

	सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62. Email-adj-mundra@gov.in	
A. File No.	:	GEN/ADJ/ADC/2639/2024-Adjn-O/o Pr. Commr- Cus-Mundra
B. Passed by	:	Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.
C. Date of SCN	:	10.12.2024
D. Noticee(s) / Party / Importer	:	M/s. Nahar Granites Pvt. Ltd. (IEC: 1398001112)
E. DIN	:	20241271MO000000F255

SHOW CUASE NOTICE UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962

On specific intelligence, an investigation was initiated by the Directorate of Revenue Intelligence, Jamnagar Regional Unit against **M/s. Nahar Granites Pvt. Ltd.** having address at Plot No. 16/1, GIDC, Kalol District, Gandhinagar, Gujarat-382721 (hereinafter referred to as 'the Importer'), having IEC: 1398001112, who were importing "Remelted Zinc Ingots" falling under tariff heading 79011200 of First Schedule to the Customs Tariff Act, 1975. Investigation indicated that various importers including M/s. Nahar Granites Pvt. Ltd., were engaged in import of "Remelted Zinc Ingots" from Thailand and availed benefit of Country of Origin as provided in Notification No. 46/2011-Customs dated 01.06.2011, as amended, though the manufacturer/supplier does not meet the criteria of Rules of Origin under AIFTA. "Remelted Zinc Ingots" is classified under CTH 79011200 of First Schedule to the CTA and effective rate of duty on this product was 5%.

2. Investigation was initiated by DRI against the Importer for duty evasion on import of "Remelted Zinc Ingots" from Thailand in respect of the 01 Bills of Entry (**RUD - 1**) mentioned below.

Sl. No.	BE No. & Date	Supplier Name (M/s.)	Country of Origin	Name of the imported

				item
1.	6262540 dated 27.12.2019	AA Metal Scrap Company Limited, Thailand	Thailand	Remelted Zinc Ingots

3. Investigation in respect of consignments imported by the Importer:

3.1 On scrutiny of documents submitted by the Importer, it appears that the Importer had been importing “Remelted Zinc Ingots” from Thailand based manufacturer from 27.12.2019 and cleared the same through Mundra SEZ Port, Mundra. The goods were manufactured by M/s. AA Metal Scrap Company Ltd. Thailand. It is pertinent to mention that in case of one of the importer of identical goods viz. M/s. Gopinath Metals, verification had been conducted under CAROTAR, 2020 and the verification reports was received from the Thailand authorities wherein they have stated that **“The exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame. We therefore, are not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, we have revoked the above mentioned Form AI issued for the company.”** Thus, it appears that the imported goods do not meet the origin criteria and therefore, not eligible for benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended.

3.2 The importer had imported 01 consignment of “Remelted Zinc Ingots” from supplier M/s. AA Metal Scrap Company Ltd. Thailand and availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, at Mundra SEZ Port, Mundra. It appears that the importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and short paid the Customs duties of Rs.5,00,325/- (Rupees Five Lakhs Three Hundred Twenty Five only) (details as per Annexure-A to the SCN) at Mundra SEZ Port, Mundra summarized as below:

SUMMARY OF ANNEXURE-A

Port of Import	Total no. of consignments	Value of goods (in Rs.)	Total differential Customs duty involved (in Rs.)
Mundra SEZ Port, Mundra	01	77,09,166	5,00,325

4. Origin Criteria in terms of Notification No. 189/2009-Cus. (N.T.), dated 31-12-2009:

4.1 Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 [hereinafter referred to as "Rules of Origin"] were notified vide Notification No. 189/2009-Cus. (N.T.), dated 31-12-2009, as amended.

4.2 In terms of Rule-5 read with Rule-3 of the said "Rules of Origin" for the products not wholly produced or obtained in the exporting party (of the Agreement), to qualify for the preferential tariff under the said Preferential Tariff Agreement, the goods must have at least 35% RVC and non-originating materials must have undergone processing to warrant change in CTSH level (6 digit) with final process of manufacture within territory of export. Rule-3 and Rule-5 of the said "Rules of Origin" read as follows:-

"Rule 3. Origin criteria.- *The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-*

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

"Rule 5. Not wholly produced or obtained products.- (1) *For the purpose of clause (b) a/ rule 3, a product shall be deemed to be originating, if-*

- (i) *the AIFTA content is not less than 35 per cent. of the FOB value; and*
- (ii) *the non-originating materials have undergone at least a change in tariff sub- heading (CTSH) level i.e. at six digit of the Harmonized System*

5. Verification under CAROTAR, 2020:

5.1 The OSD (FTA Cell) vide letter dated 09.07.2021 (**RUD-2**) has forwarded the verification report No 0307.07/483 dated 29.06.2021 received from the Director of Import Administration and Origin Certification Division, Department of Foreign Trade 563 Nonthaburi Road, Nonthaburi 11000 Thailand wherein they confirmed that:

"(1) The above mentioned certificates of Origin Form AI was authentically issued by the Department of Foreign Trade.

(2) "The exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame. We

therefore, are not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, we have revoked the above mentioned Form AI issued for the company."

5.2 The scan image of verification report No 0307.07/483 dated 29.06.2021 is as below:

[SCAN IMAGE OF VERIFICATION REPORT NO 0307.07/483 DATED 29.06.2021]

No. 0307.07/ 483



Import Administration and
Origin Certification Division
Department of Foreign Trade
563 Nonthaburi Road
Nonthaburi 11000 Thailand
Tel. 662-547-4823 Fax 662-547-4807

29 June 2021

Dear Sir,

Subject: Response to Verification of the Certificate of Origin Form AI

Reference is made to your letter No. Ban/Com/206/01/2021 dated 25 January 2021, requesting verification genuineness and authenticity of the Form AI No. AI2020-0030679 dated 3 September 2020.

Having conducted an administrative cross-control, we hereby confirm you as follows;

1. The above-mentioned Certificate of Origin Form AI was authentically issued by the Department of Foreign Trade.
2. The exporter, AA METAL SCRAP CO., LTD. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within a stipulate time frame. We, therefore, are not in a position to recognize that the goods covered by the above-mentioned Form AI is qualified for the origin claim under AIFTA. As a result, we have revoked the above-mentioned Form AI issued for the company.

Please be assured of our full co-operation.

Yours sincerely,


(Miss Lilin Kovudhikulungsri)
Director of Import Administration
and Origin Certification Division

Monoranjan Sahu
Embassy of India, Bangkok

(9) (b)(i)

List of 03 COOs issued in Thailand					
Sl. No.	COO reference no	Commodity	HS Code	Name of Importer	Name of Exporter
1	AI2020-0035331 dated 06.10.2020	Antimony Trioxide	28258000	Polycab India Limited	Thai Unipet Industries Co Ltd
2	AI2020-0035333 dated 06.10.2020	Antimony Trioxide	28258000	Polycab India Limited	Thai Unipet Industries Co Ltd
3	AI2020-0030679 dated 03.09.2020	Remelted Zinc Ingots	79011200	Gopinath Metals	AA Metal Scrap Company Ltd

6. It appears from the verification report issued by the competent authority of Department of Foreign Trade, Thailand that 'the product' i.e. 'Remelted Zinc Ingots' exported by M/s. AA Metal Scrap Company Ltd. was not qualified as originating goods in Thailand in terms of Determination of Origin of goods under the Preferential trade agreement between Government of ASEAN & India Rules, 2009 (Notification No. 189/2009-Customs (NT) dated 31.12.2009). Thus, on the basis of the provisions of sub-section 11 of Section 28DA of Customs Act, 1962, the non-compliance of the imported goods with the country of origin criteria is applicable to all the identical goods i.e. 'Remelted Zinc Ingots' manufactured by M/s. AA Metal Scrap Company Ltd. and exported to the importer during material period.

7. Summary of the Investigation:

From the investigation conducted and from the foregoing discussions, it appears that:

- a. The importer i.e. M/s. Nahar Granites Pvt. Ltd., had imported Thailand origin Remelted Zinc Ingots manufactured by M/s. AA Metal Scrap Company Ltd, Thailand, during 27.12.2019. The consignment was directly shipped from Thailand to India.
- b. The importer has classified their imported goods i.e. Remelted Zinc Ingots under tariff heading 79011200 of the first schedule to the Customs Tariff Act, 1975 and availed the benefit of Notification No 46/2011-Cus dated 01.06.2011, as amended.
- c. The verification of Origin criteria was conducted in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. In that case, the competent

authority of Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd. was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame and therefore they were not in a position to recognize that the goods covered by the above mentioned Form AI is qualified for the origin claim under AIFTA. As a result, they revoked the above mentioned Form AI issued for the company.

- d. Further verification of Origin criteria was conducted by DRI with the Thailand authority in terms of Customs Administration of Rules of Origin under Trade Agreement Rules, (CAROTAR), 2020. The competent authority of Department of Foreign Trade, Ministry of Commerce reported that the exporter, M/s. AA Metal Scrap Company was unable to prove the originating product in Thailand under the consent of preferential duty treatment within the stipulated time frame, thus they revoked the above mentioned Form AI issued for the company.
- e. The goods imported by the importer from M/s. AA Metal Scrap Company Ltd., Thailand were identical goods manufactured by same manufacturer and did not fulfill the criteria of origin in terms of Rule 5 of Origin of Rules. Thus, on the basis of the provisions of sub-section 11 of Section 28DA of Customs Act, 1962, it appears that non-compliance of the imported goods with the country of origin criteria apply to identical goods i.e Remelted Zinc Ingots manufactured by M/s. AA Metal Scrap Company Ltd. and exported to the importer during material period.
- f. The importer had wrongly availed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended and short paid the Customs duties of Rs.5,00,325/- (Rupees Five Lakhs Three Hundred Twenty Five only) (details as per Annexure-A attached to this IR) at Mundra SEZ Port, Mundra.

8. Main Legal Provisions relating to the case:

8.1 Sub-section (4) of Section 46 of the Customs Act, 1962, specifies that, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods.

8.2 Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as

otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

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

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

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

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

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

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

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

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

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

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

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

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

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

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

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

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

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

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

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

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

- (i) the tariff item is not eligible for preferential tariff treatment;
- (ii) complete description of goods is not contained in the certificate of origin;
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical

goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Explanation-For the purposes of this Chapter,-

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

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

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

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

8.4 SECTION 111. Confiscation of improperly imported goods, etc. - *The following goods brought from a place outside India shall be liable to confiscation: -*

(a) ...

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

(p)...

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

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

Any person, -

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he

knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

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

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

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

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

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

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

8.6 Section 28 (4) of the Customs Act, 1962- Recovery of duties not levied or short-levied 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.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

8.7 SECTION 28AA. Interest on delayed payment of duty. —

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

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

8.8 Section 114A of the Customs Act, 1962 read as

Penalty for short-levy or non-levy of duty in certain cases. –

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

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

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

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

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

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

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

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28

relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

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

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

Penalty for use of false and incorrect material. -

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

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

9.1 The subject Bills of Entry as mentioned in Annexure-A to this SCN, filed by the importer, wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per the verification report conducted under the provisions of CAROTAR, 2020 established that the manufacturer of goods in question had not fulfilled the origin criteria in terms of Rules of origin.

9.2 Vide Finance Act, 2011, “Self-Assessment” has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by not self-assessing the subject goods properly, it appears that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed the benefit of exemption Notification wherein imported goods had not fulfilled the origin criteria by the manufacturer. The importer has failed to possess sufficient information as regards the manner in

which country of origin criteria are satisfied and also failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

9.3 From the verification report it appears that the competent authority of Department of Foreign Trade, Thailand reported that the exporter, M/s. AA Metal Scrap Company Ltd, Thailand, declared that the products shown on the Form AI were not qualified as originating goods in Thailand, thus they revoked those products on those Forms AI. As the Country of origin (COO) certificate had been revoked by the issuing authority of Thailand, the preferential tariff treatment to the imports of Remelted Zinc Ingots by the importer for the goods supplied by the same supplier i.e. M/s. AA Metal Scrap Company Ltd, Thailand, is liable for rejection in terms of Section 28DA (11) of the Customs Act, 1962.

9.4 Therefore, it appears that the importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. AA Metal Scrap Company Ltd, Thailand, It appears to be indicative of their mensrea. Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing of the Bill of Entry at Mundra SEZ Port, Mundra and thereby caused evasion of Customs duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case. For the same reasons, the importer also appears liable to penalty under **Section 114A** of the Customs Act, 1962.

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

10.1 Sub-section (4) of section 46 of the Customs Act, 1962, specifies that, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content of such Bill of Entry and shall, in support of such declaration, produced to the proper officer the invoice, if any, and such other documents relating to the imported goods. From the verification report discussed above, it appears that the importer has suppressed the relevant facts and intentionally evaded Customs duty on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962.

10.2 As mentioned in the foregoing paras, the imported goods under the above said Bills of Entry, as mentioned in Annexure-A to this SCN, have been found to be not corresponding the condition for claiming the exemption against Country of Origin (COO) Certificate in terms of

Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported as listed in Annexure-A having assessable value of **Rs. 77,09,166/- (Rupees Seventy Seven Lakhs Nine Thousand One Hundred Sixty Six only)** are liable for confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appears that the importer is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

10.3 As discussed above, it appears that the importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, specially failed to possess sufficient information as regards the manner in which country of origin criteria are satisfied and also failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/seller. The importer was aware that the Thailand based manufacturer of Remelted Zinc Ingots did not fulfill the origin criteria of products and they were not eligible for exemption benefit as provided under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Therefore, it appears that they are also liable for imposition of penalty under **Section 114AA** of the Customs Act, 1962.

11. The importer was issued Summons (DIN 202301DDZ10000222DAA) dated 27.01.2023, Summons (DIN 20230971NN0000777F01) dated 01.09.2023 and letter DIN - 20230964WW000000EE00 dated 18.09.2023 for appearing in person to assist in the inquiry being made with reference to the ongoing investigation and also to pay up the differential duty alongwith interest / penalty. The importer did not appear on both the dates except a reply received through mail requesting for 01 months' time to investigate at their end.

12. Now therefore, the Importer, **M/s Nahar Granites Pvt. Ltd. (IEC: 1398001112)** is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra having office situated at office of the Pr. Commissioner of Customs, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 within 30 (thirty) days from the date of receipt of the notice, as to why:-

(i) The Country of Origin certificates in respect of Bills of Entry as mentioned in Annexure-A, are false and incorrect, as discussed above, in terms of Rule 5 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. The competent authority of Thailand had revoked the Form AI (Certificate of Origin) issued in respect of similar goods exported to

India by the some other exporter. Thus, the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the import of goods under Bill of Entry filed at Mundra SEZ Port, Mundra as mentioned in Annexure-A, should not be disallowed in terms of Section 28DA of the Customs Act, 1962 and the Bills of Entry should not be reassessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011.

- (ii)** The impugned goods having total assessable value of **Rs. 77,09,166/- (Rupees Seventy Seven Lakhs Nine Thousand One Hundred Sixty Six only)** as mentioned in Annexure-A should not be held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962. However, the said goods are not physically available for confiscation.
- (iii)** The differential Customs duty amounting to **Rs. 5,00,325/- (Rupees Five Lakhs Three Hundred Twenty Five only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, as calculated in "Annexure-A" attached.
- (iv)** The Interest at the applicable rate should not be recovered from them on the said differential Customs Duty as mentioned at (iii) above under Section 28AA of the Customs Act, 1962.
- (v)** Further, Penalty should not be imposed on the Importer under Section 112(a) and/or 112(b) and/or 114A of the Customs Act, 1962.
- (vi)** Penalty should not be imposed on importer under Section 114AA of the Customs Act, 1962.

13. The noticees are hereby required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They are further required to indicate in their written explanation as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written explanation, it will be presumed that they do not desire a personal hearing. If no cause is shown by them against the action proposed to be taken within 30 days of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case would be liable to be adjudicated on the basis of evidences on records.

14. This Show Cause Notice is issued without prejudice to any other actions that may be taken against the persons involved in the subject case, under the provisions of the Customs Act, 1962 or any other Allied Acts for the time being in force.

15. The relied upon documents are enclosed with this show cause notice. Copies of RUDs, if any, can also be collected from this office within 30 days of receipt of this notice.

(AMIT Kumar Mishra)
Additional Commissioner,
Custom House, Mundra.

F. No. GEN/ADJ/ADC/2639/2024-Adjn.
DIN: 20241271MO000000F255

Date: 10.12.2024

To,
M/s. Nahar Granites Pvt. Ltd. (IEC: 1398001112)
Plot No. 16/1, GIDC, Kalol District,
Gandhinagar, Gujarat-382721.

Copy to:

1. The Deputy Director, Directorate of Revenue Intelligence, Jamnagar Regional Unit, 45, Jampuri Estate, Opp. Deep Bhawan, Jamnagar- (E-mail- drijamru@nic.in).
2. The Dy. Commissioner of Customs, Group-3, CH, Mundra.
3. Guard File.

RELIED UPON DOCUMENTS TO THE SHOW CAUSE NOTICE:

RU D No.	Description	Remarks / Page No.
01	Copies of Bs/E	Available with the importer.
02	Letter of OSD (FTA Cell-1), CBIC, New Delhi's dated 09.07.2021 alongwith enclosures.	Attached 01- 03 Pages