

	<p>प्रधान सीमा शुल्क आयुक्त का कार्यालय, मुंद्रा आयुक्तालय सीमा शुल्क हाउस, अदानी पोर्ट और एस.ई.जेड., मुंद्रा (कच्छ), <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62</b></p>	<p>01C 7</p>
A. File No.	: GEN/ADJ/ADC/54/2023-Adjn-O/o Pr. Commr- Cus-Mundra	
B. Order-in-Original No.	: <b>MUN-CUSTM-000-COM-04 -24-25</b>	
C. Passed by	: K. Engineer Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue	: 22.04.2024. 22.04.2024.	
E. SCN No. & Date	: GEN/ADJ/ADC/54/2023-Adjn-O/o Pr. Commr- Cus-Mundra dated 03.05.2023 and its Corrigendum dated 16.01.2024.	
F. Noticee(s) / Party / Importer	: <b>M/s. Gupta Steel (IEC-0516983580), B-47/2, Wazirpur Industrial Area, Wazirpur Delhi- 110052 and others</b>	
G. DIN No.	: <b>20240471MO0000222B9A</b>	

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

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

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

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

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

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

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

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

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

6. अपील ज्ञापन के साथ छूट/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

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

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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



## **1. FACTS OF THE CASE IN BRIEF:**

1.1. M/s Gupta Steel (IEC-0516983580) having office at B-47/2, Wazirpur Industrial Area, Wazirpur Delhi-110052 is engaged in trading and import of Cold Rolled Stainless Steel Coils and Stainless Steel Circles. M/s Gupta Steel Imports Cold Rolled Stainless Steel Coils of grade 201, 202 & J-3 from overseas suppliers based in China, Indonesia and Malaysia. The Flat-Rolled products of Stainless Steel falling under CTH 7219/7220, attracts Basic Customs duty @7.5%, Surcharge on Customs duty @ 10%, IGST @ 18% and countervailing duty @18.95% on landed value of goods imported into India from People's Republic of China, imposed vide Notification No. 1/2017-Customs (CVD) dtd. 07.09.2017.

1.2. Intelligence collected by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as DRI) indicated that M/s Gupta Steel is importing the goods namely 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTH 72209022 and wrongly availing the benefit under Notification no. 50/2018-Customs dated 30.06.2018. As per the Notification no. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on the goods of Nickel Chromium Austenitic Type falling under CTH 72209022. M/s Gupta Steel imported the goods viz. Cold Rolled Stainless Steel Coils, which were not Nickel Chromium Austenitic Type, classifiable under CTH 72209022 but to avail the benefit under Notification No. 50/2018-Customs dated 30.06.2018, they wrongly classified the imported goods under CTH 72209022 instead of CTH 72209090.

1.3. Intelligence further indicated that M/s Gupta Steel is importing "Cold Rolled Stainless Steel Coils Grade J3" which contained more percentage of Chromium. The J3 grade (200 series) of Stainless Steel Coils was developed by Indian Stainless Steel manufacturers, which is similar to the grade 201 i.e. international grade. Later, Chinese manufacturers also started manufacturing J3 grade stating it equivalent to grade 201. J3 Grade is a chromium-manganese austenitic stainless steel with moderate amounts of copper, nickel and nitrogen. Balancing of the alloying elements produces an austenitic structure in the annealed condition.

1.4. As per Wikipedia, there are two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small amount of nickel content. Thus, the stainless steels, that does not contain maximum substitute of nickel does not fall under the category of Nickel chromium austenitic type and therefore is not classified under CTH 72209022, which specifies that the Flat Rolled products of stainless steel of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022.

1.5. Acting on the aforesaid intelligence enquiry was initiated against M/s Gupta. Summons were issued to Shri Daksh Garg, Proprietor of M/s Gupta Steel to produce all the documents related to goods imported under CTH 7219/7220 along with details of sales of goods and GST Returns. In response, M/s Gupta Steel vide letter dated 08.04.2021, produced copies of import documents viz. Bills of Entry, Commercial invoices, packing list, Mill Test certificate/ Inspection Certificate-Test Certificate, Country of origin certificates and Bills of Landing etc.

## **2. SCRUTINY OF RECORDS/DOCUMENTS**

2.1. During preliminary scrutiny of the documents produced by M/s Gupta Steel, it appears that M/s Gupta Steel has imported Stainless Steel Cold Rolled



Coils Grade J3 under CTH 72209022 from China and has availed benefit under Notification no. 50/2018-Customs dated 30.06.2018 i.e. availed concession benefit of 45% of the BCD during the period from July 2019 to February 2021. Further, on scrutiny of the Mill Test certificates/Test certificates/Inspection Certificates issued by the overseas suppliers, it appears that M/s Gupta Steel had imported Stainless Steel Cold Rolled Coils Grade J3, which contains more percentage of Chromium and Magnesium instead of Chromium & Nickel. Thus it appears that Stainless Steel Cold Rolled Coils Grade J3 imported by M/s Gupta Steel does not meet the standards of Nickel Chromium Austenitic type coils and the said goods does not fall under the CTH 72209022 in the category of Nickel Chromium Austenitic Type. Thus, it appears that M/s Gupta Steel had wrongly classified the goods under CTH 72209022 to avail benefit of Notification no. 50/2018-Customs dated 30.06.2018. It was felt that statement of Customs brokers/clearing agents, who arranged the clearance of goods were to be recorded with regards to these documents. Accordingly, investigation was extended to the clearing agents/Customs Brokers, who had arranged the clearance of imported goods.

**2.2.** The import documents related to goods cleared under CTH 72209022 were called from the respective CHAs/Customs Brokers.

**3. THE STATEMENTS OF THE RESPONSIBLE PERSONS OF THE FOLLOWING CHA FIRMS & CUSTOMS BROKERS WERE RECORDED UNDER SECTION 108 OF CUSTOMS ACT, 1962:**

S. No.	Name of Proprietor/Authorized Signatory of CHA/Customs Broker	Dt. of Statement	RUD No.
1	Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics	13.12.2021	<b>RUD-02</b>
2	Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade(India) Pvt Ltd	28.02.2022	<b>RUD-03</b>
3	Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics	16.07.2021	<b>RUD-04</b>

The above proprietor/responsible persons of Customs House Agent/Customs Broker have categorically stated that they have cleared Cold Rolled Stainless Steel Coils Grade J3 under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' by availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018, imported by M/s Gupta Steel from China. They stated that technically they were not aware of the Nickel Chromium Austenitic type Steels but they filed the Bills of Entry under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' on behalf of the Importer after the receipt of checklist, finalized by the importer. They further stated that as per Mill Test Certificate/Test Certificate-Inspection Certificate, Cold Rolled Stainless Steel Coils Grade J3 imported by M/s Gupta Steel contains more percentage of chromium and magnesium instead of Chromium & nickel. They perused the printout taken from [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](https://en.wikipedia.org/wiki/Austenitic_stainless_steel) titled as Austenitic stainless steel and understand that as per the Wikipedia, there are two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small nickel content therein. Therefore, the stainless steels, which do not contain maximum substitute of nickel, do not fall under the category of



Nickel chromium austenitic type, and therefore the product cannot be classified under CTH 72209022, which clearly specifies that Flat Rolled products of stainless steel, of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022. They admitted that as per the Mill Test Certificates/Test Certificate-Inspection Certificate and print out of Wikipedia of Austenitic stainless steel, goods imported by M/s Gupta Steel do not meet the standards of Nickel Chromium Austenitic type coils and the said goods do not fall under the CTH 72209022 in the category of Nickel Chromium Austenitic Type; that they have wrongly classified the goods imported by M/s Gupta Steel under CTH 72209022 and availed benefit of Notification no. 50/2018-Customs dated 30.06.2018. The gist of their statements are given below for ease of reference:

**3.1. Statement of Shri Deepak Sawlani, Authorized signatory and G-card holder of M/s R R Logistics (Customs broker)** was recorded under Section 108 of the Customs Act, 1962 on 13.12.2021, wherein he inter-alia stated that:

- He was G-card holder and Authorized signatory of M/s R R Logistics; that he has been authorized by Shri Sundar Raman of M/s R. R. Logistics to give statement on behalf of their firm and produced Authorisation letter dated 12.12.2021; that he was responsible for all the clearance of import and export in the name of M/s. R R Logistics.
- He perused the Bill of Entry No. 4814712 dated 07/09/2019 filed on behalf of M/s Gupta Steel, for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade-J3 Ex stock under CTH 72209022 and stated that they filed the BE under CTH 72209022 by declaring the description of goods as 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate- Inspection Certificate no. 19185-TC dated 20.08.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co., Ltd., China for the goods imported under BE No. 4814712 dated 07/09/2019 and stated that as per the Test Certificate- Inspection Certificate the coils contain less than 0.85 % of Nickel and less than 12.22% chromium.
- He perused the Country of Origin certificate bearing Sr. No. CCPIT70001190280972 dated 22.08.2019 for the BE No. 4814712 dated 07/09/2019 and stated that in the COO, the name of supplier i.e. M/s Comet International was mentioned as nonparty operator, which was other than the original manufacturer of the goods and country. He also perused the notes on backside of the country of origin certificate in Box 1, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.
- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling. He agreed that it was their mistake that they wrongly classified the goods under CTH 72209022 as they could not saw the Mill Test Certificates/Test Certificate-Inspection Certificates given by the overseas supplier to the importer.



**3.2. Statement of Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt. Ltd. (Customs brokers)** was recorded under Section 108 of the Customs Act, 1962 on 13.12.2021, wherein he inter-alia stated that:

- He was G-card holder and Authorized signatory of M/s. Exim Transtrade (India) Pvt. Ltd; that he has been authorized by Shri Jayesh B Jain, director of M/s. Exim Transtrade (India) Pvt. Ltd. to give statement on behalf of their firm and produced Authorisation letter dated 21.02.2022; that he was responsible for all the clearance of import in the name of M/s. Exim Transtrade (India) Pvt. Ltd.
- He perused the Bill of Entry No. 4180359 dated 23.07.2019 filed on behalf of M/s Gupta Steel, for the clearance of goods declared as Cold Rolled Stainless Steel Coils Ex stock Grade-J3 under CTH 72209022 and stated that they filed the BE under CTH 72209022 by declaring the description of goods as 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate- Inspection Certificate no. 19136-TC dated 30.06.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co., Ltd., China for the goods imported under BE No. 4180359 dated 23.07.2019 and stated that as per the Test Certificate- Inspection Certificate the coils contain less than 0.8 % of Nickel and less than 12.52% chromium.
- He perused the Country of Origin certificate bearing Sr. No. CCPIT70001190127718 dated 02.07.2019 for the BE No. 4180359 dated 23.07.2019 and stated that in the CCO, the name of supplier i.e. M/s Comet International was mentioned as nonparty operator, which was other than the original manufacturer of the goods and country. He also perused the notes on backside of the country of origin certificate in Box 1, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.
- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling. He agreed that it was their mistake that they wrongly classified the goods under CTH 72209022 as they could not saw the Mill Test Certificates/Test Certificate-Inspection Certificates given by the overseas supplier to the importer.

**3.3. Statement of Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics (Customs broker)** was recorded under Section 108 of the Customs Act, 1962 on 16.07.2021, wherein he inter-alia stated that:

- He was responsible for all work related to custom clearance of import and export of goods in the name of M/s Shri Balaji Logistics; that they filed Bill of Entry on behalf of the Importer after the receipt of checklist, finalized by the importer. He stated that on the basis of documents received from the importers, they mention the classification of goods and value of the goods in the bill of entry, and advice the client for availment of any exemption viz. Notification No. 50/2018 dated 30th June, 2018, payment of Custom duty,



GST and other Anti-dumping duties and CVD applicable as per Customs Tariff (CTH).

- He perused the Bill of Entry No. 2179244 dated 31/12/2020 filed on behalf of M/s Gupta Steel, for the clearance of goods declared as Cold Rolled Stainless Steel Coils Ex Stock Grade-J3 under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate-Inspection Certificate no. 20496-TC dtd 30.11.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 2179244 dated 31/12/2020, which has description of goods i.e. Cold Rolled Stainless Steel Coils Ex Stock and stated that as per the Test Certificate-Inspection Certificate the coils contain less than 1.0 % of Nickel and less than 13% chromium.
- He perused the printout taken from [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](https://en.wikipedia.org/wiki/Austenitic_stainless_steel) titled as Austenitic stainless steel and understood that the stainless steels, which do not contain maximum substitute of nickel, do not falls under the category of Nickel chromium austenitic type, and therefore the product cannot be classified under CTH 72209022. He agreed that the benefit of Notification no. 50/2018-Customs dated 30.06.2018 was not available for the product imported by M/s Gupta Steel.

#### **STATEMENTS AND INQUIRY WITH PROPRIETTOR OF IMPORTING FIRM**

**3.4.** Statements of **Shri Daksh Garg, Proprietor of M/s Gupta Steel** were recorded under Section 108 of the Customs Act, 1962 on 13.07.2021 & 18.02.2022, wherein he inter-alia stated that:

- (i) He was proprietor of M/s Gupta Steel and looked after day-to-day work related to all the activities like sales, purchase, imports and documentation etc.; that M/s Gupta Steel was engaged in trading of Stainless Steel Cold Rolled Coils and Stainless Steel Circle for which they were importing Stainless Steel Cold Rolled Coils & Stainless Steel Circle from overseas supplier based in China, Indonesia and Malaysia and further sold the same in domestic market.
- (ii) They had appointed M/s. R R Logistics as Customs House Agent for import of goods at Mundra port; that he co-ordinate with the Customs House Agent for the clearance of the Imported goods; that on the basis of documents they finalized the classification of goods, availment of any exemption viz. Notification No. 50/2018-Customs dated 30th June, 2018, payment of Custom duty, GST and other Anti-dumping duties and CVD etc.
- (iii) He contacted with overseas supplier on mobile through WhatsApp for supply of goods; that overseas suppliers send quotation on his WhatsApp number as well as discussed verbally and after finalization of the rates on which the goods to be purchased based on their quotations, they placed orders with overseas suppliers; that they send the amount through banks; that No credit limit or time was given by overseas supplier; that in some cases 100% payment was given in advance and in some cases part payment was given in advance.
- (iv) He stated that Cold Rolled Stainless Steel Coils imported by them were used in manufacturing of utensils; that Cold Rolled Stainless Steel Coils/ Stainless Steel Circle were classified under chapter 72. He stated that



they had filed most of the Bills of Entry under the heading of 'Nickel Chromium Austenitic Type' with description, Cold Rolled Stainless Steel Coils under CTH 72209022.

- (v) He perused Bill of Entry No. 4814712 dated 07/09/2019 filed by M/s Gupta Steel for the clearance of goods declared as Cold Rolled Stainless Steel Coils Grade-J3 Ex stock under CTH 72209090. He also perused the Test Certificate- Inspection Certificate no. 19185-TC dated 20.08.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co., Ltd., China for the goods imported under BE No. 4814712 dated 07/09/2019 and stated that as per the Test Certificate- Inspection Certificate the coils contain less than 0.9 % of Nickel and less than 12.5% chromium; that as per Test certificate-Inspection Certificate, Stainless Steel Coils Cold Rolled Grade J3 imported by them contains more percentage of chromium and magnesium instead of Chromium & nickel.
- (vi) He perused Country of Origin Certificate bearing Sr. No. CCPIT70001190280972 dated 22.08.2019 for the goods imported under BE No. 4814712 dated 07/09/2019 and stated that in the COO, the name of supplier i.e. M/s Comet International was mentioned as nonparty operator, which was other than the original manufacturer of the goods and country. He also perused the notes on backside of the country of origin certificate in Box 1, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.
- (vii) He perused the printout taken from the webpage of <https://www.asminternational.org> the literature on the topic 'Austenitic Stainless Steels' and stated that it is categorically elaborated that 'Austenitic Stainless Steels' grades were best viewed as a continuum with a lower boundary at 16%Cr -6%Ni and an upper boundary at 19%Cr - 12%Ni. And which represents the range from minimum to maximum austenite stability.
- (viii) He perused the printout taken from the webpage of M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder and stated that in their official website <https://www.aalco.co.uk> provided the specification sheets for various products wherein they trade including 200 Series stainless steels. In the Specification Sheet for 200 Series stainless steels, it was categorically mentioned that 200 Series stainless steels austenitic were typically used to replace types 304 and 301 as well as Carbon (Chromium-Manganese) Steels mainly for indoor use for low corrosion applications at room temperature. AISI 201 stainless steel corresponds to the specifications of 'UNS20100/EN1.4372/JIS SUS 201'. The main features of 200 Series stainless steel were that it has lower nickel than 300 series - with it being replaced by Manganese; thus lower cost than 300 series; Similar, mechanical & physical properties to 300 series; Similar fabrication performance to 300 series, including deep-drawing; Non-Magnetic. The specification sheet categorically provided the content by weight (%) of the major alloying elements and nickel content is not less than 2% and chromium is between 16 to 18 percent.



- (ix) He perused the printout taken from [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](https://en.wikipedia.org/wiki/Austenitic_stainless_steel) titled as Austenitic stainless steel and understood that as per the Wikipedia, there were two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there was still a small nickel content in the same Austenitic stainless steel.
- (x) He stated that after going through the contents of websites, <https://www.aalco.co.uk>, <https://www.asminternational.org>, Mill Test Certificate / Test certificate-Inspection certificate the goods it appears that that the coils imported by them would not falls under nickel chromium Austenitic type steels as Nickel was replaced by Manganese in 200 series SS coils. **He stated that documents received from the overseas supplier were having CTH upto six digits i.e. 722090** but as per the Notification 50/2018-Customs dated 30.06.2018, CTH 72209022 was eligible for benefit, so they asked their suppliers to mentioned HS code 72209022 on the documents to claim the benefit of Notification no 50/2018-Customs dated 30th June, 2018 but as per the literature available on website it does not fall under category of Nickel Chromium Austenitic Type and the goods imported by them would have been rightly classified under CTH 72209090 for Stainless Steel Cold Rolled Coils, Grade-J3.

#### **4. MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY:**

**4.1.** In view of the evidence and facts discussed in the foregoing paras, it appears that M/s Gupta Steel was importing the goods namely 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTH 72209022 to wrongly avail the benefit under Notification no. 50/2018-Customs dated 30.06.2018. As per the Notification no. 50/2018-Customs dated 30.06.2018 (Sr. No. A734) the exemption was available only to the goods falling under CTH 72209021 and 72209022 and not the goods falling under other sub-heading of CTH 72209090. Shri Daksh Garg, Proprietor of M/s Gupta Steel, in connivance with overseas suppliers had arranged to import 'Cold Rolled Stainless Steel Coils' by mis-declaring as 'Cold Rolled Stainless Steel Coils of Nickle Chromium Austenitic type' (a product of Stainless Steel of Nickle Chromium Austenitic type) and mis-classifying the same under CTH 72209022 to evade the applicable Customs duty by wrongly availing the benefit of Notification no. 50/2018-Customs dated 30.06.2018.

**4.2.** In the manner discussed herein above, Shri Daksh Garg, Proprietor of M/s Gupta Steel, in connivance with overseas suppliers, had evaded the Customs duty due to the Government Exchequer by way of mis-declaring the goods imported as 'product of Stainless Steel of Nickle Chromium Austenitic type' and by mis-classifying the same under CTH 72209022 to evade the applicable Customs duty.

#### **5. EXEMPTION CONDITIONS:**

**5.1.** As per the Notification no. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on the certain goods of tariff heading mentioned in the notification if imported from the country listed in APPENDIX I & APPENDIX II of the said notification from so much of that portion of the applied rate of duty of customs as is specified in the



corresponding entry in the Notification. Further, as per the provision of said notification the importer has to prove to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I or APPENDIX II, as the case may be, in accordance with the Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976, published in the notification of the Government of India in the Department of Revenue and Banking (Revenue Wing) No. 430-Customs, dated the 1<sup>st</sup> November, 1976.

**5.2.** For the purposes of implementing the Asia-Pacific Trade Agreement Rules, 2006 certain criteria are required to be followed for issuance of Country of Origin Certificate. As per Notes of completing a certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice. Moreover, the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision for accepting a certificate of origin for which invoice is issued by a non-party.

## **6. DISCUSSION OF THE EVIDENCES:**

**6.1** On scrutiny of documents viz. Mill Test certificates/ Test certificates-Inspection Certificates along with Commercial Invoices, Packing Lists, Bills of Lading, Country of Origin Certificates submitted by M/s Gupta Steel vide letter dated 08.04.2021, it appears that a Test certificate-Inspection Certificate No. 19185-TC dated 20.08.2019 was issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-19185C dated 20.08.2019 by M/s Comet International Ltd., Hong Kong to M/s Gupta Steel. As per the Test Certificate-Inspection Certificate the coils contain less than **0.9% of Nickel and less than 12.5% chromium**. The goods supplied by M/s Comet International Ltd., Hong Kong vide Invoice No. CMTSZ-19185C dated 20.08.2019 accompanying above Test certificate-Inspection Certificate issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China were cleared by M/s Gupta Steel under Bill of entry No. 4914712 dated 07.09.2019 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Ex Stock Grade-J3' under CTH 72209022.

**6.2.** On scrutiny of documents viz. Mill Test certificates/Test certificates-Inspection Certificates along with Commercial Invoices, Packing Lists, Bills of Lading, Country of Origin Certificates submitted by M/s Gupta Steel vide letter dated 08.04.2021, it appears that a **Test certificates- Inspection Certificate No. 20003B-TC dated 09.01.2020** was issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under **Commercial Invoice No. CMTSZ-20003B dated 09.01.2020** by M/s Comet International Ltd., Hong Kong to M/s Gupta Steel. As per the Test certificate-Inspection Certificate the coils contain approximately, **0.86% of Nickel, 12.45% of chromium and 9.51% of Manganese**. The said coils supplied by M/s Comet International Ltd., Hong Kong vide Commercial Invoice No. CMTSZ-20003B dated 09.01.2020 accompanying the Country of Origin Certificate No. CCPIT70001200059197 dated 11.01.2020 were cleared by M/s Gupta Steel under Bill of Entry No. 6645062 dated 27.01.2020 by declaring description of goods as 'Stainless Steel Cold Rolled Coil Ex Stock Grade-J3' under CTH 72209022.



**6.3.** Similarly, as per all the Mill Test certificates/ Test certificates- Inspection Certificates, the Cold Rolled Stainless Steel Coils, imported by M/s Gupta Steel contains more percentage of chromium and magnesium instead of Chromium & nickel. However, M/s Gupta Steel imported the same by declaring as 'product of Stainless Steel of Nickel Chromium Austenitic type' and by mis-classifying the same under CTH 72209022 to evade the applicable Customs duty.

**6.4.** On scrutiny of documents viz. Mill Test certificates/ Test certificates- Inspection Certificates along with Commercial Invoices, Packing Lists, Bills of Lading, Country of Origin Certificates submitted by M/s Gupta Steel vide letter dated 08.04.2021, it appears that M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China has issued the Country of Origin Certificate No. CCPIT70001190127718 dated 02.07.2019, which accompanying the goods supplied vide Commercial Invoice No. CMTSZ-19136 dated 30.06.2019 by M/s. Comet International, Hong Kong to M/s Gupta Steel. On perusal of COO No. CCPIT70001190127718 dated 02.07.2019, it appears that the name of supplier i.e. **M/s. Comet International, Hong Kong was mentioned as nonparty operator which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd.** Further, as per the notes written in the back side of said Country of Origin Certificate, "the name must be the same as the exporter described in the invoice" but in the said Country of Origin Certificate name of supplier was not written. On perusal of above said Country of Origin certificate issued by China based manufacturer in the name of importer and name of supplier i.e. M/s. Comet International, Hong Kong, who issued the invoice was mentioned as nonparty operator, which was other than the original manufacturer of the goods. The said goods were imported by M/s Gupta Steel under Bill of entry No. 4180359 dated 23.07.2019.

**6.5.** Similarly, as per all the Country of Origin certificate issued by China based manufacturer for Cold Rolled Stainless Steel Coils, imported by M/s Gupta Steel, the name of supplier i.e. M/s Comet International, Hongkong was mentioned as nonparty operator, which was other than the original manufacturer of the goods and country. However, M/s Gupta Steel imported the same by availing the benefit of Notification No 50/2018-Customs dated 30.06.2018.

## **7. 200 SERIES STAINLESS STEEL**

**7.1.** M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder, in their official website <https://www.aalco.co.uk> provided the specification sheets for various products wherein they trade including 200 Series stainless steels. In the Specification Sheet for 200 Series stainless steels, it is categorically mentioned that 200 Series stainless steels austenitics are typically used to replace types 304 and 301 as well as Carbon (Chromium-Manganese) Steels mainly for indoor use for low corrosion applications at room temperature. AISI 201 stainless steel corresponds to the specifications of 'UNS20100/EN1.4372/JIS SUS 201'. The main features of 200 Series stainless steel are that it has lower nickel than 300 series - with it being replaced by Manganese; thus lower cost than 300 series; Similar mechanical & physical properties to 300 series; Similar fabrication performance to 300 series, including deep-drawing; Non-Magnetic. The specification sheet categorically provided the content by weight (%) of the major alloying elements, as shown below:

### **CHEMICAL COMPOSITION**

Element	% Present
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Chromium (Cr)	16.00 - 18.00
Manganese (Mn)	6.80 - 8.50
Nickel (Ni)	2.00 - 5.00
Nitrogen (N)	0.0 - 0.25
Iron (Fe)	Balance

Extract from BS EN 10088-2: Chemical Compositions

Designation	Chemical composition % by mass max unless stated										
	EN	C	Si	Mn	P	S	N	Cr	Mo	Ni	Others
201	1.4372	0.15	1.00	5.5/7.5	0.045	0.015	0.05/0.25	16.0/18.0	-	3.5/5.5	-
201L	1.4371	0.030	1.00	6.0/8.0	0.045	0.015	0.15/0.20	16.0/17.0	-	3.5/5.5	-
202	1.4373	0.15	1.00	7.5/10.5	0.045	0.015	0.05/0.25	17.0/19.0	-	4.0/6.0	-
204C	1.4597	0.10	2.00	6.5/8.5	0.040	0.030	0.15/0.30	16.0/18.0	1.00	2.00	B: 0.0005/ 0.0050 Cu: 2.00/ 3.5

### **AUSTENITIC STAINLESS STEEL [NICKEL CHROMIUM AUSTENITIC STAINLESS STEEL]**

**7.2.** Austenitic refers to an alloy consisting mainly of austenite. The most widely used grade of stainless steel is austenitic. The Austenitic alloys contain a high percentage of nickel and chromium, which makes them, and the steel made from them, very resistant to corrosion. Austenitic stainless steels are used in a wide range of applications, including Automotive trim, Aircraft, Cookware, Food and beverage equipment, Industrial equipment. Austenitic stainless steels have also been used in conventional and nuclear power plants' superheaters and heating components.

**7.3.** A multilingual, web-based, free-content encyclopedia Wikipedia [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](https://en.wikipedia.org/wiki/Austenitic_stainless_steel) clearly shows that the Austenitic stainless steel is one of the five classes of stainless steel by crystalline structure (along with ferritic, martensitic, duplex and precipitation hardened). There are two subgroups of austenitic stainless steel i.e. 200 and 300 series. 300 series stainless steels achieve their austenitic structure primarily by a nickel addition while 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small nickel content. Its primary crystalline structure is austenite (face-centered cubic) and it prevents steels from being hardenable by heat treatment and makes them essentially non-magnetic. This structure is achieved by adding enough austenite stabilizing elements such as nickel, manganese and nitrogen. The website categorically provided the average content by weight (%) of the major alloying elements of most common Cr-Ni austenitic stainless steel grades, as shown below:

Euro norm (EN) number	EN designation	AISI grade	C	Cr	Mo	Ni	Others
1.4310	X10CrNi18-8	301	0.10	17.5	NS	8	NS
1.4301	X5CrNi18-10	304	< 0.07	18.5	NS	9	NS
1.4307	X2CrNi18-9	304L	< 0.030	18.5	NS	9	NS
1.4305	X8CrNi18-9 *	303	< 0.10	18	NS	9	0.3
1.4541	X6CrNiTi18-10	321	< 0.08	18	NS	10.5	Ti: 5×C ≤ 0.70
1.4401	X5CrNiMo17-12-2	316	< 0.07	17.5	2.2	11.5	NS
1.4404	X2CrNiMo17-12-2	316L	< 0.030	17.5	2.25	11.5	NS
1.4571	X6CrNiMoTi17-12-2	316Ti	< 0.08	17.5	2.25	12	Ti: 5×C ≤ 0.70



**7.4.** M/s. ASM International, the world's largest and most established materials information society providing access to trusted materials information through reference content, data and research, education courses and international events, in their official website <https://www.asminternational.org> provided the literature on the topic '**Austenitic Stainless Steels**'; wherein it is categorically elaborated that '**Austenitic Stainless Steels**' grades are best viewed as a continuum with a lower boundary at 16%Cr - 6%Ni and an upper boundary at 19%Cr-12%Ni. This represents the range from minimum to maximum austenite stability. The topic '**Austenitic Stainless Steels**' also provide the content by weight (%) of the major alloying elements, as shown in table below:

Table 1 Typical compositions of the most commonly used lean austenitic alloys

Alloy	Designation	C	N	Cr	Ni	Mn	Mo	Si	Other	Other	Other
201	S20100	0.08	0.07	16.3	4.5	0.2	2.1	0.45	0.001 S	0.03 P	0.2 Cu
201 drawing	S20100	0.08	0.07	16.9	5.4	0.02	2.1	0.5	0.001 S	0.30 P	0.6 Cu
201LN	S20153	0.02	0.13	16.3	4.5	0.2	2.1	0.45	0.001 S	0.03 P	0.5 Cu
301 anneal	S30100	0.08	0.4	16.6	6.8	0.2	1.0	0.45	0.001 S	0.03 P	0.3 Cu
301 drawing	S30100	0.08	0.04	17.4	7.4	0.02	1.7	0.45	0.007 S	0.03 P	0.6 Cu
303	S30300	---	---	---	---	---	---	---	---	---	---
304	S 30400	0.05	0.05	18.3	8.1	0.3	1.8	0.45	0.001 S	0.03 P	0.3 Cu
304 drawing	S30400	0.05	0.04	18.4	8.6	0.3	1.8	0.45	0.001 S	0.03 P	0.3 Cu
304 extra drawing	S30400	0.06	0.04	18.3	9.1	0.3	1.8	0.45	0.001 S	0.030 P	0.4 Cu
304L tubing	S30403	0.02	0.06	18.3	8.1	0.3	1.8	0.45	0.013 S	0.030 P	0.4 Cu
305	S30500	0.05	0.02	18.8	12.1	0.2	0.8	0.60	0.001 S	0.02 P	0.2 Cu
321	S32100	0.05	0.01	17.7	9.1	0.03	1.0	0.45	0.001 S	0.03 P	0.4 Ti
316L	S31603	0.02	0.0	16.4	10.5	2.1	1.8	0.50	0.010 S	0.03 P	0.4 Cu

**7.5.** In view of the above, it is clearly evident that the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%. Whereas, the chemicals compositions shown in the Mill Test certificate/ Test certificate/Inspection Certificate produced by the importer at the time of import shows the content of Chromium (Cr) as nearly 13% and Nickel as nearly 1%, which ruled out its classification as Austenitic Stainless-Steel grades. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s Gupta Steel are in fact Stainless Steel of other Grades and be correctly classifiable under CTH 72209090.

**7.6.** In view of the above, it is further evident that M/s Gupta Steel had imported the goods namely 'Cold Rolled Stainless Steel Coils' by mis-declaring 'Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)' and by mis-classifying the same under CTH 72209022 and wrongly availed the benefit of Customs Notification No. 50/2018-Customs dated 30.06.2018 during the period from July'2019 to February'2021. As per the Notification no. 50/2018-Customs dated 30.06.2018, the exemption was available to goods falling under CTH 72209022 and not to the goods falling under other sub-heading CTH 7220.

**7.7.** It is also forthcoming from the evidences on records that M/s Gupta Steel, had availed the benefit of payment of appropriate duty under Notification No. 50/2018-Customs dated 30.06.2018 on the Country of Origin certificates issued by China based manufacturers in the name of importer, whereas invoices were issued by other supplier based at Hong Kong. However, in terms of notes of completing a certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice and the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision



for accepting a certificate of origin for which invoice is issued by a non-party. Therefore, the benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to the Country of Origin certificates issued by the manufacturers other than the actual exporters (Invoice issuing suppliers). The details of such Bills of Entry filed by mis-declaring 'Cold Rolled Stainless Steel Coils Grade-J3 of various sizes under CTH 72209022 on which M/s Gupta Steel has availed the benefit of exemption under Notification No. 50/2018-Customs dated 30.06.2018 on the COO issued by manufacturers but invoices were issued by a non-party are as under:

Table-1

Sr. No.	BE No & Date	COO Certificate No & Date	Name of Exporter (Invoice issuing exporter)	COO certificate issued in the name of manufacturer	Total Assessable value (In Rs.)	Differential duty (Rs.)
1	4080936 dtd 16.07.2019	0119111700082 644 dtd 28.06.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2033508	104429
2	4180359 dtd 23.07.2019	0119111700086 711 dtd 02.07.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1997235	102361
3	4747841 dtd 03.09.2019	0119111700108 555 dtd 18.08.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1695792	87086
4	4811921 dtd 07.09.2019	0119111700111 706 dtd 22.08.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1652726	84875
5	4814712 dtd 07.09.2019	0119111700111 714 dtd 22.08.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1593123	81814
6	5001262 dtd 21.09.2019	0119111700115 605 dtd 03.09.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1630039	83710
7	5088835 dtd 27.09.2019	0119111700121 531 dtd 10.09.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1581359	81210
8	5188502 dtd 05.10.2019	0119111700129 266 dtd 20.09.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1681032	86328
9	5199439 dtd 07.10.2019	0119111700129 305 dtd 20.09.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1625063	83454
10	5516978 dtd 01.11.2019	0119111700142 866 dtd 17.10.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1683282	86444
11	5516246 dtd 01.11.2019	0119111700142 657 dtd 17.10.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1727304	88705
12	5793480 dtd 22.11.2019	0119111700153 016 dtd 02.11.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1688504	86712
13	5795314 dtd 22.11.2019	0119111700153 024 dtd 02.11.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1675866	86063
14	5916109 dtd 02.12.2019	0119111700159 423 dtd 11.11.2019	Comet International Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1500687	77067



15	5976888 dtd 06.12.2019	0119111700169 273 dtd 22.11.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1462298	75095
16	6030686 dtd 11.12.2019	0119111700172 566 dtd 25.11.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2816324	144630
17	6260902 dtd 27.12.2019	0119111700179 982 dtd 02.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1459318	74942
18	6264128 dtd 27.12.2019	0119111700179 974 dtd 02.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1437856	73840
19	6267253 dtd 28.12.2019	0119111700182 012 dtd 09.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1394246	71857
20	6267817 dtd 28.12.2019	0119111700181 985 dtd 09.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1459533	74953
21	6316813 dtd 01.01.2020	0119111700175 720 dtd 28.11.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1468917	75435
22	6317051 dtd 01.01.2020	0119111700181 985 dtd 28.11.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1455544	74748
23	6358566 dtd 06.01.2020	0119111700189 277 dtd 16.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1489609	76498
24	6359012 dtd 06.01.2020	0119111700189 260 dtd 16.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1497618	76909
25	6488068 dtd 16.01.2020	0119111700193 505 dtd 27.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2960820	152051
26	6577166 dtd 22.01.2020	0120111700004 357 dtd 30.12.2019	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1451880	74560
27	6645062 dtd 27.01.2020	0120111700009 810 dtd 11.01.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1487132	76371
28	664617 dtd 27.01.2020	0120111700011 700 dtd 16.01.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2884522	148133
29	7358726 dtd 26.03.2020	0120111700020 285 dtd 12.03.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1547571	79474
30	7466987 dtd 17.04.2020	0120111700026 957 dtd 30.03.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3082042	158276
31	7514313 dtd 24.04.2020	0120111700030 287 dtd 07.04.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3088216	158593
32	7539244 dtd 28.04.2020	0120111700030 262 dtd 07.04.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3084840	158420
33	7570853 dtd 02.05.2020	0120111700024 561 dtd 20.03.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2955728	151789



34	7587643 dtd 04.05.2020	0120111700024 553 dtd 20.03.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2968538	152447
35	7587664 dtd 04.05.2020	0120111700033 618 dtd 15.04.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1542011	79189
36	7965324 dtd 22.06.2020	0120111700056 230 dtd 05.06.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1457863	74868
37	8031176 dtd 29.06.2020	0120111700058 224 dtd 04.06.2020	Jiayao (Hongkong) Internation al Group Limited	Shenzhen Jiyulong Import & Export Co. Ltd	1537148	78939
38	8141083 dtd 11.07.2020	0120111700067 450 dtd 21.06.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1840935	94540
39	8276013 dtd 25.07.2020	0120111700073 504 dtd 10.07.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3131819	160833
40	8427923 dtd 10.08.2020	0120111700076 597 dtd 10.07.2020	Jiayao (Hongkong) Internation al Group Limited	Shenzhen Idea Import & Export Trade Co. Ltd	1501498	77108
41	8553044 dtd 21.08.2020	0120111700088 375 dtd 12.08.2020	Jiayao (Hongkong) Internation al Group Limited	Shenzhen Top China Imp & Exp. Co. Ltd.	1549612	79579
42	2000551 dtd 19.12.2020	0120111700132 428 dtd 07.11.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3070280	157672
43	2000552 dtd 19.12.2020	0120111700132 403R dtd 07.11.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3030636	155636
44	2149388 dtd 29.12.2020	0120111700153 336 dtd 13.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3047946	156525
45	2179240 dtd 31.12.2020	0120111700149 653 dtd 06.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2868707	147321
46	2179242 dtd 31.12.2020	0120111700154 554 dtd 11.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2960560	152038
47	2179243 dtd 31.12.2020	0120111700154 601 dtd 11.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3003829	154208
48	2179244 dtd 31.12.2020	0120111700149 331 dtd 06.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3078545	158097
49	2179247 dtd 31.12.2020	0120111700149 741 dtd 10.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1418161	72829
50	2179246 dtd 31.12.2020	0120111700154 538 dtd 12.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2998138	153967
51	2179321 dtd 31.12.2020	0120111700155 836 dtd 18.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3026950	155447
52	2179215 dtd 31.12.2020	0120111700155 803 dtd 18.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3017123	154942



53	217921 dtd 31.12.2020	0120111700155 748 dtd 18.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	1494043	76726
54	2316780 dtd 12.01.2021	0121111700002 225 dtd 29.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2954265	151714
55	2316781 dtd 12.01.2021	0121111700002 258 dtd 29.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3060214	157155
56	2346563 dtd 13.01.2021	0120111700156 283 dtd 24.12.2020	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2784102	142976
57	2354620 dtd 14.01.2021	0121111700003 033 dtd 03.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2981515	153114
58	2424785 dtd 20.01.2021	0121111700003 082 dtd 08.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2909310	149406
59	2424788 dtd 20.01.2021	0121111700004 428 dtd 09.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	3010431	154599
60	2424789 dtd 20.01.2021	0121111700001 378 dtd 01.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2995557	153835
61	2424791 dtd 20.01.2021	0121111700006 872 dtd 13.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2941444	151056
62	2647981 dtd 06.02.2021	0121111700006 454 dtd 11.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2991169	131036
63	2648016 dtd 06.02.2021	0121111700006 446 dtd 11.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2814547	123298
64	2717390 dtd 11.02.2021	0121111700014 864 dtd 28.01.2021	Comet Internation al Ltd.	Shenzhen Jinminghui Industry and Trading Co. Ltd	2840672	124443
					143077101	7282376

From the above, it appears that Country of Origin certificates issued by the manufacturers based in China, who is not actual exporters (Invoice issuing suppliers), therefore benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to M/s Gupta.

## 7. PAYMENT OF CUSTOMS DUTY:

7.1. During the course of investigation, M/s Gupta Steel have voluntarily made payment of differential duty amounting to **Rs. 30,00,000/-** (Rs. 15,00,000/- vide TR-6 Challan no. GT/01/2021 dated 17.09.2021 and Rs. 15,00,000/- vide TR-6 Challan no. GT/02/2021 dated 14.03.2022), arises due to mis-classification of goods imported by them.

## 7.2. REJECTION OF CLASSIFICATION OF COLD ROLLED STAINLESS STEEL COILS UNDER CUSTOMS TARIFF HEADING 72209022 AND RE-CLASSIFICATION UNDER CTH 72209090.

7.3. As per the General Rules for the Interpretation of the Harmonized System, the classification of goods in the Nomenclature shall be governed by



certain principles. As per Rule 1 of the General Rules for the Interpretation 'the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions (i.e. G.R. 2 to 6)'.

**7.2.** M/s Gupta Steel had imported 'Cold Rolled Stainless Steel Coils' by wrongly claiming classification under Customs Tariff Heading 72209022 during the period from July 2019 to February 2021. Further, from the evidences available in the form of Test Certificate-Inspection Certificates produced by the importer at the time of import which shows the content of Chromium (Cr) as nearly 13% and Nickel as nearly 1%, which ruled out its classification as Austenitic Stainless-Steel grades. As per website of M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder and as per multilingual, web-based, free-content encyclopedia Wikipedia [https://en.wikipedia.org/wiki/Austenitic\\_stainless\\_steel](https://en.wikipedia.org/wiki/Austenitic_stainless_steel), the Austenitic Stainless-Steel grades have major % of Nickel. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s Gupta Steel are in fact Stainless Steel of other Grades and be correctly classified under CTH 72209090.

**7.3.** From the investigations carried out in the case it appears that M/s Gupta Steel was well aware of the fact that the benefit of Notification No 50/2018-Customs dated 30.06.2018 was available under CTH 72209022 and not under CTH 72209090. They therefore, wrongly claimed classification under CTH 72209022 with a mala-fide intention of evading Customs duty by wrongly availing the benefit of Notification No 50/2018-Customs dated 30.06.2018. The importer with an intent to evade payment of Custom Duty had consciously and intentionally mis-declared the goods under CTH 72209022 in the import documents by suppressing the fact that, 'Cold Rolled Stainless Steel Coils were not Nickel Chromium Austenitic Type'. Therefore, it appears that the importer had knowingly involved themselves in the suppression & mis-statement of the material facts.

**7.4.** From the facts and evidences discussed in the foregoing, it is established that the goods Cold Rolled Stainless Steel Coils imported by M/s Gupta Steel should have been appropriately classified under CTH 72209090 and the benefit of Notification No. 50/2018-customs dated 30.06.2018 was not applicable under CTH 72209090 during the relevant period.

## **8. VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962**

**8.1.** Vide Finance Act, 2011 w.e.f. 08.04.2011 "Self-Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI. Therefore, it appears that M/s Gupta Steel have deliberately contravened the above said provisions with an



intention to evade payment of Customs Duty by wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018 on the import of Cold and Hot Rolled Stainless Steel Coils as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. It appears that M/s Gupta Steel had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as M/s Gupta Steel while filing Bill of Entry, failed to ensure the accuracy and completeness of the information filed by them and thereby failed to fulfill their legal obligation of providing correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs.

## **9. CULPABILITY AND LIABILITY OF NOTICEES**

**9.1.** From the aforesaid, it appears that the importer had knowingly and deliberately indulged in suppression of facts and had willfully misrepresented /mis-stated the material facts regarding the goods imported by them in the declarations made in the import documents including Check lists presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty by wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018. Therefore, the provisions of Section 28(4) of the Customs Act, 1962, is applicable for demand of duty not paid/short paid. The differential Customs duty amounting to **Rs.72,82,376/-** in respect of imports at various ports/ICD's/SEZ viz. Mundra port (INMUN1), Dadri ACPL CFS (INAPL6), Dadri-CGML (INCPL6), Dadri-CGML (INBUL6) and Noida-Dadri, ICD (INDER6) as indicated in **Annexure-A to E** the SCN (**Rs.39,94,338/-** in respect of the imports at Mundra port (INMUN1) as detailed in **Annexure-A, Rs. 18,31,600/-** in respect of the imports at Dadri ACPL CFS (INAPL6) as detailed in **Annexure-B, Rs.10,00,154/-** in respect of the imports at Dadri-CGML (INCPL6) as detailed in **Annexure-C, Rs.3,13,308/-** in respect of the imports at Dadri-CGML (INBUL6) as detailed in **Annexure-D and Rs.1,42,976/-** in respect of the imports at Noida-Dadri, ICD (INDER6) as detailed in **Annexure-E**) is liable to be recovered from M/s Gupta Steel, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA *ibid*.

**9.2.** M/s Gupta Steel have imported Cold Rolled Stainless Steel Coils valued at **Rs. 14,30,77,101/-** (as detailed in Annexure-A to E to the SCN), by deliberately resorting to mis-statement & suppression of the material fact that the said goods are classifiable under CTH 72209090 in contravention of the provisions of Section 46 (4) of the Customs Act, 1962. In terms of Section 46(4) of Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, which in the instant case, M/s Gupta Steel had failed to fulfill the conditions in respect of the imports of 'Cold Rolled Stainless Steel Coils through various ports/ICD's/SEZ viz. Mundra port (INMUN1), Dadri ACPL CFS (INAPL6), Dadri-CGML (INCPL6), Dadri-CGML (INBUL6) and Noida-Dadri, ICD (INDER6). For these contraventions and violations, the goods fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

**9.3.** The aforesaid acts of suppression of facts and willful mis-statement by M/s Gupta Steel had led to evasion of Customs duty of **Rs.72,82,376/-** thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Customs duty amounting to **Rs.72,82,376/-** was evaded by reason of willful mis-statement and suppression of facts with a malafide intention. All the aforesaid acts of omission and commission on the part of M/s



Gupta Steel have rendered the subject imported goods totally valued at **Rs.14,30,77,101/-** (as detailed in Annexure-A to E to the SCN) liable for confiscation under Section 111(m) of the Customs Act, 1962. M/s Gupta Steel are therefore liable to penalty under Section 112(a) and/or 112(b) of the Customs Act, 1962. In the present case, it is also evident that the actual facts were only known to the importer about the product and its actual classification. However, it appears that M/s Gupta Steel had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and have therefore rendered themselves liable for penalty under section 114AA of the Customs Act, 1962 also. Since M/s Gupta Steel have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962. However, since, M/s Gupta Steel is proprietorship firm, no separate penalties are proposed on the firm.

**9.4.** It further appears that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by M/s Gupta Steel before the Customs authorities, was done on the direction and under the guidance of Shri Daksh Garg, Proprietor of M/s Gupta Steel to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Daksh Garg had full knowledge about the mis-classification of the said imported goods in as much as Shri Daksh Garg was overall responsible for all imports and finalization of classification of imported goods. He was in constant touch with the overseas supplier of goods to manage documents for misclassification of goods and instruct Customs broker to produce the same before customs for clearance. M/s Gupta Steel received the Test Certificate-Inspection Certificate, wherein the chemicals compositions of goods and country of origin certificate received was given, as per that goods were rightly classified under CTH 72209090 but Shri Daksh Garg instructed Customs broker to file the Bills of entry under CTH 72209022 to evade duty. Shri Daksh Garg was aware that the consignments imported by M/s Gupta Steel was actually Cold Rolled Stainless Steel Coils falling under CTH 72209090, as it was evident from the documents available in the form of Mill Test Certificate/Test Certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Daksh Garg, Proprietor of M/s Gupta. All the aforesaid acts of omission and commission on the part of Shri Daksh Garg have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and/or (b) of the Customs Act, 1962. Further, it also appears that Shri Daksh Garg had knowingly and intentionally prepared/got prepared, signed/got signed and used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and has therefore rendered himself liable for penalty under section 114AA of the Customs Act, 1962. Since Shri Daksh Garg, Proprietor of M/s Gupta Steel has also violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under Section 117 of Customs Act, 1962.



**9.5.** It also appears that M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics, all Customs Broker firms acted on behalf of M/s Gupta Steel for clearance of consignments of Cold Rolled Stainless steel Coils from customs. M/s Gupta Steel handed over the documents to the Customs Brokers for filing of Bills of Entry and to arrange clearance of the goods. M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics, who handles clearance activities in the capacity as the Custom Brokers are responsible for having indulged in the conspiracy of mis-declaration of description and mis-classification of goods. M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics had hatched a conspiracy with Shri Daksh Garg, Proprietor of M/s Gupta Steel with sole aim to clear the Cold Rolled Stainless steel Coils without payment of applicable Customs duty by willfully mis-declaring its description and correct CTH No. M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics were very much aware that the consignments imported by M/s Gupta Steel by declaring as Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)' was actually Cold Rolled Stainless Steel Coils falling under heading others of chapter 7220, as it was evident from the documents available in the form of Mill Test Certificate/Test certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Daksh Garg, Proprietor of M/s Gupta. The commissions and omissions on the part of M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics who are Licensed Customs Broker Firms were in violation of the obligations casted on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they abetted M/s Gupta Steel in mis-declaring the description of goods and mis-classifying the CTH of imported goods in the Bills of Entry filed by them. M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics connived with M/s Gupta Steel and facilitated them the import goods without payment of applicable Customs duty in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. All the aforesaid acts of omission and commissions on part of M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics have rendered themselves liable to penalty under provisions of Section 112 (a) and/or 112(b) of Customs Act, 1962. They prepared/got prepared, signed/got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of Customs Act, 1962.

**9.6.** It further appears that mis-declaration of description and mis-classification of the goods in the import documents viz. Bills of Entry filed by M/s. R R Logistics, M/s. Exim Transtrade (India) Pvt Ltd. and M/s. Shri Balaji Logistics on behalf of M/s Gupta Steel before the Customs authorities, was done on the direction of Shri Deepak Sawlani, G-card holder and Authorized signatory of M/s. R R Logistics, Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt Ltd. and Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics. Shri Daksh Garg, Proprietor of M/s Gupta Steel handed over the documents to Shri Deepak Sawlani, Shri Jignesh Mota and Shri Jitender Kumar for filing of Bills of Entry and to arrange clearance of the goods.



Shri Deepak Sawlani, Shri Jignesh Mota and Shri Jitender Kumar were aware of the correct classification of the goods but as per the directions of Shri Daksh Garg, Proprietor of M/s Gupta Steel, they willfully and knowingly suppressed the true, correct and actual description and classification of the goods with an intent to facilitate M/s Gupta Steel for evasion of applicable Customs Duty. Shri Deepak Sawlani, G-card holder and Authorized signatory of M/s. R R Logistics, Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt Ltd. and Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, who handled clearance activities in the capacity as the Custom Brokers are responsible for having indulged in the conspiracy of mis-declaration of description and mis-classification of the goods. Shri Deepak Sawlani, Shri Jignesh Mota and Shri Jitender Kumar had hatched conspiracy with Shri Daksh Garg, Proprietor of M/s Gupta Steel with sole aim to clear the Cold Rolled Stainless steel Coils without payment of applicable Customs duty by willfully mis-declaring its description and correct CTH No. Shri Deepak Sawlani, Shri Jignesh Mota and Shri Jitender Kumar were very much aware that the consignments imported by M/s Gupta Steel by declaring as Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)' was actually Cold Rolled Stainless Steel Coils falling under heading others of chapter 7220, as it was evident from the documents available in the form of Test certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Daksh Garg, Proprietor of M/s Gupta Steel. The commissions and omissions on the part of Shri Deepak Sawlani, Shri Jignesh Mota and Shri Jitender Kumar who were G-card holder and Authorized signatory/proprietor of the respective Licensed Customs Broker Firms were in violation of the obligations casted on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they abetted M/s Gupta Steel in mis-declaring the description of goods and mis-classifying the CTH of imported goods in the Bills of Entry filed by them. Shri Deepak Sawlani, Shri Jignesh Mota and Shri Jitender Kumar facilitated M/s Gupta Steel to clear the import goods without payment of applicable Customs duty in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. All the aforesaid acts of omissions and commissions on the part of Shri Deepak Sawlani, Shri Jignesh Mota and Shri Jitender Kumar have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, Shri Deepak Sawlani, G-card holder and Authorized signatory of M/s. R R Logistics, Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt Ltd. and Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics have rendered themselves liable to penalty under provisions of Section 112 (a) and/or 112(b) of Customs Act, 1962. They prepared/got prepared, signed /got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of Customs Act, 1962.

**10.** The Port/ICD/SEZ wise details of goods imported by M/s Gupta Steel (IEC-0516983580) having office at B-47/2, Wazirpur Industrial Area, Wazirpur Delhi-110052 suppressing the description and Classification of goods, along with assessable value and Differential Duty demanded is as detailed below:

**Table-2**



Sr. No.	Bills of Entry No. & Date	Ports / ICDs/ SEZ of imports	Value of goods imported (Rs.)	Duty Short paid/ to be recovered (Rs.)
1	2	3	4	5
1	As shown in Annexure-A to the notice	Mundra port (INMUN1), Gujarat	77779957	3994338
2	As shown in Annexure-B to the notice	Dadri ACPL CFS (INAPL6)	36936572	1831600
3	As shown in Annexure-C to the notice	Dadri-CGML (INCPL6)	19475554	1000154
4	As shown in Annexure-D to the notice	Dadri-CGML (INBUL6)	6100916	313308
5	As shown in Annexure-E to the notice	Noida-Dadri, ICD (INDER6)	2784102	142976
<b>Total</b>			<b>14,30,77,101/-</b>	<b>72,82,376/-</b>

This SCN pertains to demand of duty involved in the goods imported through multiple ports viz. Mundra port (INMUN1), Dadri ACPL CFS (INAPL6), Dadri-CGML (INCPL6), Dadri-CGML (INBUL6) and Noida-Dadri, ICD (INDER6). The subject Show Cause Notice was issued by the competent authority at Customs Mundra as per Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi being the port where highest duty is involved.

#### 11. DEMAND OF DIFFERENTIAL DUTY:

11.1. After completion of the investigation, **M/s Gupta Steel (IEC-0516983580)** having office at B-47/2, Wazirpur Industrial Area, Wazirpur Delhi-110052, were called upon to show cause to **the Commissioner of Customs**, Custom House, Mundra, Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, wherein following has been proposed:-

- The declared classification of the subject goods in the Bills of Entry as detailed in Annexure's, shown in Column No. 2 of the Table in Para-7.7, should not be rejected and goods be re-classified under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and why the subject Bills of Entry should not be reassessed;
- The goods valued of **Rs. 14,30,77,101/- (Rupees Fourteen Crore Thirty Lacs Seventy-Seven Thousand one Hundred one only)** as per Column No. 4 of the Table in Para-7.7 and as detailed in Annexure A to E attached to this show cause notice should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962; however the same have been cleared and are not physically available for confiscation.
- Differential/Short paid Customs duty amounting to **Rs. 72,82,376/- (Rupees Seventy-Two Lacs Eighty-Two Thousand Three Hundred Seventy-Six only)** as per Column No. 5 of the Table in Para-7.7 and as detailed in Annexure A to E attached to the subject Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AAibid;
- The Customs Duty amounting of **Rs. 30,00,000/- (Rupees Thirty Lacs Only)** already paid by M/s Gupta Steel, should not be appropriated towards their Duty Liabilities mentioned at (iii) above;

11.2. The said Show Cause Notice dated 03.05.2023 was also issued to following persons/companies/firms/concerns as appearing in Column 2 of the following Tables, wherein it has been proposed to impose penalty on them as under:



Sr. No.	Name	Penal provisions under Customs Act, 1962				
		(3)	(4)	(5)	(6)	(7)
1	<b>Shri Daksh Garg, Proprietor of M/s Gupta Steel</b> (IEC-0516983580)	112(a)	112(b)		114AA	117
2	<b>M/s R R Logistics</b> , Gandhidham, Kutch	112(a)	112(b)	---	114AA	---
3	<b>M/s. Exim Transtrade (India) Pvt Ltd</b> , Mumbai 400080	112(a)	112(b)	---	114AA	---
4	<b>M/s Shri Balaji Logistics</b> , S-35/5, DLP, Phase-III, Gurgaon-122002, Haryana	112(a)	112(b)	---	114AA	---
5	<b>Shri Deepak Sawlani</b> , G-card holder & Authorized signatory of M/s R R Logistics	112(a)	112(b)	---	114AA	---
6	<b>Shri Jignesh Mota</b> , G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt Ltd	112(a)	112(b)	---	114AA	---
7	<b>Shri Jitender Kumar</b> , Proprietor of M/s Shri Balaji Logistics	112(a)	112(b)	---	114AA	---

## 12. DEFENCE SUBMISSION OF THE NOTICEES

**12.1.** M/s. Gupta Steel made defence submission vide their letter dated 15.04.2024 wherein they interalia stated as under:

- I. we had truthfully submitted all the details and documents at the time of import, i.e. description and classification of goods, invoices, Mill Test Reports, Country of Origin Certificates, etc. The department had accepted their claim and cleared a large number of imports of different importers spanning over a period of 3 years.
- II. we had adopted the Tariff classification and claimed the exemption benefit under the notification as per our understanding of the scope of Tariff heading and exemption notification.
- III. As per the Indian Standards (IS) published by the Bureau of Indian Standards (BIS), there is no separate meaning or definition provided for Nickel-Chromium austenitic steel and therefore, the classification claimed and adopted by them is correct.
- IV. The classification adopted by us has been rejected by the department by relying on websites of certain suppliers and Wikipedia, which are not recognized technical authority on the subject.
- V. The Department cannot reject the Certificate of Country of Origin without holding any consultations with the issuing authority.
- VI. The allegation of suppression of facts and wilful misrepresentation/ misstatement to invoke the provisions of Section 28(4) is a bare allegation and without any basis. A difference of opinion on classification cannot be the basis to claim suppression of facts.
- VII. The demand is barred by limitation of time.
- VIII. Our detailed submissions on the afore-mentioned points are as under:

### **REG.: SCOPE OF CLASSIFICATION & REFERENCE TO INDIAN STANDARDS (IS) ISSUED BY THE BUREAU OF INDIAN STANDARDS (BIS)**



- IX. For the purpose of classification of imported goods, the scope of Customs Tariff heading is of paramount importance. The scope of any heading is to be determined by the language used in the heading and the relevant section notes, chapter notes and heading/subheading notes. The heading 7220 is relevant for us.

7220 Flat-rolled products of stainless steel, of a width of less than 600 mm

- Not further worked than hot rolled:

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7220 20 - Not further worked than cold rolled (cold-reduced):

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7220 90 - Other:

7220 9010 --- Skelp (strips for pipes and tubes)

--- *Strips for pipes and tubes (other than skelp)*

7020 9021 --- Chromium Type

7020 9022 --- Nickel chromium austenitic type

7020 9029 --- Other

7020 9090 --- Other

At the six-digit level, the goods are classifiable under CTH 7020 90. In the HSN, there is no entry at the 8-digit level. The entries at the 8-digit level have been introduced by the national customs administrations depending on their requirements and the same vary from country to country. In this background, the scope of the entry **"7020 9022 --- Nickel Chromium Austenitic Type"** under the Indian Customs Tariff Act is to be seen in terms of the description given in the CTH along with the Section and Chapter Notes. A perusal of the Section Notes under Section XV of the Customs Tariff and Chapter Notes under Chapter 72 of the Customs Tariff indicates that the terminology 'Nickel chromium austenitic steel' has not been defined anywhere in the Customs Tariff. In this factual matrix, the scope of this entry can be understood in terms of the national standards published by the Bureau of Indian Standards. In the said Indian standards (IS), the description used is 'austenitic steel'. There is no further classification of austenitic steel provided under the Indian standards.

- X. In IS 6911, four major categories of stainless steel mentioned are Austenitic steel, Ferritic stainless steel, Martensitic stainless steel and Duplex stainless steel. As far as austenitic type steel is concerned, as per IS 6911 (as reaffirmed in 2022), the different grades of steel mentioned are 200 series, 300 series and N series. In 200 series, the percentage of Nickel is lower than the percentage of Nickel in 300 series. However, the percentage of Nickel is lowest for the 'N' series, i.e. for N1 grade, Nickel percentage prescribed is from 1.00-2.00 percent.
- XI. Further, IS 15997:2012 deals with Low Nickel Austenitic stainless steel sheets and strips for utensils and kitchens appliances. In this standard, the austenitic steel grades N1, N2 and N3 are mentioned. This standard has been amended in March 2023 (effective 01.09.23) and three grades of steel, i.e. N5, N6 and N7 have been incorporated wherein the Nickel percentage has been prescribed between 0.20 to 0.95 percent.
- XII. From the above analysis, it is clear that there are certain grades of austenitic steel which can have very low percentage of nickel. Further, there are no separate categories of austenitic steel defined in the Indian standards such as 'Nickel Chromium Austenitic Steel' or 'Manganese Chromium Austenitic Steel'. The IS simply provide for the percentage of different components in the



austenitic steel without defining the same as 'Nickel-chromium' type or 'Manganese Chromium' type.

- XIII. The Department has alleged such a stipulation in the SCN wherein it has been concluded that an austenitic steel having more manganese chromium than nickel chromium will not be a 'Nickel Chromium Austenitic Steel'. There is no such categorization in the Indian Standards or in any other statutory literature. The Indian standards do not also stipulate calculation of percentage of manganese chromium on one hand and that of nickel and chromium on the other hand to arrive at what type of austenitic steel it is. Once it is established that the item imported (J3 grade) is an austenitic steel and it comes out clearly from the chemical analysis that both Nickel and Chromium are present in the same, the item imported will squarely fall in the category of 'Nickel chromium austenitic steel' under CTH 7220 9022. We submit that the steel strips imported by us are austenitic steel and contain both Nickel as well as Chromium and are therefore, correctly classifiable under heading 7220 9022.
- XIV. Therefore, the conclusion drawn by the revenue in the SCN is erroneous and the impugned Notice thus deserves to be dropped on this count alone.

**REG.: RELIANCE PLACED BY THE DEPARTMENT ON VARIOUS WEBSITES TO SUPPORT ITS ALLEGATION ABOUT MISCLASSIFICATION IS GROSSLY INCORRECT**

- XV. The Department has relied upon the information provided on the website of 'Wikipedia' about austenitic steels. It is mentioned therein that there are two subgroups of austenitic stainless steels, i.e. 300 series stainless steel achieve their austenitic structure primarily by a nickel addition while 200 series stainless steel substitute manganese and nitrogen for nickel, though there is still a small nickel content. Based on this information, the department has alleged that 'J3 grade' of steel imported by us has less nickel and more manganese and therefore, is not a 'Nickel Chromium austenitic steel'.
- XVI. In this regard, it is submitted that as already submitted above, the relevant Indian Standards do not categorise the austenitic steels into separate categories such as 'Nickel Chromium Austenitic Steel' and 'Manganese Chromium Austenitic Steel'. CTH 7220 9022 covers 'Nickel Chromium austenitic steel'. The steel sheets imported by us have Nickel, Chromium, Manganese and other alloying materials. There is no dispute that the item imported by them is an austenitic steel. The issue to be decided is that in an austenitic stainless steel, if Nickel is present in less percentage and percentage of Manganese is more, whether the austenitic steel can be considered as an 'austenitic steel other than Nickel Chromium type'. The department has not cited any authoritative technical literature or authorised standards such as Indian Standards or international standards in support of its contention that such an austenitic steel will not fall in the category of 'Nickel Chromium austenitic steel'. In fact, no definition of 'Nickel Chromium austenitic steel' has been cited by the department.
- XVII. Further, Wikipedia is an open source website wherein any person can upload any content and any person can edit the content. There is no requirement of citing any technical literature in support of the content uploaded on Wikipedia. There is no system of any validation of such content for its correctness and accuracy by any technically competent person. It can be a good source of general information about any topic but is not an authoritative source which can be cited in any techno legal proceedings. In support of this contention we rely on the following judgments:
- a. Ponds India Ltd. vs. Commr. of Trade Tax, Lucknow [2008 (227) E.L.T. 497 (S.C.)]



- b. Hewlett Packard India Sales Pvt. Ltd. vs. Commr. of Cus. (Import), Nhava Sheva [2023 (383) E.L.T. 241 (S.C.)]
- c. Commissioner of Customs, Bangalore vs. Acer India Pvt. Ltd. [2007 (218) E.L.T. 17 (S.C.)]

- XVIII. From the above analysis about the lack of credibility of Wikipedia as an authentic source on technical matters, it is submitted that no reliance can be placed on this website to conclude that the goods imported were 'Manganese Chromium Austenitic Steel' and not 'Nickel Chromium Austenitic Steel'.
- XIX. In the SCN, reliance has also been placed on the official website of Aalco Metals Limited, a company registered in UK and Wales. The company trades in 200 series stainless steel. As per the website, the main feature of 200 series stainless steel is that it has lower Nickel than 300 series, which is replaced by Manganese. Reliance has also been placed on the website of ASM International, a material information society. It has been mentioned that 'Austenitic Stainless Steels' grades are best viewed as a continuum with a lower boundary at 16% Cr - 6% Ni and an upper boundary at 19% Cr - 12% Ni. This represents the range from minimum to maximum austenite stability.
- XX. As mentioned above, the SCN has been issued on the premise that in the item imported by us, there is less percentage of nickel and chromium than the percentage of Manganese and Chromium and therefore the same cannot be considered as 'Nickel Chromium Austenitic Steel'. A careful perusal of the material on the website of Aalco Metals Limited indicates that there is no mention therein that 200 series austenitic steel cannot be considered as Nickel Chromium Austenitic Steel. Mere presence of more Manganese in the item imported along with presence of Nickel in smaller quantity cannot disqualify the item imported from classification under CTH 7220 9022. The information on the said website shows the percentage of Nickel for 200 series as 2.00% - 6.00%. However, with the improved technology, the percentage of Nickel in the 'N' series is as low as 1-2% (N1, N2). Further, in N5, N6 and N7 series, the Nickel percentage varies from 0.20% to 0.95%. However, even with lower percentage of Nickel, these are still classified as austenitic steel.
- XXI. Further, as per the conclusion drawn by the Department on the basis of the information available on the website of ASM International, the austenitic steel should have Nickel percentage from 6% to 12% which represent the range from minimum to maximum austenitic stability. However, this conclusion, besides being not supported by any authentic technical basis, is also not even supported by the Indian Standards. The Nickel percentage in some austenitic steels is as low as 1-2 % (N1, N2) and 0.45% to 0.95% (N5, N6, N7). Even in austenitic stainless steels of numerical symbol 201, 201A, 202, 201S, 201LN, 201N, 204, 204 Cu1, 204 Cu2, 204 Cu3, the Nickel limit is permitted to be less than 6% while the website of ASM International mentions the lower limit to be not less than 6% for austenitic stability. It is therefore clear that the information mentioned in this website is outdated and cannot be relied upon for its accuracy.
- XXII. Therefore, as already established earlier, since the item imported by us contains Nickel as well as Chromium and are austenitic type, these are correctly classifiable as Nickel Chromium Austenitic Steel under CTH 7220 9022.

**REG.: DEPARTMENT CANNOT REJECT THE CERTIFICATE OF COUNTRY OF ORIGIN WITHOUT HOLDING ANY CONSULTATIONS WITH THE ISSUING AUTHORITY**

- XXIII. The SCN has sought to reject the Certificate of Country of Origin on the ground that the name of the exporter on the Certificate does not match with



the name of the exporter on the commercial invoice issued by the exporter. It is alleged in the SCN that the Certificate of Country of Origin (COO) has been issued by the China based manufacturer in the name of importer; whereas the commercial invoice was issued by the supplier based in Hong Kong. The Notice thus proposes to reject the COO on this count.

- XXIV. In this regard, it is submitted that although the name of the invoice issuing exporter is not mentioned in the column 1 of the COO which is for 'Goods consigned from', the said exporter's name is mentioned in column no. 7 which is for 'Description of goods' as a Non-Party Operator. Therefore, the invoice issuing exporter's name is mentioned in the COO and just because the same is mentioned in a different column does not render the COO as 'invalid'.
- XXV. Without prejudice to the above, it is submitted that if the importing member nation has any queries regarding the Certificate, it is within the Asia-Pacific Rules of Origin, specifically at 'Clause 5 of Annexure B to the Rules of Origin', for the importing member nation to initiate consultations with the Designated Authority of the exporting member nation. The said Clause 5 stipulates that where the importing Contracting State has reasonable doubt as to the authenticity of a Certificate of Origin or regarding the true origin of the products in question or it feels that the Rules of Origin are being circumvented, it may initiate consultations with the relevant Contracting State and Issuing Authority, and even inspect the goods in question. In cases of suspected fraudulent acts, the concerned Issuing Authorities are bound to cooperate in the action to be taken in the territory of each Contracting State against the persons involved, including imposing legal sanctions for fraudulent acts. The relevant extract of clause 5 is reproduced below:

**"5. Origin verification.**

- (i) *The Customs authority may request the Issuing Authority of the exporting APTA Participating State for a retroactive random check and/or when it has reasonable doubt as to the authenticity of the documents or as to the accuracy of the origin status of the goods in question.*
- (ii) *The request shall be accompanied by the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin may be inaccurate.*
- (iii) *The Customs authority may suspend the preferential treatment while awaiting the result of the verification:*  
*Provided that it may release the goods to the importer subject to any administrative measures deemed necessary:*  
*Provided further that the goods are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.*
- (iv) (a) *The Issuing Authority receiving a request for verification shall respond to the request promptly and reply within three months after receipt of the request.*
- (b) *The verification process, including the actual process and the determination of whether the subject goods are originating or not, should be completed and the result should be communicated to the Issuing Authority within six months.*
- (c) *While the process of the verification is being undertaken, the provisions of sub-paragraph (iii) shall be applied.*
- (d) *In the cases where the Customs authority in India does not receive any reply within four months after the making of the request, the Customs*



**authority may deny the claim for preferential treatment and in case the reply does not supply enough information to confirm the authenticity of the documents or the origin of the goods, the concerned authorities shall resolve the issue through bilateral consultation within three months, failing which the preferential treatment may be denied."**

- XXVI. In the present case, we understand that there is no consultation initiated by the revenue with the issuing authority in the exporting country and has simply sought to reject the COO on the grounds as mentioned above. Such an action on the part of the revenue is not at all in accordance with the provisions of the APTA agreement and the impugned SCN thus deserves to be dropped on this count alone.

**REG.: ALTERNATIVE CLASSIFICATION PROPOSED BY THE REVENUE UNDER CTH 7220 9090 IS NOT CORRECT**

- XXVII. The Department has proposed in the SCN that the item imported by us is classifiable under CTH 7220 9090 as 'Other'. This proposed classification runs contrary to the premise based on which the SCN has been issued. A careful perusal of the scheme of entries in heading 7220 will indicate that at single dash level there are three entries. These are (i) Not further worked than hot-rolled (7220 11, 7220 12); (ii) Not further worked than cold rolled (7220 20) and (iii) Other (7220 90). It is an admitted position even in the SCN that the item imported will fall under heading 7220 90 at six-digit level. The only ground on which the declared classification under heading 7220 9022 is being denied is that though the goods imported by us are austenitic type but these are 'Manganese Chromium Austenitic Type' and not 'Nickel Chromium Austenitic Type'. Assuming, without admitting that this classification proposed by the Department is correct and the goods are austenitic type but not 'Nickel-chromium' type, even in that case, the goods will remain classifiable at three dash level after 7220 90 10 as -

- - - *Strips for pipes and tubes (other than skelps);*

and under this, at four dash level in any of the three entries, i.e.

7220 9021 (Chromium type);

7220 9022 (Nickel chromium austenitic type); or

7220 9029 (Other).

It will not be classified under the other three dash level entry i.e. 7220 9090 which covers 'Other'. Therefore, it is submitted that the classification adopted by the Noticee has been rejected without proper understanding of the scheme of classification for the heading 7220 90.

- XXVIII. Without accepting that the classification adopted by the Noticee under CTH 7220 9022 is incorrect, if the same were to be disregarded, even in that case, the correct classification will be 7220 9029 and not 7220 9090 as proposed by the revenue. In that case also, we will be entitled to an exemption of 15% on the BCD rate under serial number 735 of Notification No. 50/2018-Cus dated 30.06.2018. Thus, the classification proposed by the Department is incorrect irrespective of the fact whether the classification adopted by the Noticee is accepted or not.

**REG.: A MERE CLAIM OF DIFFERENT CLASSIFICATION CANNOT MEAN SUPPRESSION OF FACTS AND INVOCATION OF EXTENDED PERIOD OF LIMITATION**

- XXIX. The SCN has also invoked extended period of limitation of five years under Section 28(4) of the Customs Act alleging that the imports were deliberately mis-declared and misclassified by us with an intention to evade the applicable



duty, leading to suppression of facts and wilful mis-statement. In this regard, we wish to state that prior to the issue of notification no. 50/2018-Cus, there was no difference in the rate of duty applicable to the heading 7220 9022 as adopted by the Noticee or CTH 7220 9090 as proposed by the Department. However, after the issue of notification no. 50/2018-Cus, we claimed the benefit of the notification by classifying the goods under 7220 9022 as the item imported by us was more appropriately classifiable under this heading. No adverse inference can be drawn against us on the ground that we changed the classification. Every importer is entitled to claim the benefit of an exemption if he has bonafide belief that he is entitled to the avail the benefit of exemption. Similarly, we changed the classification after the DRI investigation to 7220 9090, as this was the classification being adopted by DRI during different investigations. This was done to avoid any further controversy regarding the future consignments as such enquiry has affected our business adversely.

XXX. The SCN has been issued for the imports which took place from July 2019 to February 2021. The SCN has been issued in terms of section 28(4) of Customs Act, 1962 which covers provisions for demand of duty short paid by reason of collusion, misstatement or suppression of facts. In such a case, the department is empowered to issue SCN within five years from the relevant date i.e. within the extended period of limitation. However, when there is no suppression of facts or misstatement etc., the SCN has to be issued within two years of the relevant date in terms of Section 28(1) of the Customs Act, 1962 i.e. within the normal period of limitation. The relevant date is the date when out of charge order is given by the proper officer of Customs. This date can be taken as near to the date of filing of the Bill of Entry, as the date of such order passed by the proper officer has not been mentioned in the SCN. In this case, the SCN has been issued on 12.05.2023, which is beyond the normal period of two years from the relevant date. It is submitted that there is no suppression of facts or misstatement on our part in the present case. Therefore, the SCN could not have been issued in terms of section 28(4) of Customs Act, 1962.

XXXI. It is submitted that we had truthfully declared all the material facts at the time of imports. The department had examined our claim at the time of each import and found our claim acceptable. The SCN only makes a bland allegation that we had resorted to misstatement and suppression of facts without specifying as to what specific action was taken by us and how the same can be considered as misstatement and/ or suppression of facts.

XXXII. Kind attention is invited to Compulsory Compliance Requirements as mentioned in the Bill of entry, which are required to be checked by each Customs Officer before the clearance. These are as follows-

*Mandatory Compliance Requirements Examination Instructions (CTH) - 7220 9022*

*"Import under this CTH require compulsory registration under Steel Import Monitoring System (SIMS). Refer policy condition No.5 of Chapter-72 and DGFT Notification No 33/ 2015-20 Dt 28-09-2020. \* BIS standard IS 6911:2017 is applicable on stainless steel plate, sheet and strip? Specification. Refer steel and steel products (quality control) order, 2020 (SO 4637 (E) dated 22-12-2020."*

XXXIII. We had categorically declared that the item imported was of J3 grade. The invoice also mentions the grade of stainless steel coils imported as J3. The classification claimed was also 7220 9022. In a number of Bills of Entries, the test certificate issued by the manufacturer was also enclosed with the Bills of Entries. The compulsory compliance requirement for this heading was



quite clear and unambiguous. The Departmental officers were required to check whether the goods imported fell within the classification claimed or not. We had claimed the classification under heading 7220 9022. The grade of J3 was also specifically mentioned in the Bill of Entry. The compulsory compliance requirement was meant to ensure that the goods covered under heading 7220 9022 meet these requirements including the IS 6911:2017 mentioned therein. As there was no objection from the department and the goods were cleared in accordance with our claim for concessional rate of customs duty, it is clear that our claim was accepted by the department. Now SCN only makes a bland allegation of suppression of facts and misstatement without specifically mentioning as to how exactly this suppression or misstatement was resorted to by us. We categorically deny that any suppression of facts was done by us or we had resorted to any misstatement. We would like to draw your kind attention to the following paras of SCN.

*"14. From the investigation carried out in the case it appears that 'M/s GEPL' was well aware of the fact that the benefit of Notification No. 50/2018-Customs dated 30.06.2018 was available under CTH 7220 9020 and not under CTH 7220 9090. They therefore, wrongly claimed classification under CTH 7220 9022 with a mala-fide intention of evading Customs duty by wrongly availing the benefit of Notification No. 50/2018-Customs dated 30.06.2018. The importer with an intent to evade payment of Custom duty had consciously and intentionally mis-declared the goods under CTH 7220 9022 in the import documents by suppressing the fact that Cold Rolled Stainless Steel Coils were not Nickel Chromium Austenitic Type. Therefore, it appears that the importer had knowingly involved themselves in the suppression & mis-statement of the material facts."*

A careful perusal of this para. will indicate that in the whole para., there is not a single specific action which was done by us and based on which the learned authority has arrived at this conclusion that we were well aware of this fact that the benefit was not available to CTH 7220 9090. The SCN has used the words such as mala-fide intention, intent to evade payment of Customs duty, intentional misdeclaration, suppression of facts etc., the standard phrases used in Section 28(4) but without substantiating any of these allegations. The only basis which is mentioned in this para is the 'from the investigations carried out in the case -

XXXIV. During the course of investigation, we had submitted all the data to the department. From none of the statement or any other evidence, it is forthcoming that we had deliberately resorted to any suppression of facts or misstatement. The department, based on the material available on the websites mentioned in the SCN, has arrived at certain conclusion that the classification claimed by us was wrong. But a mere difference of opinion between department and the importer regarding classification cannot be equated with suppression of facts or misstatement. Something more positive is required to be proved against us. This principal has been well laid down in a catena of judgements, wherein the Courts have held that where the issue is relating to interpretation, suppression of facts cannot be alleged and extended period of limitation cannot be invoked. We rely on the following judgements in this regard:

- International Merchandising Company, LLC vs. Commissioner of Service Tax, New Delhi [2022 (67) G.S.T.L. 129 (S.C.)];
- Sunaram Finance Ltd. vs. Commissioner [2019 (25) G.S.T.L. J30 (S.C.)];
- Commissioner vs. Singh Transporters [2018 (13) G.S.T.L. J40 (S.C.)];
- Commissioner vs. N.C. Paul & Company [2020 (43) G.S.T.L. J93 (S.C.)].

**REG.: NO PENALTY IMPOSABLE UNDER SECTION 112(a) OR 112(b)**



XXXV. The SCN proposes to impose penalty under Section 112(a) or 112(b) of the Customs Act. Penalty under this Section is imposed for improper importation of goods. The relevant extract of the said Section is reproduced below:

*"Any person, -*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*shall be liable, - ....."*

In the present case, there is no act committed by the Noticee which would render the goods liable to confiscation under Section 111 of the Customs Act. As already submitted above, all the relevant information and documents were filed with the Customs authorities at the time of import and there was no suppression of facts on the part of the Noticee. Therefore, there is no penalty which can be imposed under Section 112 of the Customs Act on the Noticee.

**REG.: NO PENALTY IMPOSABLE UNDER SECTION 114A**

XXXVI. The SCN has proposed to impose penalty under Section 114A of the Customs Act. As per this Section, where duty has not been levied or short-levied on account of collusion or any wilful mis-statement or suppression of facts, penalty equal to the duty amount will be imposed on the 'faulter'. In the present case, as already discussed above, there is no suppression of facts, collusion, or any wilful mis-statement on the part of the Noticee and therefore penalty under Section 114A is not imposable.

XXXVII. It is relevant to note here that penalty under Section 112 cannot be imposed in cases where penalty is imposed under Section 114A of the Customs Act.

**REG.: NO PENALTY IMPOSABLE UNDER SECTION 114AA**

XXXVIII. The SCN has proposed to impose penalty under Section 114AA of the Customs Act. As per Section 114AA of the Customs Act, if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, he shall be liable to a penalty not exceeding five times the value of goods. In the present case, there is no false declaration, statement or document made, signed or used by us and as submitted earlier, this is a mere difference of opinion and interpretation of the classification of the product imported. Therefore, no penalty can be imposed under Section 114AA of the Customs Act.

**REG: NO PENALTY CAN BE IMPOSED UNDER SECTION 117**

XXXIX. The SCN has proposed to impose penalty under Section 117 of the Customs Act even though the ingredients necessary for imposition of such penalty are absent in the present case. Section 117 reads as follows:

*"SECTION 117 - Penalties for contravention, etc., not expressly mentioned - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees]."*

It is evident from the above that penalty under Section 117 can be imposed on any person only if:



- a. he contravenes any provision of the Act, or
- b. abets any such contravention, or
- c. fails to comply with any provision of this Act with which it was his duty to comply, and
- d. where no express penalty is elsewhere provided in the Act for such contravention or failure.

- XL. In the present case, as already submitted above, there was no contravention of any provisions of the Customs Act or abetment of any such contravention, on the part of the Noticee. Accordingly, no penalty can be imposed under Section 117.
- XLI. In view of above the noticee requested to drop the charges imposed against them vide the impugned SCN.

**12.2. DEFENCE SUBMISSION MADE BY SHRI DAKSH GARG, PROP. OF M/S. GUPTA STEEL: Shri Daksh Garg vide his letter dated 15.04.2024 submitted as under:**

- I. that it is a settled law that a proprietor and his proprietorship concern are same legal entity and the two are not separate persons. Accordingly, no separate penalties can be imposed upon the proprietor and the proprietorship concern. In the present case, GS and the Noticee who is the proprietor of GS cannot be considered as separate legal entities and thus no separate Notices for imposition of penalties can be issued to them. Reliance in this regards is placed on the following judgements:
  - a. Santosh Kumar Kishan Lal Jain vs. Commissioner of C. Ex., Raipur[2017 (348) E.L.T. 351 (Tri. - Del.)];
  - b. Ashwani Kumar Jain vs. Commissioner of Central Excise, Meerut[2011 (270) E.L.T. 245 (Tri. - Del.)]; and
  - c. Bimal Kumar Mehra vs. Commissioner of Customs (Import), Mumbai[2011 (270) E.L.T. 280 (Tri. - Mumbai)].
- II. In light of the above, it is submitted that since the Notice is issued to GS, the Notice which is issued to Mr. Daksh Garg, Proprietor of GS should be dropped in its entirety.

**REG.: NO PENALTY IMPOSABLE UNDER SECTION 112(a) OR 112(b)**

- III. The SCN proposes to impose penalty under Section 112(a) or 112(b) of the Customs Act. Penalty under this Section is imposed for improper importation of goods. The relevant extract of the said Section is reproduced below:

*"Any person, -*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*shall be liable, - ....."*

In the present case, there is no act committed by the Noticee which would render the goods liable to confiscation under Section 111 of the Customs Act. As already submitted in the reply filed for GS, all the relevant information and documents were filed with the Customs authorities at the time of import and there was no suppression, of facts on the part of the Noticee. The issue is one of interpretation of the classification entries and not of suppression, wilful mis-statement or collusion. Therefore, there is no penalty which can be imposed under Section 112 of the Customs Act on the Noticee.

**REG.: NO PENALTY IMPOSABLE UNDER SECTION 114AA**



- IV. The SCN has proposed to impose penalty under Section 114AA of the Customs Act. As per Section 114AA of the Customs Act, if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, he shall be liable to a penalty not exceeding five times the value of goods. In the present case, there is no false declaration, statement or document made, signed or use by me and as submitted earlier, this is a mere difference of opinion and interpretation of the classification of the product imported. Therefore, no penalty can be imposed under Section 114AA of the Customs Act.

**REG: NO PENALTY CAN BE IMPOSED UNDER SECTION 117**

- V. The SCN has proposed to impose penalty under Section 117 of the Customs Act even though the ingredients necessary for imposition of such penalty are absent in the present case. Section 117 reads as follows:

*"SECTION 117 - Penalties for contravention, etc., not expressly mentioned - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees]."*

It is evident from the above that penalty under Section 117 can be imposed on any person only if:

- e. he contravenes any provision of the Act, or
- f. abets any such contravention, or
- g. fails to comply with any provision of this Act with which it was his duty to comply, and
- h. where no express penalty is elsewhere provided in the Act for such contravention or failure.

- VI. In the present case, as already submitted above, there was no contravention of any provisions of the Customs Act or abetment of any such contravention, on the part of the Noticee. Accordingly, no penalty can be imposed under Section 117.

- VII. Therefore, he requested to withdraw the charges and discharge the noticee.

**12.3. M/s Shri Balaji Logistics -Noticee No. (vii) and Shri Jitender Kumar (Proprietor of M/s Shri Balaji Logistics)-** Noticee No (viii) vide their letter dated 15.04.2024 submitted reply against impugned SCN, wherein they interalia submitted that:

- i. That proprietor and proprietorship concern are same legal entity, therefore, no separate penalties can be imposed upon the proprietor and proprietorship concern.
- ii. That in the present case there is no act committed by the noticee so as to render the goods liable to confiscation under Section 111 of the Customs Act, 1962. Further, all the relevant information and documents were filed with the Customs authorities at the time of import and there was no suppression of facts on the part of the noticees.
- iii. That the issue is of interpretation of the classification entries and not of suppression, wilful mis-statement or collusion.
- iv. That the statement recorded of Mr. Jitendra Kumar does not mention about any act done by the noticee leading to suppression of facts or wilful mis-statement or connivance and collusion on the part of the Noticee.



- v. That no penalty under Section 114AA of the Customs Act, 1962 since there is no false declaration, statement or document made, signed or used by said noticee; and also the present issue is of mere difference of opinion and interpretation of the classification of the product imported.
- vi. That penalty under Section 117 of the Customs Act, 1962 is not imposable since there is no contravention, on part of the noticee.
- vii. Therefore, they requested to drop the charges against the noticee.

### **13. RECORD OF PERSONAL HEARING:**

Following principles of natural justice, personal hearing (i.e. PH) in the matter was granted to all the noticees on 29.11.2023 and 10.04.2024. Details of the PH are as under:

(i) **1<sup>st</sup> PH granted on 29.11.2023:** None of the noticees attended the PH. However, M/s. Gupta Steel vide their letter dated 28.11.2023 stated that due to urgent personal reason their Advocate would not be able to attend the PH. Therefore, M/s. Gupta Steel requested to grant them next date for appearing in PH. Whereas, M/s. Exim Transtrade (India) Pvt Ltd., and Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt Ltd., vide their email dated 29.11.2023 requested to grant next date for appearing in PH.

(ii) **2<sup>nd</sup> PH granted on 10.04.2024:** The record of PH held on 10.04.2024, is as under:

- Shri Kartik Dedhia, Advocate appeared on behalf of Noticee No. (i), (vii) and (viii) i.e. M/s. Gupta Steel, M/s Shri Balaji Logistics and Shri Jitender Kumar (Proprietor of M/s Shri Balaji Logistics) in the personal hearing in virtual mode. He reiterated the submission made in another case of M/s Gulshan Exim that there is no statutory definition of Ni Cr Austenitic Steel. He also referred to BIS/IS standard where there is delineation on what is austenitic steel (Composition wise) but that there is no bifurcation on what is Ni Cr Steel. He stated that the current issue is more of technical and interpretation based, therefore, there is no suppression of facts as such.
- Further, M/s Exim Transtrade (India) Pvt. Ltd. Noticee No. (iv) and Shri Jignesh Mota, Senior Manager of M/s Exim Transtrade (India) Pvt. Ltd. Noticee No. (vi) were represented by Shri Pradeep Sharma, Advocate. He stated that Bills of Entry were filed by his client on document basis only and there is no attempt to evade the duty by manipulation. He also stated that his client Shri Jignesh Mota has no role in suppression or assessment nor he connected to the importer in procuring the business as well and his client's statement was not a voluntary in nature and cannot be relied upon for making case. He also stated that an advisory note by Principal Commissioner of Customs, JNCH states that in cases of classification dispute sufficient to clearance, CHA cannot be made party. He stated that his client has not faulted at any responsibility of CHA and so the case on his client should be dropped.

### **14. DISCUSSION AND FINDINGS:**

**14.1.** I have carefully gone through the **Show Cause Notice F.No. GEN/ADJ/COMM/54/2023-Adjn-O/o Pr. Commr- Cus-Mundra dated 03.05.2023 and its Corrigendum dated 16.01.2024** both issued by the Commissioner of Customs, Custom House, Mundra, relied upon documents,



submissions made by the Noticees, relevant legal provisions and the records available before me. The main issues involved in the case which are required to be decided in the present adjudication are as below:

- (i) whether the declared classification of the subject goods is liable to be rejected and the subject goods are liable to be re-classified under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975;
- (ii) whether the subject goods valued of **Rs. 14,30,77,101/- (Rupees Fourteen Crore Thirty Lacs Seventy-Seven Thousand one Hundred one only)** are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- (iii) whether Differential/Short paid Customs duty amounting to **Rs.72,82,376/- (Rupees Seventy-Two Lacs Eighty-Two Thousand Three Hundred Seventy-Six only)** are liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962;
- (iv) Whether the Noticees are liable for Penalty as invoked vide the impugned SCN.

**14.2.** I find that the instant case arose out of investigation carried out by the DRI that M/s. Gupta Steel imported goods namely 'Cold Rolled Stainless Steel Coils' and mis-classified the same under CTH 72209022 and wrongly availed the benefit under Notification No. 50/2018-Customs dated 30.06.2018 during the period from **July 2019 to February 2021**. As per the said Notification no. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on the goods of '**Nickel Chromium Austenitic Type**' falling under CTH 72209022; whereas M/s Gupta Steel imported the goods viz. '**Cold Rolled Stainless Steel Coils**', which were allegedly not 'Nickel Chromium Austenitic Type' (classifiable under CTH 72209022). Whereas, the Mill Test certificates/Test certificates/Inspection Certificates issued by the overseas suppliers (as discussed in detailed in the notice), revealed that M/s. Gupta Steel imported '**Stainless Steel Cold Rolled Coils**', which contains more percentage of Chromium & Magnesium instead of Chromium & Nickel. Therefore, the impugned imported goods did not allegedly satisfy the conditions pre-requisite to fall under the CTH 72209022 (Nickel Chromium Austenitic Type), instead the subject imported goods appeared classifiable under CTH 72209090. Resultantly, M/s. Gupta Steel allegedly evaded Customs duty of **Rs.72,82,376/- (Rs. Seventy-Two Lacs Eighty-Two Thousand Three Hundred Seventy-Six only)** (as detailed in Annexure A to E attached to the impugned Notice).

**14.3.** I find that **Shri Daksh Garg, Proprietor of M/s Gupta Steel** during his statement 13.07.2021 and 18.02.2022 inter-alia stated that:

(i) **that Cold Rolled Stainless Steel Coils imported by them were used in manufacturing of utensils;** that Cold Rolled Stainless Steel Coils/ Stainless Steel Circle were classified under chapter 72. He stated that they had filed most of the Bills of Entry under the heading of 'Nickel Chromium Austenitic Type' with description, Cold Rolled Stainless Steel Coils under CTH 72209022.

(ii) He perused Bill of Entry No. 4814712 dated 07.09.2019 filed by M/s Gupta Steel for the clearance of goods declared as Cold Rolled Stainless Steel Coils.



Grade-J3 Ex stock under CTH 72209090. He also perused the Test Certificate-Inspection Certificate no. 19185-TC dated 20.08.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co., Ltd., China for the goods imported under BE No. 4814712 dated 07/09/2019 and stated that as per the Test Certificate-Inspection Certificate the coils contain less than 0.9 % of Nickel and less than 12.5% chromium; that as per Test certificate-Inspection Certificate, Stainless Steel Coils Cold Rolled Grade J3 imported by them contains more percentage of chromium and magnesium instead of Chromium & nickel.

(iii) He perused Country of Origin Certificate bearing Sr. No. CCPIT70001190280972 dated 22.08.2019 for the goods imported under BE No. 4814712 dated 07/09/2019 and stated that in the COO, the name of supplier i.e. M/s Comet International was mentioned as non-party operator, which was other than the original manufacturer of the goods and country. He also perused the notes on backside of the country of origin certificate in Box 1, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.

(iv) that after going through the contents of websites, [https:// www.aalco.co.uk](https://www.aalco.co.uk), <https://www.asminternational.org>, Mill Test Certificate / Test certificate-Inspection certificate the goods it appears that that the coils imported by them would not falls under nickel chromium Austenitic type steels as Nickel was replaced by Manganese in 200 series SS coils. He stated that documents received from the overseas supplier were having CTH up to six digits i.e. 722090 but as per the Notification 50/2018-Customs dated 30.06.2018, CTH 72209022 was eligible for benefit, so they asked their suppliers to mentioned HS code 72209022 on the documents to claim the benefit of Notification no 50/2018-Customs dated 30th June, 2<sup>nd</sup> 18 but as per the literature available on website it does not fall under category of Nickel Chromium Austenitic Type and the goods imported by them would have been rightly classified under CTH 72209090 for Stainless Steel Cold Rolled Coils, Grade-J3.

**14.4. I find that Mill Test certificates/Test certificates/ Inspection Certificates along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificates submitted by M/s Gupta Steel vide letter dated 08.04.2021, reveal as under:**

(i) Test certificate-Inspection Certificate No. 19185-TC dated 20.08.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-19185C dated 20.08.2019 by M/s Comet International Ltd., Hong Kong to M/s Gupta Steel, mentioned that the coils contain less than **0.9% of Nickel and less than 12.5% chromium**. The goods supplied by M/s Comet International Ltd., Hong Kong were cleared by M/s Gupta Steel under Bill of entry No. 4814712 dated 07.09.2019 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Ex Stock Grade-J3' under CTH 72209022.

(ii) Test certificate- Inspection Certificate No. 20003B-TC dated 09.01.2020 and Country of Origin certificate No. CCPIT0001200059197 dated 11.01.2020 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ-20003B dated



09.01.2020 by M/s Comet International Ltd., Hong Kong to M/s Gupta Steel, mentioned that the coils contain approximately, **0.86% of Nickel, 12.45% of chromium and 9.51% of Manganese**. The goods supplied by M/s Comet International Ltd., Hong Kong were cleared by M/s Gupta Steel under Bill of Entry No. 6645062 dated 27.01.2020 by declaring description of goods as 'Stainless Steel Cold Rolled Coil Ex stock Grade-J3' under CTH 72209022.

(iii) Similarly as per all the Mill Test certificates/ Test certificates- Inspection Certificates, the Cold Rolled Stainless steel Coils, imported by M/s Gupta Steel contains more percentage of chromium and magnesium instead of Chromium & Nickel. However, M/s Gupta Steel imported the same by declaring as 'product of Stainless Steel of Nickel Chromium Austenitic type' and by mis-classifying the same under CTH 72209022 to evade the applicable Customs duty.

(iv) M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd., China has issued the Country of Origin Certificate No. CCPIT70001190127718 dated 02.07.2019, which accompanied the goods supplied vide Commercial Invoice No. CMTSZ-19136 dated 30.06.2019 by M/s. Comet International, Hong Kong to M/s Gupta Steel. On perusal of COO No. CCPIT70001190127718 dated 02.07.2019, it is observed that the name of supplier i.e. M/s. Comet International, Hong Kong was mentioned as non-party operator which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd. Further, as per the notes written on the back side of said Country of Origin Certificate, "the name must be the same as the exporter described in the invoice" but in the said Country of Origin Certificate name of supplier was not written. On perusal of above said Country of Origin certificate issued by China based manufacturer in the name of importer and name of supplier i.e. M/s. Comet International, Hong Kong, who issued the invoice was mentioned as nonparty operator, which was other than the original manufacturer of the goods. The said goods were cleared by M/s Gupta Steel under Bill of entry No. 4180359 dated 23.07.2019.

(v) Similarly as per all the Country of Origin certificate issued by China based manufacturer for Cold Rolled Stainless steel Coils, imported by M/s Gupta Steel, the name of supplier i.e. M/s Comet International, Hongkong was mentioned as nonparty operator, which was other than the original manufacturer of the goods and country. However, M/s Gupta Steel cleared the same by availing the benefit of Notification No 50/2018-Customs dated 30.06.2018.

**14.5.** I find that the Flat-Rolled products of Stainless Steel falling under CTH 7219/7220, attracts Basic Customs duty @7.5%, surcharge on Customs duty @ 10%, IGST @ 18% and countervailing duty @18.95% on landed value of goods imported into India from People's Republic of China, imposed vide Notification No. 1/2017-Customs (CVD) dttd. 07.09.2017. As per the Notification No. 50/2018-Customs dated 30.06.2018, there is a tariff concession of 45% of the BCD only on the goods of Nickel Chromium Austenitic Type falling under CTH 72209021 and 72209022.

Relevant portion of the Notification 50/2018-Customs dated 30.06.2018 is reproduced hereunder:

**CUSTOMS NOTIFICATION NO. 50/2018-CUSTOMS DATED 30<sup>TH</sup> JUNE 2018**

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of*



Revenue), No. 72/2005-Customs, dated the 22<sup>nd</sup> July, 2005, published in the Gazette of India, Extraordinary, vide number G.S.R.497(E), dated the 22<sup>nd</sup> July, 2005, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table hereto annexed and falling under the Chapter, Heading No., Sub-heading No. or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in the corresponding entry in column (2) of the said Table, -

(a) in the case of goods specified in Part A of the said Table, when imported into India from a country listed in APPENDIX I hereto annexed; or

(b) in the case of goods specified in Part B of the said Table, when imported into India from a country listed in APPENDIX II hereto annexed, from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in column (4) of the said Table:

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the country listed in the said APPENDIX I or APPENDIX II, as the case may be, in accordance with the Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976, published in the notification of the Government of India in the Department of Revenue and Banking (Revenue Wing) No. 430-Customs, dated the 1<sup>st</sup> November, 1976.

Explanation. - For the purposes of this notification, 'applied rate of duty' means the standard rate of duty specified in the First Schedule to the said Customs Tariff Act, 1975 in respect of the goods specified in the said Table, read with any other notification for the time being in force, issued in respect of such goods under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), but not including the notifications of the Government of India in the Ministry of Finance (Department of Revenue), Nos. 236/89-Customs, dated the 1st September, 1989 [G.S.R. 805 (E), dated the 1<sup>st</sup> September, 1989], 105/99-Customs dated the 10th August, 1999 [G.S.R. 582 (E), dated the 10th August, 1999], and 26/2000-Customs dated the 1<sup>st</sup> March 2000 [G.S.R. 178 (E), dated the 1<sup>st</sup> March, 2000].

**Table**

S No.	Chapter, Heading No., Sub-Heading No., or tariff item	Description of goods	Extent of tariff concession (percentage of applied rate of duty; %)
<b>Part A</b>			
(1)	(2)	(3)	(4)
729.	7220 12 10, 7220 12 21	All goods	45
730.	7220 12 22	All goods	40
731.	7220 12 29	All goods	15
732.	7220 20 10 to 7220 20 29	All goods	15
733.	7220 90 10	All goods	15
<b>734.</b>	<b>7220 90 21, 7220 90 22</b>	<b>All goods</b>	<b>45</b>



735.	7220 90 29	All goods	15
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#### APPENDIX I

S. No.	Country
(1)	(2)
1.	Bangladesh
2.	People's Republic of China
3.	Republic of Korea
4.	Sri Lanka

#### APPENDIX II

S. No.	Country
(1)	(2)
1.	Bangladesh
2.	Lao People's Democratic Republic

2. This notification shall come into force with effect from the 1st day of July, 2018.  
[F.No.354/146/1997-TRU]

#### **EXEMPTION CONDITIONS OF NOTIFICATION NO. 50/2018-CUSTOMS DATED 30.06.2018**

As per the said Notification No. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on certain goods of tariff heading mentioned in the notification if imported from the country listed in APPENDIX I & APPENDIX II of the said notification from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in the Notification. Further, as per the provision of said notification the importer has to prove to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I or APPENDIX II, as the case may be, in accordance with the Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976, published in the notification of the Government of India in the Department of Revenue and Banking (Revenue Wing) No. 430-Customs, dated the 1<sup>st</sup> November, 1976.

(ii) For the purposes of implementing the Asia-Pacific Trade Agreement Rules, 2006 certain criteria are required to be followed for issuance of Country of Origin Certificate. As per Notes of completing a certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice. Moreover, the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision for accepting a certificate of origin for which invoice is issued by a non-party.

**15. In view of above, I find that the Importer has wrongly availed benefit of Notification No. 50/2018-Customs dated 30.06.2018, on the strength of invoices issued by a non-party:**

**15.1.** I find that M/s Gupta Steel, had availed the benefit of payment of appropriate duty under Notification No. 50/2018-Customs dated 30.06.2018 on the Country of Origin certificates issued by China based manufacturers in the



name of importer, whereas invoices were issued by other supplier based at Hong Kong. However, in terms of notes of completing a certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice and the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision for accepting a certificate of origin for which invoice is issued by a non-party. Therefore, the benefit of exemption from payment of duty under aforementioned notification dated 30.06.2018 is not available to the Country of Origin certificates issued by the manufacturers other than the actual exporters (Invoice issuing suppliers) (Details of such Bills of Entry are mentioned in TABLE-1 hereinabove). In the instant case, the Country of Origin certificates issued by the manufacturers based in China, who are not actual exporters (Invoice issuing suppliers), benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to M/s Gupta Steel. I hold so.

**15.2.** I find that the Country of origin certificate (i.e. COO) was issued by China based manufacturer i.e. M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China; and M/s. Shenzhen Top China Imp & Exp Co. Ltd. in the name of importer; whereas, invoices were issued by other suppliers based in Hong Kong i.e. M/s Comet International, and M/s. Jiayao (HongKong) Int. Group Ltd., which were other than the original manufacturer of the goods and country. In terms of notes of completing a certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice and the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision for accepting a certificate of origin for which invoice is issued by a non-party. The details of such Bills of Entry as mentioned vide Table-1 at Para No.7.7 hereinabove, filed by mis-declaring 'Cold Rolled Stainless Steel Coils Grade-J3 of various sizes under CTH 72209022 on which M/s Gupta Steel has availed the benefit of exemption under Notification No. 50/2018-Customs dated 30.06.2018 on the COO issued by manufacturers but invoices were issued by a non-party.

**15.3.** Therefore, I find that contention of the Noticee that the Department cannot reject the Certificate of Country of Origin without holding any consultations with the issuing authority does not hold ground, since vide Rules listed in CAROTAR 2020 vide **Circular No. 38/2020-Customs dated August 21, 2020**; the **Rule 3 under CAROTAR 2020** provide that the claim of the preferential rate of duty can be denied without verification, if the certificate of origin is 'Incomplete and not in accordance as prescribed by the Rules of Origin'. Rule 3(2) of the Rules under CAROTAR 2020 is reproduced as under:

*Rule 3: Information required for import declaration (Bill of Entry) -*

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(2) Notwithstanding anything continued in these rules, the claim of preferential rate of duty may be denied by the proper officer without verification if the certificate of origin-

(a) is incomplete and not in accordance with the format as prescribed by the Rules of Origin;

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**15.4.** In this connection, I place reliance on the judgement of the constitutional bench dated July 30, 2018 of Hon'ble Supreme Court of India in the case of **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ... APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007)** wherein it is held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to **strict interpretation**.

Relevant Para the said judgement is reproduced hereunder;

*"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/ assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State."*

**Therefore, it is evident** that M/s Gupta Steel have wrongly availed the benefit under Notification No. 50/2018-Customs dated 30.06.2018 in contravention to the Country of Origin rules, therefore, the benefit of concessional rate of duty is not available to them. **I hold so.**

**16. I find that the Importer has wrongly availed benefit of Notification No. 50/2018-Customs dated 30.06.2018, on account of misclassification of Imported Goods:**

**16.1.** I have carefully gone through the various technical literature relied upon in the show cause notice as well as records of PH wherein M/s, Gupta Steel, and its proprietor Shri Daksh Garg through their advocate stated that that there is no statutory definition of Ni Cr Austenitic Steel. He also referred to BIS/IS standard where it is defined what is austenitic steel (Composition wise) however there is no bifurcation as to what is Ni Cr Steel. Broadly, what can be made out is that stainless steel is a generic term used to refer to iron based alloys which contain chromium and there are more than 100 grades of stainless steel. These are differentiated by the percentage of chromium, nickel, molybdenum, and other alloying elements. Each grade is used for specific purposes and comes with its own advantages and disadvantages. The grades are grouped within five main categories: **austenitic, ferritic, martensitic, duplex, and precipitation-hardened (PH)**. Austenitic steel is the most commonly used type of stainless steel, as with its exceptional resistance to heat and corrosion, it is used extensively in many industries including medical, automotive, aerospace, and industrial applications. This category is known for unsurpassed strength and formability and that it cannot be hardened by heat treatment.

**16.2.** I observe that when nickel or nitrogen is added to steel, it becomes "austenite" by nature. The chemical composition determines the specific grade of stainless steel. Technical literature already discussed which includes the trade parlance usage of the term Austenitic stainless steel is also categorical that it contains at least 10.5 percent of chromium and 8 to 12 percent nickel, as well as nitrogen, carbon, and many other elements in solution. For example, the 300 series is nickel-based and includes standard austenitic stainless steel, which is grade 304 stainless steel — the most commonly used one. It usually contains 18 percent chromium and eight percent nickel, which is the minimum amount



of nickel required to turn ferritic stainless steel into austenitic when that much chromium is present. The 200 series is low in nickel and high in nitrogen, or manganese making it a less expensive alternative to the 300 series. In general the literature available are categorical that significant nickel content of 4%-10%, is necessary to ensure the formation of the austenitic structure. The Cr content is usually about 18 wt% or higher which is well above the critical limit for corrosion resistance, about 12 wt% Cr.

**16.3.** I have also seen the technical literature available in the User Guide of Salem Steel which is under the Steel Authority of India Ltd, which can undoubtedly be relied upon for guidance and as authoritative reference to what category of stainless steel qualifies for categorization as "Austenitic". For ready reference, the relevant part of the available literature in the said source is reproduced below:

***"Austenitic:** This category of stainless steel contains 16 to 26% Chromium and 6 to 22% Nickel. They are non-magnetic in annealed condition and have excellent corrosion resistance. They are not hardenable by heat treatment. However, they can develop high strength on cold working. They have excellent weldability, formability, hygiene factor and cryogenic properties. On cold working they exhibit different degrees of magnetism. They are identified in the AISI 300 series."*

**16.4.** It is understood that there has always been a considerable interest in developing low-cost austenitic stainless steels with similar or improved properties, for instance, replacing nickel with other cheaper alloying elements. In this search for new high-performance austenitic stainless steels with reduced amounts of nickel, manganese has been generally considered as the obvious replacement element. However, it is not technically feasible to replace nickel by equal amounts of manganese since manganese is not as strong an austenite former. Accordingly, elements such as carbon or nitrogen must be added to assist in stabilizing the austenitic structure. Such innovations in material technology have meant that types of low cost stainless steel which cannot be termed as Nickel Austenitic by virtue of their chemical composition have started being utilized for the same purposes for which the nickel austenitic was being used for. The imported material in the instant case appears to squarely fall under this category and cannot be considered Nickel Austenitic considering the above discussions.

**16.5.** I find that in order to find out whether the product of the Importer is actually '**Cold Rolled Stainless Steel Coils**' type or is it '**Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type**' classifiable under CTH 72209022, the investigating agency has conducted research with the companies in this trade in order to find out how this product is treated in the market or we can say **Commercial Parlance Test**. As per the Commercial Parlance Test the items in taxing statutes should be judged and analysed on the basis of fact that how the trade or industry or the market deal with particular goods.

**16.6.** In deciding the matter of classification in the instant case, it has to be understood that the same is not based on entries in Wikipedia. In the SCNs in question, it is clearly not the case also that the Wikipedia has been the sole cornerstone based on which allegations have been made. There have been documented technical literature of other entities who are dealing in the commodity in question. It has to be appreciated that in the matters of classification of goods under taxation statutes, several judicial forums, including



the Apex Court, have stressed upon the importance of the identity of the goods in common parlance. Further, there is a plethora of judicial pronouncements which hold that for classification of goods under statutes for taxation, the primary test is their identity in the market, or in other words, their common parlance in the market. Also, it is also a well settled principle of interpretation of statutes that a word not defined in the statute must be construed in its popular sense, meaning essentially 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'. The situation in the instant cases is akin in that there are no entry in the statutes or technical codes laying down the technical definition/parameters for the goods in question. This is a fact that has been accepted by the noticee also. **That being the case, relying on trade parlance and available technical literature of Users in the Trade is an acceptable course of action.**

**16.7.** To summarize, what paradigm emerges from the above interpretation is that where no definition is provided in the statute for ascertaining the correct meaning of a fiscal entry, the same should be construed as understood in common parlance or trade or commercial parlance. In the case of **Collector of Customs, Bombay Versus Swastic Woolen (P) Ltd., reported in AIR 1988 SC 2176**. Hon'ble Apex Court held in para 4 *"We are of the opinion that when no statutory definition is provided in respect of an item in this Customs Act or the Central Excise Act, this trade understanding, meaning thereby the understanding in the opinion of those who deal with the goods in question is the safest guide."*

**16.8.1** find it pertinent to place reliance upon following Judicial pronouncements:

➤ The **Commercial Parlance Test** was applied by the **Hon'ble Supreme Court in Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan, 1980 (6) E.L.T. 383 (S.C.)**, wherein Hon'ble Apex Court in its Order dated 08.05.1980, held that:

*"7. Now, in determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well-settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted. As the sales tax liability falls on the seller, who in his turn passes it on to the consumer. As purchase tax, the liability falls directly on the purchaser. A long train of authorities supports that view, and we need refer only to the recent judgment of this court in Porrits and Spencer (Asia) Ltd v. State of Haryana, (1978) 42 S.T.C. 433, in which reference has been made to some of them."*

➤ In case of **G.S. AUTO INTERNATIONAL LTD. Versus COLLECTOR OF C. EX., CHANDIGARH, 2003 (152) E.L.T. 3 (S.C.)**, the Hon'ble Supreme Court vide its Order dated 15.01.2023 has laid down that the true test for classification is the test of Commercial identity. Relevant portion of the said judgement is as under:

*"15. The question that needs to be adverted to is: whether the goods in question can appropriately be classified under Tariff Item 52 or not having been specified elsewhere, they fall under Tariff Item 68. In construing these items, what is the proper test to be applied? Is it the functional test or is it commercial identity test which would determine the issue. It seems to us*



that this question is no longer *res integra*. It fell for consideration of this Court earlier and it was laid down that the true test for classification was the test of commercial identity and not the functional test. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise."

**16.9.** I find that the information/ literature available on website (<https://www.aalco.co.uk>) of **M/s. Aalco Metals Limited**, (a company registered in England & Wales, the UK's largest independent multi-metals stockholder); and on website (<https://www.asminternational.org>) of **M/s. ASM International** (world's largest and most established materials information society providing access to trusted materials information through reference content, data and research, education courses and international events); clearly indicate that the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%. Whereas, the chemicals compositions shown in the Mill Test certificate/Test certificate/ Inspection Certificate produced by the importer at the time of import shows the content of **Chromium (Cr) as nearly 13% and Nickel as nearly 1%**, which ruled out its classification as Austenitic Stainless-Steel grades. Therefore, the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s Gupta Steel is in fact Stainless Steel of other Grades and would be correctly classifiable under CTH 72209090.

**16.10.** I refer that according to Commercial trade parlance the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%; as corroborated by the information/ literature available on the website of **M/s. ASM International** **M/s. Aalco Metals Limited** and technical literature available in the User Guide of Salem Steel which is under the **Steel Authority of India Ltd**, as discussed in paras hereinabove. **Further, the content of Wikipedia was referred to in the impugned SCN only in order to get the better idea of the Common Trade Parlance/ Commercial Trade Parlance of the product imported by M/s. Gupta Steel.**

**REJECTION OF CLASSIFICATION OF COLD ROLLED STAINLESS STEEL COILS UNDER CUSTOMS TARIFF HEADING 72209022 AND RE-CLASSIFICATION UNDER CTH 72209090.**

**16.11.** I refer to the General Rules for the Interpretation of the Harmonized System, the classification of goods in the Nomenclature shall be governed by certain principles. As per Rule 1 of the General Rules for the Interpretation *'the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions (i.e. G.R. 2 to 5)'*.

**16.12.** I refer that Vide Finance Act, 2011 w.e.f. 08.04.2011, "Self-Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported/exported goods while



presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI.

**16.13.** I have carefully gone through the Customs Tariff 1975 wherein entries in heading 7220 90 at six digit level as under:

SECTION-XV 642 CHAPTER-72

<b>7220 90</b>	-	<b>Other</b>
<b>7220 90 10</b>	---	<b>Skelp (strips for pipes and tubes)</b>
	---	<b>Strips for pipes and tubes (other than skelp)</b>
<b>7220 90 21</b>	----	<b>Chromium type</b>
<b>7220 90 22</b>	----	<b>Nickel chromium austenitic type</b>
<b>7220 90 29</b>	----	<b>Other</b>
<b>7220 90 90</b>	---	<b>Other</b>

**16.13.1.** I find that M/s Gupta Steel had imported 'Cold Rolled Stainless Steel Coils' by wrongly claiming classification under Customs Tariff Heading 72209022 during the period from July 2019 to February 2021. I observe that under CTH 7220 9010 covers items of **Skelp (strips for pipes and tubes) and Strips for pipes and tubes (other than skelp)**. Therefore, CTH 7220 9010 or its sub-entries 7220 9021, 7220 9022 or 7220 9029 covers items which are used in manufacturing of pipes and tubes and do not cover the items used in manufacturing the Utensils. Whereas, M/s. Gupta Steel imported impugned goods for manufacturing of utensils as evident from statement dated 13.07.2021 and 18.02.2022 of Shri Daksh Garg, proprietor of M/s Gupta Steel. Therefore, in the present case M/s. Gupta Steel imported goods for manufacturing of Utensils then the impugned imported goods are not classifiable under 7220 9010 or its sub-entries 7220 9021, 7220 9022 or 7220 9029; rather these impugned goods are correctly classifiable under CTH 7220 9090. Moreover, from the evidences available in the form of Test Certificate-Inspection Certificate produced by the importer at the time of import shows the content of Chromium (Cr) as nearly 13% and Nickel as nearly 1%, it rules out its classification as Austenitic Stainless-Steel grades. As per information available on various websites and other technical sources as discussed hereinabove wherein, it is evident that the Austenitic Stainless-Steel grades have significant % of Nickel. Therefore, the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s Gupta Steel is in fact Stainless Steel of other Grades.

**16.14.** I find that statements recorded under Section 108 of the Customs Act, 1962 have sufficient evidentiary value to establish the case in hand. I place reliance on the following judicial pronouncements wherein evidentiary value of statements recorded Section 108 of the Customs Act, 1962 is emphasized.

- The Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of



contravention.

- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull-1983(13)ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement- and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur [2000(117) E.L.t. 515(Tri)]**- wherein Hon'ble Tribunal held that- 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

**16.15.** In view of above discussion, I find that the impugned imported goods were used in manufacturing of Utensils instead of manufacturing of Pipes and tubes. Therefore, they cannot be classified under **CTH 7220 9010 or its sub-entries 7220 9021, 7220 9022 or 7220 9029. Therefore, I hold that the impugned imported goods are rightly classifiable under CTH 7220 9090.**

**17.** In view of above, I find that M/s Gupta Steel have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty by wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018 on the import of Cold and Hot Rolled Stainless Steel Coils as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. I hold that M/s Gupta Steel had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as they while filing Bill of Entry, failed to ensure the accuracy and completeness of the information filed by them and thereby failed to fulfill their legal obligation of providing correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs.

#### **18. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962**

**18.1.** The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -



"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

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

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

**Explanation-** For the purposes of this section, "relevant date" means, -

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund

(d) in any other case, the date of payment of duty or interest.

**18.2.** From the conditions of the Notification No. 50/2018-customs dated 30.06.2018, statement of proprietor of M/s Gupta Steel, and other evidences as discussed in detail in Paras hereinabove, it is apparent that M/s. Gupta Steel suppressed the actual classification of the imported goods. Therefore, the provisions of Section 28(4) of the Customs Act, 1962, is applicable for demand of duty not paid/short paid.

**18.3.** It is reasonable to assume that the mis-classification of imported goods has been done by M/s. Gupta Steel willfully with sole intention to execute the modus of availing of ineligible benefit of Notification No. 50/2018-customs dated 30.06.2018 by way of mis-classification of imported goods and evasion of Customs duty. **In view of above, the contention of the Importer that the demand is barred by limitation of time, is overruled.**

#### **19. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:**

(i). I find that it is alleged in the SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with



*the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;\**

(ii). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods, imported by way of misclassification, will be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately misclassified the imported goods with a malafide intention to evade duty. In light of these acts of misclassification of goods, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962. I hold so.

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

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

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

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

(vi). In this regard, I find that the impugned goods were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A of the Customs Act covering recovery



of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of subject imported goods.

**20. NOW I PROCEED TO EXAMINE THE ROLES OF THE VARIOUS NOTICEES IN THIS ELABORATE SCHEME TO WRONGLY AVAIL THE BENEFIT OF SAID NOTIFICATION WITH INTENT TO DEFRAUD THE GOVERNMENT EXCHEQUER.**

**20.1. ROLE PLAYED BY M/S GUPTA STEEL AND ITS PROPRIETOR SHRI DAKSH GARG:**

(i) I find that M/s. Gupta Steel had imported the goods namely 'Cold Rolled Stainless Steel Coils' valued at **Rs.14,30,77,101/-** (as detailed in Annexures to SCN) by mis-declaring the description of impugned goods as 'Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)', and by mis-classifying the same under CTH 72209022. I find that M/s. Gupta Steel manufactured Utensils from impugned imported goods, whereas, CTH **7220 9010 or its sub-entries** covers items which are used in **manufacturing of pipes and tubes** and not **Utensils as evident from statement dated 13.07.2021 and 18.02.2022 of Shri Daksh Garg, proprietor of M/s Gupta Steel.** Therefore, in the present case the impugned goods are correctly classifiable under CTH 7220 9090 since **M/s. Gupta Steel imported goods for manufacturing of Utensils** and not the Pipes and Tubes.

(ii) However, as discussed in detail hereinabove, the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%. Whereas, the chemicals compositions shown in the Mill Test certificate/Test certificate/ Inspection Certificate produced by the importer at the time of import shows the content of Chromium (Cr) as **nearly 13% and Nickel as nearly 1%**, which ruled out its classification as Austenitic Stainless-Steel grades.

(iii) I find that impugned Show Cause Notice has been issued proposing penalty on Shri Daksh Garg, proprietor of M/S Gupta Steel under Section 112(a), Section 112(b), Section 114AA and Section 117 of Customs Act, 1962 for act of omission and /or commission and for the reasons and allegations as discussed, in this regard. **Shri Daksh Garg, acting through his firm M/s Gupta Steel willfully suppressed the correct description and classification of goods with an intent to evade payment of applicable Customs Duty.** Shri Daksh Garg had full knowledge about the mis-classification of the said imported goods in as much as he was overall responsible for all imports and finalization of classification of imported goods. He was in constant touch with the overseas supplier of goods to manage documents for misclassification of goods and instruct Customs broker to produce the same before customs for clearance. M/s Gupta Steel received the Test Certificate-Inspection Certificate, wherein the chemicals compositions of goods and country of origin certificate were given, as per that goods were rightly classified under CTH 72209090 but Shri Daksh Garg instructed Customs broker to file the Bills of entry under CTH 72209022 to evade duty. **Furthermore, Shri Daksh Garg imported the impugned goods to manufacture the Utensil rather than manufacturing of Pipes and Tubes, therefore, the impugned goods are rightly classifiable under CTH 72209090.** In view of above, Shri Daksh Garg acting through his firm knowingly and intentionally availed undue benefit of Notification No. 50/2018-Customs dated 30.06.2018 with intent to evade the Customs duty. All the aforementioned acts of omission and commission on part of the importer have rendered the impugned imported goods are liable for



confiscation as per the provisions of Section 111(m) of Customs Act, 1962. Therefore, I hold that **Shri Daksh Garg, proprietor of M/s Gupta Steel** is liable to penalty under Section 112(a)(ii) of the Customs Act, 1962. I find that since Penalty under Section 112(a) of the Customs Act, 1962 is imposable on Shri Daksh Garg therefore, Penalty under Section 112(b) of the Customs Act, 1962 is not warranted upon him.

(iii) I observe that Section 112 (a) (ii) provides that penalty not exceeding ten percent of the duty or five thousand rupees, higher of either, is leviable in case of improper importation of dutiable goods.

**112. Penalty for improper importation of goods, etc. - Any person,-**

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5[not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

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

*(iii) ...*

*(iv) ...*

*(v) ...*

(iv) Further, the act of omission and commissions on part Shri Daksh Garg Proprietor of M/s Gupta Steel as discussed in foregoing paras, has rendered liable for penalty under Section 114AA of the Customs Act, 1962 also. Since M/s Gupta Steel have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962. Therefore, penalty under Section 117 of the Customs Act, 1962 is not warranted in the instant case on **Shri Daksh Garg, Proprietor of M/s Gupta Steel**.

**20.2. ROLE PLAYED BY M/S. SHRI BALAJI LOGISTICS, M/S. R R LOGISTICS, M/S. EXIM TRANSTRAD (I) PVT LTD.; AND THEIR PROPRIETORS/ KEY MANAGERIAL PERSONS I.E. SHRI JITENDER KUMAR, PROPRIETOR OF M/S. SHRI BALAJI LOGISTICS, SHRI DEEPAK SAWLANI, G-CARD HOLDER & AUTHORIZED SIGNATORY OF M/S. R R LOGISTICS AND SHRI JIGNESH MOTA, G-CARD HOLDER AND SENIOR MANAGER OF M/S. EXIM TRANSTRAD (I) PVT. LTD;**

(i) I have examined the allegations made in the show cause notice against the Custom Brokers that the mis-classification of the impugned goods in the import documents under Bills of Entry filed by **M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Exim Transtrade (I) Pvt. Ltd.** on behalf of M/s Gupta Steel



before the Customs authorities, was done on the direction of **Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s. R R Logistics and Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (I) Pvt. Ltd.** Shri Daksh Garg, Proprietor of M/s Gupta Steel handed over the documents to above mentioned Custom Brokers for filing of Bills of Entry and to arrange clearance of the goods. I find that above mentioned Custom Brokers acted as per the directions of Shri Daksh Garg, Proprietor of M/s Gupta Steel.

(ii) I have gone through the submission dated 15.04.2024 made by **M/s. Shri Balaji Logistics and Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics** in their defence reply, wherein they requested to drop the charges against them since the issue is of interpretation of the classification entries and not of suppression, wilful mis-statement or collusion.

(iii) I find that during PH held on 10.04.2024 **Shri Jignesh Mota G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt. Ltd. (Customs brokers)** through his authorized representative, stated that his statement was not a voluntary in nature and cannot be relied upon for making case. I find that **Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt. Ltd. (Customs brokers)** in his statement dated 28.02.2024 recorded under Section 108 of the Customs Act, 1962 accepted that it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling. He agreed that it was their mistake that they wrongly classified the goods under CTH 72209022 as they could not see the Mill Test Certificates/Test Certificate-Inspection Certificates given by the overseas supplier to the importer. In this connection, I find that **Shri Jignesh Mota** tendered his statement dated 28.02.2022 without any threat, duress, inducement or promise. I find that he never retracted his said statement, rather, during the course of adjudication proceeding after lapse of almost one year from the date of the statements, he comes up with a different stand that the impugned goods were of Malaysian origin. This clearly shows the said submission of **Shri Jignesh Mota** is an after-thought with intent to stymie the process of adjudication.

(iv) I find that it is categorically mentioned vide Para 4.2 of the impugned SCN that aforementioned proprietor/responsible persons of Customs House Agents/ Customs Brokers in their respective statements recorded under Section 108 of the Customs Act, 1962 stated that they have cleared Cold Rolled Stainless Steel Coils Grade J3 under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' by availing the benefit of Notification No. 50/2018-Customs dated 30.06.2018, imported by M/s Gupta Steel from China. They stated that technically they were not aware of the Nickel Chromium Austenitic type Steels but they filed the Bills of Entry under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' on behalf of the Importer after the receipt of checklist, finalized by the importer. In view of above, I find that in the instant case, M/s Gupta Steel imported the goods namely 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTH 72209022 and wrongly availed the benefit under Notification No. 50/2018-Customs dated 30.06.2018. In this regard I do not find connivance of Customs Brokers with the importer in evasion of duty by wrongly claiming exemption, therefore, the Customs Brokers cannot be penalized.

(v) Therefore, I hold that these Customs Brokers i.e. M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Exim Transtrade(I) Pvt. Ltd.; and their



proprietors/ authorised persons i.e. Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s. R R Logistics and Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (I) Pvt. Ltd, are not liable to penalty under Section 112(a), Section 112(b), Section 114 AA, and Section 117 of the Act *ibid*.

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

**ORDER**

- (i) I reject the declared classification of the impugned goods in the Bills of Entry as detailed in Annexures attached to the impugned show cause notice and order to re-classify under Customs Tariff Heading No. **72209090** of the First Schedule to the Customs Tariff Act, 1975 and re-assess the Subject Bills of Entry;
- (ii) I disallow the benefit of **Notification No. 50/2018-Customs dated 30.06.2018** availed by the Importer on the strength of invalid Country of Origin Certificates issued by the non-party i.e. M/s. Comet International Ltd., Hong Kong and M/s. Jiayao (Hong Kong) International Group Ltd.; contravening the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended]
- (iii) I order to confiscate the impugned goods valued at **Rs. 14,30,77,101/- (Rupees Fourteen Crore Thirty Lakhs Seventy-Seven Thousand One Hundred one only)** under the provisions of Section 111(m) of the Customs Act, 1962; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- (iv) I confirm the demand of differential/Short paid Customs duty amounting to **Rs.72,82,376/- (Rupees Seventy-Two Lakhs Eighty-Two Thousand Three Hundred Seventy-Six only)** (as detailed in Annexures attached to impugned Notice), and order to recover the same from M/s Gupta Steel in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962,
- (v) I order to recover the interest from M/s Gupta Steel at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty at (iii);
- (vi) I order to appropriate the Customs Duty amounting of **Rs.30,00,000/- (Rupees Thirty Lakhs Only)** already paid voluntarily by M/s Gupta Steel during the course of investigation towards their duty liability raised vide impugned show cause notice;
- (vii) I impose penalty **Rs.7,00,000/- (Rupees seven Lakhs only)** upon **Shri Daksh Garg**, Proprietor of M/s Gupta Steel in terms of Section 112(a)(ii) of the Customs Act, 1962 against confirmed demand of duty as mentioned at (iii) above; plus penalty equal to the applicable interest under Section 28AAA of the Customs Act, 1962 payable on the duty demanded and confirmed at (iii) above;
- (viii) I impose penalty of **Rs 5,00,000/- (Rupees five Lakhs only)** upon **Shri Daksh Garg**, Proprietor of M/s Gupta Steel in terms of Section 114AA of



the Customs Act, 1962 against demand of duty as mentioned at (iii) above.

- (ix) I refrain from imposing penalty upon **Shri Daksh Garg**, Proprietor of M/s Gupta Steel in terms of Section 117 of the Customs Act, 1962 for reasons discussed vide Para 20.1 hereinabove.
- (x) I refrain from imposing penalty upon M/s. R R Logistics; M/s. Exim Transtrade (I) Pvt. Ltd.; M/s. Shri Balaji Logistics, and their proprietors/ authorised persons i.e. Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s. R R Logistics; Shri Jignesh Mota, G-card holder and Senior Manager of M/s. Exim Transtrade (I) Pvt. Ltd.; and Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, and; in terms of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed hereinabove.

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

  
(K. Engineer)

Principal Commissioner of Customs,  
Custom House, Mundra

**Date: 22.04.2024**

**F.No. GEN/ADJ/COMM/54/2023-Adjn**

**By Speed Post/E Mail/Notice Board**

**To,**

- (1) **M/s Gupta Steel** having office at B-47/2, Wazirpur Industrial Area, Wazirpur Delhi-110052 (Email id-yash.garg95@gmail.com).
- (2) **Shri Daksh Garg**, Proprietor of M/s Gupta Steel having office at B-47/2, Wazirpur Industrial Area, Wazirpur Delhi-110052. (Email id-yash.garg95@gmail.com)
- (3) **M/s. R R Logistics**, S-1, 2<sup>nd</sup> floor, Plot No-195, Emerald House, Gandhidham, Kutch-370201 (email id-rrlogisticsgdhm@gmail.com)
- (4) **M/s. Exim Transtrade (India) Pvt Ltd**, 201, Marathon Maxima, L.B.S. Marg, Mulund West, Mumbai 400080 (email id-csimp@exim.ws)
- (5) **Shri Deepak Sawlani**, Authorized signatory and G-card of M/s. R R Logistics, S-1, 2<sup>nd</sup> floor, Plot No-195, Emerald House, Gandhidham, Kutch-370201 (email id-info.svjlogistic@gmail.com)
- (6) **Shri Jignesh Mota**, G-card holder and Senior Manager of M/s. Exim Transtrade (India) Pvt Ltd, 201, Marathon Maxima, L.B.S. Marg, Mulund West, Mumbai 400080 (email id-csimp@exim.ws)
- (7) **M/s Shri Balaji Logistics**, S-35/5, DLF, Phase-III, Gurgaon-122002, Haryana (email id-jitender.sehgal@endurancelogistic.com)
- (8) **Shri Jitender Kumar**, Proprietor of M/s. Shri Balaji Logistics, S-35/5, DLF, Phase-III, Gurgaon-122002, Haryana (email id-jitender.sehgal@endurancelogistic.com)

**Copy to:**

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.



- 2) The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054, for information (Email- [driazu@nic.in](mailto:driazu@nic.in)).
- 3) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra
- 4) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 6) Notice Board
- 7) Guard File