

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467
DIN- 20250371ML000071767C	
A	File No.
B	Order-in-Original No.
C	Passed by M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla
D	Date of Order 13.03.2025
E	Date of Issue 13.03.2025
F	SCN No. & Date GEN/ADJ/COMM/146/2024-Adjn-O/o Commr-Cus-Kandla dated 14.03.2024
G	Noticee / Party / Importer / Exporter M/s. Stash Barn Enterprise and others

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

2. 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:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
 2nd Floor, Bahuali Bhavan Asarwa,
 Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

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

4. 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. 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. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

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

BRIEF FACTS OF THE CASE-

Intelligence gathered by the officers of P&I Section, KASEZ indicated that certain SEZ Units were importing Flat rolled products of Stainless Steel falling under CTH 7219 & 7220, from China and Indonesia and subsequently clearing into DTA without payment of applicable CVD. Further, the Intelligence revealed that SEZ Units along with DTA clients are mis-classifying the goods imported from China in order to avail benefit of concessional rate of Basic Customs duty. In view of the above mis-declarations by the said SEZ Units, undue benefits were being availed which resulted into misuse of the FTA and evasion of Customs duty.

1.1. This office had received a letter F. No. K-43017(16)/1/2021-SEZ dated 13.07.2021 from Ministry of Commerce and Industry along with DRI letter F. No. DRI/AZU/CI/INT-02/2021/494 dated 09.06.2021 (RUD-01). Vide said letter, it has been informed that during the course of inquiry proceedings by the Directorate of Revenue Intelligence (here-in-after referred to as "DRI"), it appeared that certain importers had cleared subject goods from SEZ to DTA without payment of applicable CVD. Further, it has been informed that the said importers had also indulged in other violations like mis-classification, wrong availment of benefit of exemption under Preferential Trade Agreement, clearance without mandatory SIMS registration etc. Further, DRI had informed that since the inquiry on the same matter had already been initiated by KASEZ customs, in the interest of revenue, DRI transferred all the files and documents related to the case to KASEZ Customs for further investigation.

1.2. Further, during the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed that certain KASEZ units had cleared "*Cold Rolled Stainless Steel Sheet in Coils (J3 Grade)*" in DTA classifying them under CTH 72209022 and the Customs duty was paid on these DTA clearances at the rate of 23.35%. The Audit team on scrutiny of their "*Mill Test Certificate*", noticed that these items contained "Chromium-Cr" (12.4% -12.5%) and "Manganese-Mn" (9.2 % -9.4%) in majority and only a small quantum of "Nickel Ni" (1.03% -1.07%). Therefore, Audit team made an observation that the subject goods cleared in DTA were actually "chromium-manganese austenitic type" stainless steel and were correctly classifiable under CTH 72209090 and subsequently, benefit of Notification 50/2018-Cus was also not admissible for subject goods. The above said observations were communicated by the Audit team to KASEZ vide HM dated 27.09.2021 and subsequently vide LAR dated 03.11.2021 (**RUD-02**).

1.3. Acting on the intelligence gathered by the P&I Section and the inputs received from DRI Ahmedabad & Audit observation, an inquiry was initiated against all such SEZ Units and subject DTA clients. M/s. Stash Barn Enterprises, Kandla Special Economic Zone, Gandhidham, Kutch, is one of such units which have cleared imported goods into DTA without payment of applicable CVD and availed concessional rate of duty of the goods originated from China by mis-classifying the goods under 72209022 instead of 72209090.

1.4. M/s. Stash Barn Enterprises (hereinafter also referred to as 'SEZ Unit'), is situated at Shed No.390, AS-III Type, Sector-III, Kandla Special Economic Zone, Gandhidham, Kutch in Kandla SEZ having letter of Approval No. 05/2015-16 dated 02.06.2015 issued by the Joint Development Commissioner vide letter F.No KASEZ/IA/005/2015-16 (**RUD-03**) under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit and carry out authorized operations of warehousing and trading activity.

1.5. The Government of India vide Notification No. 01/2017-Cus (CVD) dated 07.09.2017 (**RUD-04**) imposed Countervailing Duty (CVD) of 18.95% on the goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" when imported from "China PR". Subsequently, vide notifications no. 02/2021-Cus

(CVD) dated 01.02.2021, 05/2021-Cus (CVD) dated 30.09.2021 and 01/2022-Customs (CVD) dated 01.02.2022, the imposition of CVD on import of goods under Chapter 7219 or 7220 from China was rescinded w.e.f. 02.02.2021. By virtue of above said notifications the import of goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" from "China PR" during the period from 07.09.2017 to 01.02.2021 attracted CVD in addition to standard/ applicable BCD, SWS & IGST.

1.6. Further, the Government of India vide Notification No. 02/2020-Cus (CVD) dated 09.10.2020 (**RUD-05**) imposed Countervailing Duty (CVD) on the goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" when imported from "Indonesia". Subsequently, vide Notification no. 01/2021-Cus (CVD) dated 01.02.2021, the imposition of CVD on import of goods under Chapter 7219 or 7220 from Indonesia was rescinded w.e.f. 02.02.2021. By virtue of above said notifications the import of goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" from "Indonesia" during the period from 09.10.2020 to 01.02.2021 attracted CVD in addition to standard/ applicable BCD, SWS & IGST.

2. During the course of investigation, Statements of Partner of M/s. Stash Barn Enterprises were recorded under Section 108 of Customs Act, 1962 wherein they have agreed that they have not paid CVD portion due to lack of knowledge of their authorized person Mr. Deepak Manuja. Further, it is stated that after initiation of investigation, they have paid an amount of **Rs. 2,36,95,459/-** towards duty and interest including differential duty of Rs. 17,00,738/- towards BCD and Rs. 5,87,308/- towards interest in regard to the objections raised by the Audit team and communicated to them vide KASEZ Customs letter dated 29.09.2021 (**RUD-06**).

2.1. During the course of investigation, it was found that below mentioned 03 importers have imported goods through SEZ Unit M/s. Stash Barn Enterprises and subsequently cleared into DTA without payment of applicable CVD. Letters were forwarded to jurisdictional GST commissionates to carry out the verification of genuineness of the said importers. The outcome of the verification proceedings is detailed below (**RUD-07**):

Sr. No.	Name of DTA Importer (M/s.)	Declared address of DTA Importer.	Outcome of IEC verification proceedings.
1.	M/s. Metal and Steel India	1/25b Asaf Ali Road, Delhi 110002	Found Existent
2.	M/s. Om Drishian International Ltd.	SSI-58, G.T. Karnal Road, Industrial Area, North West Delhi – 110033.	Found Existent
3	M/s. Udaya Udyog	30, Lifescapes Nilay, Dr Babasaheb, Jaykar Marg Thakurdwar Road, Mumbai, Maharashtra, India – 400002	Found Existent

3.1. During the course of investigation, Statement of Shri Rakesh Bansal, partner of M/s. Stash Barn Enterprises was recorded on 05.02.2021 (**RUD-08**) under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- that he is one of the partners of M/s. Stash Barn Enterprise and their firm M/s. Stash Barn Enterprise is a Unit engaged in providing warehousing services in KASEZ as per the LoA issued by the Development Commissioner of KASEZ since the year 2015.
- that Mr. Deepak Manuja, their employee at Gandhidham, looked after all activities related to import and subsequent clearance of Stainless Steel; He was responsible for filing Bills of entry and he was authorized signatory of the firm for all Customs and banking related work.
- that they were not aware of CVD in relation to import of Stainless Steel under CTH 7219 and 7220. They got to know about such duty only through letter of Customs KASEZ.
- that they immediately checked their records and found that CVD was otherwise payable but they had not paid the CVD portion due to lack of knowledge of their authorized person Mr. Deepak Manuja, who should have known about the duty applicable on CTH 7219 and 7220. Further, they immediately contacted their clients and conveyed them regarding the non-payment of CVD which was otherwise payable as per Notification No. 1/2017-Customs (CVD) dated 07.09.2017 and Notification No. 2/2020-Customs(CVD) dated 09.10.2020. Further, he conveyed that their clients readily accepted the demand and paid the Customs duty (CVD) along with applicable interest.
- that, for verification of genuineness of their DTA clients, they take KYC of the party such as copy of IEC, details of firm, GST registration certification, PAN card, Aadhar card, Bank attested and notarized documents and a photograph for identification.
- that they verify the companies registered with GST from GST portal, they further verify the credential from Aadhar card portal also. That they take all due care to verify the veracity of their clients and till date no offence related to evasion of Govt. dues has been noticed on their part.
- That they have all the authorization from their respective clients to file Bills of entry on their behalf as per SEZ Rule.
- That they have permission of various OGL items but currently they only dealing in goods falling under CTH 7219 and 7220.
- That they have started to warehouse goods falling under CTH 72 from Nov-2016.
- That they do not have technical knowledge regarding finer details such as how bills of entry are filed and applicable rate of duty on various commodities. He further stated that all technical matters related to Customs clearance was erstwhile managed by Mr. Deepak Manuja.
- That they filed DTA bills of entry of goods falling under CTH 72 and submitted all the details of goods cleared.
- that all the Customs related work was handled by Mr. Deepak Manuja and it appears that due to lack of knowledge about applicability of CVD on the goods

falling under CTH 72 coupled with the fact that neither the CVD provision was reflected nor was calculated at the time of filing of Bills of entry at SEZ online system. The mistake probably happened due to error of SEZ online portal. Since the time KASEZ Customs has informed them regarding the non-payment of applicable CVD on the goods falling under CTH 72, they have already paid full differential duty i.e. 18.95% of the Landed value as required by KASEZ Customs letter dated 16.01.2021 regarding recovery of Short Paid duty.

- that he rigorously followed up with all their DTA clients and their clients have already paid Rs. 2,14,07,413/- with interest.
- that this incident of short payment of Customs duty was not intentional and has happened due to the fact that SEZ online was not updated with relevant CVD Notification and its provisions which is unable to update its system as and when changes introduced by various notifications of Customs and lack of awareness regarding deeper knowledge of Rules and day to day changing Notifications of Customs.

3.2. During the course of investigation, another Statement of Shri Rakesh Bansal, partner of M/s. Stash Barn Enterprises was recorded on 25.01.2024 (**RUD-09**) under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- that he is one of the partners of M/s Stash Barn Enterprise and his firm M/s Stash Barn Enterprise is a unit engaged in providing warehousing services in KASEZ as per the LOA issued by the Development Commissioner of Kandla Special Economic Zone since the year 2015. **He is also one of the Directors of M/s. Om Drishian International Ltd.**
- **that he had been authorized by M/s. Metal and Steel India and M/s. Udaya Udyog** to present and depose statement on behalf of them in reference to Summons issued to them and submitted copies of authorization letters/ emails.
- That till date, details of amount paid towards BCD, CVD & Interest by their DTA Clients are detailed in the table below

S1 No	Name of the DTA Client	Basic Customs Duty (in INR)	CVD (in INR)	Interest (in INR)	Total (in INR)
1	M/s Metal & Steel India	17,00,738	1,07,92,775	37,42,088	1,62,35,601
2	M/s Udaya Udyog		26,38,369		26,38,369
3	M/s Om Drishian International Ltd		48,21,489		48,21,489
TOTAL					2,36,95,459

- a. Out of the above mentioned amounts, an amount of Rs. 17,00,738/- towards BCD and Rs. 5,87,308/- towards interest has been paid in regard to the objections raised by the Audit team and communicated to them by KASEZ Customs vide letter dated 29.09.2021.
- b. In regard to payments made towards differential duty on account of non-payment of CVD, the Bill of Entry wise reconciliation with payments made by them would be submitted in 05 working days. The payments made by

respective DTA clients may be considered for differential duty in first in first out manner towards DTA clearances of respective clients.

- c. In regard to 03 DTA clearances made by their client M/s. Metal & Steel India vide Bills of entry no. 2003770 dated 12.04.2018, 2011311 dated 08.10.2018 and 2011312 dated 08.10.2018, though the country of Origin of these imported goods is "Indonesia" due to clerical mistake in filing Bill of Entry for DTA clearance they had mentioned the Country of Origin as "China" and they submitted attested copies of Import documents pertaining to said 03 Bills of entry. Further, they requested to consider above said facts while arriving at differential duty calculations.
- With regard to goods imported from supplier M/s. Cekap Prima Sdn Bhd vide Bills of entry no. 1013102 & 1013103 both dated 16.12.2020 and subsequently cleared into DTA to their client vide Bills of entry no. 2010917 dated 21.12.2020 and 2010914 dated 21.12.2020, in light of information that the supplies made by Malaysian supplier M/s. Cekap Prima Sdn Bhd under the benefit of ASEAN-India Preferential Trade Agreement and India-Malaysia Preferential Trade Agreement are found to be non-authentic, they stated that they have imported against non-preferential COOs issued by the said supplier and discharged applicable Custom duties (BCD+SWS) & IGST at the time of DTA clearance of said imported goods.
- that due to clerical mistake they erroneously declared COO as "India" in Bill of entry no. 2003529 dated 29.05.2020 whereas actual Country of Origin is "China" same is also available in uploaded documents.

3.3. Subsequently, the unit had submitted details, vide email dated 02.02.2024, of duty payments made till date (**RUD-06**). The reconciliation appeared to be incorrect for the facts that IGST portion is not revised taking into account amount of CVD, some of the Bills of entry are not considered for differential duty calculation etc..

3.4. During his statement dated 05.02.2021 (**RUD-08**), Shri Rakesh Bansal, Partner of M/s. Stash Barn Enterprises, KASEZ categorically stated that Mr. Deepak Manuja, their employee at Gandhidham, looked after all activities related to import and subsequent clearance of Stainless Steel, and he was responsible for filing Bills of entry and he was authorized signatory of the firm for all Customs and banking related work. He further stated that they had not paid the CVD portion due to lack of knowledge of their authorized person Mr. Deepak Manuja, who should have known about the applicable duty on goods falling under CTH 7219 and 7220.

In this connection, to elicit more facts/ details related to subject investigation, reliance is made on a statement dated 29.01.2021 (**RUD-10**), made before DRI, AZU, of Shri Deepak Manuja, in the capacity of Proprietor of M/s. Unique Steel, Gandhidham, recorded under Section 108 of Customs Act, 1962, in a parallel investigation initiation based on the subject intelligence gathered by KASEZ Customs and inputs received from DRI. It is pertinent to place on record that as Shri Deepak Manuja is an employee and authorized signatory of M/s. Stash Barn Enterprises, some of facts stated by him in the statement appears to be relevant to present investigation. The relevant portion of the statement dated 29.01.2021 of Shri Deepak Manuja is as under:-

- that, he is the proprietor of M/s Unique Steel, his wife, Smt. Shivani Manuja is the proprietor of M/s AD Enterprises and his elder brother, Shri Sandeep Manuja is the proprietor of M/s D.S. Trading Company. That, all the companies were established by himself only and his wife as well as his brother were not involved in any activities of the companies. That, all the day today work related to all the activities like sales, purchase etc. was looked after by him only.

- that, M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company, are engaged in trading of Flat rolled products of Stainless-Steel Cold Rolled Coils/Hot Rolled Coil/ Circles. That, first they purchased Flat rolled products of Stainless-Steel Cold Rolled Coils/Hot Rolled Coil/Circle from overseas supplier based in China and Malaysia and further imported the consignments in bulk and warehoused the same in KASEZ. That, thereafter, from KASEZ, they cleared in DTA on payment of applicable duties and sold to various Importers in Domestic market.
- **that, regarding classification of goods, availment of any exemption viz. Asian Pacific Trade Agreement (APTA), payment of Custom duty, GST and other Anti-dumping duties and CVD etc. he stated that he has some knowledge of customs and accordingly, based on the documents received from the overseas suppliers, they filed the Bill of entry.**
- that, he contacted overseas suppliers for supply of Flat rolled products of Stainless-Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil/ Stainless Steel Circle and did not issue any purchase order but they received proforma Invoice and accordingly they made the advance payment through banks as no credit limit or time was given by overseas supplier.
- that, on being asked about the operation of the bank accounts, he informed that his brother, Sandeep Manuja operated the accounts of all the three firms viz. M/s. Unique Steel, M/s. AD Enterprises and M/s. D.S. Trading Company and they did not operate the accounts of M/s RMC Enterprise and M/s AJ Steel.
- That, they do not know the end use of product viz. Flat rolled products of Stainless-Steel Cold Rolled Coils/Hot Rolled Stainless Steel Coil/ Stainless Steel Circle and they do not have any end-use certificate also.
- that, under CTH 72 goods mainly steel product i.e., S.S. Coil/pipe are classified. That, there are two types of coils i.e., HRC (Hot Rolled Coil) and CRC (Cold Rolled Coil). That, as far as difference between HRC and CRC is concerned, it depends on the rolling mechanism, temperature used on it, and CRC is made from HRC after finishing of it. That, they have imported both types of coils. That, under CTH 7219, Flat-rolled products of stainless steel of a width of 600 mm or more have been classified whereas under CTH 7220, Flat-rolled products of stainless steel of a width of less than 600 mm have been classified.
- that, they have filed the Bills of Entry for the goods with description of Cold Rolled Coils under CTH 72209022 Nickel Chromium Austenitic Type' and for the goods with description of Hot Rolled Coils under CTH 72201222 with description 'Nickel Chromium Austenitic Type. That, they filed the Bills of Entry under said CTH for taking benefit of SAPTA Notification under the description of 'Nickel Chromium Austenitic Type.
- **that, they classified the imported goods under said CTH for taking benefit of SAFTA and further, he accepted that it is does not fall under category of Nickel Chromium Austenitic Type.**
- **that, on being asked to go through the CTH 7220, he found that the correct classification of imported goods with description of Hot Rolled Stainless Steel have to be classified under CTH 72201290 and imported goods with description of Hot Rolled Stainless Steel have to be classified under 72209090.**

- **that, SIMS (Steel Import Monitoring System) registration is required for the import of steel. Importer has to register it.** As far as goods imported by M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company, we have not had SIMS registration.
- **that, Initially, they received the documents from their overseas supplier with HS code or CTH mentioned in 6 digits i.e. 7220.90 but as the CTH mentioned in SAPTA Notification no. 50/2018 the eligible HS code to claim benefit on BCD is mentioned as 72209022 therefore, they asked their suppliers to mention HS code 72209022 on the import documents where as their goods imported are of HS Code 72209090.**
- that, as said imported goods are not falling under category of Nickel Chromium Austenitic, therefore, it appears that SAFTA benefit is not applicable on the said products by M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company.
- That, on being asked about applicability of CVD on the imported products as per Customs Notification no. 01/2017 (CVD), he agreed that as per the said notification CVD is applicable on the goods imported by them.

4. Scrutiny of documents and analysis of evidences gathered during investigation-

4.1. During the analysis of statistical data of the import/ DTA clearances by KASEZ Customs, it was noticed that several importers are clearing Stainless Steel Coil/ Circles imported from China and Indonesia into DTA, without paying applicable CVD. In regard, KASEZ Customs vide letter dated 16.01.2021 & 27.01.2021(**RUD-06**), inter-alia, requested M/s. Stash Barn Enterprises, KASEZ to pay the Countervailing Duty (CVD) leviable under Notification No. 01/2017-Customs (CVD) dated 07.09.2017 & Notification No. 02/2020 – Customs (CVD) dated 09.10.2020 on the said goods along with the applicable interest.

In response, below mentioned 03 DTA clients/importers of M/s Stash Barn Enterprises have paid an amount of Rs. 2,14,07,413/- (Two Crores Fourteen Lakhs Seven Thousand Four Hundred and Thirteen rupees only) towards differential duty(CVD) and interest. The challans submitted by the DTA clients/ importers have been forwarded to SBI, KASEZ for verification vide letter dated 16.04.2021 and the Bank vide their letter ref: KAFTZ/2021-22/20 dated 22.04.2021 confirmed the payment of duty vide cheques mentioned therein (**RUD-06**).

4.2. During the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed that the said SEZ Unit along with DTA Importers have mis-classified the goods imported under CTH 72209022 to claim the benefit of Asian Pacific Trade Agreement (APTA) under Notification No. 50/2018 dated 30.06.2018, wherein benefit/ exemption of @45% on the BCD on the goods imported from China is available. The Audit team, on scrutiny of “Mill Test Certificates” had observed that actual classification of these goods should be 7220 9090. The audit observations have been communicated to the SEZ Unit vide this office letter dated 29.09.2021 with a request to pay the differential duty/outstanding amount along with applicable interest. In response the unit vide their letter dated 23.12.2021 (**RUD-06**) intimated that they have paid an amount of Rs. 17,00,738/- vide TR-6 challan no. 04/2021-122 dated 22.12.2021 towards short levy of Customs Duty and an amount of Rs. 5,87,308/- vide TR-6 challan no. 05/2021-22 dated 22.12.2021 towards the interest.

4.3. The details of duty payments and interest payments made by the 03 DTA clients/ importers, till date, are tabulated hereunder:-

(i) M/s Metal & Steel India:-

Sl. No	Challan/ Cheque No – Date	Amount paid	TOTAL
1	016556 Dt: 20.01.2021	50,00,000/-	50,00,000
2	016557 Dt: 20.01.2021	50,00,000/-	50,00,000
3	016558 Dt 20.01.2021	7,92,775/- + 31,54,780/-	39,47,555
4	469510 & 469511 dt: 22.12.2021	17,00,738/-	17,00,738
5	469512 dt 22.12.2021	5,87,308/-	5,87,308
TOTAL		1,62,35,601	1,62,35,601

(ii) M/s Om Drishian International Limited:-

Sl No	Challan/ Cheque No – Date	CVD& Interest	TOTAL
1	375508 Dt 01.02.2021	48,21,489	48,21,489

(iii) M/s Udaya Udyog

Sl No	Challan/ Cheque No – Date	CVD & Interest	TOTAL
1	004566 Dt 30.01.2021	26,38,369	26,38,369

4.5. Import without SIMS registration: Whereas, DGFT vide notification no. 33/2015-2020 dated 28.09.2020 has amended the import policy for goods falling under Chapter 72 and 73 from “Free” to “Free subject to compulsory registration under Steel Import Monitoring System (SIMS)”. During the course of investigation, it emerged that subject SEZ unit in connivance with DTA importers have imported subject goods without compulsory registration under SIMS as mandated by prevailing import policy notified by DGFT.

5. Discussion related to legal contraventions:

5.1. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported /export goods while presenting bill of entry or shipping bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules, all inward or outward movements of the goods into or from SEZ by the Unit/Developer shall be based on self-declaration made by the Unit/Developer. While importing subject goods, the said SEZ unit and DTA importers were bound for true and correct declaration and assessment. As the said SEZ unit engaged in business of providing warehousing services in respect of subject goods, they were fully aware of specifications, characteristics, nature, rate of duty and description of the goods imported and warehoused on behalf of DTA client. Section 46(4A) of the Customs Act, 1962, the importer, who is presenting the bill of entry should 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.

6.2 During the course of investigation, it emerged that Shri Deepak Manuja, employee and authorized signatory of M/s Stash Barn Enterprises in his statement dated 29.01.2021 (RUD-10), in relation to another investigation, stated that they willfully mis-classified the imported goods to avail benefit of concessional rate of duty. The facts of himself being proprietor of an importing firm and handling other 02 firms established in the name of his wife and brother, dealing directly with overseas suppliers, DTA importers, filing Bills of entry etc. clearly suggest that he was well aware of actual classification, rate of duty and other details of imported goods. Further, the fact that the SEZ unit, its partner, the DTA clients and the employee/ authorized signatory themselves being engaged in the business of importing/ trading of subject goods, it appeared they were fully aware of specifications, characteristics, nature, rate of duty and description of the goods imported and willfully mis-declared and mis-represented the facts to evade the Custom duty. The legal contraventions caused out of acts of omissions and commission on the part of the DTA Clients and the SEZ in evasion of Customs duty would have not come to the notice of Customs authorities except for Statistical data analysis, intelligence gathering, and inputs from reliable sources and further investigation by Customs. Further, the CRA team observed willful mis-classification of imported goods to evade customs duty by way of availing non-eligible benefits of concessional rate of duty under India-ASEAN FTA. In view of all the above discussed acts of omissions and commissions, it appeared to be a clear case of willful mis-statement and suppression of facts and thereby attracts the invocation of extended period of demand of duty under Section 28(4) of the Customs Act, 1962. Further, it emerged that all these acts had been done with well and pre-planned strategy so as to illegally enrich the said SEZ unit and DTA importers through evasion of Customs duty.

6.3 During the course of Investigation, it emerged that the said SEZ Unit along with DTA importers have wrongly availed the benefit of exemption on goods imported from China by mis-classifying the goods and evaded the Customs duty by mis-declaring the applicable rate of duty/ CVD. Such indulgence and endeavor on the part of said SEZ Unit and DTA importers were in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which maked the impugned goods liable for confiscation in terms of Section 111(m) and Section 111(o) of the Customs Act, 1962 and said SEZ unit and their DTA importers liable for penalty under Section 112, Section 114A and section 114AA of the Customs Act, 1962.

Mis-classification of the goods to avail undue APTA benefits:

6.4 During the course of Investigation, it emerged that the said SEZ Unit along with DTA Importers had mis-classified the goods imported under CTH **7220-9022** to claim the benefit of Asian Pacific Trade Agreement (APTA) under Notification No. 50/2018 dated 30.06.2018, wherein benefit/exemption of @45% on the BCD on the goods imported from China, resulted in the short payment in Customs Duty. The actual classification of these goods appeared to be **7220-9090 (Chromium-Manganese Austenitic Stainless Steel)** as per the Mill test reports discussed above. Such indulgence and endeavor on the part of said SEZ Unit and DTA importers are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable for confiscation in terms of Section 111(m) and Section 111(o) of the Customs Act, 1962 and said SEZ unit and their DTA importers liable for penalty under Section 112, Section 114A and Section 114AA of the Customs Act, 1962.

Clearance of the goods without SIMS Registration.

6.5 DGFT vide notification no. 33/2015-2020 dated 28.09.2020 had amended the import policy for goods falling under Chapter 72 from “Free” to “Free subject to compulsory registration under Steel Import Monitoring System (SIMS)”. During the course of investigation, it emerged that Shri Deepak Manuja, employee and authorized signatory of M/s Stash Barn Enterprises in his statement dated 29.01.2021 (RUD-10) had stated that he was aware of the compulsory SIMS (Steel Import Monitoring System) Registration for the import of steel products. Thus, it is evident that subject SEZ unit in connivance with DTA importers had imported subject goods without compulsory registration under SIMS as mandated by prevailing import policy notified by DGFT. Such indulgence and endeavor on the part of said SEZ Unit and DTA importers are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which made the impugned goods liable for confiscation in terms of Section 111(d) and Section 111(o) of the Customs Act, 1962 and said SEZ unit and their DTA importers liable for penalty under Section 112 and section 114AA of the Customs Act, 1962.

7. Quantification of Duty Evasion

7.1. The bill of entry-wise details of DTA clearances made by M/s. Stash Barn Enterprises without payment of applicable CVD were enlisted in Annexure-A to the notice. Further, the partner of the SEZ Unit in his statement dated 25.01.2024, stated that in respect of 03 DTA clearances made by their client M/s Metal & Steel India vide Bills of entry no. 2003770 dated 12.04.2018, 2011311 dated 08.10.2018 and 2011312 dated 08.10.2018, though the country of Origin of the subject imported goods is “Indonesia” due to clerical mistake in filing Bill of Entry for DTA clearance they have mentioned as Country of Origin as “China” and submitted attested copies of Import documents pertaining to said 03 Bills of entry. On scrutiny of documents submitted by the unit, the details mentioned in the import documents are in support of the claim of the unit that the actual COO of the imported goods appeared to be “Indonesia”. Accordingly, it appeared that the CVD was not leviable/ payable on DTA clearances made vide Bills of entry no. 2003770 dated 12.04.2018, 2011311 dated 08.10.2018 and 2011312 dated 08.10.2018 and the said 03 Bills of entry (mentioned at Sr.No.03 to 05 in Annexure-A) were omitted while arriving at the differential duty payable. During the scrutiny, with respect to goods cleared into DTA under BE No. 2008528 dated 09.09.2019 (Sr.No. 11 of Annexure-A) it was observed that the SEZ Unit declared goods under CTI 72209090 and wrongly availed concessional rate of BCD, the benefit of which is not available for CTI 72209090 and the same should attract full rate of BCD. Whereas, the partner of the SEZ Unit in his statement dated 25.01.2024, stated that the payments made by respective DTA clients may be considered for differential duty in first in first out manner towards DTA clearances of respective clients. Accordingly, out of the differential duty paid by the DTA importer M/s. Metal and Steel India, till date of issuance of notice, amounts of Rs. 22,40,336/- and Rs. 10,92,164/- should be considered as differential duty and interest, respectively, paid towards the DTA clearances made vide 02 DTA Bills of entry i.e. 2011075 and 2011076 both dated 07.10.2017, mentioned at Sr. No. 1 & 2 of the Annexure-A. Now, the importer-wise revised/balance duty paid details, after above discussed adjustments, shall be as under:

Sr.No	Name of the DTA client (M/s.)	Customs duty (BCD/CVD) (in Rs.)	Interest (in Rs.)	Total (in Rs.)
1	Metal and Steel India	1,02,53,177/- (17,00,738/- BCD + 85,52,439/- CVD)	26,49,924/-	1,29,03,101/-
2	Om Drishian International Ltd.		48,21,489/-	48,21,489/-

3	Udaya Udhyog	26,38,369/-	26,38,369/-
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7.2. From the investigation carried out, it appeared that the SEZ unit and their DTA clients have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally misclassified the subject goods to avail the benefits of Concessional rate of duty, mis-declared applicable rate of duty, filed Bills of Entry for import of subject goods without SIMS Registration, cleared goods after availing the benefits of concessional rate of duty and short paid the applicable Customs duty. All these acts and omissions on their part have rendered the goods having total assessable value of Rs. **9,62,51,249/-** (Rupees Nine Crore Sixty Two lakh Fifty One Thousand Two Forty nine only) liable to confiscation under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-B, Annexure-C and Annexure-D** to the SCN and goods having total assessable value of Rs. **27,11,31,698/-** (Rupees Twenty Seven Crore eleven lakh thirty one Thousand six Hundred and Ninety Eight only) liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-E, Annexure-F, Annexure-G and Annexure-H** to the SCN. The said acts of omission and commission on the part of the SEZ unit and their DTA clients had rendered them liable for penalty, under the provisions of Section 112/ 114A, 114AA of the Customs Act, 1962.

7.3 It further appeared that, in addition to mis-classification, the SEZ unit, DTA importers and Shri Deepak Manuja, employee of the SEZ unit indulged in mis-declaration of applicable rate of duty i.e. CVD component. This deliberate act of mis-declaration and mis-classification appears to be with intent to evade Customs duty. Therefore, the total differential customs duty amounting to **Rs. 2,68,00,170/-** (Rupees Two Crore Sixty Eight Lakhs One Hundred and Seventy only) on the said goods imported, as shown in the Annexure-B, Annexure-C and Annexure-D to the Show Cause Notice, which was lawfully payable by them and liable to be recovered from the said respective DTA Clients, individually and separately, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

7.4 From the investigation carried out, it appeared that M/s. Metal and Steel India, contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally mis-declared applicable rate of duty, mis-classified the imported goods, cleared goods after availing the benefits of concessional rate of duty & short paid applicable Customs duty and filed Bills of Entry for import of subject goods without SIMS Registration. All these acts and omissions on their part have rendered the goods having total assessable value of Rs. **4,48,80,802/-** (Rupees Four crore Forty Eight lakh Eighty thousand Eight hundred and Two only) are liable to confiscation under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-B** to the SCN and also rendered goods having total assessable value of **Rs. 1,19,00,073/-** (Rupees One crore Nineteen lakh and Seventy three only) are liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-E** to the SCN. Further, the total differential customs duty amounting to **Rs. 1,26,69,339/-** (Rupees One crore Twenty Six Lakh Sixty Nine Thousand Three Hundred and Thirty Nine only), on the said goods imported, as shown in the **Annexure-B** to this Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA importers under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The said acts of omission and commission on the part of M/s. Metal and Steel India have rendered them liable for penalty, under the provisions of Section 112/ 114A and 114AA of the Customs Act, 1962.

7.5 Further, from the investigation carried out, it appeared that M/s. Om Drishian International Ltd. contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally mis-declared applicable rate of duty & short paid

applicable Customs duty and filed Bills of Entry for import of subject goods without SIMS Registration. All these acts and omissions on their part have rendered the goods having total assessable value of Rs. **4,13,69,761/-** (Rupees Four crore Thirteen lakh Sixty Nine thousand Seven hundred and Sixty One only) are liable to confiscation under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to the SCN and also rendered goods having total assessable value of **Rs. 7,38,16,133/-** (Rupees Seven Crore Thirty eight lakh sixteen thousand one hundred and thirty three only) are liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-F** to the SCN . Further, the total differential customs duty amounting to **Rs. 1,12,00,690/-** (Rupees One crore Twelve lakh six hundred and Ninety only), on the said goods imported, as shown in the **Annexure-C** to the Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA importers under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The said acts of omission and commission on the part of M/s. Om Drishian International Ltd. have rendered them liable for penalty, under the provisions of Section 112/ 114A and 114AA of the Customs Act, 1962.

7.6 From the investigation carried out, it appeared that M/s. Udaya Udyog contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally mis-declared applicable rate of duty & short paid applicable Customs duty and filed Bills of Entry for import of subject goods without SIMS Registration. All these acts and omissions on their part have rendered the goods having total assessable value of Rs. **1,00,00,686/-** (Rupees One crore Six hundred and eighty six only) are liable to confiscation under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-D** to the SCN and also rendered goods having total assessable value of **Rs. 2,99,84,584/-** (Rupees Two Crore Ninety nine lakh eighty four thousand five hundred and eighty four only) are liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-G** to the SCN. Further, the total differential customs duty amounting to **Rs. 29,30,141/-** (Rupees Twenty Nine Lakh Thirty thousand One hundred and forty one only), on the said goods imported, as shown in the **Annexure-D** to the Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA importers under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The said acts of omission and commission on the part of M/s. Udaya Udyog have rendered them liable for penalty, under the provisions of Section 112/ 114A and 114AA of the Customs Act, 1962.

7.7 Whereas, from the investigation carried out so far, it appeared that M/s. New Era Trading Pvt. Ltd. contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally filed Bills of Entry for import of subject goods without SIMS Registration. All these acts and omissions on their part have rendered the goods having total assessable value of Rs. **15,54,30,909/-** (Rupees Fifteen crore fifty four thousand thirty lakh nine hundred and nine only) are liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-H** to this SCN. The said acts of omission and commission on the part of M/s. New Era Trading Pvt. Ltd have rendered them liable for penalty, under the provisions of Section 112 of the Customs Act, 1962.

8. Statement of charges and Authority to adjudicate the subject charges

8.1. Therefore, **M/s. Stash Barn Enterprises, KASEZ** (IEC - 0515046914) having Letter of Approval No. F.No KASEZ/IA/005/2015-16 dated 02.06.2015 were called upon to show cause to the Commissioner of Customs, as to why:

- i) The classification of the imported goods under CTH 7220 9022 and cleared into DTA, vide bills of entry as detailed at Sr.No. 1 to 4 and 7 to 13 in **Annexure-B** should not be rejected and re-classified under CTH 7220 9090 and subsequently benefit of concession rate of duty availed by virtue of the Sl. No. 729 of the table mentioned under Notification 50/2018-Cus dated 30.06.2018 should not be denied.
- ii) the goods imported and further cleared into DTA vide Bills of Entry as detailed in **Annexure-B, Annexure-C and Annexure-D** having declared assessable value of Rs. **9,62,51,249/-** (Rupees Nine crore Sixty two lakh Fifty one thousand two hundred and forty nine only) should not be confiscated under Section 111(m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD.
- iii) The imported goods cleared into DTA vide Bills of Entry as detailed in **Annexure-E, Annexure-F, Annexure-G and Annexure-H** having declared assessable value of Rs. **27,11,31,698/-** (Rupees Twenty Seven Crore eleven lakh thirty one Thousand six Hundred and Ninety Eight only) should not be confiscated under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;
- iv) Penalty under Section 112 and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

8.2. M/s. Metal and Steel India, (IEC – 0504038788/ AAAFM4581A), 1/25B, First Floor, Asaf Ali Road, New Delhi, Delhi, India - 110002 were called upon to show cause to the Commissioner of Customs as to why:

- i) The classification of the imported goods under CTH 7220 9022 and cleared into DTA, vide bills of entry as detailed at Sr.No. 1 to 4 and 7 to 13 in **Annexure-B** should not be rejected and re-classified under CTH 7220 9090 and subsequently benefit of concession rate of duty availed by virtue of the Sl. No. 729 of the table mentioned under Notification 50/2018-Cus dated 30.06.2018 should not be denied.
- ii) The differential Customs duty of **1,26,69,339/-** (Rupees One crore Twenty Six Lakh Sixty Nine Thousand Three Hundred and Thirty Nine only) as detailed in '**Annexure-B**' to the Show Cause Notice, should not be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962.
- iii) The differential Customs duty and interest, totalling, Rs. 1,29,03,101/- (Rupees One crore Twenty Nine lakh Three thousand One hundred and One only), paid by them, should not be appropriated against the differential duty and applicable interest mentioned at Sr.No. (ii) above.
- iv) The goods imported from China and further cleared into DTA vide Bills of Entry as detailed in '**Annexure-B**' having declared assessable value of Rs. **4,48,80,802/-** (Rupees Four crore Forty Eight lakh Eighty thousand Eight hundred and Two only) should not be confiscated under Section 111(m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD.
- v) The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-E**' having declared assessable value of **Rs. 1,19,00,073/-** (Rupees One crore Nineteen lakh and Seventy three only) should not be confiscated under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;

vi) Penalty under Section 112/114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

8.3. Further, **M/s. Om Drishian International Limited, (IEC-0501044825/ AABCO0120B)**, SSI-58, G.T Karnal Road, Delhi, Delhi, India - 110033 were called upon to show cause to the Commissioner of Customs, as to why:

- i) The differential Customs duty of Rs. **1,12,00,690/-** (Rupees One crore Twelve lakh six hundred and Ninety only) as detailed in '**Annexure-C**' to the Show Cause Notice, should not be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962.
- ii) The differential Customs duty and interest, totalling, **Rs. 48,21,489/-** (Rupees Forty Eight lakh Twenty One thousand Four hundred and Eighty Nine only), paid by them, should not be appropriated against the differential duty and applicable interest mentioned at Sr.No. (i) above.
- iii) The goods imported from Indonesia and further cleared into DTA vide Bills of Entry as detailed in '**Annexure-C**' having declared assessable value of Rs. **4,13,69,761/-** (Rupees Four crore Thirteen lakh Sixty Nine thousand Seven hundred and Sixty One only) should not be confiscated under Section 111(m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD.
- iv) The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-F**' having declared assessable value of **Rs. 7,38,16,133/-** (Rupees Seven Crore Thirty eight lakh sixteen thousand one hundred and thirty three only) should not be confiscated under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;
- v) Penalty under Section 112/114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

8.4. M/s. Udaya Udyog, (IEC-0300018754/ AAAFU0989Q), 30, Lifescapes Nilay, Dr Babasaheb, Jaykar Marg Thakurdwar Road, Mumbai, Maharashtra, India - 400002 were called upon to show cause to the Commissioner of Customs, as to why:

- i) The differential duty amount of **Rs. 29,30,141/-** (Rupees Twenty Nine Lakh Thirty thousand One hundred and forty one only) as detailed in '**Annexure-D**' to the Show Cause Notice, should not be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962.
- ii) The differential Customs duty and interest, totalling, **Rs. 26,38,369/-** (Rupees Twenty Six lakh Thirty Eight thousand Three hundred and Sixty Nine only), paid by them, should not be appropriated against the differential duty and applicable interest mentioned at Sr.No. (i) above.
- iii) The goods imported from Indonesia and further cleared into DTA vide Bills of Entry as detailed in '**Annexure-D**' having declared assessable value of Rs. **1,00,00,686/-** (Rupees One crore Six hundred and eighty six only) should not be confiscated under Section 111 (m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD.

- iv) The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-G**' having declared assessable value of **Rs. 2,99,84,584/-** (Rupees Two Crore Ninety nine lakh eighty four thousand five hundred and eighty four only) should not be confiscated under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;
- v) Penalty under Section 112 and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

8.5. M/s. New Era Trading Pvt Ltd (IEC-0512064831/ AAECN1601K), 504, 5th Floor, Inderprastha Tower, Plot No.6, Wazirpur Industrial Area,, Delhi, India - 110052 are hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why:

- i) The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-H**' having declared assessable value of **Rs. 15,54,30,909/-** (Rupees Fifteen crore fifty four thousand thirty lakh nine hundred and nine only) should not be confiscated under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;
- ii) Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

RECORD OF PERSONAL HEARING-

9. Shri Karthik Dedhia, Advocate appeared for personal hearing on behalf of M/s. Staash Barn Enterprise, M/s. Metal and Steel India, M/s. Om Drishian International Ltd., M/s. Udaya Udyog and M/s. New Era Trading Pvt. Ltd. on 21.01.2025. During the course of personal hearing, he reiterated the submissions made in the reply dated 14.05.2024, 20.09.2024 and 23.09.2024. He has further submitted that they would be filing an additional written submission shortly. In view of the same, he has filed additional submission on 18.02.2025.

WRITTEN SUBMISSION-

10. M/s. Stash Barn Enterprises, M/s. Metal and Steel(India), M/s. Om Drishain International Limited and M/s. Udaya Udyog vide their submission dated 14.05.2024 interalia, submitted that-

- i. M/s. Stash Barn Enterprise is an approved warehousing unit in KASEZ having LoA issued by the Development Commissioner.
- ii. The DTA Clients import goods and warehouse in their unit in SEZ and they file the import and DTA Bill of Entry in terms of Rule 48(1) of SEZ Rules, 2006 on the basis of import documents and get the goods cleared in the DTA after payment of the applicable duties.
- iii. All the import Bills of Entry are subject to assessment and examination by the Custom officers posted in KASEZ invariably.
- iv. The demand notice is issued beyond the prescribed time period of issuance of the SCN given under the Customs Act, 1962 and therefore the demand is unsustainable and bad in law.
- v. At the time of importation, filing of Bill of Entry and Clearing the Steel coils into DTA, they were not aware that the CVD was applicable on the subject goods. Only

when, they received a letter from the KASEZ Custom letter dated 16.01.2021 and 27.02.2021, they came to know that the CVD was applicable on the subject goods. On knowing the same, they immediately contacted their DTA clients and informed them about such short payment and paid the duty.

- vi. Para 3.3 of the Show Cause notice, where it is mentioned that, "*unit had submitted details vide email dated 02.02.2024, of duty payment made till date*" is misleading in nature as they had already submitted duty payment challan and details to the department vide various letters dated 16.02.2021, 05.02.2021, 25.03.2021 and 23.12.2021. The department have not mentioned the receipt of the above mentioned letters which indicates that Show Cause Notice is issued with prejudiced and intentionally hid the information to cover their in-actions.
- vii. Para 3.4 of the Show Cause Notice indicated that the department has relied upon the statement of their ex-employee Mr. Deepak Manuja, who was fired from their firm as he was found to be involved in other business activities apart from his responsibilities in their firm. Further, his individual role in any other case, cannot be brought into the instant matter. In his statement dated 29.01.2021, he has clearly stated that he contacted Mr. Devang Mehta and started clearing the goods from some other unit of KASEZ. There are no common DTA clients. Further, none of the DTA clients name mentioned in his statement dated 29.01.2021 had warehoused in their SEZ unit i.e. M/s. Stash Barn Enterprises.
- viii. To invoke the extended period for demand elements of collusion or any wilful mis-statement or suppression of facts is mandatory. Without the above said elements, the extended period of time limit for demand is not sustainable. In the instant case, they have clearly mentioned/declared all the particulars correctly w.r.t the goods being cleared under the Bill of Entry such as Goods Description, Grade, Value, Country of Origin etc. All the Bills of Entry had been assessed by the apprising officers of KASEZ and examined by Preventive officers and then only out of charge was granted. In none of the case, there is any collusion/wilful misstatement or suppression of facts. Section 17 of the Customs Act 1962, Rule 75 of the SEZ provides for the self-assessment and declaration w.r.t the particulars of the goods in the Bill of Entry, which they did with the truest of intent and disclosed all the particulars correctly. Now the onus of correcting the bonafide mistakes if any committed by us or DTA importers due to lack of knowledge is on the department. The department cannot transfer its responsibility/duties on the importers for their bonafide mistakes.
- ix. the audit report suggests that the goods "J3 Grade" of Stainless steel is classifiable under CTH 72209090. It does not suggest that some other grade of steel coil is also classifiable under CTH 7220 9090. In^ our case, we had imported 410 8 grade steel not 'J3 Grade" as also mentioned in the invoice / packing list of the Bill of Entry. The audit has mechanically considered all the grade of coils to be classifiable under CTH 7220 9090 as could be seen in the annexure attached to the Audit report. All of the bills of entry of other SEZ units were declared to be J3 only as mentioned in the Annexure to the Audit report. Neither the audit report nor the Show cause notice mentions how could 410 S grade steel is classifiable under 7220 9090 which is for J3 grade.
- x. In Para 6.5 of the Show Cause Notice, It Is alleged that we have imported and cleared the goods without SIMS and hence the goods are liable for confiscation under Section 111 (d) and (o) of the Customs Act, 1962. The said allegation is put forth by the investigation without application of scientific and legal mind due to the reasons mentioned below: - 18.1 The DGFT vide Notification no 17/2015-20 dated 05.09.2019 amended the Import policy of goods falling under Chapter 72 and 73 and inserted Policy Conditions to obtain Compulsory Registration under (Steel Import Monitoring System) SIMS of certain CTIs mentioned in the Annex

attached to the notification. It is to note that goods imported by us under the CTI 7220 9022 was not mentioned in the aforesaid Annexure of the notification no 17/2015-20 dated 05.09.2019. Therefore, the goods under the CTI 7220 9022 were free as per DGFT. Further DGFT vide notification no 33/2015-20 dated 28.09.2020 brought all HS codes of Chapter 72,73 and 86 under the Compulsory Registration under (Steel Import Monitoring System) SIMS before Import. The said DGFT notification was effective from 16.10.2020 as mentioned in the Public Notice no 19/2015 dated 28.09.2020 Issued by the DGFT

10.1 M/s. Udaya Udyog and M/s. Metal & Steel India in their submission dated 20.09.2024, interalia, submitted that-

- (i) The SEZ unit filed 2 home consumption bills of entry, detailed in Annexure-D to the SCN, on our behalf and in our name. Goods namely cold rolled stainless steel in coils covered by these 2 bills of entry had been sold to us by the SEZ unit and cleared under the 2 bills of entry, detailed in Annexure- C, as mentioned above.
- (ii) At the time of clearance of these goods for sale to us, the SEZ unit while filing the 2 bills of entry did not pay CVD leviable under section 9 of the Customs Tariff Act, 1975 in respect of import of such goods from China.
- (iii) We submit that except for lending our name in the bills of entry in question, all actions regarding clearance of the goods in respect of these bills of entry had been taken by M/s Stash Barn Enterprises, the SEZ unit only, in terms of the proviso to rule 48 of the SEZ rules 2006. We had done absolutely nothing regarding classification of the goods or non-payment of CVD or even for non-compliance with SIMS.
- (iv) As we had authorized the SEZ unit to take all actions on our behalf and in our name, in respect of the goods sold to us and cleared in our name in the DTA by filing home consumption bills of entry, necessary explanation on our behalf in respect of any such alleged offence or contravention has to be given only by the SEZ unit, M/s Stash Barn Enterprises.
- (v) There is no dispute that CVD under Section 9 of the Customs Tariff Act, 1975 was leviable on the goods of Chinese origin imported by the SEZ unit. When the goods were cleared and deposited under the warehousing bills of entry in Stash Barn Enterprises' premises, the assessment in all respects indicating the classification of the goods, the duty payable, including the CVD, had to be done under section 46 of the Customs Act, 1962 in the same way as assessment in respect of bills of entry for home consumption is done with the only difference that duty payable is not required to be paid at the time of warehousing. However, when the bills of entry for domestic clearance were filed by Stash Barn Enterprises in respect of its 3 DTA buyers, all the customs duties including CVD were required to be paid. As mentioned earlier, since the bills of entry for the DTA importers were filed by Stash Barn Enterprises only, it was its responsibility to ensure payment of all the duties properly including payment of CVD.
- (vi) When it came to their notice, the Appraising officer of Gandhidham SEZ, vide letter dated 16.01.2021, requested Stash Barn Enterprises to pay the CVD amount @18.95% leviable in respect of the goods cleared under the DTA bills of entry'.
- (vii) After payment of the above mentioned amounts made by the 3 DTA importers, as advised by Stash Barn Enterprises, even though, in respect of some of the bills of entry, the normal period of limitation of two years for raising a demand

under Section 2S(1) of the Customs Act, 1962 was over, the customs authorities should have treated the matter as closed and there was no need for proceeding further in respect of the CVD component, as mandated under sub-section (2) of section 28 of the Customs Act, 1962. Even if there was some additional short levy in the IGST component as it was Payable on the CVD amount also paid subsequently, demand for that could also have been issued later as provided in sub-section (3) of section 28 of the Customs Act, 1962 itself, subject however to the normal period of limitation of two years as provided thereunder.

- (viii) The demand for CVD is hit by the limitation.
- (ix) We submit that the grounds given for invoking the extended period in the show cause notice are totally inadequate to bring the issue within the purview of willful misstatement or suppression of facts with an intention to evade the CVD amount within the meaning of section 28 of the Customs Act, 1962.
- (x) The grounds for proposing confiscation of the goods covered by these 24 bills of entry is that the CVD was not paid in respect of these goods and that non-payment of CVD was a deliberate act on the part of Stash Barn Enterprises which amounted to mis-declaration within the meaning of Section 111(m) of the Customs Act, 1962. In addition, in respect of the 12 bills of entry, out of 13 covered by Annexure B of DTA importer, Metal & Steel Ltd, the additional ground proposing confiscation of the goods under the 12 Bills of entry is that benefit of exemption under notification No' 50/2018-Cus dated 30.06.2018 was taken by deliberately classifying the goods under tariff item 7220 9022, as against their correct classification under tariff item 7220 9090. In fact, it has been alleged that in respect of the bill of entry at Sr.No.5 of Annexure B, Stash Barn Enterprises itself classified identical goods under tariff item 7220 9090 without claiming benefit of the preferential rate under notification no. 50/2015-Cus dated 30.06.2018. From this, it is concluded that the benefit of preferential rate had been wrongly claimed by deliberately classifying the goods under tariff item 7220 9022.
- (xi) We submit that Section 111(m) of the Customs Act, 1962 can be invoked only when certain goods did not correspond in respect of value or in any other particular with the declaration made on the bills of entry. There is no allegation of any mis-declaration in value in respect of these bills of entry. The only allegation was that CVD was not paid in respect of these goods, as the fact that CVD was attracted in respect of these goods, was neither known to stash Barn Enterprises nor was it known to the customs officers of the SEZ who assessed these bills of entry.
- (xii) The Annexure to the notification does not cover the goods classifiable under tariff item 7220 9022, which are the subject matter of the present proceedings, even though it covers a large no. of tariff items of chapter 72 of the Customs tariff. In other words, the goods imported and cleared to the 4 DTA importers by stash Barn Enterprises were not covered by the initial notification no. 17/2015-2020 dated 5th September, 2019 providing for the SIMS compulsory registration.
- (xiii) As the goods covered by the bills of entry detailed in Annexure G are concerned, these will not attract the mischief of section 111(d) and 111(o) of the Customs Act, 1962 and goods covered thereunder will not be liable to confiscation. Consequently, neither Stash Barn Enterprises nor the DTA importers will be liable to any penalty under section 112(a) of the Customs Act, 1962, to that extent.

(xiv) penalty under Section 114AA is imposable only when a person knowingly or intentionally makes any declaration which is false or incorrect in any material particular. There is nothing in the show cause notice which shows that either Stash Barn Enterprises or the 3 DTA importers mentioned herein, have made any false declaration and that too knowingly or intentionally. As has already been discussed earlier, non-Payment of CVD was the result primarily of not knowing that it was leviable. Additionally, even the customs assessing officers were not aware of it. The fact that the SEZ system in Kandla at the time of assessment of these bills of entry, had not been updated for the notification imposing CVD on the goods imported from China is not in dispute. In the circumstances, we submit that the proposal to impose penalty not only on Stash Barn Enterprises but also on the 3 DTA importers namely, M/s Metal & Steel India, OM Drishian International Ltd. & M/s Udaya Udyog under Section 114AA is totally misconceived and untenable.

10.2 M/s. Stash Barn Enterprises, M/s. Om Drishian and M/s. New Era Trading Pvt. Ltd. vide submission dated 18.02.2025, interalia, submitted that-

- (i) The Noticee submits that there is no dispute that CVD under Section 9 of the Customs Tariff Act, 1975 was leviable on the goods of Chinese origin imported by it. When the goods were cleared and deposited under warehousing bills of entry in the Noticee's premises, the assessment in all respects indicating the classification of the goods, the duty payable, including the CVD, had to be done under Section 46 of the Customs Act, 1962 in the same way as assessment in respect of bills of entry for home consumption is done with the only difference that duty payable is not required to be paid at the time of warehousing. However, when the bills of entry for domestic clearance were filed by the Noticee in respect of its 3 DTA buyers, all the customs duties including CVD were required to be paid. As mentioned earlier, since the bills of entry for the DTA importers were filed by the Noticee only, it was its responsibility to ensure payment of all the duties properly including payment of CVD.
- (ii) However, Mr. Rakesh Bansal, Partner of the Noticee, in his statements dated 05.02.2021 and 25.01.2024 recorded before the Customs Officers of the SEZ, had categorically stated that on the SEZ online portal, the requirement of payment of CVD was not reflected. In fact, in the statement dated 29.01.2021 before the DRI officers, Mr. Deepak Manuja, Noticee's employee, who supervised all the paper work in respect of the bills of entry whether for warehousing or for home consumption, also categorically stated that the SEZ online system did not show that CVD was payable. In short, the Noticee submits that non-payment of CVD at the time of clearance of the goods for home consumption under the DTA bills of entry by it on behalf of the 3 DTA buyers was only an inadvertent error not only on the
- (iii) part of the Noticee, to have not known that CVD was payable on these goods, but it was also mainly because neither the SEZ portal showed the requirement of payment of CVD nor the customs officers who assessed the bills of entry had any inkling that CVD was payable. In these circumstances, non-payment of CVD in respect of all the domestic clearances made by the Noticee on behalf of its DTA clients was only an inadvertent error and cannot be treated to be a deliberate attempt either on the part of the Noticee or on the part of its 3 DTA importers to evade payment of this duty warranting issue of SCN under Section 28(4) of the Customs Act, 1962 on the grounds of fraud, mis-declaration and suppression etc. The conclusion drawn in para 7.3 of the notice, that the Noticee indulged in misdeclaration of the applicable rate of duty i.e. the CVD component with an intention to evade the CVD amount to the tune of

Rs.2,68,00,170/-, as shown in Annexures B, C and D, is therefore totally misconceived and untenable. This amount also includes an amount of approximately Rs.16,00,000/- pertaining to the alleged short payment of BCD and SWS under preferential rate.

(iv) When it came to their notice, the Appraising Officer of Gandhidham SEZ, vide letter dated 16.01.2021, requested the Noticee to pay the CVD amount @ 18.95% leviable in respect of the goods cleared under the DTA bills of entry.

(v) The Noticee submits that the demand for CVD as mentioned above was tenable on merits, except in respect of three bills of entry figuring at Sr. No. 3, 5 & 6 of Annexure C in the case of OM Drishian International Ltd as the goods under these three bills of entry were given out of charge on 8.4.2021, 10.2.2021 & 6.4.2021 when the levy of CVD on such goods had been rescinded and no CVD was leviable thereon in view of the provisions of sub-section 1(b) of section 15 of the Customs Act, 1962, and the Noticee and the three DTA importers were bound to pay it provided notice for demanding the amount had been issued within the normal period of two years. The demand vide show cause notice dated 14.3.2024 was however made invoking the extended period of time where it could be sustained only when it satisfied the requirements of sub-section (4) of section 28 of the Customs Act, 1962 for the purpose of invoking the extended period and not otherwise.

(vi) The Noticee submits that the grounds given for invoking the extended period in the show cause notice are totally inadequate to bring the issue within the purview of willful misstatement or suppression of facts with an intention to evade the CVD amount within the meaning of section 28(4) of the Customs Act, 1962.

(vii) The audit officer was of the view that based on the description of the goods and having regard to the mill test certificates attached with the bills of entry, these goods had nickel content only within the range of 1.03% to 1.07%. These could, therefore, not be categorized as nickel chromium austenitic type classifiable under tariff item 7220 9022. According to Audit, tariff item 7220 9022 covered only those goods where the nickel content was much more and not merely a small negligible quantity as was the case with the goods imported. According to audit, goods with such a negligible nickel content could not be classified as nickel chromium austenitic type and that such goods were classifiable only as chromium-manganese austenitic type covered under tariff item 7220 9090 and consequently benefit of the preferential rate under notification no. 50/2018-Cus dated 30.06.2018, as amended, was not available to these goods.

(viii) The Noticee submits that tariff item 7220 9022 covers nickel chromium austenitic type goods. For this purpose, the content of nickel has not been specified either in the customs tariff or in the Explanatory Notes. Accordingly, so long as the goods are nickel chromium austenitic type only, whether of cheaper variety or of premium variety where nickel content might be more, the goods will have to be treated as nickel chromium austenitic type only and so long there is nickel in it even of a small percentage, the goods shall continue to be only nickel chromium austenitic type. This is established beyond any doubt by IS 15997:2012 which provides that austenitic type goods may contain the percentage of nickel even less than 1% and thus, even though such low nickel chromium austenitic type of goods may find use only in cheaper variety of manufactured goods like utensils and kitchen appliances, so long as there

is some amount of nickel in such goods, these will have to be treated as nickel chromium austenitic type only. This is particularly so as the customs tariff and also the Explanatory Notes make no mention of nickel content for such goods to qualify as nickel chromium austenitic type classifiable under tariff item 7220 9022.

(ix) However, in the show cause notice, the admission of Mr. Deepak Manuja in his statement dated 29.1.2021 before the DRI officers of Ahmedabad zone, has been heavily relied upon. Mr. Deepak Manuja, in the context of imports by some of his own companies, out of intimidation and fear of the DRI, has stated that the goods imported by his companies were actually classifiable under tariff item 7220 9090 only and not under tariff item 7220 9022 whereunder, in respect of the goods cleared by his own companies, benefit of exemption under notification no. 50/2018-Cus dated 30.06.2018, had been availed by him.

(x) The Noticee submits that, first, the statement dated 29.1.2021 had been given by Mr. Deepak Manuja in respect of the goods imported by his companies and it has no relevance to the imports made by the Noticee and the DTA clearances made by it on behalf of his 3 DTA clients. Merely because in these cases also, Mr. Deepak Manuja, being the employee of the Noticee, was involved, even though he was later on fired for doing a similar business in his own companies, his admission before the DRI officers which was in the context of his own companies, cannot be treated as an admissible evidence in respect of the clearances under the 12 bills of entry on behalf of M/s Metal & Steel India. Secondly, averments made in such a statement, in particular, on technical issues, cannot be treated as authentic and conclusive unless corroborated by technical literature on the subject.

(xi) the decision of this Hon'ble Tribunal in the case of Shah Foils Ltd. v. C.C-Mundra [Customs Appeal No. 10115 of 2024] pronounced on 01.05.2024, wherein it was held that "Hot/Cold Rolled Stainless Steel Coils" are correctly classifiable under Chapter Tariff Heading 7220 9022 as Nickel Chromium Austenitic Type.

(xii) In the aforesaid case, the Hon'ble Tribunal, relying upon the Indian Standards, held that Nickel content in Austenitic Steel can be as low as 1-2% and the contention of the Revenue that only those steel which contain 4.5% to 12% is austenitic steel is incorrect as the said contention is contrary to the specification provided under Indian Standard IS 15997:2012. Furthermore, the Hon'ble Tribunal also relied upon the clarification given by India Stainless Steel Development Association and observed that in austenitic stainless steel, the Nickel content can vary as low as 0.2% to 14% (refer para 5 on page 8 to 11 of the judgement).

DISCUSSION AND FINDINGS-

11. I have carefully gone through the Show cause Notice, defence submissions, record of personal hearing and all the submissions made post the record of personal hearing.

12. The issues to be decided before me are-

(i) Whether the imported goods are required to be classified under CTH 7220 9022 as claimed by the noticee or under CTH 7220 9090 and subsequently benefit of

concession rate of duty availed by virtue of the Sl. No. 729 of the table mentioned under Notification 50/2018-Cus dated 30.06.2018 is denied or otherwise;

(ii) whether the goods are liable to confiscation under Section 111(m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD

(iii) whether the goods are liable to confiscation under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020

(iv) Whether the respective importers are liable to pay duty under Section 28(4) of the Customs Act, 1962 alongwith interest

(v) Whether penalty under various sections of the Customs Act, 1962 are required to be imposed.

ISSUES RAISED IN THE SHOW CAUSE NOTICE-

13. Wrong availment of concessional rate of duty- During the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed that certain KASEZ units had cleared "Cold Rolled Stainless Steel Sheet in Coils (J3 Grade)" in DTA classifying them under CTH 72209022 and the Customs duty was paid on these DTA clearances at the rate of 23.35%. The Audit team on scrutiny of their "Mill Test Certificate", noticed that these items contained "Chromium-Cr" (12.4% -12.5%) and "Manganese-Mn" (9.2 % - 9.4%) in majority and only a small quantum of "Nickel Ni" (1.03% -1.07%). Therefore, Audit team made an observation that the subject goods cleared in DTA were actually "chromium-manganese austenitic type" stainless steel and were correctly classifiable under CTH 72209090 and subsequently, benefit of Notification 50/2018-Cus was also not admissible for subject goods. The above said observations were communicated by the Audit team to KASEZ vide HM dated 27.09.2021 and subsequently vide LAR dated 03.11.2021

NON-PAYMENT OF CVD-

14. The Government of India vide Notification No. 01/2017-Cus (CVD) dated 07.09.2017 (**RUD-04**) imposed Countervailing Duty (CVD) of 18.95% on the goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" when imported from "China PR". Subsequently, vide notifications no. 02/2021-Cus (CVD) dated 01.02.2021, 05/2021-Cus (CVD) dated 30.09.2021 and 01/2022-Customs (CVD) dated 01.02.2022, the imposition of CVD on import of goods under Chapter 7219 or 7220 from China was rescinded w.e.f. 02.02.2021. By virtue of above said notifications the import of goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" from "China PR" during the period from 07.09.2017 to 01.02.2021 attracted CVD in addition to standard/ applicable BCD, SWS & IGST.

15. Further, the Government of India vide Notification No. 02/2020-Cus (CVD) dated 09.10.2020 (**RUD-05**) imposed Countervailing Duty (CVD) on the goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" when imported from "Indonesia". Subsequently, vide Notification no. 01/2021-Cus (CVD) dated 01.02.2021, the imposition of CVD on import of goods under Chapter 7219 or 7220 from Indonesia was rescinded w.e.f. 02.02.2021. By virtue of above said notifications the import of goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" from "Indonesia" during the period

from 09.10.2020 to 01.02.2021 attracted CVD in addition to standard/ applicable BCD, SWS & IGST.

IMPORT WITHOUT SIMS-

16. DGFT vide Notification no. 33/2015-2020 dated 28.09.2020 has amended the import policy for goods falling under Chapter 72 and 73 from “Free” to “Free subject to compulsory registration under Steel Import Monitoring System (SIMS)”. During the course of investigation, it is seen that subject SEZ unit in connivance with DTA importers had imported subject goods without compulsory registration under SIMS as mandated by prevailing import policy notified by DGFT.

APPRECIATION OF THE SUBMISSION MADE BY THE NOTICEES-

17. M/s. Stash Barn Enterprises, M/s. Metal and Steel(India), M/s. Om Drishain International Limited and M/s. Udaya Udyog vide submission dated 14.05.2024 argued that the demand notice is time barred under the provisions of Customs Act, 1962.

However, in this regard, it is seen that the show cause notice has been issued invoking extended period as the ingredients of wilful mis-statement/suppression/collusion had appeared on the basis of evidences like voluntary statements of the authorized persons. Therefore, the show cause notice has been issued within the stipulated period of five years as provided under Section 28(4) of the Customs Act, 1962.

17.1 They have further argued that at the time of importation, filing of Bill of Entry and Clearing the Steel coils into DTA, they were not aware that the CVD was applicable on the subject goods. Only when, they received a letter from the KASEZ Custom letter dated 16.01.2021 and 27.02.2021, they came to know that the CVD was applicable on the subject goods. On knowing the same, they immediately contacted their DTA clients and informed them about such short payment and paid the duty.

In this regard, it is pertinent to note that it is a settled principle that *ignorance of law is not an excuse*. Further, the SEZ Act, 2005 and rules made thereunder cast special responsibilities on the SEZ unit to abide by all the provisions of the Customs Act, 1962 and rules made thereunder as they (SEZ Unit) get exemptions, concessions from import duties, among others. A unit established in SEZ for the purpose of boosting exports and augmenting foreign exchange of the country can't take refuge of 'ignorance of law'.

17.2 The noticee has further argued that Para 3.3 of the Show Cause notice mentioned that, “unit had submitted details vide email dated 02.02.2024, of duty payment made till date” is misleading in nature as they had already submitted duty payment challan and details to the department vide various letters dated 16.02.2021, 05.02.2021, 25.03.2021 and 23.12.2021. They have further argued that the department had not mentioned the receipt of the above mentioned letters which indicates that Show Cause Notice is issued with prejudiced and intentionally hid the information to cover their in-actions.

In this regard, I don't find any merit in the argument as the noticee has failed to establish how such facts have affected the merit of the case. Merely stating that the Show cause notice has been issued with prejudiced intentions doesn't come to their rescue.

17.3 The noticee has further argued that the department has relied upon the statement of their ex-employee Mr. Deepak Manuja, who was fired from their firm as he was found to be involved in other business activities apart from his responsibilities in their firm. Further, his individual role in any other case, cannot be brought into the instant matter.

In his statement dated 29.01.2021, he has clearly stated that he contacted Mr. Devang Mehta and started clearing the goods from some other unit of KASEZ. There are no common DTA clients. Further, none of the DTA clients name mentioned in his statement dated 29.01.2021 had warehoused in their SEZ unit i.e. M/s. Stash Barn Enterprises.

In this regard, I find that Shri Rakesh Bansal, Partner, M/s. Stash Barn Enterprises in his statement dated 05.02.2021 admitted that Mr. Deepak Manuja, their employee at Gandhidham, looked after all activities related to import and subsequent clearance of Stainless Steel and he (Mr. Deepak Mauja) was responsible for filing Bills of entry and he (Mr. Deepak Mauja) was authorized signatory of the firm for all Customs and banking related work. The statement tendered by the partner, Shri Rakesh Bansal, was voluntary in nature and had never been retracted. Further, the statement tendered by Mr. Deepak Mauja, even if in another case, was voluntary in nature and has never been retracted. Therefore, the voluntary statement of Mr. Deepak Mauja recorded under Section 108 of the Customs Act, 1962 is admissible as evidence under the provisions of Customs Act, 1962 even if the same was recorded in respect of some other cases having similar modus operandi. Therefore, the reliance upon the decision of Hon'ble Supreme Court in the matter of Mandal Vikas Nigam Ltd. Vs Girja Shankar Pant & Ors by the noticee is not applicable in the instant case.

17.4 They have further argued that to invoke the extended period for demand elements of collusion or any wilful mis-statement or suppression of facts is mandatory. Without the above said elements, the extended period of time limit for demand is not sustainable. In the instant case, they have clearly mentioned/declared all the particulars correctly w.r.t the goods being cleared under the Bill of Entry such as Goods Description, Grade, Value, Country of Origin etc. All the Bills of Entry had been assessed by the apprising officers of KASEZ and examined by Preventive officers and then only out of charge was granted. In none of the case, there is any collusion/wilful misstatement or suppression of facts. Section 17 of the Customs Act 1962, Rule 75 of the SEZ provides for the self-assessment and declaration w.r.t the particulars of the goods in the Bill of Entry, which they did with the truest of intent and disclosed all the particulars correctly. Now the onus of correcting the bonafide mistakes if any committed by us or DTA importers due to lack of knowledge is on the department. The department cannot transfer its responsibility/duties on the importers for their bonafide mistakes.

In this regard, I rely on the voluntary statement dated 29.01.2021 (RUD-10), made before DRI, AZU, of Shri Deepak Manuja, in the capacity of Proprietor of M/s. Unique Steel, Gandhidham, recorded under Section 108 of Customs Act, 1962, in a parallel investigation initiation based on the subject intelligence gathered by KASEZ Customs and inputs received from DRI. In his statement, he has admitted that, initially, they received the documents from their overseas supplier with HS code or CTH mentioned in 6 digits i.e. 7220.90 but as the CTH mentioned in SAPTA Notification no. 50/2018 the eligible HS code to claim benefit on BCD is mentioned as 72209022 therefore, they asked their suppliers to mention HS code 72209022 on the import documents where as their goods imported are of HS Code 72209090, further he has admitted that **they classified the imported goods under said CTH for taking benefit of SAFTA**. As discussed earlier, Shri Rakesh Bansal, Partner of SEZ unit has deposed that Shri Deepak Manuja was handling all the work related to customs. Therefore, the intention to evade duties of Customs is clearly evident from the voluntary statement, which establishes the presence of willful mis-statement or suppression of facts in order to invoke extended period of time under Section 28(4) of the Customs Act, 1962.

17.5 They have further argued that if there was any short payment of the Customs Duty, the department should have issued the show cause notice in terms of Section 28(3) of the Customs Act, 1962.

As discussed above, the instant matter involves the ingredients of suppression, willful mis-statement or collusion, the demand of duties of customs is required to be made under Section 28(4) of the Customs Act, 1962.

17.6 The noticee has further argued that the audit report suggests that the goods "J3 Grade" of Stainless steel is classifiable under CTH 72209090. It does not suggest that some other grade of steel coil is also classifiable under CTH 7220 9090. In their case, they had imported 410 S grade steel not 'J3 Grade" as also mentioned in the invoice / packing list of the Bill of Entry. The audit has mechanically considered all the grade of coils to be classifiable under CTH 7220 9090 as could be seen in the annexure attached to the Audit report. All of the bills of entry of other SEZ units were declared to be J3 only as mentioned in the Annexure to the Audit report. Neither the audit report nor the Show cause notice mentions how could 410 S grade steel is classifiable under 7220 9090 which is for J3 grade.

In this regard, I find that the Mill test certificate referred by the noticee clearly suggests that the Cold Rolled Stainless Steel sheet in coils imported by the noticee had "15%" manganese as the chemical composition which suggests that the finding of the CRA Audit was correct while noting that the imported goods contained Chromium and Manganese in majority, which in turn classifies the goods under CTH 72209090.

17.7 The noticee has further argued that in Para 6.5 of the Show Cause Notice, it is alleged that we have imported and cleared the goods without SIMS and hence the goods are liable for confiscation under Section 111 (d) and (o) of the Customs Act, 1962. The said allegation is put forth by the investigation without application of scientific and legal mind due to the following reasons. The DGFT vide Notification no. 17/2015-20 dated 05.09.2019 amended the Import policy of goods falling under Chapter 72 and 73 and inserted Policy Conditions to obtain Compulsory Registration under (Steel Import Monitoring System) SIMS of certain CTIs mentioned in the Annex attached to the notification. It is to note that goods Imported by us under the CTI 7220 9022 was not mentioned In the aforesaid Annexure of the notification no 17/2015-20 dated 05.09.2019. Therefore, the goods under the CTI 7220 9022 were free as per DGFT. 18.2Further DGFT vide notification no 33/2015-20 dated 28.09.2020 brought all HS codes of Chapter 72,73 and 86 under the Compulsory Registration under (Steel Import Monitoring System) SIMS before Import. The said DGFT notification was effective from 16.10.2020 as mentioned In the Public Notice no 19/2015 dated 28.09.2020 Issued by the DGFT.

In this regard, I find that the DGFT Notification No. 17/2015-20 dated 05.09.2019 includes goods falling under CTH 72209090 at Sr.No. 24 of the Annexure. Therefore, they were required to mandatorily obtain registration under SIMS.

17.8 M/s. Udaya Udyog and M/s. Metal & Steel India in their submission dated 20.09.2024 interalia argued that the Bills of Entry were filed by SEZ unit and therefore, necessary explanation on their behalf in respect of any such alleged offence or contravention has to be given only by the SEZ unit, M/s Stash Barn Enterprises.

In this regard, it is pertinent to note that SEZ unit is authorized to file Bills of Entry on behalf of the DTA client however, that doesn't mean the DTA unit can escape the liability on furnishing incorrect information or details in the Bill of Entry. The importer clearly declares, in the Bill of Entry, that the contents are true and correct in every aspect.

17.9 M/s. Udaya Udyog and M/s. Metal & Steel India, in their submission dated 20.09.2024 has further argued that Section 111(m) of the Customs Act,1962 can be invoked only when certain goods did not correspond in respect of value or in any other particular with the declaration made on the bills of entry. There is no allegation of any

mis-declaration in value in respect of these bills of entry- The only allegation was that CVD was not paid in respect of these goods, as the fact that CVD was attracted in respect of these goods, was neither known to stash Barn Enterprises nor was it known to the customs officers of the SEZ who assessed these bills of entry.

In this regard, I find that it has been already held that the DTA client in connivance with the SEZ unit has mis-classified their goods in order to evade the duty, therefore, Section 111(m) is invokable.

17.10 M/s. Stash Barn Enterprises, M/s. Om Drishian and M/s. New Era Trading Pvt. Ltd. vide submission dated 18.02.2025, interalia, relied upon the decision of this Hon'ble Tribunal in the case of Shah Foils Ltd. v. C.C-Mundra [Customs Appeal No. 10115 of 2024] pronounced on 01.05.2024, wherein it was held that "Hot/Cold Rolled Stainless Steel Coils" are correctly classifiable under Chapter Tariff Heading 7220 9022 as Nickel Chromium Austenitic Type. In the aforesaid case, the Hon'ble Tribunal, relying upon the Indian Standards, held that Nickel content in Austenitic Steel can be as low as 1-2% and the contention of the Revenue that only those steel which contain 4.5% to 12% is austenitic steel is incorrect as the said contention is contrary to the specification provided under Indian Standard IS 15997:2012. Furthermore, the Hon'ble Tribunal also relied upon the clarification given by India Stainless Steel Development Association and observed that in austenitic stainless steel, the Nickel content can vary as low as 0.2% to 14% (refer para 5 on page 8 to 11 of the judgement).

In this regard, I find that the Hon'ble bench had to decide the following issue:-

"1.3 *It is the case of the department that the Appellant has misclassified the subject goods under CTH 7220 90 22 as subject goods doesn't have the sufficient amount of nickel content to be classified as Nickel-Chromium Austenite Steel. According to department to qualify as nickel austenitic stainless steel the nickel content should be ranging from 4.5% to 12%. Since in the present case nickel content is approx. 1%, according to department imported goods are not nickel austenitic stainless steel."*

However, in the instant case, the show cause notice alleges that the imported goods contain manganese in majority apart from Chromium which makes the goods "chromium-manganese austenitic type" stainless steel and not chromium nickel austenitic type. The show cause notice is not disputing the austenitic nature of the goods. Therefore, the said judgement is not applicable in the instant case.

APPRECIATION OF THE EVIDENCES AVAILABLE ON RECORD-

18. I find that during the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed that certain KASEZ units had cleared "Cold Rolled Stainless Steel Sheet in Coils (J3 Grade)" in DTA classifying them under CTH 72209022 and the Customs duty was paid on these DTA clearances at the rate of 23.35%. The Audit team on scrutiny of their "Mill Test Certificate", noticed that these items contained "Chromium-Cr" (12.4% -12.5%) and "Manganese-Mn" (9.2 % -9.4%) in majority and only a small quantum of "Nickel Ni" (1.03% -1.07%). Therefore, Audit team made an observation that the subject goods cleared in DTA were actually "chromium-manganese austenitic type" stainless steel and were correctly classifiable under CTH 72209090 and subsequently, benefit of Notification 50/2018-Cus was also not admissible for subject goods.

18.1 Austenitic stainless steel is one of the five families of stainless steel (along with ferritic, martensitic, duplex and precipitation hardened). Its primary crystalline structure is austenite (face-centered cubic). Such steels are not hardened by heat treatment and are essentially non-magnetic. This structure is achieved by adding enough austenite-stabilizing elements such as nickel, manganese and nitrogen. Adding nickel is the classic

way of preserving an austenitic structure in stainless steel. However, adding manganese, combined with nitrogen, can have the same effect – and at lower material cost. Not only are chrome-manganese stainless steels significantly cheaper from a material cost point-of-view, depending on their chemical composition, they also offer good formability (ductility) and/or strength.

18.2 On the basis of Mill Test certificate submitted by the noticee, as explained above, the content of Managanese and Chromium is in majority which gives the steel a characteristic of Chromium-managanese austenitic type. Since the CTH 72209022 (declaration in Bills of Entry) covers Nickel Chromium austenitic type, the goods imported by the noticee fall under CTH 72209090 which covers-others.

18.3 I find that the noticee has argued that they had imported 410S grade stainless steel and the same appeared to fall under CTH 72209022, however, it is pertinent to note that stainless steel of 400 grades are either ferritic or martensitic in nature. Considering the Mill test certificate submitted by the noticee, the argument of the noticee that their goods were Nickel chromium austenitic and were 410S grade stainless has no merit.

18.4. On perusal of the statements tendered by Shri Rakesh Bansal, Partner, M/s. Stash Barn Enterprise, who is also one of the Directors of M/s. Om Drishian International Ltd., (one of the DTA clients) that all the Customs work was handled by Shri Deepak Manuja and due to lack of knowledge about applicability of CVD on the goods, they did not pay the CVD. Further, on perusal of the statement of Shri Deepak Manuja recorded under Section 108 of the Customs Act, 1962, he admitted to have classified the imported goods under said CTH for taking benefit of SAFTA and further, he accepted that it is does not fall under category of Nickel Chromium Austenitic Type. He further admitted that, initially, they received the documents from their overseas supplier with HS code or CTH mentioned in 6 digits i.e. 7220.90 but as the CTH mentioned in SAPTA Notification no. 50/2018 the eligible HS code to claim benefit on BCD is mentioned as 72209022 therefore, they asked their suppliers to mention HS code 72209022 on the import documents where as their goods imported are of HS Code 72209090.

18.5 I hold that the said SEZ Unit along with DTA Importers have mis-classified the goods imported under CTH 72209022 to claim the benefit of Asian Pacific Trade Agreement (APTA) under Notification No. 50/2018 dated 30.06.2018, wherein benefit/exemption of @45% on the BCD on the goods imported from China is available. In view of the above discussion and findings, I hold that the duty amount on that account is recoverable under the provisions of Section 28(4) of the Customs Act, 1962.

19. The Government of India vide Notification No. 01/2017-Cus (CVD) dated 07.09.2017 (**RUD-04**) imposed Countervailing Duty (CVD) of 18.95% on the goods falling under Chapter 7219 or 7220 and having description “Flat-rolled products of stainless steel” when imported from “China PR”. Subsequently, vide notifications no. 02/2021-Cus (CVD) dated 01.02.2021, 05/2021-Cus (CVD) dated 30.09.2021 and 01/2022-Customs (CVD) dated 01.02.2022, the imposition of CVD on import of goods under Chapter 7219 or 7220 from China was rescinded w.e.f. 02.02.2021. By virtue of above said notifications the import of goods falling under Chapter 7219 or 7220 and having description “Flat-rolled products of stainless steel” from “China PR” during the period from 07.09.2017 to 01.02.2021 attracted CVD in addition to standard/ applicable BCD, SWS & IGST.

19.1. Further, the Government of India vide Notification No. 02/2020-Cus (CVD) dated 09.10.2020 (**RUD-05**) imposed Countervailing Duty (CVD) on the goods falling under Chapter 7219 or 7220 and having description “Flat-rolled products of stainless steel” when imported from “Indonesia”. Subsequently, vide Notification no. 01/2021-Cus (CVD)

dated 01.02.2021, the imposition of CVD on import of goods under Chapter 7219 or 7220 from Indonesia was rescinded w.e.f. 02.02.2021. By virtue of above said notifications the import of goods falling under Chapter 7219 or 7220 and having description "Flat-rolled products of stainless steel" from "Indonesia" during the period from 09.10.2020 to 01.02.2021 attracted CVD in addition to standard/ applicable BCD, SWS & IGST.

20. Clearly, CVD is leviable on the goods imported from China PR under Chapter 7219 or 7220. Therefore, the goods are leviable to CVD and the noticees are not disputing the leviability of the CVD on the imported goods.

21. I find that the DGFT vide notification no. 33/2015-2020 dated 28.09.2020 had amended the import policy for goods falling under Chapter 72 from "Free" to "Free subject to compulsory registration under Steel Import Monitoring System (SIMS)". During the course of investigation, it emerged that Shri Deepak Manuja, employee and authorized signatory of M/s Stash Barn Enterprises in his statement dated 29.01.2021 (RUD-10) had stated that he was aware of the compulsory SIMS (Steel Import Monitoring System) Registration for the import of steel products. Thus, it is evident that subject SEZ unit in connivance with DTA importers had imported subject goods without compulsory registration under SIMS as mandated by prevailing import policy notified by DGFT. Such indulgence and endeavor on the part of said SEZ Unit and DTA importers are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which made the impugned goods liable for confiscation in terms of Section 111(d) and Section 111(o) of the Customs Act, 1962 and said SEZ unit and their DTA importers liable for penalty under Section 112 and section 114AA of the Customs Act, 1962.

CONFISCATION OF GOODS-

22. I find that the SEZ unit and their DTA clients have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had intentionally misclassified the subject goods to avail the benefits of Concessional rate of duty, mis-declared applicable rate of duty, filed Bills of Entry for import of subject goods without SIMS Registration, cleared goods after availing the benefits of concessional rate of duty and short paid the applicable Customs duty.

All these acts and omissions on their part have rendered the goods having total assessable value of Rs.9,62,51,249/- (Rupees Nine Crore Sixty Two lakh Fifty One Thousand Two Forty nine only) liable to confiscation under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962 as detailed in Annexure-B, Annexure-C and Annexure-D to the SCN on account of non-payment of CVD and goods having total assessable value of Rs. 27,11,31,698/- (Rupees Twenty Seven Crore eleven lakh thirty one Thousand six Hundred and Ninety Eight only) liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 as detailed in Annexure-E, Annexure-F, Annexure-G and Annexure-H to the SCN on account of importing the goods falling under CTH 72209090 without obtaining the registration under SIMS.

In this regard, I also rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai), upheld in Apex court in 2003 (ELT A309 (SC)), wherein it is held that when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not.

22.1 I find that the goods are not available for confiscation as the same have already been cleared into DTA. In this regard, it is pertinent to note that the redemption fine under Section 125 of the Customs Act, 1962 can be imposed even when the goods are

not available for confiscation. In this regard, reliance is placed on the following judgements:-

- (i) Hon'ble High Court of Madras in the case of M/s. Visteon Automotive Systems vs the Customs, 2017
- (ii) Hon'ble High Court of Gujarat in the matter of SYNERGY FERTICHEM PVT. LTD. Versus STATE OF GUJARAT {2020 (33) G.S.T.L. 513 (Guj.)}

DUTY DEMAND-

23. I find that the duty demand on account of non payment of CVD and denial of APTA benefit on account of goods falling under CTH 72209090 is as follows:-

Sr.No.	Name of the Importer/DTA client	Amount of Duty (in Rs.)	Amount already paid against duty and interest (in Rs.)
1.	M/s. Metal and Steel India	1,26,69,339/-	1,29,03,101/-
2.	M/s. Om Drishian International Limited	1,12,00,690/-	48,21,489/-
3.	M/s. Udaya Udyog	29,30,141/-	26,38,369/-
	Total	2,68,00,170/-	

24. I hold that the duty amounting to Rs. 2,68,00,170/- is required to be recovered under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

PENALTIES UNDER SECTIONS 112, 114A and 114AA-

25. I find that M/s. Metal and Steel India, contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally mis-declared applicable rate of duty, mis-classified the imported goods, cleared goods after availing the benefits of concessional rate of duty & short paid applicable Customs duty and filed Bills of Entry for import of subject goods without SIMS Registration. All these acts have resulted in evasion of duty of customs amounting to Rs. 1,26,69,339/- which has rendered them liable for penal action under Section 114A of the Customs Act, 1962. As per proviso to Section 114A of the Customs Act, 1962 once penalty is imposed under Section 114A, no penalty is required to be imposed under Section 112 of the Customs Act, 1962.

26. Similarly, M/s. Om Drishian International Ltd. is liable for penal action under the provisions of Section 114A of the Customs Act, 1962 for evasion of duty as per the table given in Para 23 above.

27. In terms of Circular No.61/2002 Dated 20/09/2002, Penalty under Section 114A of the Customs Act, 1962 is equal to the duty plus interest.

28. Further, M/s. Udaya Udyog is liable for penal action under Section 112 of the Customs Act, 1962 for their acts of commission and omission which have rendered the goods liable for confiscation. However, in respect of M/s. New Era Trading Pvt. Ltd, I find that the show cause notice doesn't allege any duty evasion, therefore, penalty under Section 112 is not attracted as the penalty under 112(b)(ii) mandates penalty not exceeding 10% of the duty sought to be evaded.

29. I further find that the SEZ unit is equally responsible for the mis-classification in order to avail the benefits of Concessional rate of duty, mis-declared applicable rate of duty, filed Bills of Entry for import of subject goods without SIMS Registration, cleared goods after availing the benefits of concessional rate of duty and short paid the applicable Customs duty. Their act has rendered them liable for penal action under 112 of the Customs Act, 1962 as they were fully aware of the specification and nature of the goods and their action has rendered the goods liable for confiscation.

30. The SEZ unit and DTA clients have filed incorrect details in the Bills of Entry which has rendered them liable for penal action under Section 114AA of the Customs Act, 1962.

31. In view of the above discussion and findings, I hereby pass the following order-

A. ORDER IN RESPECT OF M/s. Stash Barn Enterprises, KASEZ-

- i) I reject the classification of the imported goods under CTH 7220 9022 and cleared into DTA, vide bills of entry as detailed at Sr.No. 1 to 4 and 7 to 13 in **Annexure-B** and order to re-classify the same under CTH 7220 9090 and subsequently benefit of concessional rate of duty availed by virtue of the Sl. No. 729 of the table mentioned under Notification 50/2018-Cus dated 30.06.2018 is denied.
- ii) I order to confiscate the goods imported and further cleared into DTA vide Bills of Entry as detailed in **Annexure-B, Annexure-C and Annexure-D** having declared assessable value of Rs. **9,62,51,249/-** (Rupees Nine crore Sixty two lakh Fifty one thousand two hundred and forty nine only) under Section 111(m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD. However, I don't impose any redemption fine as the same is imposed on the respective importer as given below.
- iii) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in **Annexure-E, Annexure-F, Annexure-G and Annexure-H** having declared assessable value of Rs. **27,11,31,698/-** (Rupees Twenty Seven Crore eleven lakh thirty one Thousand six Hundred and Ninety Eight only) under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020. However, I don't impose any redemption fine as the same is imposed on the respective importer as given below.
- iv) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five lakhs Only) under Section 112(b)(ii) of the Customs Act, 1962;
- v) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) under Section 114AA of the Customs Act, 1962;

B. ORDER IN RESPECT OF M/S. METAL AND STEEL INDIA-

- i) I reject the classification of the imported goods under CTH 7220 9022 and cleared into DTA, vide bills of entry as detailed at Sr.No. 1 to 4 and 7 to 13 in **Annexure-B** and order to re-classify the same under CTH 7220 9090 and subsequently benefit of concessional rate of duty availed by virtue of the Sl. No. 729 of the table mentioned under Notification 50/2018-Cus dated 30.06.2018 is denied.
- ii) I determine and confirm the differential Customs duty of **1,26,69,339/-** (Rupees One crore Twenty Six Lakh Sixty Nine Thousand Three Hundred and Thirty Nine only) as detailed in '**Annexure-B**' to the Show Cause Notice, and order to recover

the same under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962.

- iii) I order to appropriate the differential Customs duty and interest, totalling, Rs. 1,29,03,101/- (Rupees One crore Twenty Nine lakh Three thousand One hundred and One only), paid by them against the differential duty and applicable interest confirmed at Sr.No. (ii) above.
- iv) I order to confiscate the goods imported from China and further cleared into DTA vide Bills of Entry as detailed in '**Annexure-B**' having declared assessable value of Rs. **4,48,80,802/-** (Rupees Four crore Forty Eight lakh Eighty thousand Eight hundred and Two only) under Section 111(m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD.

Since the goods are not available for confiscation, I impose redemption fine of Rs. 50,00,000/- (Fifty lakhs only) under Section 125 of the Customs Act, 1962.

- v) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-E**' having declared assessable value of **Rs. 1,19,00,073/-** (Rupees One crore Nineteen lakh and Seventy three only) under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;

Since the goods are not available for confiscation, I impose redemption fine of Rs. 10,00,000/- (Ten lakhs only) under Section 125 of the Customs Act, 1962.

- vi) I impose penalty equal to the duty plus interest confirmed above at (ii) under Section 114A of the Customs Act, 1962 on them in relation to the said goods;
- vii) I impose penalty of Rs. 10,00,000/- (Ten lakhs only) Only under Section 114AA of the Customs Act, 1962.

C. ORDER IN RESPECT OF M/S. OM DRISHIAN INTERNATIONAL LIMITED-

- i) I determine and confirm the differential Customs duty of Rs. **1,12,00,690/-** (Rupees One crore Twelve lakh six hundred and Ninety only) as detailed in '**Annexure-C**' to the Show Cause Notice, and order to recover the same under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962.
- ii) I order to appropriate the differential Customs duty and interest, totalling, **Rs. 48,21,489/-** (Rupees Forty Eight lakh Twenty One thousand Four hundred and Eighty Nine only), paid by them, against the differential duty and applicable interest confirmed at Sr.No. (i) above.
- iii) I order to confiscate the goods imported from Indonesia and further cleared into DTA vide Bills of Entry as detailed in '**Annexure-C**' having declared assessable value of Rs. **4,13,69,761/-** (Rupees Four crore Thirteen lakh Sixty Nine thousand Seven hundred and Sixty One only) under Section 111(m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD.
Since the goods are not available for confiscation, I impose redemption fine of Rs.50,00,000/- (Rupees Fifty Lakhs only) in terms of Section 125 of the Customs Act, 1962.
- iv) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-F**' having declared assessable value of **Rs. 7,38,16,133/-**

(Rupees Seven Crore Thirty eight lakh sixteen thousand one hundred and thirty three only) under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;

Since the goods are not available for confiscation, I impose redemption fine of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) in terms of Section 125 of the Customs Act, 1962.

- v) I impose penalty equal to the duty plus interest confirmed above at (ii) under Section 114A of the Customs Act, 1962 on them in relation to the said goods;
- vi) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs) Only under Section 114AA of the Customs Act, 1962.

D. ORDER IN RESPECT OF M/S. UDAYA UDHYOG-

- i) I determine and confirm the differential duty amount of **Rs. 29,30,141/-** (Rupees Twenty Nine Lakh Thirty thousand One hundred and forty one only) as detailed in '**Annexure-D**' to the Show Cause Notice, and order to recover the same under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962.
- ii) I order to appropriate the differential Customs duty and interest, totalling, **Rs. 26,38,369/-** (Rupees Twenty Six lakh Thirty Eight thousand Three hundred and Sixty Nine only), paid by them, against the differential duty and applicable interest mentioned at Sr.No. (i) above.
- iii) I order to confiscate the goods imported from Indonesia and further cleared into DTA vide Bills of Entry as detailed in '**Annexure-D**' having declared assessable value of Rs. **1,00,00,686/-** (Rupees One crore Six hundred and eighty six only) under Section 111 (m) and 111(o) of the Custom Act, 1962 for the non-payment of applicable CVD.

Since the goods are not available for confiscation, I impose redemption fine of Rs.10,00,000/- (Rupees Ten Lakhs only) in terms of Section 125 of the Customs Act, 1962.

- iv) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-G**' having declared assessable value of **Rs. 2,99,84,584/-** (Rupees Two Crore Ninety nine lakh eighty four thousand five hundred and eighty four only) under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;

Since the goods are not available for confiscation, I impose redemption fine of Rs.12,00,000/- (Rupees Twelve Lakhs only) in terms of Section 125 of the Customs Act, 1962.

- v) I impose penalty of Rs. 2,90,000/- (Rupees Two Lakhs Ninety Thousand) only under Section 112(b)(ii) of the Customs Act, 1962.
- v) I impose penalty of Rs.3,00,000/- (Rupees Three Lakhs) Only under Section 114AA of the Customs Act, 1962.

E. ORDER IN RESPECT OF M/S. NEW ERA TRADING PVT LTD

- i) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-H**' having declared assessable value of Rs. **15,54,30,909/-** (Rupees Fifteen crore fifty four thousand thirty lakh nine

hundred and nine only) under Section 111(d) and 111(o) of the Custom Act, 1962 for non-compliance in respect of mandatory SIMS registration as per prevailing Import policy and DGFT Notification No. 33/2015-2020 dated 28.09.2020;

Since the goods are not available for confiscation, I impose redemption fine of Rs.50,00,000/- (Rupees Fifty Lakhs only) in terms of Section 125 of the Customs Act, 1962.

ii) I don't impose penalty under Section 112(b)(ii) of the Customs Act, 1962;

32. This order is issued without prejudice to any action that can be taken against the SEZ unit or any other importer under the provisions of this Act or any other law for the time being in force.

(M. Ram Mohan Rao),
Commissioner of Customs,
Custom House, Kandla

F.No. GEN/ADJ/COMM/146/2024-Adjn
By Speed Post/Courier/E-mail
DIN- 20250371ML000071767C

To,

- i) M/s. Stash Barn Enterprises (IEC-0515046914), Shed No.390, AS-III Type, Sector-III, Kandla Special Economic Zone, Gandhidham, Kutch-370230.
- ii) M/s. Metal and Steel India, (IEC – 0504038788/ AAAFM4581A), 1/25B, First Floor, Asaf Ali Road, New Delhi, Delhi, India - 110002.
- iii) M/s. Om Drishian International Limited, (IEC-0501044825/ AABCO0120B), SSI-58, G.T Karnal Road, Delhi, Delhi, India - 110033.
- iv) M/s. Udaya Udyog, (IEC-0300018754/ AAAFU0989Q), 30, Lifescapes Nilay, Dr Babasaheb, Jaykar Marg Thakurdwar Road, Mumbai, Maharashtra, India – 400002
- v) M/s. New Era Trading Pvt Ltd (IEC-0512064831/ AAECN1601K), 504, 5th Floor, Inderprastha Tower, Plot No.6,, Wazirpur Industrial Area,, Delhi, India – 110052.

Copy to:

1. The Chief Commissioner, Customs Zone, Ahmedabad, for the purpose of Review.
2. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
3. The Principal ADG, DRI, Ahmedabad Zonal Unit, Ahmedabad for kind information.
4. The Deputy Commissioner of Customs, KASEZ, Gandhidham.
5. Guard file.