	<p align="center"><b>सीमाशुल्ककेआयुक्तकाकार्यालय (निवारक),सीमाशुल्कभवन, जामनगर-राजकोटहाइवे,विक्टोरियाब्रिजकेपास, जामनगर001 361 – (गुजरात)</b></p> <hr/> <p align="center"><b>Office of the Commissioner of Customs (Preventive), 'Seema Shulk Bhavan', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001</b></p> <p align="center"><b>Email: commr-custjmr@nic.in; adj-custjmr@nic.in</b></p>			
	<p><b>DIN - 20240671MM000000DF79</b></p>			
1.	फ़ाइलक्रमांक/ File Number	VIII/10-27/ADC/O&A/2020-21 (E-file No. CUS/62/2022-Adt.)		
2.	मूलआदेशक्रमांक/ Order-in-Original No.	03/Additional Commissioner/2024-25		
3.	द्वारापारित/passed by	हरकिरपाल खटाना/ Harkirpal Khatana अपरआयुक्त/ Additional Commissioner, सीमाशुल्क) निवारक/(Customs (Preventive) जामनगर/ Jamnagar.		
4.	Date of Order/आदेशदिनांक	18.06.2024		
	Date of issue / आदेशजारीकिया	18.06.2024		
5.	कारणबताओनोटिसक्रमांकएवंदिनांक Show Cause Notice Number & date	VIII/10-27/ADC/O&A/2020-21 dated 24.05.2021		
6.	नोटिसीकानाम/ Name of Noticee	M/s. Metalloy Impex, 302, Shivanjali Complex, Atabhai Circle, Bhavnagar – 364001.		
01	<p>इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।</p> <p>The original copy of this order is provided free of cost to the person concerned</p>			
02	<p>इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962128A)(1)a(सीमा शुल्क अपील) नियम), 1982 के नियम 3के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिनके भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र,दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम एक प्रमाणित प्रति हो।)</p> <table border="1"> <tr> <td> <p>आयुक्त अपील 4 वी मंजिल, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा,अहमदाबाद-</p> </td> <td> <p>Commissioner (Appeals), 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380 009</p> </td> </tr> </table>		<p>आयुक्त अपील 4 वी मंजिल, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा,अहमदाबाद-</p>	<p>Commissioner (Appeals), 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380 009</p>
<p>आयुक्त अपील 4 वी मंजिल, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा,अहमदाबाद-</p>	<p>Commissioner (Appeals), 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380 009</p>			
	<p>Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).</p>			
03	<p>अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989</p>			



	के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पररुपये ) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this 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.
04	अपीलीय ज्ञापन के साथ शुल्क भुगतानअर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क /जुर्माना / अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम,और सिस्टेट प्रक्रिया 1982 प्रोसीजर) नियम),हुआ है। के सभी नियमों का पूरा पालन 1982
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.



**Brief Facts of the Case:-**

The facts leading to the present adjudication are that M/s. Metalloy Impex, 302, Shivanjali Complex, Atabhai Circle, Bhavnagar 364 001 (hereinafter referred to as the Noticee) had filed Bill of Entry No. 5367167 dated 26-02-2018 before the Customs House, Gujarat Pipavav Port Limited, Pipavav wherein the goods to be imported were declared as "Stainless Steel Melting Scrap Grade 304". However, upon investigation it appeared that the goods were mis-declared. Hence, the offence case was booked against the said Noticee and during the investigation they paid an amount of Rs. 10,00,000/- (Rupees Ten Lakhs Only) vide Challan No. Cus/171/2018-2019 dated 09-05-2018 under protest.

2. Aforesaid investigations culminated into issuance of Show Cause Notice F. No. VIII/10-191/JC/O&A/2017 dated 17-09-2018 by the Joint Commissioner of Customs, Customs (Preventive), Jamnagar and the same was adjudicated by the Additional Commissioner, Customs (Preventive), Jamnagar vide Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 wherein the proceedings initiated against the Noticee vide Show Cause Notice dated 17-09-2018 were dropped.

3. The Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 was not accepted by the department and in accordance with Review Order No. 13/2019-2020 dated 06-11-2019, an appeal had been filed before the Commissioner of Customs (Appeals), Ahmedabad.

4. During the pendency of appeal before the Commissioner of Customs (Appeals), Ahmedabad, the said Noticee filed an application before the Customs House, M/s. Gujarat Pipavav Port Limited, Pipavav seeking refund of Rs. 10,00,000/- paid by them under protest vide Challan No. Cus/171/2018-2019 dated 09-05-2018.

5. In absence of order staying the operation of Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 the Deputy Commissioner of Customs, Customs House, M/s. Gujarat Pipavav Port Limited, Pipavav granted refund of Rs. 10,00,000/- vide his Order-in-Original No. 79/DC/GPPL/Ref/2020-2021 dated 28-04-2020 and its corrigendum dated 01-07-2020.



6. Aforesaid departmental appeal before the Commissioner of Customs (Appeals), Ahmedabad was decided vide Order-in-Appeal No. JMN-CUSTM-000-APP-058-20-21 dated 22-12-2020 wherein the Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 was upheld and the departmental appeal was rejected.

7. The Order-in-Appeal No. JMN-CUSTM-000-APP-058-20-21 dated 22-12-2020 was not accepted by the department and in accordance with Review Order No. 6/2020-2021 dated 16-03-202, an appeal had been filed before the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad on 01-04-2021.

8. In view of the fact that departmental appeal before the Commissioner of Customs (Appeals), Ahmedabad against the Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 was pending, at the material time, Order-in-Original No. 79/DC/GPPL/Ref/2020-2021 dated 28-04-2020 and its corrigendum dated 01-07-2020 passed by the Deputy Commissioner, Customs House, Gujarat Pipavav Port Limited, Pipavav granting refund of Rs. 10,00,000/- to the Noticee, appears to be erroneous in view of the fact that the order dated 30-08-2019/19-09-2019 on the basis of which said refund was based was under litigation before Commissioner of Customs (Appeals), Ahmedabad and decision thereof was pending.

9. In view of above, the refund of Rs. 10,00,000/- granted to the Noticee appeared to be erroneous and was required to be recovered from the Noticee under Section 28(1) of the Customs Act, 1962 along with interest, at appropriate rates, under Section 28AA of the Customs Act, 1962.

10. As stipulated under proviso to clause (a) to sub-section (1) of Section 28 of the Customs Act, 1962 read with Pre-Notice Consultation Regulations, 2018 the Noticee were informed the intention about issuance of Show Cause Notice on the above grounds by the Additional Commissioner of Customs (Preventive), Jamnagar vide letter F. No. VIII/10-26/ADC/O&A/2020-2021 dated 12-04-2021, which was delivered to the said Noticee by Speed Post on 21-04-2021. In said letter dated 12-04-2021, the Noticee were requested to submit the written submission in this regard, if they wish, within fifteen days from the date of receipt of letter as stipulated under Rule 3(2) of Pre-Notice Consultation Regulations, 2018 as well as per proviso to Rule 3(2) *ibid* the Noticee were also requested to specifically mention in their written



reply as to whether they desire to be heard in person or otherwise. The Noticee has not filed any reply to letter dated: 12-04-2021.

**11.** It further appeared that Show cause notice F. No. VIII/20-32/Ref/GPPL/2019-2020 dated 06-11-2020 had been issued by the Joint Commissioner (I/s), Customs House, Gujarat Pipavav Port Limited, Pipavav to the said Noticee made answerable to the Deputy Commissioner, Customs House, Gujarat Pipavav Port Limited, Pipavav, wherein it was proposed to demand and recover from them the erroneous refund of Rs. 10,00,000/- under Section 28 of the Customs Act, 1962 along with interest under Section 28AA *ibid*.

**12.1** It appeared that the amount of refund demanded in Show Cause Notice dated 06-11-2020 is Rs. 10,00,000/- & therefore as per Para 4 of Circular No. 24/2011-Cus dated 31-05-2011, the appropriate authority to made demand for such erroneous refund is Additional / Joint Commissioner and not the Deputy Commissioner, as mentioned in the show cause notice.

**12.2** It also appeared that as per proviso to Section 28(1)(a) of the Customs Act, 1962 read with Regulation 3(1) of Pre-notice Consultation Regulations, 2018, notified vide Notification No. 29/2018-Cus(NT) dated 02-04-2018, it is mandatory to conduct pre-notice consultation. However, it appeared from the show cause notice dated 06-11-2020 that the same was not done and it required to be done by the officer competent to issue such show cause notice under Section 28(1)(a) of the Customs Act, 1962.

**12.3** Circular No. 37/2019 dated: 05-11-2019 read with Circular No. 43/2019-Customs dated 23-12-2019 stipulates that any communication issued without an electronically generated DIN and not covered under exception mentioned in Para 34 of Circular dated 05-11-2019 shall be treated as invalid and shall be deemed to have never been issued. It is observed that the show cause notice dated 06-11-2020 was issued by the Joint Commissioner (I/s), Customs House, Gujarat Pipavav Port Limited, Pipavav without mentioning electronically generated DIN as required.

**12.4** In view of above the Show cause notice F. No. VIII/20-32/Ref/GPPL/2019-2020 dated 06-11-2020 issued by the Joint Commissioner (I/s) working as Deputy Commissioner (In-situ), Customs House, Gujarat Pipavav Port Limited, Pipavav to the said Noticee made



answerable to the Deputy Commissioner, Customs House, Gujarat Pipavav Port Limited, Pipavav, seeking recovery of erroneously granted refund of Rs. 10,00,000/- is not proper and legal and hence withdrawn accordingly with effect from issuance of the captioned notice.

**13.** In backdrop of the fact that since the refund of Rs. 10,00,000/- sanctioned to the Noticee by the Deputy Commissioner, Customs House, Gujarat Pipavav Port Limited, Pipavav vide his Order-in-Original No. 79/DC/GPPL/Ref/2020-2021 dated 28-04-2020 and its corrigendum dated 01-07-2020 was erroneous, therefore Show Cause Notice on hand was issued to the Noticee on 24.05.2021 wherein it has been proposed to recover from them:

- (i) the erroneous refund of Rs. 10,00,000/- (Rupees Ten Lakhs Only) sanctioned and granted vide Order-in-Original No. 79/DC/GPPL/Ref/2020-2021 dated 28-04-2020 and its corrigendum dated 01-07-2020 passed by the Deputy Commissioner, Customs House, Gujarat Pipavav Port Limited, Pipavav under Section 28(1)(a) of the Customs Act, 1962; and
- (ii) interest, at appropriate rates, under Section 28AA the Customs Act, 1962 on amount at (i) above.

**14.** Subsequently, the CESTAT, WZB, Ahmedabad vide it's final order No. A/10522-10525/2024 dated 28.02.2024 finally settled the matter in favour of the claimant and dismissed the Departmental appeal. The CESTAT held as under:

*"In this case, department has filed appeal against concurrent findings of the lower authorities. The issue in hand pertains to, what department describes as heavy Stainless-sheets and which were described as scrap by the party. Department is in the appeal since there is a particular expert opinion of the Chartered Engineer who initially stated that these sheets are capable of used as goods. But later on during cross examination pointed out that by industrial use he meant that HMS was capable of being used as scrap. On the other hand Learned Advocate submits that the concurrent findings of the lower authorities are sustainable since not only the expert opinion was changed during cross examination but also they produced evidence to the effect that the sheets were actually*



*sold as scrap. They also relied upon various other evidences like chartered accountant certificate indicating that the goods were eventually sold as scrap only and for industrial use by manufacture and also that before seizure they had categorically informed the authorities, that in case sheets are found in the scrap in whatever proportion then same can be destroyed to level of scrap at their cost. This offer was not reacted upon the department side. We find that in view of materials on record including cross examination of Engineer and the offer made by the respondent to department to destroy sheers, if use was doubted, the appeals by the department lack merits.*

*In view of the above, we find that the concurrent findings of authorities below deserve to be maintained. The appeal is liable to dismissed. Appeal dismissed."*

**14.1** The aforesaid final order of the CESTAT, WZB, Ahmedabad has been accepted by the Department during the process of review on monetary ground as informed by the Superintendent (RRA), Customs (Prev), Jamnagar vide its letter F.No.GEN/REV/TRIB/449/2024-Rev-O/o Commr-Cus-Prev-Jamnagar dated 21.03.2024. Therefore, the captioned show cause notice has been taken up for decision.

**DEFENCE:**

**15.** The noticee has not filed any defence submission in the matter.

**DISCUSSION AND FINDINGS:**

**16.** I have carefully gone through the show cause notice dated 24.05.2021 and the entire case records put forth before me in the matter. I find that the noticee has not filed any defence submission in the matter and therefore, I proceed to decide the case on the basis of available records with this office.

**17.1** I find that the limited issue to be decided in the matter as to whether the demand show cause notice issued for the refund amount of Rs.10,00,000/- granted erroneously to the noticee is recoverable along



with interest at appropriate rate under the provisions of Section 28 of the Customs Act, 1962 or otherwise.

**17.2** The issue arisen in the captioned matter is briefly stated is that the noticee, consequent upon the proceedings initiated against the Noticee vide Show Cause Notice F. No. VIII/10-191/JC/O&A/2017 dated 17-09-2018 got dropped vide Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019, and hence Noticee filed an application for refund before the Customs House, Pipavav seeking refund of Rs. 10,00,000/- deposited by them under protest vide Challan No. Cus/171/2018-2019 dated 09-05-2018 during the course of investigation.

**18.1** I find that the Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 was not accepted by the department and in accordance with Review Order No. 13/2019-2020 dated 06-11-2019, an appeal had been filed by the Department before the Commissioner of Customs (Appeals), Ahmedabad. In absence of any order staying the operation of Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 the Deputy Commissioner of Customs, Customs House, Pipavav granted refund of Rs. 10,00,000/- to the Noticee vide his Order-in-Original No. 79/ DC/ GPPL/ Ref/ 2020-2021 dated 28-04-2020 and its corrigendum dated 01-07-2020.

**18.2** I find that aforesaid departmental appeal before the Commissioner of Customs (Appeals), Ahmedabad was decided vide Order-in-Appeal No. JMN-CUSTM-000-APP-058-20-21 dated 22-12-2020 wherein the Order-in-Original No. 04/Additional Commissioner/2019-2020 dated 30-08-2019/19-09-2019 was upheld and the departmental appeal was rejected.

**18.3** I find that the Order-in-Appeal No. JMN-CUSTM-000-APP-058-20-21 dated 22-12-2020 was not accepted by the department and in accordance with Review Order No. 6/2020-2021 dated 16-03-2021, an appeal had been filed before the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad on 01-04-2021.

**18.4** I find that to protect the revenue i.e. refund granted to the Noticee to the tune of Rs.10,00,000/- vide Order-in-Original No. 79/ DC/ GPPL/ Ref/ 2020-2021 dated 28-04-2020 and its corrigendum dated 01-



07-2020, the Department has issued the captioned show cause notice vide F.No. VIII/10-27/ADC/O&A/2020-21 dated 24.05.2021 under the provisions of Section 28 of the Customs Act, 1962.

**19.** I find that the CESTAT, WZB, Ahmedabad vide its final order No. A/10522-10525/2024 dated 28.02.2024 finally settled the matter in favour of the Noticee and dismissed the Departmental appeal. I find that the CESTAT in its aforesaid final order dated 28.02.2024 has held as under:

*"In this case, department has filed appeal against concurrent findings of the lower authorities. The issue in hand pertains to, what department describes as heavy Stainless-sheets and which were described as scrap by the party. Department is in the appeal since there is a particular expert opinion of the Chartered Engineer who initially stated that these sheets are capable of used as goods. But later on during cross examination pointed out that by industrial use he meant that HMS was capable of being used as scrap. On the other hand Learned Advocate submits that the concurrent findings of the lower authorities are sustainable since not only the expert opinion was changed during cross examination but also they produced evidence to the effect that the sheets were actually sold as scrap. They also relied upon various other evidences like chartered accountant certificate indicating that the goods were eventually sold as scrap only and for industrial use by manufacture and also that before seizure they had categorically informed the authorities, that in case sheets are found in the scrap in whatever proportion then same can be destroyed to level of scrap at their cost. This offer was not reacted upon the department side. We find that in view of materials on record including cross examination of Engineer and the offer made by the respondent to department to destroy sheers, if use was doubted, the appeals by the department lack merits.*

*In view of the above, we find that the concurrent findings of authorities below deserve to be maintained. The appeal is liable to dismissed. Appeal dismissed."*

**19.1** I also find that the aforesaid final order of the CESTAT, WZB, Ahmedabad dated 28.02.2024 has been accepted by the Department




during the process of review on monetary ground as informed by the Superintendent (RRA), Customs (Prev), Jamnagar vide its letter F.No.GEN/REV/TRIB/449/2024-Rev-O/o Commr-Cus-Prev-Jamnagar dated 21.03.2024. Since, the Departmental appeal has been dismissed by the CESTAT and the said decision of CESTAT, WZB, Ahmedabad has been accepted by the Department during the process of review, I find that the captioned demand show cause notice for recovery of Rs. 10,00,000/- in respect of erroneously refund granted to the noticee does not survive and needs to be dropped.

20. In view of the foregoing paras, I pass the following order:

**O R D E R**

20.1 *The proceedings initiated vide Show Cause Notice F.No. VIII/10-27/ADC/O&A/2020-21 dated 24.05.2021 for recovery of erroneous refund of Rs. 10,00,000/- is hereby dropped.*

20.2 This order is issued without prejudice to any other action that may be taken against the Noticees or any other person under the Customs Act, 1962 or any other law for the time being in force.

  
हरकिरपाल खटाना / (Harkirpal Khatana)  
अपरआयुक्त / Additional Commissioner

F. No: VIII/10-27/ADC/O&A/2020-21

दिनांक: 18.06.2024

**By Speed Post/ By Email/ By Hand Delivery/ Through Notice Board/  
Uploading on website:**

To,

**M/s. Metalloy Impex,**  
302, Shivanjali Complex,  
Atabhai Circle,  
Bhavnagar - 364001.

**Copy to:**

- 1) The Commissioner, Customs (Preventive), Jamnagar
- 2) The Deputy/ Assistant Commissioner, CH, Pipavav.
- 3) Superintendent (RRA), Customs (Preventive), Jamnagar.
- 4) Superintendent (Systems), Customs (Preventive), Jamnagar.
- 5) Guard File