

VIII/10-254/ICD-KHOD/O&A/HQ/2024-25
OIO No. 240/ADC/SRV/O&A/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाई कोर्ट के सामने, नवरंगपुरा,
अहमदाबाद – 380 009.

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PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-254/ICD-KHOD/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	VIII/10-254/ICD-KHOD/O&A/HQ/2024-25 dated 21.01.2025
C	मूल आदेश संख्या / Order-In-Original No.	:	240/ADC/SRV/O&A/2024-25
D	आदेश तिथि / Date of Order-In-Original	:	27.01.2025
E	जारी करने की तारीख / Date of Issue	:	27.01.2025
F	द्वारा पारित / Passed By	:	SHREE RAM VISHNOI, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	M/S. CHANDAN STEEL & ALLOY, NO.2 FIRST FLOOR NANAVATI ESTATE, NR. KEVAL KANTA ROAD, RAKHIAL, AHMEDABAD, GUJARAT-380023
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क) अपील(, चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE

M/S. CHANDAN STEEL & ALLOY, No. 2, First Floor, Nanavati Estate, Nr. Keval Kanta Road, Rakhial, Ahmedabad, Gujarat-380023 (hereinafter referred to as 'M/s. Chandan Steel & Alloy', 'the importer' or 'the noticee' for the sake of brevity), having IEC: AAFHG0785H, imported "Stainless Steel Welded Pipe" falling under CTH 7306 of first Schedule to the Customs Tariff Act, 1975.

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2. On the basis of reference received from Directorate of Revenue Intelligence ('DRI'), HQ, New Delhi vide letter No. DRI/HQ-CI/B Cell/50D/Enq-1/2020-CI dated 07.06.2022 & 25.07.2022 and DRI Ahmedabad Zonal Unit letter F.No.DRI/AZU/Conf.-59/2022 dated 16.01.2023, an investigation was initiated by the Directorate of Revenue Intelligence, Vapi Sub Regional Unit, Vapi (henceforth referred to as "DRI Vapi" for the sake of brevity) against the importer M/s. Chandan Steel & Alloy. The above said reference indicated that M/s. Chandan Steel & Alloy were engaged in import of "Stainless Steel Welded Pipe" from Malaysia and were availing the benefit of preferential tariff rate on the basis of Country of Origin ('CoO') Certificate under the ASEA-India FTA as notified vide Notification No. 46/2011-Customs dated 01.06.2011, as amended. As per the report forwarded by Ministry of International Trade and Industry (MITI), Malaysia it was informed that certain CoO Certificates sent for retroactive verification were found to be unauthentic and that their ePCO system did not have any user by the name of CEKAP PRIMA SDN BHD, FUTURE METAL ENTERPRISE & EZY METAL ENTERPRISE, among others.

3. Since M/s. Chandan Steel & Alloy had also imported the said goods from the suppliers CEKAP PRIMA SDN BHD, FUTURE METAL ENTERPRISE & EZY METAL ENTERPRISE who appeared to have never registered in the ePCO system (necessary to apply for a CoO Certificate in Malaysia) it appeared that they had claimed the preferential tariff benefit fraudulently by way of unauthentic CoO Certificates and hence the effective rate of duty on their import of "Stainless Steel Welded Pipe" classified under CTH 7306 of the first Schedule to the CTA would be the merit rate of 10% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017, as amended (Sr. No. 377).

4. Accordingly, investigation was initiated by DRI, Vapi against the importer for duty evasion on import of 'Stainless Steel Welded Pipe' from Malaysia in respect of 05 nos. of Bills of Entry (BE Nos. 8676845 dated 02.09.2020, 7532267 dated 27.04.2020, 7532358 dated 27.04.2020, 6912060 dated 17.02.2020 & 6629053 dated 25.01.2020) mentioned below in Table-1. The importer was communicated about the fact that the benefit of Country of Origin as notified under Notification No. 46/2011-Customs dated 01.06.2011, as amended, is not available to them since the various CoO Certificates issued in Malaysia in respect of suppliers CEKAP PRIMA SDN BHD, FUTURE METAL ENTERPRISE & EZY METAL ENTERPRISE were found unauthentic by the Ministry of International Trade and Industry of Malaysia, and that therefore, the effective rate of duty on the product in question viz. 10% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017, as amended (Sr. No. 377) was found to be applicable in their case.

TABLE-1: Details of Concerned Bills of Entry

Sl. No.	Custom House Code	Custom House Name	Bills of Entry No.	BoE Date	Assessable Value in Rs.	Payable Duty
1	INSBI6	Sabarmati ICD	8676845	02.09.2020	2639027	342546
2	INMUN1	Mundra	7532267	27.04.2020	2469112	320491
3	INMUN1	Mundra	7532358	27.04.2020	2307090	299460
4	INPAV1	Pipavav (Victor) Port	6912060	17.02.2020	2905574	377144
5	INSBI6	Sabarmati ICD	6629053	25.01.2020	2659505	345204
			TOTAL		12980308	1684845

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5. On scrutiny of documents and data, it was observed that the importer had imported 'Stainless Steel Welded Pipe' from Malaysia based Suppliers/Manufacturers vide above Bills of Entry had cleared the same through Sabarmati ICD, Mundra Port, Pipavav (Victor) Port, Customs. The importer had availed benefit of Country of Origin notified vide Notification No. 46/2011-Customs dated 01.06.2011, as amended, in all the Bills of Entry. The details of CoO Certificate Submitted by the Importer are as follows:

TABLE-2: Details of CoO Certificate

Sl. No.	BOE>Date	ITEM DESCRIPTION	CTH	Country of Origin	Supplier Name	CoO Reference No.
1	8676845 dated 02.09.2020	STAINLESS STEEL WELDED PIPES GRADE J3	73064000	MALAYSIA	EZY METAL ENTERPRISE	KL-2020-AI-21-073674 dated 12.08.2020
2	7532267 dated 27.04.2020	STAINLESS STEEL WELDED POLISH ROUND & SQUARE PIPE	73064000 & 73066100	MALAYSIA	FUTURE METAL ENTERPRISE	KL-2020-AI-21-025097 dated 30.03.2020
3	7532358 dated 27.04.2020	STAINLESS STEEL WELDED POLISH ROUND & SQUARE PIPE	73064000 & 73066100	MALAYSIA	EZY METAL ENTERPRISE	KL-2020-AI-21-025097
4	6912060 dated 17.02.2020	STAINLESS STEEL WELDED POLISH ROUND & SQUARE PIPE	73064000 & 73066100	MALAYSIA	CEKAP PRIMA SDN BHD	KL-2020-AI-21-006840
5	6629053 dated 25.01.2020	STAINLESS STEEL WELDED POLISH ROUND/SQUARE/ RECTANGULAR PIPE	73064000 & 73066100	MALAYSIA	CEKAP PRIMA SDN BHD	KL-2020-AI-21-003570

6. Tariff Notification No.046/2011-Cus. Dated 01.06.2011 is applicable for giving duty exemption benefits to specific goods when imported into India from Philippines and other ASEAN countries in view of ASEAN-India Free Trade Agreement (AIFTA). The Notification No.046/2011-Cus. Dated 01.06.2011 was further amended from time to time. In this case, relevant provisions of the applicable Notifications are as below:

Principal Notification No. 46/2011 dated 1st June, 2011

"G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.153/2009-Customs dated the 31st December, 2009 [G.S.R. 944 (E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in, - column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II . Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the

case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the 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, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009.

Sr. No.	Chapter or heading or subheading or tariff item	Description	Rate
955	72	All goods	5.0

Amended Notification No. 82/2018-Customs dated 31st December, 2018

“G.S.R.(E).—In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2011-Customs, dated the 1st June, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 423 (E), dated the 1st June, 2011, namely:-In the said notification, for the Table, the following Table shall be substituted, namely:-

Sr. No.	Chapter or heading or subheading or tariff item	Description	Rate
967	72	All goods	0

7. In determining the origin of products eligible for the preferential tariff treatment under ASEAN-India FTA (AIFTA), amongst others, rules of Article 13 shall be applied:

“Rule 13 Certificate of Origin- A claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Party and notified to the other Parties in accordance with the Operational Certification Procedures as set out in Appendix D.”

8. For the purposes of implementing the Rules of Origin for the AIFTA, amongst others, in the instant case, the following Articles notified in the Operational Certification Procedures for the Rules of Origin under ASEAN-INDIA FREE TRADE AREA (AIFTA) as set out in Appendix D may be referred:

“Article 4:-

The exporter and/or the manufacturer of the products qualified for preferential tariff treatment shall apply in writing to the Issuing Authority of the exporting Party requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to products, the origin of which by their nature can be easily verified.

Article 5:-

At the time of carrying out the formalities for exporting the products under preferential tariff treatment, the exporter or his authorised representative shall submit a written application for the AIFTA Certificate of Origin together with appropriate supporting documents proving that the products to be exported qualify for the issuance of an AIFTA Certificate of Origin.”

Article 16:-

(a) The importing Party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on a producer/exporter's cost statement based on the current cost and prices within a six- month timeframe prior to the date of exportation subject to the following procedures:

(i) the request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;

(ii) the Issuing Authority shall respond to the request promptly and reply within three (3) months after receipt of the request for retroactive check;

(iii) In case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing Party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the good to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and...”

9. During the course of verification of various CoOs issued from Malaysia, an e-mail dated 31.12.2020 was sent to Ministry of International Trade and Industry (MITI), Malaysia by High Commission of India, Kuala Lumpur for verification of Country of Origin (CoO) Certificates said to be issued in Malaysia for export of Stainless-Steel cold

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rolled coils and circles (HSN 72209090 & 72199090) from Malaysia to India under AIFTA. A total of 143 copies of Certificate of Origin (CoO) were sent to Ministry of International Trade and Industry (MITI) via e-mail. It was requested to have a retroactive check in respect of the genuineness and authenticity of the said certificates. Further, the Issuing Authority was requested to provide a report on the manufacturing process undertaken by the exporter/manufacturer of the finished goods along with details of the source of originating material used, if any, in the production of the subject commodity. It was also requested to provide a copy of the application submitted by the exporter/manufacturer along with appropriate supporting documents.

9.1 In response to the e-mail dated 31.12.2020, The Ministry of International Trade and Industry (MITI) informed vide e-mail dated 14.04.2021 that 87 out of 143 Certificates of Origin (CoOs) submitted to them for verification are not authentic and they were not issued by the Ministry of International Trade and Industry of Malaysia (MITI). MITI also provided a list of non-authentic CoO Certificate Reference Numbers, along with exporter/manufacturer in their e-mail dated 14.04.2021. Ministry of International Trade and Industry of Malaysia (MITI) further stated that they had never received any CoO application from the respective companies (as per the provided list) via their system. Further, the CoO issued to FUTURE METAL ENTERPRISE was also found to be unauthentic during the course of verification and Ministry of International Trade and Industry, Malaysia have informed that they have never received any CoO application from the respective Company.

9.2 Further, as per para no. 5.4 of CBIC, FTA Cell's Letter vide F.No.466/19/2021-FTA Cell 2 dated 01.02.2022, MITI Malaysia vide its email dated 18.05.2021 had informed that exporters including CEKAP Prima SDN BHD, EZY Metal Enterprise had never made any CoO application via their e-PCO system. This means any CoO issued to them prior to 18 May, 2021 is non-authentic.

9.3 In view of the fact that the importer's suppliers viz. CEKAP PRIMA SDN BHD, FUTURE METAL ENTERPRISE & EZY Metal Enterprise had never applied for a CoO Certificate before the Malaysian Authorities, it appeared that the CoO Certificate submitted for claim of preferential duty benefit by the importer under Notification No. 46/2011-Cus dated 01.06.2011, as amended, is wrong and the claimed benefit is ineligible in terms of Rule 13 of Determination of Origin of Goods under Preferential Trade Agreement between the Government of ASEAN and India Rules, 2009 (Notification No. 189/2009-Cus(NT) dated 31.12.2009). The CoO Certificate produced in respect of goods supplied by CEKAP PRIMA SDN BHD, FUTURE METAL ENTERPRISE & EZY Metal Enterprise whose Bills of Entry details are mentioned in Table-1, was identified as unauthentic and was found to be squarely covered for proceedings with action under Rule 6(7)(c) of CARTOTAR, 2020. Rule 6(7) (c) of CARTOTAR, 2020 is reproduced below for ready reference-

Rule 6. Verification request:-

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(7) The proper officer may deny claim of preferential rate of duty without further verification where:

(a)

(b)

(c) The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

In terms of Rule 6(7) (c) of CARTOTAR, 2020, the CoO Certificate in respect of the concerned Bill of Entry (detailed in Table-1 above) was found to be unauthentic.

9.4 Accordingly, summons dated 13.02.2023 & 30.08.2024 were issued to the importer in respect of the import done by them vide the 05 nos. of Bills of Entry (BE Nos. 8676845 dated 02.09.2020, 7532267 dated 27.04.2020, 7532358 dated 27.04.2020, 6912060 dated 17.02.2020 & 6629053 dated 25.01.2020). In response to these summons, Shri Ganesharam Jetharam Chaudhari, Proprietor of Chandan Steel and Alloy at A/5, A One Estate, SPF Mill Compound, Near Keval Kanta, Rakhial, Ahmedabad, Gujarat, 380023 appeared on 11.09.2024 and his statement dated 11.09.2024 was recorded under Section 108 of the Customs Act, 1962. Shri Ganesharam Jetharam Chaudhari perused Annexure-A of Alert Circular No. 02/2021-CI issued by Joint Director (CI), Ministry of Finance (Department of Revenue), according to which more than 150 CoO Certificates pertaining to import of Steel Products (Coil/Sheet), mainly from Malaysia and a few from Thailand from various suppliers as listed in the Annexure-A have been reported to be non-authentic by the respective CoO issuing Authorities, thus rendering any consequential benefit availed under ASEAN-India Preferential Trade Agreement and India-Malaysia Trade Agreement ineligible. On being asked, he stated that, he had never contacted the overseas suppliers CEKAP PRIMA SDN BHD, FUTURE METAL ENTERPRISE & EZY METAL ENTERPRISE, Malaysia personally for importing the Stainless-Steel Welded Pipes imported i.r.o 05 no. of Bills of Entry (BE Nos. 8676845 dated 02.09.2020, 7532267 dated 27.04.2020, 7532358 dated 27.04.2020, 6912060 dated 17.02.2020 & 6629053 dated 25.01.2020) from Malaysia and that a broker, who was also an importer, named Shri Kunal Sanghvi had contacted the overseas suppliers and had provided all the documents related to import done under 05 nos. of Bills of Entry (BE Nos. 8676845 dated 02.09.2020, 7532267 dated 27.04.2020, 7532358 dated 27.04.2020, 6912060 dated 17.02.2020 & 6629053 dated 25.01.2020).

9.5 The veracity of the CoO certificates with Reference No. KL-2020-AI-21-073674 dated 12.08.2020 & KL-2020-AI-21-025097 dated 30.03.2020 issued by the suppliers EZY METAL ENTERPRISE & FUTURE METAL ENTERPRISE, which were submitted during import, was verified on the official Malaysian govt. portal (<https://newepco.dagangnet.com.my/dnex/login/>), in the presence of Shri Ganesharam Jetharam Chaudhari, proprietor of Chandan Steel and Alloy. It was seen

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that the CoO certificate numbers were non-existent. Further, the importer accepted that CoO Certificates in respect of remaining three Bills of Entry i.e. 7532358 dated 27.04.2020, 6912060 dated 17.02.2020 and 6629053 dated 25.01.2020 were also unauthentic.

10. During the course of investigation, it was informed by the importer that they have already paid the amount of Rs.5,14,449/- as differential Customs Duty along with applicable interest and Penalty @15% in respect of BOE no.6629053 dated 25.01.2020 and an amount of Rs.5,58,513/- as differential Customs Duty along with applicable interest and Penalty @15% in respect of BOE no. 6912060 dated 17.02.2020 and submitted the copies of payment challans. The importer had further paid an amount of Rs.15,27,118/- as differential Customs Duty along with applicable interest and Penalty @15% in respect of Bills of Entry No. 7532267 dated 27.04.2020, 7532358 dated 27.04.2020 and 8676845 dated 02.09.2020 and had accepted that the CoO Certificates submitted by them are not authentic. Accordingly, the importer has voluntarily paid total amount of Rs.26,00,080/- as differential Customs Duty along with applicable interest and Penalty @15% for wrongly availed benefit of Notification No. 46/2011- Customs dated 01.06.2011 in respect of all the 05 nos. of Bills of Entry. On being asked, he further stated that he was told by Shri Kunal Sanghvi that the goods were imported from Malaysia only and he believed him as he used to import goods from overseas supplier through him. However, as pointed out, he accepted that the 5 nos. of CoOs certificates are unauthentic.

11. The importer has admitted their duty liability and discharged differential duty along with applicable Interest and 15% Penalty vide various challans totally amounting to Rs.26,00,080/- (Rupees Twenty-Six Lakhs eighty only) in respect of the Bills of Entry mentioned in Table-1.

TABLE-3: Details of Voluntary Payment Made

BE No.	BE Date	Differential Duty	Interest	Penalty @15%	Total amount in Rs.	Challan No.	Date of Payment
8676845	02-09-2020	962497	420246	144375	1527118	02/2023-24	08.05.2024
7532267	27-04-2020						
7532358	27-04-2020						
6912060	17-02-2020	377141	124800	56572	558513	CUS/342/21-22, CUS/343/21-22 & CUS/344/21-22	29.11.2021
6629053	25-01-2020	345204	117464	51781	514449	193	24.12.2021
Total amount in Rs.		1684842	662510	252728	2600080		

12. Relevant legal provisions of the Customs Act, 1962:

(A) Section 17. Assessment of duty-

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(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.]*

(B) Section 46: Entry of goods on importation. -

(1) *The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting ¹ [electronically] ² [on the customs automated system] to the proper officer a bill of entry for home*

consumption or warehousing in such form and manner as may be prescribed

.....

(4) 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 as may be prescribed

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(C) Section 28(4) of the Customs Act, 1962:

“(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”

(D) 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.

(E) Section 28DA. Procedure regarding claim of preferential rate of duty. -

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(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.*

(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".

(F) Section 111: Confiscation of improperly imported goods, etc..

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

(a) ...

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

(n) ...

(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.

(G) 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,..”*

(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,*

(H) 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 willful 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 22[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined.]”

(I) 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.

(J) Section 124: Issue of show cause notice before confiscation of goods, etc.-

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of

the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

(K) Rule 6 of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020

Rule 6. Verification request :-

(1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

(a) there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;

(b) there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or

(c) verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed:

Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific information from the Verification Authority as may be necessary to determine the origin of goods.

(2) Where information received in terms of sub-rule (1) is incomplete or nonspecific, request for additional information or verification visit may be made to the Verification Authority, in such manner as provided in the Rules of Origin of the specific trade agreement, under which the importer has sought preferential tariff treatment.

(3) When a verification request is made in terms of this rule, the following timeline for furnishing the response shall be brought to the notice of the Verification Authority while sending the request:

(a) timeline as prescribed in the respective trade agreement; or

(b) in absence of such timeline in the agreement, sixty days from the request having been communicated.

(4) Where verification in terms of clause (a) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods,

(a) The preferential tariff treatment of such goods may be suspended till conclusion of the verification;

(b) The verification Authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification; and

(c) The proper officer may, on the request of the importer, provisionally assess and clear the goods, subject to importer furnishing a security amount equal to the difference between the duty provisionally assessed under section 18 of the Act and the preferential duty claimed.

(5) All requests for verification under this rule shall be made through a nodal office as designated by the Board.

(6) Where the information requested in this rule is received within the prescribed timeline, the proper officer shall conclude the verification within forty five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs may allow:

Provided that where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer shall finalize the verification within such timeline.

(7) The proper officer may deny claim of preferential rate of duty without further verification where:

(a) The verification Authority fails to respond to verification request within prescribed timelines;

(b) The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or

(c) The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

13. The subject Bill of Entry as mentioned in Table-1 of this investigation report, filed by the importer, wherein they had declared the description, classification of goods and country of origin was self-assessed by them. However, as per the verification report received from FTA Cell, CBIC, the Certificate of Origin was un-authentic in respect of supplies in the aforesaid Bill of Entry and hence the benefit availed by them appeared to not be available to them. The importer has agreed to the fact and has paid the differential duty along with interest and penalty.

13.1 Vide the 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

filling 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 goods, while presenting Bill of Entry. 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 with regard to the origin criteria. In view of the same, by submitting un-authentic Certificate of Origin, it appeared that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed benefit of exemption Notification on the basis of unauthentic CoO Certificate produced by them for the import of goods. The importer has failed to exercise reasonable care and precaution with regard to the accuracy and truthfulness of the information provided by exporter/ seller to them, as was entrusted to them by the Act while providing benefit of the CoO.

13.2 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 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. From the verification report discussed above, it appeared that the importer knowingly and deliberately availed exemption Notification without authentic and valid of Country of Origin document supporting the import as prescribed under Section 46 of Customs Act, 1962 and 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.

13.3 as discussed in the foregoing paras, the imported goods under the Bill of Entry, as mentioned in Table-1 to this investigation report, has been found to be imported under the cover of unauthentic Country of Origin (CoO) Certificate and hence does not satisfy the criteria for claiming exemption under Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported vide 5 nos. of Bills of entry (BE Nos. 8676845 dated 02.09.2020, 7532267 dated 27.04.2020, 7532358 dated 27.04.2020, 6912060 dated 17.02.2020 & 6629053 dated 25.01.2020) having total assessable value of **Rs.1,29,80,308/- (Rupees One Crore, Twenty-Nine Lakhs Eighty Thousand Three Hundred Eight only)** are liable for confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appeared that the importer is also liable for imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962.

13.4 as per the discussion above, it appeared that the importer knowingly availed exemption Notification which was not available to them. By the provisions of Section 28DA of the Customs Act, it appeared that the importer failed to exercise due diligence while availing benefit of exemption notification and by his act of willfully availing exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, during filing

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of the Bill of Entry at Sabarmati ICD(INSBI6), Mundra Port (INMUN1), Pipavav (Victor) Port (INPAV1) Customs, the importer has evaded applicable Customs duty. Accordingly, it appeared that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case. For the same reasons, the importer also appeared liable to penalty under Section 114A of the Customs Act, 1962.

13.5 as per the discussion above, it appeared that the importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and due diligence with regard to the authenticity of documents and truthfulness of the information provided by the manufacturer/supplier. The importer was not eligible for the exemption benefit as available under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted unauthentic documents for claiming the exemption benefit before the Customs Authorities. Therefore, it appeared that they are also liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

14. With the insertion of Section 110AA in the Customs Act, 1962 enforced vide Finance Act, 2022, the proper officers for issuance and adjudication of demand notices under Section 28 and Section 28AAA have been appointed under the Customs Act, 1962 in cases of single and multiple jurisdictions. Further, vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, CBIC has appointed the officers of Customs to exercise powers under Section 28, Section 28AAA or Chapter X of the said Act, and assigned the functions to such officers in the cases of single and multiple jurisdictions as referred in Section 110AA of Customs Act, 1962. Similarly, vide Notification No. 29/2022-CUS (NT) dated 31.03.2022, CBIC has assigned the proper officers for the purpose of adjudication.

14.1 It appeared that the import of the disputed goods viz. Stainless-Steel welded pipes was made at Sabarmati ICD(INSBI6), Mundra Port (INMUN1), Pipavav (Victor) Port (INPAV1) Customs. As per Section 110AA of the Customs Act, 1962 read with notification 28/2022-Customs (NT) dated 31.03.2022, the jurisdiction having highest amount of duty involved shall be the Common Adjudicating Authority. In the instant case, the proper officer shall be the Additional/Joint Commissioner of Customs, in-charge of Sabarmati ICD (INSBI6), Ahmedabad Customs Commissionerate, Kaligam Sabarmati Ahmedabad 382470.

15. Thereafter, a show cause notice was issued vide F. No. VIII/10-254/ICD-KHOD/O&A/HQ/2024-25 dated 21.01.2025 to **M/s. Chandan Steel & Alloy (IEC: AAFHG0785H), No.2 First Floor Nanavati Estate, Nr. Keval Kanta Road, Rakhial, Ahmedabad, Gujarat-380023** to show cause to the Additional Commissioner of Customs, Customs House, Navrangpura, Ahmedabad-380009, as to why:

- i. The Country of Origin certificate in respect of Bills of Entry as mentioned in Table-1, issued by Ministry of International Trade and Industry (MITI) for the “Stainless Steel welded pipes” supplied

by 'CEKAP PRIMA SDN BHD, FUTURE METAL ENTERPRISE & EZY METAL ENTERPRISE' are un-authentic, as discussed above, in terms of Rule 6 of CAROTAR 2020. 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 Sabarmati ICD(INSBI6), Mundra Port (INMUN1), Pipavav (Victor) Port (INPAV1) Customs, as mentioned in Table-1, should not be disallowed in terms of Section 28DA (11) of the Customs Act, 1962 and the Bill of Entry may be reassessed by disallowing the benefit of Notification No. 46/2011-Cus dated 01.06.2011 as amended.

- ii. The impugned goods having total assessable value of **Rs.1,29,80,308/- (Rupees One Crore, Twenty-Nine Lakhs Eighty Thousand Three Hundred Eight only)** as mentioned in Table-1 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.16,84,842/- (Rupees Sixteen Lakhs Eighty-Four Thousand and Eight Hundred Forty-Two only)** should not be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962, as calculated in "Table-1" above. Since the differential duty amount of Rs.16,84,842/- (Rupees Sixteen Lakhs Eighty-Four Thousand and Eight Hundred Forty-Two only) has already been paid by them vide Challan no. mentioned in "Table-3" above, the same may be appropriated and adjusted against the aforesaid demand of duty.
- iv. The Interest at the applicable rate should not be recovered from them on the said differential Customs Duty as mentioned in Table-1 above under Section 28AA of the Customs Act, 1962. Since the interest amount of **Rs.6,62,510/- (Rupees Six Lakh Sixty-Two Thousand Five Hundred Ten only)** has already been paid by them vide Challan no. mentioned in "Table-3", the same may be appropriated and adjusted against the aforesaid demand of interest.
- v. Further, Penalty should not be imposed on the importer under Section 112(a) & (b)/ 114A & 114 AA of the Customs Act, 1962. Since the Penalty amount of Rs.2,52,728/- (Rupees Two Lakhs, Fifty-Two Thousand Seven Hundred and Twenty-Eight only) has already been paid by them vide Challan no. mentioned in "Table-

3", the same may be appropriated and adjusted against the aforesaid demand of Penalty.

SUBMISSION AND PERSONAL HEARING:-

16. Accordingly, M/s. Chandan Steel & Alloy submitted a written submission on 23.01.2025 vide which they submitted that they have accepted the allegations in the Show cause Notice and reiterated the fact that they have already made the payment of differential amount of Duty along with interest and 15 % penalty before issuance of the SCN as per proposed by the SCN and requested for closure in terms of Section 28(6) of the Customs Act, 1962. They also submitted that they do not want any personal hearing in the matter.

DISCUSSION AND FINDINGS:-

17. I have gone through the Show Cause Notice, the Submissions made by M/s. Chandan Steel & Alloy as well as available records of the case.

17.1 I find from the records available that M/s. Chandan Steel & Alloy has imported Stainless Steel Welded Pipe at Sabarmati ICD, Mundra Port, Pipavav (Victor) Port by availing duty exemption benefit of Customs Tariff Notification No.46/2011-Cus. dated 01.06.2011 availing Country of Origin benefit on the basis of the Country of Origin Certificates issued by the supplier mentioned in Table-2 above and has paid Customs Duty at lower rates to evade the Customs Duties under section 28 (4) of the Customs Act, 1962. However, I find that the noticee has accepted their mistake and paid the differential duty along with interest and penalty @15% of the differential duty as detailed in Table-3 above, before the issuance of the Show-cause Notice. Further the noticee has requested to conclude the proceedings as per Section 28(6) of the Customs Act, 1962 vide their submission dated 23.01.2025. I find that by paying duty along with Interest and 15% penalty, they have made themselves eligible for concluding the proceedings under Section 28 (6) of the Customs Act, 1962.

17.2 Section 28 (5) and Section 28 (6) read as follow:-

"Section 28(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.

“Section 28(6) - Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).”

17.3 Also Section 125 reads as follow:-

“125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] [Inserted by Act 80 of 1985, Section 9 (w.e.f. 27.12.1985).] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:]

17.4 I find that M/s Chandan Steel & Alloy, has accepted the violation of Section 28(4) of the Customs Act, 1962 and have discharged the differential duty along with interest under Section 28AA of the Customs Act, 1962 along with penalty at 15% as envisaged under Section 28(5) of the said Act. I also find that M/s Chandan Steel & Alloy has requested that since they have discharged their liabilities, proceedings against them may please be concluded. As the differential duty liability along with applicable interest and penalty at 15% have been paid, I find that the proceedings against M/s Chandan Steel & Alloy can be concluded under the provisions of Section 28(6) of the Customs Act, 1962. I also find that in view of first proviso to section 125(1) of the Customs Act, 1962 proceedings

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are deemed to be conclude under provision of sub-section (2) of section 28 or under clause (i) of subsection (6) of the section in respect of goods which are not prohibited or restricted, no such fine shall be imposed. As in present case, goods are not of prohibited or restricted nature, no fine in lieu of confiscation is to be imposed.

18. I view of above, I pass the following order:

ORDER

I order to conclude the proceedings initiated vide Show Cause Notice F. No. VIII/10-254/ICD-KHOD/O&A/HQ/2024-25 dated, 21.01.2025 issued by the Additional Commissioner of Customs, Ahmedabad under Section 28(6) of the Customs Act, 1962.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

F. No. VIII/10-254/ICD-KHOD/O&A/HQ/2024-25 Date: **27.01.2025**
DIN: **20250171MN000031313F**

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To,

M/S. CHANDAN STEEL & ALLOY,
NO.2 FIRST FLOOR NANAVATI ESTATE,
NR. KEVAL KANTA ROAD, RAKHIAL,
AHMEDABAD, GUJARAT-380023

Copy to:

1. The Additional Director General, Ahmedabad Zonal Unit.
2. The Additional Commissioner of Customs, Mundra Port, Mundra
3. The Additional Commissioner of Customs, Pipavav (Victor) Port, Jamnagar
4. The Assistant Commissioner of Customs, ICD-Sachana, Ahmedabad.
5. The Superintendent of Customs (Systems), Customs HQ, Ahmedabad for uploading on official web-site.
6. The Superintendent (Task Force), Customs-Ahmedabad
7. Guard File.