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DIN- 20251171MO000000A54E

SHOW CAUSE NOTICE**(Issued under Section 28(4) read with Section 124 of the Customs Act, 1962)**

During the Investigation carried out by this office in respect of M/s. R. K. Traders, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar, it was found that importer was engaged in importing “old and used Steel Shaft” (under CTH - 7326 9080) and claiming preferential rate of duty under Notification No. 99/2011 dated 09.11.2011 (SAFTA) with the Country of Origin as Bangladesh.

2. The investigation in the above matter has been completed and Show Cause Notice No. GEN/ADJ/COMM/157/2024-Adjn dated 22.03.2024 has already been issued to M/s. R.K. Traders, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar.

3. Further, during the investigation, it was also observed that half portion of the premises of M/s. R.K. Traders, Bhavnagar was occupied by M/s. G. K. Steel, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat (IEC: AMKPK1153A), a proprietary concern of Shri Abdul Gafar Abdul Kadarhai Kaliwala, who is also one of the partner of M/s. R. K. Traders.

4. M/s. G. K. Steel, Bhavnagar was also engaged in importing “old and used Steel Shaft” (under CTH - 7326 9080) and claiming preferential rate of duty under Notification No. 99/2011 dated 09.11.2011 (SAFTA) with the country of origin as Bangladesh similar to the goods imported by M/s. R. K. Traders. The goods imported by M/s. G. K. Steel, Bhavnagar viz. “old and used Steel Shaft” (under CTH - 7326 9080) which were obtained from ship breaking activity at Chattogram, Bangladesh, falls under the category of Second-Hand Goods other than Capital Goods which are restricted goods and requires Import Authorization as per Para 2.31 (II) of the Foreign Trade Policy 2015-2020.

5. M/s. G. K. Steel, Bhavnagar had imported 06 consignments during the period from March, 2021 to October, 2022 from the same exporter M/s. Asha Trading, Chattogram and M/s. Anan Enterprise, Chattogram who were also involved in the case of M/s. R.K. Traders, Bhavnagar and availed the benefit of Notification No. 99/2011 dated 09.11.2011. It appears that M/s. G. K. Steel had imported restricted goods by wrongly availing benefit of Notification No. 99/2011 dated 09.11.2011, as amended. The details of the 06 consignments are as under:

Sl. No.	B/E. No.	Date	RUD
01	3360158	30.03.2021	(RUD-01)
02	6561945	07.12.2021	(RUD-02)
03	8624199	10.05.2022	(RUD-03)
04	8623830	10.05.2022	(RUD-04)
05	9108386	14.06.2022	(RUD-05)
06	9937633	09.08.2022	(RUD-06)

STATEMENTS AND INQUIRY**Statement of Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G. K. Steel, Bhavnagar.**

6. A Statement of Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G. K. Steel, was recorded under Section 108 on 02.02.2023 (**RUD No. 08**), wherein he inter alia stated that:-

- M/s. G.K. Steel, Bhavnagar was importing 'Iron & Steel Shaft" (HSN 7326 9080) from Bangladesh.
- The B/E. No. 3360158 dated 30.03.2021, 6561945 dated 12.07.2021, 8624199 dated 05.10.2022, 9103386 dated 14.06.2022, 8623830 dated 05.10.2022 and 9937633 dated 08.09.2022 were filed by M/s. Malan Shipping on behalf of their firm M/s. G. K. Steel, Bhavnagar.
- He stated that they have imported 'Iron & Steel Shafts' from M/s. Anan Enterprises, Bangladesh and M/s. Asha Trading, Bangladesh.
- He stated that the Imported goods were pieces of old and used iron and steel shafts and they were selling them as scraps.
- He admitted that their firm does not possess any DGFT license/authorization in order to import such goods.
- Ongoing through the Para 2.31(II) of Foreign Trade Policy issued by DGFT, he stated that he came to know the fact that License/Authorization from DGFT is required to import 'old & used iron and steel shaft'. He also admitted in relation of import of old and used iron steel shaft, he does not have any license/authorization from DGFT.
- He admitted that his firm M/s. G. K. Steel, Bhavnagar has been importing Old and Used Iron & Steel Shafts without any DGFT Authorization/License. On being shown/explained about provisions of Para 2.31(II) of Foreign Trade Policy issued by DGFT, he admitted that as per the relevant provisions of DGFT import of 'Old/Used Iron and Steel Shaft' are restricted and requires authorization/license for import of such goods.
- He admitted that he was aware that the goods were old and used and obtained from the ship breaking activities.
- He was shown the provisions of Section 46 of the Customs Act, 1962 and after going through the provisions; he admitted that as per Section 46(4) of the Customs Act, 1962, he had to provide complete, accurate, authentic and valid information and to comply with restriction or prohibition relating to the goods.
- After understanding the provisions of Para 2.31(II) of the Foreign Trade Policy and Section 46 of the Customs Act, 1962, he admitted that he had violated the provisions Para 2.31(II) of Foreign Trade Policy and Section 46 of the Customs Act, 1962.

Legal provisions regarding old and used goods :

7. During the course of investigation, it appeared that the goods declared as 'Iron and Steel Shafts' were actually 'Old and Used Iron and Steel Shafts' imported by importer without DGFT authorization/license.

8. The proprietor of M/s. G. K. Steel admitted that imported goods i.e. '**Iron & Steel Shaft**' have been obtained from broken ships. The said goods fall under the category of Second-Hand Goods other than Capital Goods which were **restricted goods** and requires Import Authorization as per Para 2.31(II) of the Foreign Trade Policy 2015-2020. It also appeared that the Importer did not possess any valid Import Authorization from DGFT for importing such goods. Therefore, the importer by importing the Old and Used Iron and Steel Shaft without any authorization/license has contravened to the provisions of Foreign Trade Policy 2015-2020 issued by DGFT and hence the said goods are liable to be confiscated under Section 111(d), 111(m), 111(o) & 111(q) of the Customs Act, 1962.

9. It also appeared that in all the consignments of "Iron and Steel Shafts" which were imported by them, they have availed the benefit of Exemption Notification No.99/2011-Cus dated 09.11.2011 (SAFTA), on the basis of the Country of Origin Certificates issued by 'Export Promotion Bureau' Chattogram, Bangladesh.

10. Ongoing through the SAFTA Certificates produced by the importer issued by 'Export Promotion Bureau' Chattogram, it appears that the subject goods i.e. "Old/Used Iron and Steel Shafts" imported by the importer were obtained from ship breaking activity at Chattogram, Bangladesh. It also appears that the importer does not have authorization as stipulated under Para 2.31(II) of the Foreign Trade Policy to import "Old/Used Iron and Steel Shafts" which were restricted goods. On going through the provisions of Para 2.31(II) of the DGFT, the proprietor of the firm admitted that he has violated the said provisions of DGFT by importing the restricted goods and also admitted to have violated the provisions of Section 46 of the Customs Act, 1962.

11. The provisions of Para 2.31 of the Foreign Trade Policy (FTP) 2015-20 reads under:-

Sl.No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
I	Second Hand Capital Goods		
(a)	(i) Desktop computers, (ii) Refurbished/reconditioned spares of re-furbished parts of Personal Computers/Laptops	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods Order 2012	Restricted	Importable against authorization.
(c)	Refurbished/re-conditioned spares of Capital goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
(d)	All other second hand capital goods {other than (a), (b) & (c) above}.	Free	

II	Second Hand Goods other than Capital Goods	Restricted	Importable against Authorization.
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12. The definition of **Capital Goods** as given in **Foreign Trade Policy 2015-20** is as below:-

“Capital Goods” means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly of goods or for rendering services, including those required for replacement, modernization, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing research and development, quality and pollution control.”

From the above definition of the Capital Goods, it appears that the imported “Old/Used Iron and Steel Shafts” does not fall under the category of Capital Goods, as these goods are not plant, machinery, equipment or accessories required for manufacture or production or purposes as defined in the definition above.

13. The imported goods being old and used shafts recovered from ship breaking falls under the category of ‘Second Hand Goods other than Capital Goods), which is restricted as per Para 2.31(II) of Foreign Trade Policy (FTP) 2015-20 and can only be imported against valid authorization. Whereas, the importer did not possess any such authorization at the material time of import, rendering the goods liable to confiscation under Section 111(d), 111(m), 111(o) &111(q)of the Customs Act, 1962.

14. Shri Abdul Gafar Abdul Kadarbhai Kaliwala in his statement recorded under Section 108 of the Customs Act on 02.02.2023 had accepted the fact that his firm does not possess any import license (Authorization) issued by DGFT for restricted items at the time of import.

Scrutiny and Analysis of Documents/ Evidences:-

15. On scrutiny of import documents/data recovered/obtained from importer, it revealed that the importer had been importing ‘Used Iron & Steel Shaft’ products from Bangladesh since 2021 and availing the benefits of concession duty under FTA in terms of Notification No.99/2011-Cus. dated 09.11.2011 on the said products, which were mainly exported by M/s. Anan Enterprise, Chattogram and M/s. Asha Trading, Chattogram, Bangladesh on the basis of SAFTA certificates of origin (in form of ‘Form-AI) in respect of M/s. Anan Enterprise, Chattogram and M/s. Asha Trading, Chattogram, Bangladesh. The ‘Form-A1’ were submitted by the importer to Customs authorities for claiming the benefits of Notification No. 99/2011-Cus. Dated09.11.2011 which indicated the following:

- a) The Form-AI was issued by Export Promotion Bureau in terms of South Asian Free Trade Area Agreement (SAFTA);
- b) The Country of Origin shows as ‘Bangladesh’;
- c) The exporter is shown as (i) Anan Enterprise, Chattogram, and (ii) Asha Trading, Chattogram;
- d) The origin criteria for the goods shown in the Forms-A1 as “Wholly Obtained”;

Preferential rate of duty:-

16. The importer has claimed benefit of preferential duty under Notification No. 99/2011(Cus) dated 09.11.2011, on the strength of the Country of Origin Certificates issued by 'Export Promotion Bureau' Chattogram, Bangladesh wherein, the origin criteria of goods is/are mentioned as "Wholly obtained". The relevant Rules of Origin for the Notification No.99/2011-Cus dated 09.11.2011 is "**Determination of origin of goods under the agreement of South Asian Free Trade Area (SAFTA)**" under Notification No.75/2006-Cus (NT) dated 30.06.2006 as amended. **Rule 5** of the Rules of Origin prescribes details of "Wholly obtained" goods as under:-

Rule 5 : Wholly produced or obtained

Within the meaning of Rule 4(a), the following shall be considered as wholly produced or obtained in the territory of the exporting Contracting State.

- (a) raw or mineral products extracted from its soil, its water extending up to its Exclusive Economic Zone (EEZ), or its sea bed extending up to its seabed or continental shelf;
- (b) Agriculture, vegetable and forestry products harvested there;
- (c) Animal born and raised there;
- (d) products obtained from animals referred to in clause (c) above;
- (e) products obtained by hunting or fishing conducted there;
- (f) products of sea fishing and other marine products from the high seas by its vessels;
- (g) products processed and/or made on board its factory ships exclusively from products referred to in clause (f) above;
- (h) raw materials recovered from used articles collected there;
- (i) waste and scrap resulting from manufacturing operations conducted there;
- (j) products taken from the seabed, ocean floor or subsoil thereof beyond the limits of national jurisdiction, provided it has the exclusive rights to exploit that sea bed, ocean floor or subsoil thereof;
- (k) goods produced there exclusively from the products referred to in clauses (a) to (j) above.

17. Further, according to Rule 4 of the **Customs (Administration of Rules of Origin under Trade Agreements) Rules – 2020** (Carotar Rules – 2020), the origin related information is required to be possessed by importer for claiming the preferential rate of duty, the relevant extract is reproduced as under:-

“4. Origin related information to be possessed by importer: The importer claiming the preferential rate of duty shall –

- (a) possess information, as indicated in **Form I**, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.
- (b) Keep all supporting documents related to Form I for at least five years from date of filing bill of entry and submit the same to the proper officer on request.
- (c) Exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.”

18. Further, the country of origin certificate uploaded in e-sanchit by the importer, in the origin criteria, the goods have been claimed to meet origin

F.No. GEN/ADJ/COMM/709/2025-Adjn-O/o Pr Commr-Cus-Mundra
SCN No. 39/2025-26/COMM/N.S/Adjn/MCH

criteria as 'A' under Box 8. For a better understanding of the above a sample copy of Form AI is scanned and juxtaposed below:-

CERTIFICATE OF ORIGIN (SOUTH ASIAN FREE TRADE AREA)						
1. Goods consigned from (exporter's business name, address, country) EPB REG.NO: NT00436 ASHA TRADING BTC GATE, PORT LINK, BHATIARY, SITAKUNDA, CHITTAGRAM, BANGLADESH			Reference No. EPB(C) 32819 SOUTH ASIAN FREE TRADE AREA (SAFTA) (combined declaration and certificate) BANGLADESH Issued in (country) see notes overleaf			
2. Goods consigned to (Consignee's name, address, country) G.K STEEL PLOT NO: 47 BLOCK NO: 59 OPP PEGHODA ROLLING MILL, MANSA, DIST: BRAHMANBARA, INDIA. GST NO: 24AMFPK1153A120			4. For Official use ISSUED RETROSPETIVELY			
5. HS code	6. Marks and numbers of packages	7. Number and kind of packages : description of goods	8. Origin criterion (see notes overleaf)	9. Gross Weight or other quantity	10. Number and date of invoices	11. f.o.b value in US \$
7326 90 90		IRON & STEEL SHAFT	"A"	GROSS WT: 101.00 M/TONS	ATC/01/22 DATED: 17-05-2022	CNF MUNTRA
7326 90 80		T/T NO: 2022042600241240 DATED : 26-04-2022 EXP.NO: 2962-008188-2022 DATED : 17-05-2022 SB NO : 873994 DATED : 17-05-2022		NET WT: 100.00 M/TONS		\$ 98,000.00 (U.S.DOLLAR NINETY EIGHT THOUSAND ONLY)
12. Declaration by the exporter : The undersigned hereby declares that the above details and statements are correct : that all the goods were produced in BANGLADESH (country)			13. Certificate It is hereby certified on the basis of control carried out, that the declaration by the exporter is correct.			
and that they comply with the origin requirements specified for those goods in SAFTA for goods exported to INDIA CHITTAGONG (importing country) 29-05-2022 ASHA TRADING <i>Murshidul Haque</i> Place and date, signature of authorized signatory			 Murshidul Haque Information Officer Export Promotion Bureau Chittagong, Bangladesh 29 MAY 2022 Place and date, signature and stamp of certifying authority			

"A" in the box of COO certificate denotes for products which meet the origin criteria according to **Rule 5 Determination of origin of goods under the agreement of South Asian Free Trade Area (SAFTA)** under Notification No.75/2006-Cus (NT) dated 30.06.2006."

19. Whereas, on careful examination of **Form No.1 (RUD No.07)** in respect of COO certificate No. EPB(C) 32819 dated 29.05.2022 (juxtaposed

above), against Sl. No. 2(d) **is the originating criteria based on value content**, the information furnished states as 'Yes' and (i) **percentage of local value content**: Material price is shown as 50%, (ii) Components which constitute value addition were shown as labour charges 25%, Gas Expenses 13%, Yard rent 7% and Machinery/equipment cost 5%, also, against Srl No.2(e) **HSN of Non-originating material/components used in production of goods was given as '7326 9080' (CTH '7326 9080' which covers 'parts of ship, floating structure and vessels).**

20. Whereas, the imported goods are old & used shaft obtained from dismantling of ships (which can be re-used or for extraction of metals) and it is well-known fact that these ships were imported/acquired by ship-breakers from international market. Also, the importer has admitted that goods were recovered from Bangladesh Ship Breaking, Chattogram. The information relating to origin criteria in country of origin certificate does not match with that of information available on Form – I.

Legal Provisions:-

21. In accordance with the relevant portion of Chapter V-AA, Administration of Rules of Origin Under Trade Agreement, Section 28DA of the Customs Act, 1962, states that:-

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

.....

(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 be 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.

22. On the basis of statement recorded of Shri Abdul Gafar Abdul Kadarbhai Kaliwala on 02.02.2023, M/s. G. K. Steel had imported consignments during the period from March, 2021 to August, 2022 under 06 Bills of Entry wherein, they have availed the benefits of Notification No. 99/2011-Cus dated 09.11.2011 and all of them were assessed. The details of import of goods under all the Bills of Entries imported for the period from March, 2021 to August, 2022 and its duty calculation are annexed as **Annexure – 'A'** to Investigation Report.

23. Retroactive check of the true origin –

In a similar case of M/s. R. K. Traders involving the same suppliers as well as the commodity, the Department has carried out verification of COO **vide letter F. No. DRI/AZU/JaRU/ENQ-02/22-23/2374 dated November 23,2022 (RUD No. 9)**. The compliance report received was not confirming the details of the COO unambiguously. Therefore, it appears that the benefit of concessional rate of duty as provided in the notification ibid is not available to the importer. In a similar case of another importer

M/s. R. K. Traders, Show Cause Notice has already been issued by the jurisdictional Customs Commissionerate, the relevant paragraphs relating the verification of COO are reproduced hereunder:

23.1 CBIC Instruction No.31/2016-Customs dated 12.09.2016 stipulates that the country of origin verification may also be undertaken on random basis as a measure of due diligence. For this purpose, factors such as the quantum of duty being foregone, the nature of goods, viz-a-viz the country of origin, commodities that are prone to mis-declaration of country of origin, compliance record of the importer etc. may be given regard while selecting Certificate of Origin for random verification.

23.2. Considering the intelligence and the facts which emerged during investigation, reference for verification of the Certificate of Origin was made to the Board in respect of the imports made by the M/s. R.K. Traders, Bhavnagar, as per the Rules of Origin for determining the origin of products eligible for the preferential tariff concessions. As per para 2(b) of the instructions regarding implementation of Rules of Origin under Free/Preferential Trade Agreements and the verification of preferential Certificates of Origin, the following Preferential Certificates of Origin, were forwarded to the Director (International Customs Division), CBIC for verification.

Name of the Free/Preferential Trade Agreement	South Asian Free Trade Area (SAFTA)
Relevant Custom Notification (Tariff & Non-Tariff)	Notification No. 99/2011-Customs dated 09.11.2011. Notification No. 75/2006-Customs (NT) dated 30.06.2006.
Reference No. of the Certificate of Origin	(i) EPB(C) 33837 dated 16.08.2022. (ii) EPB(C) 33841 dated 24.08.2022 (iii) EPB(C) 29105 dated 18.07.2021
Issuing Authority	Export Promotion Bureau, Chattogram, Bangladesh.
Name of the consignee	M/s. R. K. Traders, Bhavnagar
Name of the consignor	1. M/s. Anan Enterprise, BTC Gate, Port Link, Bhatiary, Sitakunda, Chattogram, Bangladesh. 2. M/s. Asha Trading, BTC Gate, Port Link, Bhatiary, Sitakunda, Chattogram, Bangladesh. 3. M/s. S.S. Corporation, Shitalpur, Sitakunda, Chattogram, Bangladesh
Description of Goods	'Iron & Steel Shaft'
Origin criteria as mentioned in the certificates	'Wholly owned'

23.3. The above certificates, purportedly issued by the Export Promotion Bureau, Chattogram, Bangladesh were forwarded by OSD (FTS Cell -1), Directorate of International Customs, New Delhi to Bangladesh Authorities, for retroactive verification in respect of genuineness, authenticity, cost of raw material and to verify the originating criteria along with the sample country of origin certificates with the issuing Authority in terms of Article 15(a) of Annex II "Operational Certification Procedures" for SAFTA Rules of Origin.

23.4. The Ministry of Foreign Affairs, Dhaka got the questionnaire

answered from the exporter viz. M/s. Anan Enterprise, Chattogram, M/s. Asha Trading, Chattogram, & M/s. S. S. Corporation, Chittagong and forwarded the same vide e-mail dated 10.12.2023 to FTA Cell, Directorate of International Custom (DIC) , CBIC, New Delhi (**RUD No.10**), who in turn, vide their F. NO. 456/59/2022-FTA CELL -I dated 12.12.2023 (**RUD No.11**), conveyed the same to this Directorate. In the said questionnaire, the questions to ascertain the originating criteria mentioned in the COO have been answered as "N/A" by the said exporters. The reply in response to the production process carried out on the subject goods have also been given as "N/A". Moreover, all the three exporters, in the replies to the questionnaire, have stated that they are exporting various kinds of Ferrous & Non Ferrous Metal Scrap, whereas M/s. R. K. Traders have imported the goods falling under CTH 73269080 which is not for scrap. Thus, in view of the overseas enquiry carried out in the matter, it appears that the goods imported by the importer do not qualify for exemption in absence of verification by the competent authority especially when the verification was sought.

In view of above, it appears that the goods covered under the aforesaid COO do not qualify under Rule 4(a) i.e. wholly produced or obtained in the territory of exporting country as defined in Rule 5 Determination of Origin of goods under the Agreement on South Asian Free Trade Area (SAFTA), hence, importer is not eligible for availing the benefit of preferential duty vide aforesaid COO.

CONTRAVENTIONS AND CHARGES

24. Willful Mis-declaration of the imported goods

24.1. Further, CBIC vide Circular No.43/2005-Cus. Dated 24.11.2005 has introduced the 'Risk Management System' (RMS) in major Customs locations, where the Indian Customs EDI System (ICES) is operational. The purpose of RMS is to facilitate a large number of Bills of Entry, which are perceived to be compliant with the Customs Laws and Regulations. Such self-assessed Bills of Entry will be processed by the RMS to evaluate the risk in the Bill of Entry, if any, duty will be calculated and challan will be generated by ICES based on declaration/self-assessment made by the importer. The goods will be ready for out of charge on the basis of the importers declaration/self-assessment 'and without any assessment/examination by the officers, with the objective to strike an optimal balance between facilitation and enforcement and to enable low risk consignments to be cleared based on the acceptance of the importer's self-assessment and without examination. In RMS system, the stress is on self-assessment of the Bills of Entry which will be processed by the system based on declaration and if found compliant, such Bills may be sent to out of charge without any action and it is expected from all importers that they have suitable mechanisms in place to ensure that their declarations are accurate, sufficient and factually correct, while filing the fields in the Bill of Entry.

24.2. Therefore, it appears that the importer has knowingly and deliberately availed undue benefit of exemption Notification on the goods imported from (i) M/s. Anan Enterprise, Chattogram, Bangladesh, (ii) M/s. Asha Trading, Chattogram, Bangladesh. 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 undue benefit of exemption Notification No. 99/2011-Cus dated 09.11.2011 (as amended), during filling of the Bill of entry at Mundra Port and thereby caused evasion of Customs duty.

24.3. Whereas, M/s. G. K. Steel had also failed to file correct and factual fact that the goods imported by them were 'old/used iron and steel shafts' and requires DGFT authorization to import the same, and by declaring goods as 'Iron and Steel Shafts' in place of 'old/Used Iron & Steel Shafts', they have suppressed the fact from the Customs authorities and have imported the said goods which are liable for confiscation in absence of valid authorization. The fact that the imported goods are 'old/used iron and steel shafts' were obtained from ship breaking activity at Chattogram, Bangladesh was emerged only during the investigation initiated by DRI authorities. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962, are invokable in this case. For the same reasons, the importer also appears liable to penalty under Section 114A of the Customs Act, 1962.

24.4. From the foregoing paras, it appears that M/s. G. K. Steel, Bhavnagar was always aware that the imported goods were not eligible for the imports without proper DGFT authorization in accordance with Para 2.31 (II) of the Foreign Trade Policy 2015-2020, but had deliberately suppressed these facts at the material time of import. They were also aware of the fact that the goods imported by them were recovered from ship breaking activity at Chattogram, Bangladesh and does not fulfil the origin criterion as specified in the Rules of Origin of the Notification No.99/2011-Cus dated 09.11.2011 i.e. "Determination of origin of goods under the agreement of South Asian Free Trade Area (SAFTA)" under Notification No.75/2006-Cus (NT) dated 30.06.2006 as amended. However, they have availed the benefit of preferential rate of duty under Notification No. 99/2011-Cus dated 09.11.2011 on the basis of fraudulently obtained/issued country of origin certificates.

24.5. In view of the above, it appears that act of mis-declaration in the description of the goods as "Iron and Steel Shaft" under CTH 73269080 instead of "Old/Used Iron & Steel Shaft" is wilful mis-statement so as to avail benefit of exemption notification No. 99/2011-Cus. dated 09.11.2011 on the strength of Country of Origin Certificate. Further, the said mis-declaration in the description of the goods have also been made to hide the vital fact that the goods under import is a second hand in nature so as to circumvent from the restriction of import envisaged as per Para 2.31 (II) of the Foreign Trade Policy, 2015-20. In the era of Self-assessment, it was incumbent upon the importer to declare the true and correct description of the goods in the Bill of Entry irrespective of the fact as to what is the description mentioned in the documents furnished by the supplier. The importer cannot escape from the charge of wilful mis-statement under the pretext that declaration is based on the description given in the supplier invoices, packing list etc.

Therefore, in view of the above, the duties evaded by wrongly availing the benefit of exemption Notification No. 99/2011-Cus dated 09.11.2011 by way of suppression of facts and willful mis-statement, are liable to be demanded and recovered from M/s. G. K. Steel, Bhavnagar, under **Section 28(4)** of Customs Act, 1962 along with applicable interest under **Section 28AA** of Customs Act, 1962. The relevant legal provisions are as under:

24.6. As per **Section 11A(a) of the Customs Act, 1962**, 'illegal import' means the import of any goods in contraventions of the provisions of this Act or any other law for the time being in force. In event of the country of origin having been fraudulently obtained, the short payments of duties would become liable to be recovered from the importer under **Section**

28(4) along with applicable interest under **Section 28AA** of the Customs Act, 1962. The relevant legal provisions are as under:

SECTION 28(4). Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded —

- (1)
- (2)
- (3)
- (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) *wilful misstatement; 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.

24.7. 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.*

25. Improper Import:

25.1. Since the goods were imported by importer on the basis of fraudulently obtained country of origin certificates and also without any

proper authorization/license issued by the DGFT, therefore, the goods are liable to be confiscated under Section 111(d), 111 (m), 111(o) & 111(q) of the Customs Act, 1962. By these acts of omission and commission, the importer has rendered themselves liable to penalty under Section 112(a) and 114A of the Customs Act, 1962 for the goods imported by them. The relevant legal provisions are as under:

SECTION 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable to confiscation: -

- (a) ...
- (b) ...
- (c) ...

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

...
...

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

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

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

Sections 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,

(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.

Section 114A. *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 the section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

26. Mis-declaration:

26.1. 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 Bills 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 Bills of Entry or Shipping Bill. In the present case, it appears that the importer, have deliberately contravened the above said provisions with a malafide intention to avail the benefit of exemption Notification No 99/2011-Customs on fraudulently obtained COO certificate and imported 'Old & used Iron and Steel Shaft' without any authorization issued by DGFT.

26.2. Since the importer have violated the provisions of Sections 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 which reads as under:

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 four lakh rupees.

26.3. Whereas from the foregoing paras, it also appears that the importer have intentionally and wilfully made declarations, statements, documents etc., which are false and incorrect in nature. This act of mis-declaration by the Importer during the transactions of their business has rendered them liable for penalty under **Section 114AA** too which reads as under:

SECTION 114AA. 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.

27. Personal Penalty:

27.1. From the investigations, it appears that Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of the firm was responsible for all the matters related to the said firm and he, in his statement dated 02.02.2023, had admitted that he was looking after all the work of M/s. G. K. Steel, Bhavnagar and was responsible for all the matters related to the said firm. By this act, Shri Abdul Gafar Abdul Kadarbhai Kaliwala had knowingly and intentionally made or caused to be made documents which were false or incorrect in material particulars in the export of goods and contravened the Customs Act, 1962 as stated in para(s)-supra. Therefore, Shri Abdul Gafar Abdul Kadarbhai Kaliwala has rendered himself liable for penalty under **Section 114AA** of the Customs Act, 1962.

27.2. It further appears that Shri Abdul Gafar Abdul Kadarbhai Kaliwala, acting as Proprietor of M/s. G. K. Steel, Bhavnagar had consciously and deliberately dealt with the goods which he knew or had reasons to believe were liable to confiscation under the provisions of Section 111(d), Section 111(m), Section 111(o) and Section 111(q) of the Customs Act, 1962 in respect of imports made by them without any valid DGFT authorization and also by availing the undue benefit of exemption Notification No. 99/2011-Cus. dated 09.11.2011. He also played an important role in availing undue benefit of exemption under Notification No.99/2011-Cus dated 09.11.2011 with read Notification No.75/2006-Cus (NT), and such acts and omissions on the part of Shri Abdul Gafar Abdul Kadarbhai Kaliwala, acting as Proprietor of M/s. G. K. Steel, Bhavnagar have rendered him liable for penalty under **Section 112(a)** of the Customs Act, 1962 against the import goods.

27.3. Since, Abdul Gafar Abdul Kadarbhai Kaliwala 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 the Customs Act, 1962.

28. As per Section 110AA(a)(i) of the Customs Act, 1962, inserted vide Finance Act, 2022 the proper officer for exercising the powers under Section 28 of the Customs Act, 1962 in the instant case would be the Principal Commissioner of Customs or Commissioner of Customs Mundra.

CHARGING SECTION-

29. Now, therefore, M/s. G. K. Steel, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat (IEC: AMKPK1153A), are hereby called upon to show cause to the Principal Commissioner or Commissioner of Customs, Mundra within 30 days of receipt of the show cause notice, so as to why –

(i) The concessional rate of duty under Notification No. 99/2011- Customs dated 09.11.2011, should not be denied to them in respect of Bills of Entry shown in Annexure –A attached.

(ii) The goods valued at Rs.4,37,26,323/- (Rupees Four Crores Thirty Seven Lakhs Twenty Six Thousand Three Hundred and Twenty Three Only) imported under the Bills of Entry mentioned at Annexure-A, where the goods are not available for seizure should not be held liable to confiscation under Section 111(d), Section 111(m) Section 111(o) and Section 111(q) of the Customs Act, 1962.

(iii) The duty exemption as detailed in Annexure-A to the tune of Rs.56,75,676/- (Rupees Fifty Six Lakhs Seventy Five Thousand Six Hundred and Seventy Six Only) availed by the importer vide Notification No. 99/2011 dated 09.11.2011 (SAFTA) should not be denied and the same should not be demanded & recovered from them under Section 28(4) of the Customs Act, 1962.

(vi) Interest leviable under Section 28AA of the Customs Act, 1962, on the differential duty of Rs. 56,75,676/- should not be recovered from the importer.

(ix) Penalties under Section 112(a), 114A, 114AA and 117 of the Customs Act, 1962, should not be imposed upon the Importer.

30. Further Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G.K. Steel is hereby called upon to show cause as to why penalties under Section 112(a), 114A, 114AA and 117 of the Customs Act, 1962, should not be imposed upon him.

31. The Noticees should state in their written reply to this notice as to whether they desire to be heard in person. If no reply to this notice is received from them within 30 days from the date of receipt of this notice or if they fail to appear for the personal hearing on the date and time intimated to them, the case is liable to be decided ex parte based on evidence available on record without any further reference to them.

32. This notice is issued without prejudice to any other action that may be taken against the Noticees or any other person(s) under the provisions of the Customs Act, 1962 and the Rules & Regulations made thereunder or any other law for the time being in force.

33. Department reserves its rights to add, alter, amend, modify or supplement this Notice at any time on the basis of any evidence, material facts related to import of goods in question, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case. Further, this Show Cause Notice is only with respect to the

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issue in the instant case and the department reserves the right to issue Show Cause Notice on other issues relation to "M/s G K Steel". This Show Cause Notice is issued without prejudice to any other action that may be taken against the persons/firms mentioned herein or any other person under the Customs Act 1962 or any other law for the time being in force.

34. A copy of the Show Cause Notice is also e-mailed to the notices at their mail ID as under in terms of clause (C) of sub-section 1 of Section 153 of the Customs Act 1962, so that such service through e-mail shall be deemed to have been received by the notices in terms of clause (C) of sub-section 1 of section 153 of the Customs Act 1962.

Encl: As above.

(Nitin Saini)

Commissioner of Customs

To:

- (i) M/s. G. K. Steel, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat (IEC: AMKPK1153A)
- (ii) Shri Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G.K. Steel, Plot No. 47, Block No. 59, Opposite Pagoda Rolling Mill, Mamsa, Ghogha, District – Bhavnagar Gujarat.

Copy To-

- (i) The Deputy Director, DRI, Jamnagar Regional Unit
- (ii) The Superintendent (EDI), Customs Mundra for uploading on the website.

RELIED UPON DOCUMENTS:

RUD No.	Description	Remarks / Page No.
01	Bill of Entry No. 3360158/30.03.2021	Available with the importer.
02	Bill of Entry No. 6561945 /12.07.2021	Available with the importer.
03	Bill of Entry No. 8624199/05.10.2022	Available with the importer.
04	Bill of Entry No. 8623830/05.10.2022	Available with the importer.
05	Bill of Entry No. 9108386/14.06.2022	Available with the importer.
06	Bill of Entry No. 9937633/08.09.2022	Available with the importer.
07	Form No.1	Available with the importer
08	Copy of Statement of Abdul Gafar Abdul Kadarbhai Kaliwala, Proprietor of M/s. G. K. Steel recorded on 02.02.2023	Copy Attached

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09	Copy of letter F. No. DRI/AZU/JaRU/ENQ-02/22-23/2374 dated November 23,2022 regarding initiation of retroactive COO verification	Copy Attached
10	Copy of Ministry of Foreign Affairs, Dhaka's E-mail dated 10.12.2023	Copy Attached
11	Copy of letter F. NO. 456/59/2022-FTA CELL -I dated 12.12.2023	Copy Attached