action the part of GK that makes the goods liable to confiscation under Section 111(m) and (o) of the Customs Act, 1962, therefore, penalty proposed under Section 112/ or 114A, and 114AA will not survive.

M/s. G K requested to grant an opportunity of personal hearing before the adjudication of the case and also grant to cross-examination of Shri Sanjay Jain.

**16.2.** Shri Sanjay Jain made his submission through his Advocate vide email dated 28.01.2024. Wherein he interalia submitted as under:

**(i) The Noticee denies that he routed the Chinese origin goods via Malaysia and got arranged fake import document including Country of Origin in respect of the import made by M/s G. K. Enterprises, New Delhi vide subject Bills of Entry.**

**(ii)** It is incorrect to say the Noticee routed the Chinese origin goods via Malaysia and got arranged fake import documents including Country of Origin in respect of the imports made by M/s G. K. Enterprises, New Delhi.

**(iii)** that, M/s G. K. enterprises gave orders to the Noticee to supply CRSS Coils etc. from Malaysia company and, accordingly, the Noticee forwarded the orders of M/s G. K. Enterprises to M/s D M Aluminum & Steel Manufacturing, Malaysia (herein after referred to as M/s D M Aluminum and Steel) who introduced themselves to the Noticee as a supplier of Malaysian CRSS Coils etc. As per orders, M/s D M Aluminum & Steel, Malaysia supplied the CRSS Coils etc. to M/s G. K. Enterprises along with all the required documents like invoice, Packing list, Certificate of Origin. M/s G. K. Enterprises filed Bills of Entry No. 5290295 dated 20.02.2018, 6665754 dated 04.06.2018, 7086415 dated 05.07.2018 and 8111178 dated 19.09.2018 along with all the relevant documents like invoice, Packing Lists, Certificate of Origin etc. at the time of import of those goods in India for claiming benefit of Notification 46/2011-Cus dated 01.06.2011 (Indo-ASEAN FTA). These Bills of Entry filed by M/s G. K. Enterprises were assessed

by the proper officer of customs at the port and the proper officer of customs, on being satisfied on the basis of submitted documents, allowed the benefit of the Notification 46/2011-Cus dated 01.06.2011 (Indo-ASEAN FTA) to M/s G. K. Enterprises and the imported goods were cleared for home consumption after examination by the proper officer of customs. These facts clearly indicate that all the relevant documents including invoice, packing lists, certificate of origin etc. as well as the goods imported by M/s G. K. Enterprises vide Bills of Entry No. 5290295 dated 20.02.2018, 6665754 dated 04.06.2018, 7086415 dated 05.07.2018 and 8111178 dated 19.09.2018 pertained to and sent by M/s D M Aluminum & Steel, Malaysia and the documents sent by M/s D M Aluminum & Steel, Malaysia were submitted by M/s G. K. Enterprises along with their above Bills of Entry at the time of import. It clearly indicates that the Noticee had no role either in procurement of the goods supplied by M/s D M Aluminum & Steel, Malaysia or in preparation of the document sent by M/s D M Aluminum & Steel, Malaysia in respect of those goods which were submitted by M/s G. K. Enterprises, New Delhi at the port along with Bills of Entry at the time of import in India. Thus, it is incorrect to say that the Noticee routed the Chinese origin goods via Malaysia and got arranged fake import document including Country of Origin in respect of the import made by M/s G. K. Enterprises, New Delhi vide Bills of Entry No. 5290295 dated 20.02.2018, 6665754 dated 04.06.2018, 7086415 dated 05.07.2018 and 8111178 dated 19.09.2018.

**(iv)** that the subject Bills of Entry were assessed by the proper custom officer and were also examined by the proper custom officer keeping in view the exemption claimed and its declared description and thereafter the same cleared for home consumption.

**(v)** There is no evidence on record to suggest that either the Government of Malaysia or the Competent Authority of Malaysia who had issued the above mentioned Certificate of Origin and Mill Inspection Certificate (submitted by the Importer along with their Bills Of Entry) had claimed that the above said Certificate of Origin and Mill Inspection Certificates were not issued by them or were forged. It is pertinent to mention that benefit of exemption Notification No. 46/2011-Cus dated 01.06.2011 (Indo-ASEAN ITA) claimed and received by the Importer on the basis of Certificate of Origin and Mill Inspection Certificates issued by the Competent Authority of the Exporting Country cannot be denied if the above documents are genuine. In the entire SCN there is no such evidence where the Malaysian Government or the Malaysian Competent Authority who had issued the above documents had stated that the submitted Certificate of Origin and Mill Inspection Certificate issued by the Competent Authority of Malaysia in respect of above said goods supplied by M/s D. M. Aluminium & Steel Manufacturing, Malaysia to M/s G. K. Enterprises were not genuine or forged.

**(vi) Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Collector of Customs, Bombay vs East Punjab Traders, reported as 1997 (89) ELT 11 (S.C.). The Show Cause Notice is based upon presumption and assumption and there is no evidence to suggest that the goods imported by M/s G.K.Enterprises were sent by the Noticee from China.**

**(vii)** It has been alleged in the SCN that the Goods imported by M/s G. K. Enterprises, Delhi vide Bills of Entry No. 5290295 dated 20.02.2018, 6665754 dated 04.06.2018, 7086415 dated 05.07.2018 and 8111178 dated 19.09.2018

were of Chinese Origin and not of Malaysian Origin. The allegations are wrong and hence denied. There is no evidence in the entire SCN to substantiate the above allegation and the SCN is based on assumption and presumptions. The entire SCN is based upon the statements of the Noticee and of the Importer which were taken under threat and coercion.

**Confessional statements alone, in absence of any cogent evidences, not admissible in evidence.**

(viii) It is submitted that entire case of the department hinges on the oral testimony of the Noticee. There is absolutely no corroboration to substantiate what is being stated in the statement. It is settled legal position that statement alone, even if confessional, without independent and cogent evidences, cannot be the foundation for demanding duty or imposing penalty. Reliance in this regard is placed on the decision of **Commissioner of Central Excise Versus Saakeen Alloys Pvt. Ltd.**, reported as 2014 (308) E.L.T. 655 (Guj.), **Hon'ble Gujarat High Court** has held that confessional statements alone, much less the retracted statements, in absence of any cogent evidences, cannot be the foundation for duty demand. **The above decision is affirmed by Hon'ble Supreme Court by dismissing SLP** [Commissioner v. Saakeen Alloys Pvt. Ltd. - 2015 (319) E.L.T. A117 (S.C.)].

**(ix) Statement not admissible in evidence unless examined under Section 138B of the Customs Act / Section 9D of the Central Excise Act.**

Section 138B of the Customs Act, 1962 lays down that the statement recorded under Section 108 of the Customs Act would not be an admissible piece of evidence unless it is examined by the Adjudicating Authority. **Various Courts have categorically held that this is a mandatory requirement and the Adjudicating Authority has to suo moto call for the person who has given statement and examine him, failing which, no reliance can be placed on such statement, even though it may be confessional.** Some of the case laws are relied upon in the ensuing paras. It would be relevant to mention here that the provisions contained under Section 9D of the Central Excise Act, 1944 and Section 138B of the Customs Act, 1962 are parimateria, therefore, the decisions in respect of either provision are binding.

Reliance is placed on the decision of **Hon'ble Delhi High Court** in the case of **Additional Director General (Adjudication) Versus Its My Name Pvt. Ltd., reported as 2021 (375) E.L.T. 545 (Del.)**, wherein Hon'ble Delhi High Court held that statements, though admissible in evidence, acquire relevance only when they are, in fact, admitted in evidence, by the adjudicating authority and, if the affected assessee so chooses, tested by cross-examination.

Reliance is placed on judgement of Hon'ble Chhattisgarh High Court in the case of **Hi - Tech Abrasives Ltd. Vs. CCE, Raipur, reported as 2018 (362) ELT 961 (Chhattisgarh)**.

**(x) The statement of the Noticee was recorded by coercion, therefore, Ld. Adjudicating Authority has to undertake such exercise and examine the Noticee, if his statement is to be relied upon.**

**(xi) M/s D. M. Aluminium & Steel, Malaysia is the overseas supplier of M/s G. K. Enterprises, Delhi and all the documents were sent by the overseas supplier to Indian Importer.** Assuming without admitting that the M/s G. K. Enterprises, Delhi had evaded duty as alleged in the SCN by wrongly availing exemption under Notification No 46/2011-Cus dated 01.06.2011 (Indo-ASEAN

FTA) on the basis of false /forged Certificate of Origin, even then the Noticee is not liable for penalty under Section 112 and Section 114 AA of the Customs Act, 1962 as proposed in the SCN. It is on record that the Certificate of Origin and Mill Inspection Certificate was sent by the overseas supplier M/s D. M. Aluminium & Steel, Malaysia to M/s G. K. Enterprises, which were submitted by the Indian Importer to claim above exemption. There is no evidence on record that the Noticee had either sent or prepared those documents or instructed any person to prepare such documents. The role of the Noticee was that he had procured order from Indian Importer M/s G. K. Enterprises and passed on the same to Malaysia. Thereafter, the Noticee, being a Notified party collected the payment from the Indian Importer. The goods and the documents to Indian Importer were sent by overseas supplier M/s D. M. Aluminium & Steel, Malaysia. Hence, the Noticee has no role in preparation or sending the documents to M/s G. K. Enterprises, Delhi and hence cannot be penalised under section 114AA of the Customs Act, 1962.

**(xii) The Noticee being an overseas entity is not liable for any Penal Action under Section 112 and under Section 114AA of the Custom Act, 1962 before 29.03.2018.** Assuming without admitting that the M/s G. K. Enterprises, Delhi had evaded duty as alleged in the SCN with the connivance of the Noticee, even then the Noticee is not liable to penal action under Section 112 and 114AA of the Customs Act 1962 upto 28.03.2018.

**(xiii)** The investigation has failed to bring out any connivance between the Noticee and the importer and other persons who imported the goods by availing exemption. The investigation also failed to establish any motive, whether financial or others, for aiding the importer in any wrongful acts. In such a situation, no penalty is imposable under this Section.

**(xiv)** That they prayed to drop the proceedings initiated vide the SCN; to pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case; and to grant an opportunity of personal hearing to the Noticee

#### **17. PERSONAL HEARING:-**

After following principals of natural justice, Personal hearing in the matter was granted to all the noticees on 29.11.2023, on 16.01.2024 and 29.01.2024. Details of the PH are as under:

**1<sup>st</sup> Personal Hearing(P.H.)** was granted on 29.11.2023. The Noticee No. 1 i.e. M/s. G.K. vide their letter dated 25.11.2023 requested for rescheduling of PH on or after 16.01.2024. However, Noticee No. 2 i.e. Shri Sanjay Jain did not appear for P.H. nor did he submit any reply.

**2<sup>nd</sup> Personal Hearing(P.H.) was granted on 16.01.2024.** The noticee no. 1 i.e. M/s. G.K. vide their letter dated 11.01.2024 and Noticee No. 2 i.e. Shri Sanjay Jain **vide his email dated 09.02.2024 requested to adjourn the personal hearing.**

**3<sup>rd</sup> Personal Hearing (P.H.) was granted on 29.01.2024.** Both the noticees attended the P.H. Shri Bhagwan Jha and Shri Manish Aggrawal both authorized representative of M/s. G.K reiterated their earlier submission dated 15.05.2023. Shri Rajnish Kumar Varma, Adv., authorized representative of

Shri Sanjay Jain reiterated their written submission vide email dated 28.01.2024.

**18. DISCUSSION AND FINDINGS:**

**18.1.** I have carefully gone through the impugned **Show Cause Notice bearing F.No. GEN/ADJ/COMM/155/2022-Adjn-O/o Pr. Commr- Cus-Mundra dated 22.02.2023** issued by the Commissioner of Customs, Custom House, Mundra, relied upon documents, submissions dated 15.05.2023 made by the M/s. G.K. Enterprises and submission vide email dated 28.01.2024 made by Mr. Sanjay Jain, legal provisions and the records available before me. The main issues involved in the case which are to be decided in the present adjudication are as below:

- i. whether the imported goods was Chinese origin and the same was routed through Malaysia;
- ii. whether the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia, is liable to be denied;
- iii. whether CVD vide Notification no. 01/2017-Customs (CVD) dated 07.09.2017 as amended vide Notification no. 05/2021 dated 30.09.2021, and ADD vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 as amended vide Notification no. 44/2020-Cus (ADD) dated 03.12.2020, are applicable;
- iv. whether the imported goods under bills of entry (as detailed in Annexure-A to impugned Notice) valued at **Rs. 1,13,84,792/-** are liable to be confiscated under Section 111(m) & 111(o) of the Customs Act, 1962;
- v. whether the differential duty amounting to **Rs. 1,47,69,039/- (Rupees One Crore Forty-Seven Lakh Sixty-Nine Thousand Thirty-Nine only)**, is required to be demanded and recovered from importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;
- vi. whether penalty is liable to be imposed upon the noticees as proposed in the impugned SCN.

**19.1.** I find that M/s. G.K. vide their written submission sought cross examination of Mr. Sanjay Jain Director of M/s Excelvantage Global Ltd. China/ (HK), on the following grounds:

- that the statements of Shri Jain were not made available to Shri Gugan Kumar, Proprietor of M/s. G.K.
- that no efforts were made by the investigating authority to cross check the contention made by Shri Sanjay Jain.

**19.2.** In this connection, from the records available I find that Shri Gugan Kumar in his statement dated 03.02.2023 has interalia stated as under:

- that he was aware that Mr. Sanjay Jain was settled in China / Hong Kong, and that the goods would come through Malaysia with all proper Government issued documents, so that he could get goods on cheaper rates as customs duty was not payable when the goods came from

Malaysia; that Mr. Sanjay Jain assured him that there would be no problem in clearance of goods as all documents would be proper.

- **that he admitted that he was aware that the goods imported by him under four Bills of Entry were of Chinese Origin and had been routed through Malaysia** as it was a prevalent practice in the market as various traders of Delhi were importing via that means through various suppliers from China / Malaysia.
- that they could not believe that all Certificates of Origin were not genuine, as Mr. Sanjay Jain assured them for the correctness of all the documents.

The above facts clearly reveal that Shri Gugan Kumar was well aware of the actual origin of the imported goods. Further, statement dated 04.02.2023 of Shri Sanjay Jain and documents found at the premises of the importer clearly reveal that the imported goods is Chinese origin. **The statements recorded under Section 108 of the Customs Act, 1962, itself make substantive evidences.**

**19.3.** I find that Shri Sanjay Jain vide their submission in email dated 28.01.2024 has stated that statement not admissible in evidence unless examined under Section 138B of the Customs Act.

**19.4.** I find that the investigating agency DRI have sincerely carried out whole investigation and based their case on the strong foundations of various undeniable corroborative evidences.

**19.5.** I find that when there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination. Reliance is placed on Judgement of Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273], as follows:

*"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."*

Therefore, I find that cross examination in the instant case is not necessary.

#### **19.5. PROVISION OF SECTION 138B:**

As regards necessity of cross examination of persons who had given statement under section 108, I find that chapter XVI of the customs act,1962 pertains to 'Offences and Prosecutions' and wherein section 138B deals with 'offences to be tried summarily. The entries of section 138B are as follows.

138. Offences to be tried summarily

138A. Presumption of culpable mental state.

138B. Relevancy of 138 B in certain circumstances

- (1) A statement made and signed by a person before any Gazetted Officer of customs during the course of any enquiry or proceeding under this act shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-
  - (a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the

adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, or

(b) When the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub section (1) shall so far as may be, apply in relation to any proceeding under this act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.

i) In view of above statutory provisions of section 138B(i) I find that the provisions of section 138 pertain to the prosecution proceedings before a court of law and the same have nothing to do with the proceeding before a quasi-judicial authority.

ii) As per the provisions of chapter XVI the provision of section 138 are applicable during a proceeding before a court of law wherein offences are summarily tried.

iii) I find that in case where offences are being summarily tried the provisions of section 138(B) ensures cross examination of the persons whose statements have been relied during a summary trial of offences by courts of law under the Customs Act, 1962.

iv) The provisions of section 138(B) are relevant for summary trial wherein test of the evidence remains that offence should be proved beyond doubt.

v) The principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established.

vi) I find that cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per 138B(2) the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

vii) I find that the investigating agency DRI have diligently carried out their investigation which is corroborated by irrefutable evidences gathered and scrutinized during the investigation process. In the instant case M/s. G.K. have availed illegal benefits of Notification No. 46/2011-Customs dated 01.06.2011; and also evaded duties of Customs as leviable vide Notification No. 61/2015-Cus (ADD) dated 11.12.2015 as amended, Notification No. 01/2017-Customs (CVD) dated 07.09.2017 as amended, by way of submitting forged documents. The key managerial persons themselves admitted in their respective statements that they have routed Chinese origin goods through Malaysia resultantly evaded the duties of Customs. Therefore, the cross examination of witness is not necessary. Further, it is a settled position that proceedings before the quasi judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737**:- wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.

b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.)**:- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.

c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai)**:- wherein it has been observed that cross-examination not to be claimed as a matter of right.

d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: .....denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)

e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; "....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

**20.** I find that in the instant case the DRI, New Delhi alleged that M/s. G.K. were wrongly availing the benefit of the preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 (Indo-ASEAN FTA), in connivance with the supplier Mr. Sanjay Jain (an Indian Resident), through his firms/companies i.e. M/s Excelvantage Global Ltd., (HK), M/s Excelvantage Global Ltd., British Virgin Island, China; and M/s EVG Metals Industries SDN BHD, Malaysia as the items imported by M/s G. K. Enterprises, i.e., **Cold Rolled Stainless-Steel Coils Grade 410S/Magnetic Stainless Steel Cold Rolled Coil Grade 410S** from Malaysia and declared to be of Malaysian origin, were, in fact, of Chinese origin and were routed through Malaysia to wrongly avail the benefit of preferential duty and other applicable duties, on the said items, at the time of import.

**21.** I find that documentary evidences on records, and **statements dated 02.02.2023, 04.02.2023 of Mr. Sanjay Jain, China Based supplier & director of M/s Excelvantage Global Ltd.,** and statement dated **03.02.2023 of Mr. Gugan Kumar, Proprietor of M/s G. K.,** it is revealed that:

- Mr. Gugan Kumar, had never dealt with the Malaysian supplier company i.e. M/s DM Aluminium & Steel Manufacturing, under the invoices of which the goods of four Bills of Entry were imported by him. His dealings were with Mr. Sanjay Jain only and payments in respect of all four Bills of Entry were sent to Mr. Sanjay Jain's company M/s Excelvantage Global

Ltd., Hong Kong. The details of payments submitted to Indian Bank, Paharganj, New Delhi, by Mr. Gugan Kumar, Prop. of M/s G. K. Enterprises, New Delhi were resumed during the search of his office-cum godown premises at Paharganj, New Delhi, on 01.02.2023 under Panchnama dated 01.02.2023, are also corroborate the same.

- Shri Sanjay Jain, Director of M/s Excelvantage Global Ltd. (HK) in his statements admitted that the goods under all four invoices of M/s DM Aluminium & Steel Manufacturing, Malaysia, exported to M/s G. K. Enterprises, were of Chinese origin, purchased by him in China and were routed through Malaysia. He also admitted that import documents like Invoice, Packing List, Mill Test report and Certificate of Origin were prepared at Malaysia by his associate Mr. Nadeem Shikoh at Malaysia. The containers of goods in question, sent from China to Malaysia, were got changed in Malaysia, by his associate Mr. Nadeem Shikoh.
- Copy of trail-mails dated 05.06.2018 and 07.06.2018, between Mr. Gugan Kumar, Mr. Sanjay Jain, and employees of Mr. Sanjay Jain at China/HK, i.e. Ms Tracy and Ms Viola, it is confirmed that the Chinese origin goods covered under invoice number 2018EVG026 were sent to M/s G. K. Enterprises, New Delhi at Mundra Port via Malaysia by Mr. Sanjay Jain.
- From perusal of assessed Bill of Entry (No.5290295 dated 20.02.2018) on ICES portal of the Customs, it has been observed that initially the documents were filed under notification 46/2011-customs dated dated 01.06.2011 which had been later amended to notification number 50/2017-Customs dated 30.06.2017 and BCD was paid on the goods @7.5%. Which reveal that they are well aware of the fact that benefit of Notification No.46/2011-customs dated dated 01.06.2011 is not available to them.
- M/s G. K. Enterprises had imported Stainless Steel Coils / Magnetic C.R.S.S. Coils 410S grade **under four Bills of Entry (BE) under CTH 7219**. Goods under **BE No. 5290295 dated 20/02/2018 had been imported at ICD-Loni, Ghaziabad** and Goods under **Bills of Entry no. 6665754 dated 04.06.2018** (Invoice No. 2018EVG006 dated 26.04.2018); **7086415 dated 05.07.2018** (Invoice No. 2018EVG026 dated 28.06.2018) and **8111178 dated 19.09.2018** (Invoice No.2018EVG066 dated 02.09.2018) **had been imported at Mundra SEZ Port, Mundra (INMUN1)**.
- During search proceedings at the premises of the importer, **two parallel invoices and two parallel packing lists** bearing the same Invoice number EVG 171108-001 were resumed, for same commodity to the same importer i.e. one from Malaysia and one from China, as detailed vide Para 8 to the impugned SCN. Similarly, two Parallel Invoices and two parallel packing lists bearing Invoice No. 2018EVG026, were resumed, for the same commodity to the same importer – one from Malaysia and one from China. Also the Proforma Invoice for invoice No. EVG 171108-001, found during the said search proceeding, reveals that this Proforma Invoice shown China based Supplier for supply of goods through Malaysia to the importer having same invoice number. Therefore, all the aforementioned evidences revealed that M/s. G.K. prepared/ got prepared forged documents for availing ineligible benefit of the said notification so as to avoid duties of Customs.

- Scrutiny of import documents, revealed that on the Bill of lading no. OBLPKGMUN18080684; GOSUPKL8038258; GOSUPKL8031958 and TSVMYPKG1805900 related to above referred invoices / BE, name of suppliers i.e. M/s Excelvantage Global Ltd., British virgin Island or M/s Excelvantage Global Ltd., HK was mentioned as '**Notify Party**'. Mr. Sanjay Jain in his statement dated 02.02.2023 has also admitted that these companies are owned by him. Therefore, it is revealed that the impugned goods were supplied by China based companies owned by Mr. Sanjay Jain.
- Neither the goods supplied/ sold to M/s G. K. Enterprises were produced in Malaysia nor any further processing were done in Malaysia as Mr. Sanjay Jain has admitted in his statement dated 02.02.2023 and 04.02.2023 that the goods were purchased in the name of his companies in China and later were routed through Malaysia. He also admitted that containers were being changed at the Klang port of Malaysia itself to show that the goods were of Malaysian origin. He further admitted that the Certificate of Origin were arranged by his Malaysian associate Mr. Nadeem Shikoh and he was paying for that purpose to Mr. Nadeem.
- The contents available on the website <http://www.aluminiumsteel.com> of M/s DM Aluminium & Steel Manufacturing indicate that they are manufacturers of Ball Bearing and Rollers Bearing. No other product was mentioned on their website. Nowhere in the website, it was mentioned that they were also engaged in manufacturing or processing of any type of Stainless-Steel Cold Rolled Coils. Despite the above fact, M/s DM Aluminium & Steel Manufacturing, Malaysia issued invoices of Cold Rolled Stainless Steel Coils to M/s. G.K. Further, Mr. Gugan Kumar Prop. of M/s. G.K. also admitted in his statement dated 03.02.2023 that he had no dealing with M/s DM Aluminium & Steel Manufacturing, Malaysia. He had dealing with Mr. Sanjay Jain only and made payments in the account of M/s Excelvantage Global Ltd, HK a company of Mr. Sanjay Jain. Therefore, it is evident that the invoices issued by M/s DM Aluminium & Steel Manufacturing, Malaysia are not valid document.

**22.** In view of above, I find that M/s G. K. have wrongly availed the benefit of concessional / preferential rate of duty under **Notification No. 46/2011-Cus. dated 01.06.2011, as amended**, in respect of the Stainless Steel Coils / Magnetic Cold Rolled Stainless Steel Coils of 410S Grade imported from Malaysia, on the basis of fake documents prepared / issued in the name of M/s DM Aluminium & Steel Manufacturing, Malaysia. The Certificates of Origin submitted by M/s G. K. Enterprises in respect of three Bills of Entry at Mundra Port were not genuine. In respect of one Bill of Entry unsigned / unstamped COO was provided at ICD-Loni which did not work and only BCD was paid at that time for that Bill of Entry (No. 5290295 dated 20.02.2018). Further, the importer also evaded the Anti-dumping duty (ADD) and Counter Vailing Duty (CVD), leviable on the said goods since the goods were of Chinese origin.

**23.** I find that Mr. Gugan Kumar, Prop. of M/s G. K. in connivance with their China-based supplier Mr. Sanjay Jain, submitted fake Certificates of Origin of Malaysia and the goods claimed to be of Malaysia origin were actually of Chinese origin and the said goods did not qualify to be goods of Malaysia origin in terms of Rules 3, 5 & 6 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of

the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 as amended. It is also an admitted fact that Mr. Gugan Kumar, Prop. of M/s G. K. Enterprises was aware of the Chinese origin of the said Cold Rolled Stainless Steel Coils. Mr. Gugan Kumar submitted fake Certificates of Origin of Malaysia, in connivance with Mr. Sanjay Jain, actual supplier from China to wrongfully claim ineligible benefits i.e. to evade Customs duties. Therefore, **Mr. Gugan Kumar**, Prop. of M/s G. K. Enterprises had intentionally by misstatement and suppression of facts, wrongly availed the benefit of concessional / preferential rate of duty under **Notification No. 46/2011-Cus. dated 01.06.2011, as amended, in respect of the Stainless-Steel / Magnetic Cold Rolled Coils imported by them under Bills of Entry supra. Further, the importer did not also pay the antidumping duty under Notification No. 61/2015- Customs (ADD) dated 11.12.2015 and CVD under Notification no. 01/2017-Customs (CVD) dated 07.09.2017 on the imported goods.**

#### **REJECTION OF CERTIFICATES OF ORIGIN OF THE IMPUGNED IMPORTS:**

**24.** From the facts discussed hereinabove, I find that Mr. Gugan Kumar Prop. of M/s G. K. was aware that the goods imported by him from Malaysia were of Chinese origin. Mr. Gugan Kumar being Proprietor of the firm used to look after all the work related to the import of goods under the firm, was aware that the said goods imported by him under the Bills of Entry supra, were routed through Malaysia only for fraudulently showing their Malaysian origin. Mr. Gugan Kumar connived with his China based supplier Mr. Sanjay Jain, in routing the said goods via Malaysia. Certificates of Origin issued in terms of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, notified vide the Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 and submitted while filing Bills of Entry, apparently were fake.

**24.1.** The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 was notified on 21st September 2020 vide Notification No. 81/2020-Customs (N.T.) for detailed procedure for verification of Certificate of Origin. Rule 7(1) reads as follows:-

*7. Identical goods.—(1) Where it is determined that **goods originating from an exporter or producer do not meet the origin criteria** prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, **without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.***

It can be seen from the above that if the goods originating from an exporter or producer do not meet the origin criteria, then claims of preferential rate of duty will be denied for prior imports of identical goods. In the instant case, for all the above mentioned four Bills of Entry, the actual supplier was M/s Excelvantage Global Ltd., China / Ms Excelvantage Global Ltd. (HK). **Further, vide email dated 30.11.2021, MITI, the issuing agency for Certificates of Origin of Malaysia, has informed that Certificates of Origin were not authentic wherein the supplier was M/s Excelvantage Global Ltd. / Ms**

**Excelvantage Global Ltd. (HK) and third party was M/s Artfransi International SDN BHD.**

In view of above, I find that by application of Rule 7 ibid, the Certificates of Origin of the impugned imports are liable to be rejected.

**25.1.** I find that M/s. G.K. vide their written submission 15.05.2023 have stated that "***The allegation that Shri Gugan Kumar has stated that he was aware that the goods were of China origin itself is not sufficient. The said statement is not supported with any evidence. Even if, Shri Gugan Kumar has admitted that the goods were of China Origin, no exercise has been made by the department to corroborate this fact with evidence.***" I find that statement dated 03.02.2023 of Shri Gugan Kumar of M/s. G.K., was recorded without any coercion, threat or pressure or consideration. M/s. G.K. have vide the said submission stated that the said statement is not supported with any evidence. In this regard, it is pertinent to mention that the statement recorded under Section 108 of the Customs Act, 1962, itself has merit of substantive evidence.

**25.2.** I find that **Mr. Sanjay Jain, China Based supplier and director of M/s. Excelvantage Global Ltd**, vide his written submission submitted in email dated 28.01.2024, has interalia stated that; he forwarded orders of M/s. G.K to the supplier of goods i.e. M/s. D M Aluminium for supply of CRSS Coils etc. As per said orders M/s. D.M. Aluminium supplied the Malaysian origin goods to M/s. G.K. alongwith all the required documents like invoice, packing lists, Certificate of Origin; that the benefit exemption Notification No. 46/2011-Cus dated 01.06.2011 (Indo-ASEAN ITA) claimed and received by the importer on the basis of Certificate of Origin and Mill Inspection Certificates issued by the Competent Authority of the Exporting Country cannot be denied if the above documents are genuine. In the entire SCN there is no such evidence where the Malaysian Government or the Malaysian Competent Authority who had issued the above documents had stated that the Certificate of Origin and Mill Inspection Certificate issued by the Competent Authority of Malaysia in respect of above said goods supplied by M/s. D.M. Aluminium & Steel Manufacturing, Malaysia to M/s. G.K. Enterprise were not genuine or forged; that his statement was recorded by coercion; that the documents submitted by him were assessed and goods were examined by the proper customs officer at the port before clearance for home consumption.

**25.3.** In this connection, I find that the said submission of Shri Sanjay Jain Director of M/s Excelvantage Global Ltd. (HK) dated 28.01.2024 is not in consonance with his earlier statements dated 02.02.2023 and 04.02.2023 admitted recorded during the course of investigation, under Section 108 of the Customs Act, 1962 without coercion, Threat, Pressure or consideration; wherein he admitted that the goods under all four invoices of M/s. DM Aluminium & Steel Manufacturing, Malaysia, exported to M/s. G. K. Enterprises, were of Chinese origin, purchased by him in China and were routed through Malaysia. He also admitted in his said statements that import documents like Invoice, Packing List, Mill Test report and Certificate of Origin were prepared at Malaysia by his associate Mr. Nadeem Shikoh at Malaysia. The containers of goods in question, sent from China to Malaysia, were got changed in Malaysia, by his associate Mr. Nadeem Shikoh.

**25.4.** I find that confirmation of genuineness of documents from documents issuing authority i.e. **Malaysian Government or the Malaysian Competent Authority, was not warranted since** Shri Sanjay Jain himself admitted his connivance with M/s. G.K. in order to wrongly avail the benefit of origin of the goods, and he also explained in detail how his associate Mr. Nadeem Shikoh prepared forged Invoice, Packing List, Mill Test report and Certificate of Origin and Shri Jain also explained how the containers laden with Chinese origin goods were changed in Malaysia. **vide email dated 30.11.2021, MITI, the issuing agency for Certificates of Origin of Malaysia, has informed that Certificates of Origin were not authentic wherein the supplier was M/s Excelvantage Global Ltd. / Ms Excelvantage Global Ltd. (HK) and third party was M/s Artfransi International SDN BHD.** Therefore, I find that with basic prudence it is not difficult to establish that the said documents were fake.

**25.5.** I find that Shri Sanjay Jain never retracted his said statements, rather, during the course of adjudication proceeding after lapse of almost one year from the date of the statements, he comes up with a different stand that the impugned goods were of Malaysian origin. This clearly shows the said submission of Shri Sanjay Jain is an after-thought with intent to stymy the process of adjudication

**25.6.** I observe that as per the provisions of the Section 46(4A) of the Customs Act, 1962, the importer while presenting a bill of entry **shall** make and subscribe to a declaration as to the **truth** of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. However, in the instant case the importer with malafide intension to wrongly avail the benefit of Origin of the goods, submitted fake/ forged documents to the Customs Officer at the time of import. I also observe that legal maxim '**Nullus commodum capere potest de injuria sua propria**' has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations. Therefore, I hold that the submission dated 28.01.2024 does not hold ground.

**25.7.** I find that the noticees i.e. M/s. G.K or by Shri Sanjay Jain have primarily failed to submit any documentary evidence to establish their innocence. They have merely denied the charges leveled against them without furnishing any supporting evidence. It is pertinent to mention that the burden of proof with respect of rebuttal of the charges made by the Revenue lies on the person on whom the charges have been leveled. This principle has been aptly explained in the case of M/s Satish Mohan Agarwal reported at 2016 (336) ELT 562 (T) wherein it has been observed as under:

*"Enactments like Customs Act, 1962 and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellant, was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained undischarged by appellant."*

In the instant case, the department had discharged their burden of proof by presenting mutually corroborative evidence in the form of forged documents recovered during search at their premises i.e. parallel invoices and packing lists, email dated 30.11.2021 of MITI, the issuing agency for Certificates of Origin of Malaysia, which has informed that Certificates of Origin were not authentic wherein the supplier was M/s Excelvantage Global Ltd. / Ms Excelvantage

Global Ltd. (HK) and third party was M/s Artfransi International SDN BHD; and the statements of the various persons recorded by the investigating officer. No evidence gathered by the DRI were demolished by M/s. G.K or by Shri Sanjay Jain by any means.

**25.8.** I find it pertinent to mention that in the case of **Collector of Customs Vs. D.Bhoormull AIR SC 859 (1983 (13) ELT 1546 (SC))**, the Hon'ble Supreme Court, while discussing the admissibility of preponderance of probability has held that even with regard to burden in criminal prosecution, Department is not required to prove its case with mathematical precision to a demonstrable degree and that all that it is required is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. This decision was also referred and relied by the Hon'ble Supreme Court in the case of M/s. Maganlal Gulabchand Shah Vs. U.O.I (1992 (59) ELT 235 (Guj.)).

**25.9.** I find that the statement recorded under Section 108 of the Customs Act, 1962 have merit of substantive evidence in proving the act of contravention. Reliance is placed on the following judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

- The Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement- and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur (2000(117) E.L.t. 515(Tri))**- wherein Hon'ble Tribunal held that- 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC**. Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

**26. CONFISCATION OF THE GOODS UNDER SECTION 111(m) AND SECTION 111(o) OF THE CUSTOMS ACT, 1962:**

(i). The impugned SCN allege that the goods are liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods is concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) and Section 111(o) 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;"*

(ii). In terms of Section 111(m) of the Customs Act, 1962, the goods not corresponding in respect of value or any other particular with the entry made under the Customs Act, 1962 and in terms of Section 111(o) of the Customs Act, 1962, any goods exempted, subjected to any condition, from duty or any prohibition in respect of the import thereof under the Customs, Act, 1962 or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, are liable for confiscation. As discussed in the foregoing para's, it is evident that the Importer has knowing and intentionally used fake Certificates of Origin to evade duty. In light of these acts of using fake Certificates of Origin, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) and Section (o) of Customs Act, 1962. I hold so.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(m) and Section (o) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 reads as under:-

It is clear that any goods

**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 [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."

(iv) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party

in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

(v). As regards applicability of Section 111(m) and Section(o) of the Customs Act, I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripalspat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any legs to stand.

(vi). In this regard, I find that the impugned goods were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A of the Customs Act covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of subject imported goods.

## **27. NOW I PROCEED TO EXAMINE THE ROLES OF M/S G.K. ENTERPRISES AND MR. SANJAY JAIN.**

### **27.1 ROLE PLAYED BY M/S G. K. ENTERPRISES**

(i). Mr. Gugan Kumar had procured goods for M/s G. K. Enterprises and he was aware that the goods imported from Malaysia were of Chinese origin and the same were routed through Malaysia to wrongly avail the benefit of the Notification No. 46/2011-Customs dated 01.06.2011. **He did not pay applicable Anti-dumping duty and CVD as stated above.** He was instrumental in arranging the fake Certificates of Origin (COO) and other import documents in connivance with Mr. Sanjay Jain, a China based Supplier and the consequent evasion of duty by M/s G. K. Enterprises by declaration of wrong Certificate of Origin to the Customs. **Therefore, they have, by way of wilful misstatement and suppression of facts, availed the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, though such benefit was not available to the goods of Chinese origin routed through Malaysia.** Thus, M/s G. K. Enterprises through its Proprietor, Mr. Gugan Kumar had wilfully with intention to evade duties of Customs, violated the provisions of Sections 46(4) and 46(A) of the Customs Act, 1962 and failed to discharge the obligation of proper 'self-assessment of duty' in terms of Section 17 of the Customs Act, 1962.

(ii). M/s G.K. Enterprises had imported Stainless Steel coils of 410S Grades of various sizes i.e. 0.3\*1250 mm, 0.4\*1250 mm, 0.3\*1240 mm and 0.4\*1240 mm under the said four Bills of entry. By way of submitted the fake Country of Origin Certificates, the importer has evaded the following duties in following Bills of entry:

**A. For Bills of Entry viz. 6665754 dated 04.06.2018, 7086415 dated 05.07.2018 and 8111178 dated 19.09.2018**

- Did not pay Basic Custom Duty by way of wrong availment of benefit of Notification No. 46/2011-Customs dated 01.06.2011;
- Did not pay Anti-Dumping Duty as applicable vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 as amended and CVD as applicable vide Notification number 01/2017-Customs (CVD) dated 07.09.2017 as amended;

**B. For Bill of Entry viz. 5290295 dated 20.02.2018**

- Did not pay Anti-Dumping Duty as applicable vide Notification no. 61/2015-Cus (ADD) dated 11.12.2015 as amended and CVD as applicable vide Notification number 01/2017-Customs (CVD) dated 07.09.2017 as amended;

In terms of Notification No.1/2017-Customs (CVD) dated 07.09.2017 and Notification No. 61/2015-Cus (ADD) dated 11.12.2015, as amended, the Countervailing duty (CVD) at the rate i.e. 38.44%, which is the difference of Anti-dumping duty @ 57.39% and CVD @ 18.95%, on the 'landed values', as defined under the said notifications and Anti-dumping duty @ 57.39% are payable by M/s G.K enterprises. **Thus, differential duty in respect of four Bills of Entry filed by M/s G. K. Enterprises comes to Rs. 1,47,69,039/- (as calculated in Table of Para 13 hereinabove)**

**(iii).** In light of these acts of submitting fake Certificates of Origin to the Customs authorities, I find that M/s G.K. Enterprises had evaded total duties of Customs to the tune of **Rs. 1,47,69,039/-**, thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the said duties of Customs were evaded by reason of willful mis-statement and suppression of facts with a malafide intention. All the aforesaid acts of omission and commission on the part of M/s G.K. Enterprises have rendered the subject imported goods totally valued at **Rs. 1,13,84,792/-** liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. M/s G.K. Enterprises are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it is also evident that M/s G.K. Enterprises has knowingly and intentionally used fake Certificates of Origin, invoices, packing list etc. Therefore M/s G.K. Enterprises have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 also.

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

**(v).** I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable.

**(vi).** I find that there is a mandatory provision of penalty under Section 114A of customs act, 1962 where duty is determined under section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under Section 112(a) and Section 112(b) of Customs Act, 1962. I hold so.

**27.2. ROLE PLAYED BY MR. SANJAY JAIN DIRECTOR OF M/S EXCELVANTAGE GLOBAL LTD. CHINA/ (HK)**

Mr. Sanjay Jain, Director of M/s Excelvantage Global Ltd. China/ (HK), presently residing in India at Gurugram and running the same business in Delhi, was also dealing in carrying, harbouring of the said goods. He knowingly routed the Chinese origin goods via Malaysia, got arranged fake import documents including Certificates of Origin in relation to the goods supplied to M/s G. K. Enterprises, through one of his Malaysian associate Mr. Nadeem Shikoh, to whom he paid for arranging such documents. He knew that by sending goods via Malaysia would save various Customs Duties and he was also having knowledge that Anti-dumping duty and CVD was payable on the C.R.S.S. Coils when imported into India from China. Thus, his wilful acts supra had led to short levy of duties on the goods, supplied/sold by him to M/s G. K. Enterprises and imported in India via Malaysia and therefore, rendered the said imported goods liable to confiscation under Section 111(m) & (o) of the Customs Act, 1962 and rendered themselves liable to penalty in terms of Section 112 and 114AA of the Customs Act, 1962.

**28. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:**

**ORDER**

- i. I reject the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported by M/s G.K. Enterprises from Malaysia under three bills of entry detailed in Annexure-A to the subject notice.
- ii. I order to confiscate the impugned imported goods valued at **Rs. 1,13,84,792/- (Rupees One Crore Thirteen Lakh Eighty Four Thousand Seven Hundred Ninety Two only)** under the provisions of Section 111(m) & Section 111(o) of the Customs Act, 1962; however the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- iii. I confirm the demand of differential duty amounting to **Rs. 1,47,69,039/- (Rupees One Crore Forty-Seven Lakh Sixty-Nine Thousand Thirty-Nine only)** (as detailed in Annexure-A to subject Notice) and order to recover the same from M/s G.K. Enterprises in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962.
- iv. I order to recover the interest from M/s G.K. Enterprises at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty as mentioned at (iii) above;
- v. I impose penalty **Rs. 1,47,69,039/- (Rupees One Crore Forty-Seven Lakh Sixty-Nine Thousand Thirty-Nine only)** upon M/s G.K. Enterprises in terms of Section 114A of the Customs Act, 1962 against confirmed demand of duty as mentioned at (iii) above;
- vi. I refrain from imposing penalty under Section of Section 112(a) and 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.
- vii. I impose penalty of **Rs 5,00,000 (Rupees Five Lakh only)** upon M/s G.K. Enterprises in terms of Section 114AA of the Customs Act, 1962 against demand of duty as mentioned at (iii) above.

viii. I impose penalty of **Rs.14,00,000/- (Rupees Fourteen lakh only)** upon Mr. Sanjay Jain, Director of M/s Excelvantage Global Ltd. China/(HK) in terms of Section 112(a)(ii) of Customs Act, 1962.

ix. I impose penalty of **Rs.10,00,000 (Rupees Ten lakh only)** upon Mr. Sanjay Jain, Director of M/s Excelvantage Global Ltd. China/(HK) in terms of Section 114AA of Customs Act, 1962.

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

*[Signature]*  
(K. Engineer)  
Commissioner of Customs  
Custom House Mundra.

DIN: 20240171MO0000999A6B

Date: 01.02.2024.

F.No. CUS/ADJ/COMM/155/2023- Adjn

*✓ 7926 4 7927*  
By Speed Post/By Email/By Hand/ Notice Board Or By Other Legally  
Permissible Means:

To:

(i) **M/s G. K. Enterprises (IEC-0507000048),**  
2746, Gali No.6, Chuna Mandi, Paharganj, New Delhi-110055 through its  
Prop. Mr. Gugan Kumar. E-mail- gkechachan@yahoo.co.in,  
sdjain73@gmail.com

(ii) **Mr. Sanjay Jain,**  
R/o- Flat No. D-153, DLF Park Place, Phase-V, Sector-54, Gurugram,  
Haryana-122009. E-mail-excelvantage@gmail.com, sj@excelvantage.com,  
ridhisidhimeals21@gmail.com

Copy to:

(a) The Pr. Additional Director General, Directorate of Revenue Intelligence, Delhi  
Zonal Unit, B-3 &4, 6<sup>th</sup> Floor, Pt. Deendayal Antyodaya Bhawan, CGO  
Complex, Lodhi Road, New Delhi-110003 (E-mail- dridzu@nic.in).

(b) The Chief Commissioner of Customs, CCO, Ahmedabad.

(c) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House,  
Mundra

(d) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House,  
Mundra.

(e) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.

(f) Notice Board

(g) Guard File.

