

| | | |
|---|--|---|
|  | OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 <u>Phone No.02838-271165/66/67/68</u> <u>FAX.No.02838-271169/62</u> |  |
| A. File No. | : | GEN/ADJ/ADC/478/2022-Adjn-O/o Pr. Commr- Cus-Mundra |
| B. Order-in-Original No. | : | MUN-CUSTM-000-COM-18-23-24 |
| C. Passed by | : | K.Engineer Commissioner of Customs, Customs House, AP & SEZ, Mundra. |
| D. Date of order and Date of passing of Order | : | 11.12.2023 11.12.2023 |
| E. SCN No. & Date | : | Three SCN i.e. (i) SCN F.No. GEN/ADJ/ADC/478/2022-Adjn dated 20.05.2022 and Corrigendum dated 11.04.2023, (ii) C.No. VIII (30) CUS/ADJ/ICD- DD/GEPL/ DRI/03/2023, dated 24.03.2023, (iii) F. No. GEN/ADJ/ADC/478/2022- Adj dated 12.05.2023. |
| F. Noticee(s) / Party / Importer | : | M/s Gulshan Exim Private Limited (IEC-0505000261), B-234, 2nd Floor, North Ex Mall, Sector-9, Rohini, New Delhi-110085; and others |
| G. DIN No. | : | 20231271MO0000059330 |

1/1596666/2023

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

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

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

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” **“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”**

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

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

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

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

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

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

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

1/1596666/2023

Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

1. FACTS OF THE CASE IN BRIEF:

1.1. M/s Gulshan Exim Private Limited (IEC-0505000261), B-234, 2nd Floor, North Ex Mall, Sector-9, Rohini, New Delhi-110085 (*hereinafter referred to as 'M/s GEPL' or also as 'Importer' interchangeably for the sake of brevity*) is engaged in trading and import of Cold Rolled Stainless Steel Coils, Hot Rolled Stainless Steel Coils and Stainless Steel Circles. M/s GEPL imports Cold Rolled Stainless Steel Coils/Hot Rolled Stainless Steel Coils of grade 201, 202 & J-3 from overseas suppliers based in China, Indonesia and Malaysia. The Flat-Rolled products of Stainless Steel falling under CTH 7219/7220, attracts Basic Customs duty @7.5%, Surcharge on Customs duty @ 10%, IGST @ 18% and countervailing duty @18.95% on landed value of goods imported into India from People's Republic of China, imposed vide Notification No. 1/2017-Customs (CVD) dtd. 07.09.2017.

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

1.3. Acting on the intelligence, an investigation was initiated against M/s GEPL. Summons were issued to Shri Ashok Kumar, Director of M/s GEPL to produce all the documents related to goods imported under CTH 7219/7220 along with details of sale of goods and GST Returns. In response, M/s GEPL vide letter dated 09.07.2021, produced copies of import documents viz. Bills of Entry, Commercial invoices, packing list, Mill Test certificate/ Inspection Certificate/Test Certificate/Inspection Certificate-Test Certificate, Country of origin certificates, Bills of Landing

1/1596666/2023

and GST Returns etc.

2. SCRUTINY OF RECORDS/DOCUMENTS

2.1. During preliminary scrutiny of the documents produced by M/s GEPL, it appears that M/s GEPL has imported Stainless Steel Cold Rolled Coils Grade J3 under CTH 72209022 from China and has availed benefit under Notification no. 50/2018-Customs dated 30.06.2018 i.e. availed concession benefit of 45% of the BCD during the period from September'2018 to September'2020. Further, on scrutiny of the Mill Test certificates/Test certificates/Inspection Certificates issued by the overseas suppliers, it appears that M/s GEPL had imported Stainless Steel Cold Rolled Coils Grade J3, which contains more percentage of Chromium and Magnesium instead of Chromium & Nickel. Thus, it appears that Stainless Steel Cold Rolled Coils Grade J3 imported by M/s GEPL does not meet the standards of Nickel Chromium Austenitic type coils and the said goods does not falls under the CTH 72209022 in the category of Nickel Chromium Austenitic Type. Thus, it appears that M/s GEPL had wrongly classified the goods under CTH 72209022 to avail benefit of Notification no. 50/2018-Customs dated 30.06.2018. It was felt that statement of Customs brokers/clearing agents, who arranged the clearance of goods were to be recorded with regards to these documents. Accordingly, investigation was extended to the clearing agents/Customs Brokers, who had arranged the clearance of imported goods.

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

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

| S. No. | Name of Proprietor/Authorized Signatory of CHA/Customs Broker | Dt. of Statement | RUD No. |
|--------|---|------------------|---------------|
| 1 | Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics, Gurgaon | 16.07.2021 | RUD-02 |
| 2 | Shri Deepak Sawlani, G-card holder and Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd | 13.12.2021 | RUD-03 |
| 3 | Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics | 13.01.2022 | RUD-04 |

The above responsible persons of Customs House Agent/Customs Broker have categorically stated that they have cleared Cold Rolled Stainless Steel Coils Grade J3 under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type' by availing the benefit of Notification no.

1/1596666/2023

50/2018-Customs dated 30.06.2018, imported by M/s Gulshan Exim Private Limited from China. They further stated that as per Mill Test certificates/Test certificates/ Inspection Certificates, Cold Rolled Stainless Steel Coils Grade J3 imported by M/s GEPL contains more percentage of chromium and magnesium instead of Chromium & Nickel. They perused the printout taken from https://en.wikipedia.org/wiki/Austenitic_stainless_steel titled as Austenitic stainless steel and understand that as per the Wikipedia, there are two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there is still a small nickel content therein. Therefore, the stainless steels, which do not contain maximum substitute of nickel, do not fall under the category of Nickel chromium austenitic type, and therefore the product cannot be classified under CTH 72209022, which clearly specifies that Flat Rolled products of stainless steel, of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022. They admitted that as per the Mill Test certificates/Test certificates/Inspection Certificates and print out of Wikipedia of Austenitic stainless steel, goods imported by M/s GEPL do not meet the standards of Nickel Chromium Austenitic type coils and the said goods do not fall under the CTH 72209021/72209022 in the category of Nickel Chromium Austenitic Type; that they have wrongly classified the goods imported by M/s GEPL under CTH 72209021/72209022 and availed benefit of Notification no. 50/2018-Customs dated 30.06.2018. The gist of their statements is given below for ease of reference:

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

- He perused the Bill of Entry No. 2709384 dated 04/04/2019 filed on behalf of M/s Gulshan Exim Pvt. Ltd., for the clearance of goods declared as Stainless Steel (CR) Strips Coils Ex Stock Grade- J3 under CTH 72209022 and stated that they filed the BE under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further perused the Inspection Certificate no. 1801205 dated 07/03/2019 issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., for the goods imported under BE No. 2709384 dated 04/04/2019 which has description of goods i.e. Stainless Steel (CR) Strips Coils Ex Stock Grade- J3 and stated that as per the Inspection Certificate the coils contain less than 1.3 % of Nickel and less than 14% chromium.
- He agreed that after going through all the contents of Wikipedia and the Mill Test certificates/Test certificates/Inspection Certificates, the coils imported by M/s Gulshan Exim Pvt. Ltd. would not fall under nickel chromium Austenitic type steels under CTH 72209022 as Nickel is replaced by the Manganese in 200 series SS coils and the benefit under Notification no. 50/2018-Customs dated 30.06.2018 was not applicable on this product.

3.2. Statement of Shri Deepak Sawlani, G-card holder and

1/1596666/2023

Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd (Customs brokers) was recorded under Section 108 of the Customs Act, 1962 on 13.12.2021 **[RUD-03]**, wherein he inter-alia stated that:

- He was G-card holder and Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd and he has been authorized by Shri Sundar Raman of M/s R. R. Logistics and Shri Santosh Manager of M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd to give statement on behalf of their respective firms and produced Authorisation letters; that he was responsible for all the clearance of import and export in the name of M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd for the period June 2017 to June 2019 and from June 2019 to till date in M/s. R R Logistics.
- He perused the Bill of Entry No. 6599726 dated 23/01/2020 filed by M/s R R Logistics on behalf of M/s Gulshan Exim Pvt. Ltd., for the clearance of goods declared as Stainless Steel Cold Rolled Coils Grade-J3 Ex Stock under CTH 72209022 and stated that they filed the BE under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further perused the Test certificate-Inspection Certificate no. 19313-TC dated 28/12/2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 6599726 dated 23/01/2020 which has description of goods i.e. Stainless Steel Cold Rolled Coils Grade-J3 Ex Stock and stated that as per the Test certificate-Inspection Certificate the coils contain less than 0.9 % of Nickel and less than 12.53% chromium.
- He perused the Bill of Entry No. 8548000 dated 22/10/2018 filed by Shivam Clearing Agency (Mumbai) Pvt Ltd on behalf of M/s Gulshan Exim Pvt. Ltd., for the clearance of goods declared as Stainless Steel Cold Rolled Coils Grade- J3 Ex Stock under CTH 72209022 and stated that they filed the BE under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate- Inspection Certificate no. HXL-SZG2018-129TC dated 01/10/2018 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 8548000 dated 22/10/2018 which has description of goods i.e. Stainless Steel Cold Rolled Coils Grade-J3 Ex Stock and stated that as per the Mill Test Certificate the coils contain less than 0.85 % of Nickel and less than 12.5% chromium.
- He perused the Country of Origin certificate bearing Sr. No. CCPIT70001200020688 dated 30.12.2020 for the BE No. 6599726 dated 23/01/2020 and No. CCPIT70001180195436 dated 11.10.2018 for the BE No 8548000 dated 22/10/2018 and stated that in CCO No. CCPIT70001200020688 dated 30.12.2020, the name of supplier i.e. M/s Comet International was mentioned as non-party operator and in CCO No. CCPIT70001180195436 dated 11.10.2018, the name of supplier i.e. M/s. Great China Alliance was mentioned as non-party operator, which were other than the original manufacturer

1/1596666/2023

of the goods and country. He also perused the notes on backside of both the country of origin certificates in Box 1, wherein it was clearly mentioned that goods consigned from "the name must be the same as the exporter described in the invoice" and agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.

- He agreed that after going through all the contents of Wikipedia and the Test certificate-Inspection Certificates, the coils imported by M/s Gulshan Exim Pvt. Ltd. would not fall under nickel chromium Austenitic type steels under CTH 72209022 as Nickel is replaced by the Manganese in 200 series SS coils and the benefit of Notification no. 50/2018-Customs dated 30.06.2018 was not applicable on this product; that they have filed 05 BEs on behalf of M/s Gulshan Exim Pvt. Ltd. in which benefit of Notification no. 50/2018-Customs dated 30.06.2018 has been claimed by the importer which was not applicable to them.
- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

3.3. Statement of Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics (Customs Broker) was recorded under Section 108 of the Customs Act, 1962 on 13.01.2022 [RUD-04], wherein he inter-alia stated that:

- He was responsible for all daily work of the company and overall work related to custom clearance of import and export of goods in the name of M/s. Maffick Logistics; that they had filed only one Bill of entry for M/s. Gulshan Exim Pvt Ltd in which benefit of Notification 50/2018-Customs dated 30.06.2018 has been claimed by the importer.
- He perused the Bill of Entry No. 7926226 dated 05/09/2018 filed on behalf of M/s Gulshan Exim Pvt. Ltd., for the clearance of goods declared as Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3 under CTH 72209022 and stated that the Country of Origin certificate No. B18470ZC58420004 having CTH 722090 upto six digits so they filed the Bill of Entry under CTH 72209022 under the description of 'Nickel Chromium Austenitic Type'. He further perused the Test Certificate no. 09.08.2018 issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the goods imported under BE No.7926226 dated 05/09/2018, which has description of goods i.e. Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3 and stated that as per the Test Certificate the coils contain less than 1.1 % of Nickel and less than 13.36% chromium and the percentage of Manganese was equal to 10.81 %; that the percentage of nickel and chromium was less than the percentage of manganese and chromium.

I/1596666/2023

- He agreed that after going through all the contents of Wikipedia and the Test certificate-Inspection Certificate, the coils imported by M/s Gulshan Exim Pvt. Ltd. would not fall under nickel chromium Austenitic type steels under CTH.72209022 as Nickel is replaced by Manganese in 200 series SS coils and M/s Gulshan Exim Pvt. Ltd. had imported J3 grade which was a customized grade of 200 series. He agreed that the benefit of Notification no. 50/2018-Customs dated 30.06.2018 was not available for the product imported by M/s Gulshan Exim Pvt. Ltd.
- He stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

STATEMENTS AND INQUIRY WITH DIRECTOR OF IMPORTING COMPANY

3.4. Statement of Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited was recorded under Section 108 of the Customs Act, 1962 on 19.07.2021 & 08.03.2022, wherein he inter-alia stated that:

- (i). He was one of the Director of M/s Gulshan Exim Private Limited and looked after day to day work related to all the activities like sales, purchase, and imports etc.; that M/s Gulshan Exim Private Limited was engaged in trading of Stainless Steel Cold Rolled Coils and Stainless Steel Circle for which they were importing Stainless Steel Cold Rolled Coils & Stainless Steel Circle from overseas supplier based in China, Indonesia and Malaysia as well as procured from local market; that they further sold the same in domestic market.
- (ii). He coordinates with the Customs House Agent for the clearance of the Imported goods; that on the basis of documents they finalized the classification of goods, availment of any exemption viz. Notification No. 50/2018-Customs dated 30th June, 2018, payment of Custom duty, GST and other Anti-dumping duties and CVD etc.
- (iii). He placed the order to overseas supplier for supply of goods through agents of overseas suppliers in Delhi; that after verbal discussion with agents and after finalization of the rates, they placed order for purchase of goods; that after receipt of commercial Invoice through bank, they send the amount through banks; that No credit limit or time was given by overseas supplier; that in some cases 100% payment was given in advance and in some cases part payment was given in advance.
- (iv). He stated that Cold Rolled Stainless Steel Coils imported by them were used in manufacturing of utensils; that Cold Rolled Stainless Steel Coils/ Stainless Steel Circle were classified under chapter 72. He stated that they had filed most of the Bills of Entry under the heading of 'Nickel Chromium Austenitic Type' with description, Cold Rolled Stainless Steel Coils under CTH 72209022.
- (v). He perused Bill of Entry No. 4822064 dated 16.01.2018 filed by M/s

1/1596666/2023

GEPL for the clearance of goods declared as Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM under CTH 72209090. He also perused the Inspection Certificate no. FSTT170509-5 dated 07.12.2017 issued by M/s. Tocean Industry Limited, Hong Kong for the goods imported under BE No. 4822064 dated 16.01.2018 and stated that they filed the BE under correct CTH 72209090 as per goods declared but after issuance of Notification no 50/2018 dated 30.06.2018, they filed Bills of entry under CTH 72209022 to claim the benefit of the said Notification.

(vi) He perused Bill of Entry No. 6599726 dated 23.01.2020 filed by M/s GEPL for the clearance of goods declared as Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM under CTH 72209022. He also perused Commercial Invoice No CMTSZ19313 dated 28.12.2019, Test Certificate-Inspection Certificate No. 19313-TC dated 28.12.2019, Bill of Lading, Country of Origin certificate for the goods imported under BE No. 6599726 dated 23.01.2020. On being asked, he stated that as per Test Certificate-Inspection Certificate dated 28.12.2019, the coils contain less than 0.9 % of Nickel and less than 12.52% chromium but they filed the BE No. 6599726 dated 23.01.2020 under CTH 72209022 by declaring the goods as Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM.

(vii). He perused Country of Origin Certificate bearing Sr. No. CCPIT 70001200020688 dated 30.12.2019 for the goods imported under BE No. 6599726 dated 23.01.2020 and stated that the name of supplier i.e. M/s. Comet International was mentioned as nonparty operator which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd; that as per the notes written on the said Country of Origin Certificate, "the name must be the same as the exporter described in the invoice" but in the said Country of Origin Certificate name of supplier was not written.

(viii). He perused Bill of Entry No. 7926226 dated 05.09.2018 filed by M/s GEPL for the clearance of goods declared as Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3 under CTH 72209022 and stated that documents including Country of Origin certificate bearing Sr. No. B18470ZC58420004 received from the overseas supplier were having CTH 722090 upto six digits so they filed the Bill of Entry under the description of 'Nickel Chromium Austenitic Type' declaring as Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3 under CTH 72209022.

(ix). He perused Test Certificate dated 09.08.2018, issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the goods imported under BE No. 7926226 dated 05.09.2018 which has description of goods i.e. Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3 and stated that as per the Test Certificate the coils contain less than 1.1 % of Nickel, 13.36 % of chromium and 10.81% of Manganese; that percentage of Nickel and chromium is less than Manganese and chromium.

(x). He perused the printout taken from https://nickelinstitute.org/media/1638/austeniticchromium_nickelstainlesssteelsatzerotemperatures_mechanicalandphysicalproperties_313.pdf, wherein specification of

1/1596666/2023

Nickel chromium Austenitic type steels was given and stated that as per the website been Nickel chromium Austenitic type steels contains 3.5 % to 16% of Nickel and 16% to 26% of Chromium.

(xi). He perused the printout taken from the webpage of <https://www.asminternational.org> the literature on the topic 'Austenitic Stainless Steels' and stated that it is categorically elaborated that 'Austenitic Stainless Steels' grades were best viewed as a continuum with a lower boundary at 16%Cr -6%Ni and an upper boundary at 19%Cr - 12%Ni. And which represents the range from minimum to maximum austenite stability.

(xii). He perused the printout taken from the webpage of M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder and stated that in their official website <https://www.aalco.co.uk> provided the specification sheets for various products wherein they trade including 200 Series stainless steels. In the Specification Sheet for 200 Series stainless steels, it was categorically mentioned that 200 Series stainless steels austenitics were typically used to replace types 304 and 301 as well as Carbon (Chrome-Manganese) Steels mainly for indoor use for low corrosion applications at room temperature. AISI 201 stainless steel corresponds to the specifications of 'UNS20100/EN1.4372/JIS SUS 201'. The main features of 200 Series stainless steel were that it has lower nickel than 300 series – with it being replaced by Manganese; thus lower cost than 300 series; similar mechanical & physical properties to 300 series; Similar fabrication performance to 300 series, including deep-drawing; Non-Magnetic. The specification sheet categorically provided the content by weight (%) of the major alloying elements and nickel content is not less than 2% and chromium is between 16 to 18 percent.

(xiii). He perused the printout taken from https://en.wikipedia.org/wiki/Austenitic_stainless_steel titled as Austenitic stainless steel and understood that as per the Wikipedia, there were two subgroups of austenitic stainless steel. The 300 series stainless steels achieve their austenitic structure primarily by a nickel addition, while 200 series stainless steels substitute manganese and nitrogen for nickel, though there was still a small nickel content in the same Austenitic stainless steel.

(xiv). He stated that after going through the contents of websites, <https://www.aalco.co.uk>, <https://www.asminternational.org>, Mill Test Certificate/ Test certificate-Inspection certificate the goods it appears that that the coils imported by them would not falls under nickel chromium Austenitic type steels as Nickel was replaced by Manganese in 200 series SS coils. He stated that documents received from the overseas supplier were having CTH upto six digits so they classified the goods under the description of 'Nickel Chromium Austenitic Type' and filed the Bills of Entry under CTH 72209022 to claim the benefit of Notification no 50/2018 dated 30th June, 2018 but as per the literature available on website it does not fall under category of Nickel Chromium Austenitic Type and the goods imported by them would have been rightly classified under CTH 72209090 for Stainless Steel Cold Rolled Coils, Grade-J3 as described by them prior to the issuance of Notification No 50/2018 dated 30.06.2018.

1/1596666/2023

4 . MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY:

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

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

5. CONDITIONS FOR EXEMPTION:

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

5 . 2 . For the purposes of implementing the Asia-Pacific Trade Agreement Rules, 2006 certain criteria are required to be followed for issuance of Country of Origin Certificate. As per Notes of completing a certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice. Moreover, the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement,

1/1596666/2023

(formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision for accepting a certificate of origin for which invoice is issued by a non-party.

6. DISCUSSION OF THE EVIDENCES:

6.1. On scrutiny of documents viz. Mill Test certificates/Test certificates/ Inspection Certificates along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificates submitted by M/s GEPL vide letter dated 09.07.2021, it appears that a Test certificate-Inspection Certificate No. 19313-TC dated 28.12.2019 was issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ19313 dated 28.12.2019 by Comet International Ltd., Hong Kong to M/s GEPL. As per the Test certificate-Inspection Certificates the coils contain less than **0.9% of Nickel and less than 12.52% chromium**.

The goods supplied by M/s Comet International Ltd., Hong Kong vide Invoice No. CMTSZ19313 dated 28.12.2019 accompanying above Test certificate-Inspection Certificates issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China were cleared by M/s GEPL under Bill of entry No. 6599726 dated 23.01.2020 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM' under CTH 72209022.

6.2. On scrutiny of documents viz. Mill Test certificates/Test certificates/ Inspection Certificates along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificates submitted by M/s GEPL vide letter dated 09.07.2021, it appears that a Inspection Certificate No. 1801031 dated 09.01.2019 was issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the Coils supplied under Commercial Invoice No. MCHA190101 dated 09.01.2019 to M/s GEPL. As per the Inspection Certificate the coils contain approximately, **1.25% of Nickel, 13.50% of chromium and 10.50% of Manganese**. The goods supplied by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd. vide Invoice No. MCHA190101 dated 09.01.2019 accompanying above Inspection Certificate were cleared by M/s GEPL under Bill of entry No. 9986405 dated 08.02.2019 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Ex Stock Grade- J3' under CTH 72209022.

6.3. On scrutiny of documents viz. Mill Test certificates/ Test certificates/ Inspection Certificates along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificates submitted by M/s GEPL vide letter dated 09.07.2021, it appears that a Inspection Certificate No. 1801205 dated 07.03.2019 was issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the Coils supplied under Commercial Invoice No. MCHA190224 dated 07.03.2019 to M/s GEPL. As per the Inspection Certificate the coils contain approximately, **1.25% of Nickel, 13.50% of chromium and 10.50% of Manganese**. The goods supplied by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd. vide Invoice No. MCHA190224 dated 07.03.2019 accompanying above Inspection Certificate was cleared by M/s GEPL under Bill of entry No. 2709384

1/1596666/2023

dated 04/04/2019 by declaring description of goods as 'Stainless Steel (CR) Strips Coils Ex Stock Grade- J3' under CTH 72209022.

6.4. On scrutiny of documents viz. Mill Test certificates/Test certificates/ Inspection Certificates along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificates submitted by M/s GEPL vide letter dated 09.07.2021, it appears that a Test certificate dated 09.08.2018 was issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the Coils supplied under Commercial Invoice No. FSTTI70508 dated 09.08.2018 to M/s GEPL. As per the Test certificate-Inspection Certificates the coils contain approximately, **1.1% of Nickel, 13.36% of chromium and 10.81% of Manganese**. Further, it appears that M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., has also issued a Country of Origin certificate bearing Sr. No. B18470ZC58420004 for supply of Non-Magnetic Stainless Steel Cold Rolled Coil, which is having CTH 722090 upto six digits. The said coils supplied by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China were cleared by M/s GEPL under Bill of entry No. 7926226 dated 05.09.2018 by declaring description of goods as 'Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3' under CTH 72209022.

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

6.6. On scrutiny of documents viz. Mill Test certificates/ Test certificates/ Inspection Certificates along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificates submitted by M/s GEPL vide letter dated 09.07.2021, it appears that in the Country of Origin Certificate No. CCPIT 70001200020688 dated 30.12.2019, the name of supplier i.e. M/s. Comet International, Hong Kong was mentioned as nonparty operator which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd. Further, as per the notes written on the said Country of Origin Certificate, "the name must be the same as the exporter described in the invoice" but in the said Country of Origin Certificate name of supplier was not written. On perusal of above Country of Origin certificate issued by China based manufacturers in the name of importer and name of supplier i.e. M/s. Comet International, Hong Kong, who issued the invoice was mentioned as nonparty operator which was other than the original manufacturer of the goods. The said goods were imported by M/s GEPL under Bill of entry No. 6599726 dated 23.01.2020.

6.7. On scrutiny of documents submitted by M/s GEPL vide letter dated 09.07.2021, it appears that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, M/s GEPL was classifying the goods under CTH 72209090. On perusal of above Bill of Entry, it appears that M/s GEPL has imported the similar goods from China by declaring it as 'Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM'

I/1596666/2023

under CTH 72209090 but after issuance of Notification No. 50/2018-Customs dated 30.06.2018, M/s GEPL started classifying the goods under CTH 72209090 to avail the benefit of said Notification. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s GEPL is in fact Stainless Steel of other Grades and be correctly classified under CTH 72209090.

6.8. Shri Ashok Kumar, Director of M/s GEPL in his statement recorded on 19.07.2021 & 08.03.2022 himself admitted that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the said coils under CTH 72202090. He also admitted that Stainless Steel Cold Rolled Coils Grade- J3 should be classified under CTH 72202090. Also On verification of import data of M/s GEPL, prior to the issuance of the said notification, M/s GEPL had classified correctly said coils under CTH 72209090.

200 SERIES STAINLESS STEEL

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

CHEMICAL COMPOSITION

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

Extract from BS EN 10088-2: Chemical Compositions

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

AUSTENITIC STAINLESS STEEL (NICKEL CHROMIUM AUSTENITIC STAINLESS STEEL)

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

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

| Euro norm (EN) number | EN designation | AISI grade | C | Cr | Mo | Ni | Others |
|-----------------------|----------------|------------|---------|------|----|------|-------------------|
| 1.4310 | X10CrNi18-8 | 301 | 0.10 | 17.5 | NS | 8 | NS |
| 1.4301 | X5CrNi18-10 | 304 | < 0.07 | 18.5 | NS | 9 | NS |
| 1.4307 | X2CrNi18-9 | 304L | < 0.030 | 18.5 | NS | 9 | NS |
| 1.4305 | X8CrNiS18-9 e | 303 | < 0.10 | 18 | NS | 9 | 0.3 |
| 1.4541 | X6CrNiTi18-10 | 321 | < 0.08 | 18 | NS | 10.5 | Ti: 5×C ≤ 0.70 |

I/1596666/2023

| | | | | | | | |
|--------|-------------------|-------|---------|------|------|------|-------------------|
| 1.4401 | X5CrNiMo17-12-2 | 316 | < 0.07 | 17.5 | 2.2 | 11.5 | NS |
| 1.4404 | X2CrNiMo17-12-2 | 316L | < 0.030 | 17.5 | 2.25 | 11.5 | NS |
| 1.4571 | X6CrNiMoTi17-12-2 | 316Ti | < 0.08 | 17.5 | 2.25 | 12 | Ti; 5xC ≤ 0.70 |

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

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

| Alloy | Designation | C | N | Cr | Ni | Mo | Mn | Si | Other | Other | Other |
|-------------------|-------------|------|------|------|------|------|-----|------|--------|--------|-------|
| 201 | S20100 | 0.08 | 0.07 | 16.3 | 4.5 | 0.2 | 7.1 | 0.45 | 0.001S | 0.03P | 0.2Cu |
| 201 drawing | S220100 | 0.08 | 0.07 | 16.9 | 5.4 | 0.02 | 7.1 | 0.5 | 0.001S | 0.30P | 0.6Cu |
| 201LN | S20153 | 0.02 | 0.13 | 16.3 | 4.5 | 0.2 | 7.1 | 0.45 | 0.001S | 0.03P | 0.5Cu |
| 301 tensile | S30100 | 0.08 | 0.4 | 16.6 | 6.8 | 0.2 | 1.0 | 0.45 | 0.001S | 0.03P | 0.3Cu |
| 301 drawing | S30100 | 0.08 | 0.04 | 17.4 | 7.4 | 0.02 | 1.7 | 0.45 | 0.007S | 0.03P | 0.6Cu |
| 303 | S30300 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| 304 | S30400 | 0.05 | 0.05 | 18.3 | 8.1 | 0.3 | 1.8 | 0.45 | 0.001S | 0.03P | 0.3Cu |
| 304 drawing | S30400 | 0.05 | 0.04 | 18.4 | 8.6 | 0.3 | 1.8 | 0.45 | 0.001S | 0.03P | 0.3Cu |
| 304 extra drawing | S30400 | 0.06 | 0.04 | 18.3 | 9.1 | 0.3 | 1.8 | 0.45 | 0.001S | 0.030P | 0.4Cu |
| 304L tubing | S30403 | 0.02 | 0.09 | 18.3 | 8.1 | 0.3 | 1.8 | 0.45 | 0.013S | 0.030P | 0.4Ci |
| 305 | S30500 | 0.05 | 0.02 | 18.8 | 12.1 | 0.2 | 0.8 | 0.60 | 0.001S | 0.02P | 0.2Cu |
| 321 | S32100 | 0.05 | 0.01 | 17.7 | 9.1 | 0.03 | 1.0 | 0.45 | 0.001S | 0.03P | 0.4Ti |
| 316L | S31603 | 0.02 | 0.0 | 16.4 | 10.5 | 2.1 | 1.8 | 0.50 | 0.010S | 0.03P | 0.4Cu |

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

6.14. In view of the above, it also appears that M/s GEPL had imported the goods namely 'Cold Rolled Stainless Steel Coils' by mis-declaring 'Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)' and by mis-classifying the same under CTH 72209022 and wrongly availed the benefit of Customs Notification No. 50/2018-Customs dated 30.06.2018 during the period from September'2018 to September'2020. As per the Notification no. 50/2018-Customs dated 30.06.2018, the exemption was available to goods falling under CTH 72209022 and not to the goods falling under other sub-heading CTH 7220.

I/1596666/2023

6.15. It was also forthcoming from the evidences on records that M/s GEPL, had availed the benefit of payment of appropriate duty under Notification No. 50/2018-Customs dated 30.06.2018 on the Country of Origin certificates issued by China based manufacturers in the name of importer, whereas invoices were issued by another supplier based at Hong Kong. However, in terms of notes of completing a certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice and the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended] has no exclusive provision for accepting a certificate of origin for which invoice is issued by a non-party. Therefore, the benefit of exemption from payment of duty under Notification No. 50/2018-Customs dated 30.06.2018 is not available to the Country of Origin certificates issued by the manufacturers other than the actual exporters (Invoice issuing suppliers). The details of such Bills of Entry filed by mis-declaring 'Cold Rolled Stainless Steel Coils Grade-J3 of various sizes under CTH 72209022 on which M/s GEPL has availed the benefit of exemption under Notification No. 50/2018-Customs dated 30.06.2018 on the COO issued by manufacturers but invoices were issued by a non-party are as under:

TABLE-1:

| Sr. No. | BE No. & Date | COO Certificate No & Date | Name of Exporter (Invoice issuing exporter) | COO certificate issued in the name of manufacturer | Total Assessable value (In Rs.) | Duty Difference (In Rs.) |
|---------|------------------------------|------------------------------------|---|--|---------------------------------|--------------------------|
| 1 | 8548000 dtd 22.10.2018 | 0118111700109343 dtd 11.10.2018 | Great China Alliance Ltd., Hong Kong | Shenzhen Jinminghui Industry & Trading Co. Ltd | 3588051 | 184262 |
| 2 | 8720545 dtd 03.11.2018 | 0118111700113315 dtd 14.10.2018 | Great China Alliance Ltd., Hong Kong | Shenzhen Jinminghui Industry & Trading Co. Ltd | 1765788 | 90681 |
| 3 | 6509689 dtd 17.01.2020 | B19725123392146 dtd 31.12.2019 | Mch Steel Industry Co. Ltd | Shenzhen Chuangfuseixiang Commerce Co. Ltd | 2902684 | 149065 |
| 4 | 6599726 dtd 23.01.2020 | 0120111700004340 dtd 30.12.2019 | Comet International Ltd, Hong Kong | Shenzhen Jinminghui Industry & Trading Co. Ltd | 2783065 | 142922 |
| 5 | 8809960 dtd 14.09.2020 | 0120111700093485 dtd 25.08.2020 | Mch Steel Industry Co. Ltd | Shenzhen Yongxinli Import and Export Co. Ltd | 4633732 | 237962 |

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

1/1596666/2023

M/s GEPL.

7. PAYMENT OF CUSTOMS DUTY:

7.1. During the course of investigation, M/s GEPL have voluntarily made payment of differential duty amounting to **Rs.15,00,000/-** (Rs.10,00,000/- vide TR-6 Challan no. GEPL/01/2021 dated 28.09.2021 & Rs. 5,00,000/- vide TR-6 Challan no. GEPL/02/2021 dated 14.03.2022), due to misclassification of goods imported by them.

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

7 . 3 . As per the General Rules for the Interpretation of the Harmonized System, the classification of goods in the Nomenclature shall be governed by certain principles. As per Rule 1 of the General Rules for the Interpretation '*the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions (i.e. G.R. 2 to 6)'*'.

7.4. M/s GEPL had imported 'Cold Rolled Stainless Steel Coils' by wrongly claiming classification under Customs Tariff Heading 72209022 during the period from September'2018 to September'2020. Further, from the evidences available in the form of Test certificate-Inspection Certificate produced by the importer at the time of import which shows the content of Chromium (Cr) as nearly 13% and Nickel as nearly 1%, these facts seem to rule out its classification as Austenitic Stainless-Steel grades. As per website of M/s. Aalco Metals Limited, a company registered in England & Wales, the UK's largest independent multi-metals stockholder and as per multilingual, web-based, free-content encyclopedia Wikipedia https://en.wikipedia.org/wiki/Austenitic_stainless_steel, the Austenitic Stainless-Steel grades have major % of Nickle. Shri Ashok Kumar, Director of M/s GEPL also admitted that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the goods under CTH 72209090. Therefore, it appears that the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s GEPL is in fact Stainless Steel of other Grades and be correctly classified under CTH 72209090.

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

I/1596666/2023

facts.

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

8. VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962

8.1. Vide Finance Act, 2011 w.e.f. 08.04.2011 "Self Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI. Therefore, it appears that M/s GEPL have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty by wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018 on the import of Cold and Hot Rolled Stainless steel Coils as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. It appears that M/s GEPL had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as M/s GEPL while filing Bill of Entry, failed to ensure the accuracy and completeness of the information filed by them and thereby failed to fulfill their legal obligation of providing correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs.

9. CULPABILITY AND LIABILITY OF NOTICEES

9.1. From the aforesaid, it appeared that the importer had knowingly and deliberately indulged in suppression of facts and had willfully misrepresented /mis-stated the material facts regarding the goods imported by them in the declarations made in the import documents including Check lists presented for filling of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty by wrongly availing benefit of Notification No. 50/2018-customs dated 30.06.2018. Therefore, the provisions of Section 28(4) of the Customs Act, 1962, is applicable for demand of duty not paid/short paid. The differential Customs duty amounting to Rs.54,64,932/- in respect of imports at various ports/ICD's viz. Mundra port (INMUN1), ICD Loni (INLON6) and ICD Sabarmati

1/1596666/2023

(INSBI6) as detailed in **Annexures** to subject SCNs (**Rs.41,36,129/-** in respect of the imports at Mundra port (INMUN1) as detailed in Annexure to subject SCN, **Rs. 8,81,878/-** in respect of the imports at ICD Loni (INLON6) as detailed in Annexure to subject SCN; and **Rs.4,46,925/-** in respect of the imports at ICD Sabarmati (INSBI6) as detailed in Annexure to subject SCN) is liable to be recovered from M/s GEPL, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

9.2. M/s GEPL have seemingly imported Cold Rolled Stainless steel Coils valued at **Rs.10,64,16,180/-** (as detailed in Annexures to subject SCNs), by deliberately resorting to mis-statement & suppression of the material fact that the said goods are classifiable under CTH 72209090 in contravention of the provisions of Section 46 (4) of the Customs Act, 1962. In terms of Section 46(4) of Customs Act, 1962, the importer was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, which in the instant case, M/s GEPL had failed to fulfill the conditions in respect of the imports of 'Cold Rolled Stainless steel Coils through various ports/ICD's viz. Mundra port (INMUN1), ICD Loni (INLON6) and ICD Sabarmati (INSBI6)'. For these contraventions and violations, the goods fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

9.3. The aforesaid acts of suppression of facts and willful mis-statement by M/s GEPL had led to evasion of Customs duty of **Rs.54,64,932/-** thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Customs duty amounting to **Rs.54,64,932/-** was evaded by reason of willful mis-statement and suppression of facts with a malafide intention. All the aforesaid acts of omission and commission on the part of M/s GEPL rendered the subject imported goods totally valued at **Rs.10,64,16,180/-** (as detailed in Annexure-A to C to the SCN) liable for confiscation under Section 111(m) of the Customs Act, 1962. M/s GEPL are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it is also evident that the actual facts were only known to the importer about the product and its actual classification. However, it appears that M/s GEPL had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and have therefore rendered themselves liable for penalty under section 114AA of the Customs Act, 1962 also. Since M/s GEPL have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962.

I/1596666/2023

9.4. It further appeared that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by M/s GEPL before the Customs authorities, was done on the direction and under the guidance of Shri Ashok Kumar, Director of M/s GEPL to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Ashok Kumar had full knowledge about the mis-classification of the said imported goods in as much as Shri Ashok Kumar was overall responsible for all imports and finalization of classification of imported goods. He was in constant touch with the overseas supplier of goods to manage documents for misclassification of goods and instruct Customs broker to produce the same before customs for clearance. M/s GEPL received the Test certificate-Inspection Certificate, wherein the chemicals compositions of goods and country of origin certificate received was given, as per that goods were rightly classified under CTH 72209090 but Shri Ashok Kumar instructed Customs broker to file the Bills of entry under CTH 72209022 to evade duty. Shri Ashok Kumar was aware that the consignments imported by M/s GEPL was actually Cold Rolled Stainless Steel Coils falling under CTH 72209090, as it was evident from the documents available in the form of Mill Test Certificate/Test certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Ashok Kumar, Director of M/s GEPL. The past consignments imported by M/s GEPL before issuance of Notification No 50/2018-Customs dated 30.06.2018, M/s GEPL were also classifying the said goods under CTH 72209090. All the aforesaid acts of omission and commission on the part of Shri Ashok Kumar have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. Further, it also appears that Shri Ashok Kumar had knowingly and intentionally prepared/got prepared, signed/got signed and used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and has therefore rendered himself liable for penalty under section 114AA of the Customs Act, 1962. Since Shri Ashok Kumar, Director of M/s GEPL has also violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under Section 117 of Customs Act, 1962.

9.5. It also appeared that M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics, all the Customs Broker firms acted on behalf of M/s GEPL for clearance of consignments of Cold Rolled Stainless steel Coils from customs. M/s GEPL handed over the documents to the Customs Brokers for filing of Bills of Entry and to arrange clearance of the goods. M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics, who handles clearance activities in the capacity as the Custom Brokers are responsible for having

1/1596666/2023

indulged in the conspiracy of mis-declaration of description and mis-classification of goods. M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics had hatched a conspiracy with Shri Ashok Kumar Director of M/s GEPL with sole aim to clear the Cold Rolled Stainless steel Coils without payment of applicable Customs duty by willfully mis-declaring its description and correct CTH No. M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd. and M/s. Maffick Logistics appeared aware that the consignments imported by M/s GEPL by declaring as Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type) was actually Cold Rolled Stainless Steel Coils falling under heading others of chapter 7220, as it was evident from the documents available in the form of Mill Test Certificate/Test certificate/ Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Ashok Kumar Director of M/s GEPL. The commissions and omissions on the part of M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics who are Licensed Customs Broker Firms were in violation of the obligations casted on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they seemingly abetted M/s GEPL in mis-declaring the description of goods and mis-classifying the CTH of imported goods in the Bills of Entry filed by them. M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics allegedly connived with M/s GEPL and facilitated them the import goods without payment of applicable Customs duty in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. All the aforesaid acts of omissions and commissions on part of M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics have rendered themselves liable to penalty under provisions of Section 112 (a), 112(b) of Customs Act, 1962. They prepared/got prepared, signed/got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of Customs Act, 1962.

9.6. It further appeared that mis-declaration of description and mis-classification of the goods in the import documents viz. Bills of Entry filed by M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd. and M/s. Maffick Logistics on behalf of M/s GEPL before the Customs authorities, was done on the direction of Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, G-card holder and Authorized signatory of M/s. R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd. and Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics. Shri Ashok Kumar Director of M/s GEPL handed over the documents to Shri

1/1596666/2023

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

9.7. Whereas, after detailed investigation as discussed above, it was revealed that M/s Gulshan Exim Private Limited (IEC-0505000261), B-234, 2nd Floor, North Ex Mall, Sector-9, Rohini, New Delhi-110085 were suppressing the description and Classification of goods, along with assessable value and consequently evaded the duty. Therefore, the Show Cause Notices for demand of duty in respect of the goods imported at Mundra Port (INMUN1) and ICD Luni (INLON6) by M/s Gulshan Exim Private Limited (IEC-0505000261) has been issued by the jurisdictional Customs authorities. For the remaining customs station i.e. in case of ICD Sabarmati (INSBI6), the Show Cause Notice was issued by the Commissioner of Customs, Custom House, Mundra making the show cause notice answerable to "**Principal Commissioner of Customs, Mundra**" as per Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 issued by CBIC, New Delhi. The detail of the said SCN's are as under:

TABLE-2:

| Sr. No. | Bills of Entry No. & Date | Ports / ICDs/ SEZ of imports | Show Cause Notice Number | Value of goods imported (Rs.) | Duty paid/ to be recovered (Rs.) |
|---------|--------------------------------------|------------------------------|---|-------------------------------|----------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | As shown in Annexure-A to the notice | Mundra Port (INMUN1) | GEN/ADJ/ADC/478/2022 ADJN dated 20.05.2022 read with Corrigendum dated 11.04.2023 | 8,05,40,987/- | 41,36,129/- |
| 2 | As shown in Annexure-B to the notice | ICD Loni (INLON6) | C.NO. VIII(30)CUS/ADJ/ICD-DD/GEPL/DRI/03/2023/ dated 24.03.2023 | 1,71,72,417/- | 8,81,878/- |
| 3 | As shown in Annexure-C to the notice | ICD Sabarmati (INSBI6) | GEN/ADJ/ADC/478/2022 ADJN dated 12.05.2023. | 87,02,776/- | 4,46,925/- |
| Total | | | | 10,64,16,180/- | 54,64,932/- |

10. DEMAND OF DIFFERENTIAL DUTY:

10.1. After completion of the investigation, **M/s. Gulshan Exim Private Limited (IEC-0505000261)**, B-234, 2nd Floor, North Ex Mall, Sector-9, Rohini, New Delhi-110085, were called upon to show cause to the Principal Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, wherein it has been proposed:-

- i. To reject the declared classification and re-classify the goods under CTH 72209090; and reassess the subject Bills of Entry;
- ii. To confiscate goods valued at **Rs.10,64,16,180/- (Rupees Ten Crore Sixty Four Lacs Sixteen Thousand One Hundred Eighty only)** (as discussed vide Column No. 4 of **TABLE-2** hereinabove and as

1/1596666/2023

detailed in Annexure-A, B & C attached to above mentioned show cause notices), under the provisions of Section 111(m) of the Customs Act, 1962 and to impose penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

- iii. To demand and recover the Differential/Short paid Customs duty amounting to **Rs.54,64,932/- (Fifty Four Thousand Sixty Four thousand Nine Hundred Thirty Two Only)** (as discussed vide Column No. 5 of **TABLE-2** hereinabove and as detailed in Annexure-A, B & C attached to aforementioned Show Cause Notices), from M/s.GEPL under Section 28(4)of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid; and to Impose penalty upon them under the provisions of Section 114A, 114AA and 117 of the Customs Act, 1962 for duty mentioned above.
- iv. To appropriate the Customs duty of **Rs.15,00,000/- (Rupees Fifteen Lakhs only)** already paid voluntarily by M/s. GEPL during the course of investigation towards their duty liability raised vide SCN bearing F.No. GEN/ADJ/ADC/478/2022-ADJN dated 12.05.2023.

1 0 . 2 The Show Cause Notices were also issued to following persons/companies/firms/concerns as appearing in Column 2 of the following Tables, wherein it has been proposed to impose penalty on them as under:

Penalty proposed under SCN bearing F.No.GEN/ADJ/ADC/478/2022-ADJN dated 20.05.2022 read with Corrigendum dated 11.04.2023

| Sr. No. | Name | Penal provisions under Customs Act, 1962 | | | | |
|---------|---|--|--------|-----|-------|-----|
| | | (3) | (4) | (5) | (6) | (7) |
| 1 | Shri Ashok Kumar, Director of the importer; | 112(a) | 112(b) | | 114AA | 117 |
| 2 | M/s R R Logistics; | 112(a) | 112(b) | --- | 114AA | 117 |
| 3 | M/s.Shivam Clearing Agency (Mumbai) Pvt. Ltd.; | 112(a) | 112(b) | --- | 114AA | 117 |
| 4 | Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. | 112(a) | 112(b) | --- | 114AA | 117 |

Penalty proposed under SCN bearing C.NO.VIII(30)CUS/ADJ/ICD-DD/GEPL/DRI/03/2023/ dated 24.03.2023

| Sr. No. | Name | Penal provisions under Customs Act, 1962 | | | | |
|---------|---|--|--------|-----|-------|-----|
| | | (3) | (4) | (5) | (6) | (7) |
| 1 | Shri Ashok Kumar, Director of the importer; | 112(a) | 112(b) | | 114AA | 117 |
| 2 | M/s Shri Balaji Logistics; | 112(a) | 112(b) | --- | 114AA | 117 |
| | Shri Jitender Kumar, | 112(a) | 112(b) | --- | 114AA | 117 |

1/1596666/2023

| | | | | | | |
|---|---|--|--|--|--|--|
| 3 | Proprietor of M/s. Shri Balaji Logistics. | | | | | |
|---|---|--|--|--|--|--|

Penalty proposed under SCN GEN/ADJ/ADC/478/2022-Adjn dated 12.05.2023.

| Sr. No. | Name | Penal provisions under Customs Act, 1962 | | | | |
|---------|---|--|--------|-----|-------|-----|
| | | (3) | (4) | (5) | (6) | (7) |
| 1 | Shri Ashok Kumar, Director of the importer; | 112(a) | 112(b) | | 114AA | 117 |
| 2 | M/s Shri Balaji Logistics; | 112(a) | 112(b) | --- | 114AA | 117 |
| 3 | M/s R R Logistics; | 112(a) | 112(b) | --- | 114AA | 117 |
| 4 | M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.; | 112(a) | 112(b) | --- | 114AA | 117 |
| 5 | M/s Maffick Logistics. | 112(a) | 112(b) | --- | 114AA | 117 |
| 6 | Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics | 112(a) | 112(b) | --- | 114AA | 117 |
| 7 | Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. | 112(a) | 112(b) | --- | 114AA | 117 |
| 8 | Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics | 112(a) | 112(b) | --- | 114AA | 117 |

11. DEFENSE SUBMISSION:

M/s Gulshan Exim Private Limited ('GEPL'), vide letter dated 06.12.2023 submitted their reply in respect of all the **three Show Cause Notices** i.e. SCN No. 11/ADC/NOIDA/CUS/2022-23 dated 24.03.2023 issued by the Additional Commissioner, Noida Customs Commissionerate; SCN F. No. GEN/ADJ/ADC/478/2022-Adjn/1913 dated 20.05.2022 issued by the Additional Commissioner of Customs, Custom House Mundra and Corrigendum dated 11.04.2023; SCN F. No. GEN/ADJ/ADC/478/2022-Adjn/1913 dated 12.05.2023 issued by the Commissioner of Customs, Custom House, Mundra, interalia submitted as under:

- (i) that the SCN dated 20.05.2022 was transferred to call book under provisions of Section 28(9A) of the Customs Act, in view of Instruction no. 4/2021-Cus. dated 17.03.2021, and subsequently the matter was then taken out of the call book vide letter issued vide F. No. GEN/ADJ/ADC/478/2022-Adjn./6706 dated 23.01.2023. The SCN was issued by the Additional Commissioner of Customs, Custom House, Mundra and not by the DRI. Therefore, the SCN was incorrectly transferred to the call book. In that case, the present SCN

1/1596666/2023

be adjudicated considering the timelines from the date of issuance of the SCN and not from the date when the same was removed from the call book.

(ii) that they had truthfully submitted all the details and documents at the time of import, i.e. description and classification of goods, invoices, Mill Test Reports, Country of Origin Certificates, etc. The department had accepted their claim and cleared a large number of imports of different importers spanning over a period of 3 years.

(iii) that they had adopted the Tariff classification and claimed the exemption benefit under the notification as per their understanding of the scope of Tariff heading and exemption notification.

(iv) that as per the Indian Standards (IS) published by the Bureau of Indian Standards (BIS), there is no separate meaning or definition provided for Nickel-Chromium austenitic steel and therefore, the classification claimed and adopted by them is correct.

(v) that the classification adopted by them has been rejected by the department by relying on websites of certain suppliers and Wikipedia, which are not recognized technical authority on the subject.

(vi) that the Department cannot reject the Certificate of Country of Origin without holding any consultations with the issuing authority.

(vii) that the allegation of suppression of facts and wilful misrepresentation/ misstatement to invoke the provisions of Section 28(4) is a bare allegation and without any basis. A difference of opinion on classification cannot be the basis to claim suppression of facts.

(viii) The demand is barred by limitation of time.

That their detailed submissions on the afore-mentioned points are as under:

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

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

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

1/1596666/2023

| | |
|----------------|---|
| than 600 mm | |
| - | Not further worked than hot rolled: |
| | |
| 7220 20 - | Not further worked than cold rolled (cold-reduced): |
| | |
| 7220 90 - | Other: |
| 7220 9010 --- | Skelp (strips for pipes and tubes) |
| --- | Strips for pipes and tubes (other than skelp) |
| 7020 9021 ---- | Chromium Type |
| 7020 9022 ---- | Nickel chromium austenitic type |
| 7020 9029 | Other |
| 7020 9090 --- | Other |

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

(x) It is to be noted that three Indian Standards as applicable to stainless steel are relevant for their consideration. These are:

- IS 6911: 2017 (reaffirmed in 2022) – Stainless Steel Plate, Sheet and Strip — Specification
- IS 5522: 2014 (reaffirmed in 2019) – Stainless Steel Sheets and Strips for Utensils — Specification
- IS 15997: 2012 (reaffirmed in 2018 and 2022) - Low Nickel Austenitic Stainless Steel Sheet and Strip for Utensils and Kitchen Appliances — Specification

(xi) In IS 6911, four major categories of stainless steel mentioned are Austenitic steel, Ferritic stainless steel, Martensitic stainless steel and Duplex stainless steel. As far as austenitic type steel is concerned, as per IS 6911 (as reaffirmed in 2022), the different grades of steel mentioned are 200 series, 300 series and N series. In

200 series, the percentage of Nickel is lower than the percentage of Nickel in 300 series. However, the percentage of Nickel is lowest for the 'N' series, i.e. for N1 grade, Nickel percentage prescribed is from 1.00-2.00 percent.

(xii) Further, IS 15997:2012 deals with Low Nickel Austenitic stainless steel sheets and strips for utensils and kitchens appliances. In this standard, the austenitic steel grades N1, N2 and N3 are mentioned. This standard has been amended in March 2023 (effective 01.09.23) and three grades of steel, i.e. N5, N6 and N7 have been incorporated wherein the Nickel percentage has been prescribed between 0.20 to 0.95 percent.

(xiii) From the above analysis, it is clear that there are certain grades of austenitic steel which can have very low percentage of nickel. Further, there are no separate categories of austenitic steel defined in the Indian standards such as 'Nickel Chromium Austenitic Steel' or 'Manganese Chromium Austenitic Steel'. The IS simply provide for the percentage of different components in the austenitic steel without defining the same as 'Nickel-chromium' type or 'Manganese Chromium' type.

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

(xv) Therefore, the conclusion drawn by the revenue in the SCN is erroneous and the impugned Notice thus deserves to be dropped on this count alone.

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

(xvi) The Department has relied upon the information provided on the website of 'Wikipedia' about austenitic steels. It is mentioned therein that there are two subgroups of austenitic stainless steels, i.e. 300 series stainless steel achieve their austenitic structure primarily by a nickel addition while 200 series stainless steel substitute manganese and nitrogen for nickel, though there is still a small nickel content. Based on this information, the department has alleged that 'J3 grade' of steel imported by them has less nickel and

more manganese and therefore, is not a 'Nickel Chromium austenitic steel'.

(xvii) In this regard, it is submitted that as already submitted above, the relevant Indian Standards do not categories the austenitic steels into separate categories such as 'Nickel Chromium Austenitic Steel' and 'Manganese Chromium Austenitic Steel'. CTH 7220 9022 covers 'Nickel Chromium austenitic steel'. The steel sheets imported by them have Nickel, Chromium, Manganese and other alloying materials. There is no dispute that the item imported by them is an austenitic steel. The issue to be decided is that in an austenitic stainless steel, if Nickel is present in less percentage and percentage of Manganese is more, whether the austenitic steel can be considered as an 'austenitic steel other than Nickel Chromium type'. The department has not cited any authoritative technical literature or authorised standards such as Indian Standards or international standards in support of its contention that such an austenitic steel will not fall in the category of 'Nickel Chromium austenitic steel'. In fact, no definition of 'Nickel Chromium austenitic steel' has been cited by the department.

(xviii) Further, Wikipedia is an open source website wherein any person can upload any content and any person can edit the content. There is no requirement of citing any technical literature in support of the content uploaded on Wikipedia. There is no system of any validation of such content for its correctness and accuracy by any technically competent person. It can be a good source of general information about any topic but is not an authoritative source which can be cited in any techno legal proceedings. In support of this contention they rely on the following judgements:

- a. Ponds India Ltd. vs. Commr. of Trade Tax, Lucknow [2008 (227) E.L.T. 497 (S.C.)]
- b. Hewlett Packard India Sales Pvt. Ltd. vs. Commr. of Cus. (Import), Nhava Sheva [2023 (383) E.L.T. 241 (S.C.)]
- c. Commissioner of Customs, Bangalore vs. Acer India Pvt. Ltd. [2007 (218) E.L.T. 17 (S.C.)]

(xix) From the above analysis about the lack of credibility of Wikipedia as an authentic source on technical matters, it is submitted that no reliance can be placed on this website to conclude that the goods imported were 'Manganese Chromium Austenitic Steel' and not 'Nickel Chromium Austenitic Steel'.

(xx) In the SCN, reliance has also been placed on the official website of Aalco Metals Limited, a company registered in UK and Wales. The company trades in 200 series stainless steel. As per the website, the main feature of 200 series stainless steel is that it has lower Nickel than 300 series, which is replaced by Manganese. Reliance has also been placed on the website of ASM International, a material information society. It has been mentioned that 'Austenitic Stainless Steels' grades are best viewed as a continuum with a lower boundary at 16% Cr - 6% Ni and an upper boundary at 19% Cr - 12% Ni. This

1/1596666/2023

represents the range from minimum to maximum austenite stability.

(xxi) As mentioned above, the SCN has been issued on the premise that in the item imported by them, there is less percentage of nickel and chromium than the percentage of Manganese and Chromium and therefore the same cannot be considered as 'Nickel Chromium Austenitic Steel'. A careful perusal of the material on the website of Aalco Metals Limited indicates that there is no mention therein that 200 series austenitic steel cannot be considered as Nickel Chromium Austenitic Steel. Mere presence of more Manganese in the item imported along with presence of Nickel in smaller quantity cannot disqualify the item imported from classification under CTH 7220 9022. The information on the said website shows the percentage of Nickel for 200 series as 2.00% - 6.00%. However, with the improved technology, the percentage of Nickel in the 'N' series is as low as 1-2% (N1, N2). Further, in N5, N6 and N7 series, the Nickel percentage varies from 0.20% to 0.95%. However, even with lower percentage of Nickel, these are still classified as austenitic steel.

(xxii) Further, as per the conclusion drawn by the Department on the basis of the information available on the website of ASM International, the austenitic steel should have Nickel percentage from 6% to 12% which represent the range from minimum to maximum austenitic stability. However, this conclusion, besides being not supported by any authentic technical basis, is also not even supported by the Indian Standards. The Nickel percentage in some austenitic steels is as low as 1-2 % (N1, N2) and 0.45% to 0.95% (N5, N6, N7). Even in austenitic stainless steels of numerical symbol 201, 201A, 202, 201S, 201LN, 201N, 204, 204 Cu1, 204 Cu2, 204 Cu3, the Nickel limit is permitted to be less than 6% while the website of ASM International mentions the lower limit to be not less than 6% for austenitic stability. It is therefore clear that the information mentioned in this website is outdated and cannot be relied upon for its accuracy.

(xxiii) Therefore, as already established earlier, since the item imported by them contains Nickel as well as Chromium and are austenitic type, these are correctly classifiable as Nickel Chromium Austenitic Steel under CTH 7220 9022.

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

(xiv) In this regard, it is submitted that although the name of the invoice issuing exporter is not mentioned in the column 1 of the COO which is for 'Goods consigned from', the said exporter's name is mentioned in column no. 7 which is for 'Description of goods' as a Non-Party Operator. Therefore, the invoice issuing exporter's name is mentioned in the COO and just because the same is mentioned in a different column does not render the COO as 'invalid'.

(xxv) Without prejudice to the above, it is submitted that if the

1/1596666/2023

importing member nation has any queries regarding the Certificate, it is within the Asia-Pacific Rules of Origin, specifically at 'Clause 5 of Annexure B to the Rules of Origin', for the importing member nation to initiate consultations with the Designated Authority of the exporting member nation. The said Clause 5 stipulates that where the importing Contracting State has reasonable doubt as to the authenticity of a Certificate of Origin or regarding the true origin of the products in question or it feels that the Rules of Origin are being circumvented, it may initiate consultations with the relevant Contracting State and Issuing Authority, and even inspect the goods in question. In cases of suspected fraudulent acts, the concerned Issuing Authorities are bound to cooperate in the action to be taken in the territory of each Contracting State against the persons involved, including imposing legal sanctions for fraudulent acts. They have reproduced relevant extract of clause 5.

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

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

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

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

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

7220 9021 (Chromium type);

7220 9022 (Nickel chromium austenitic type); or

7220 9029 (Other).

It will not be classified under the other three dash level entry i.e.

I/1596666/2023

7220 9090 which covers 'Other'. Therefore, it is submitted that the classification adopted by the Noticee has been rejected without proper understanding of the scheme of classification for the heading 7220 90.

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

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

(xxix) The SCN has also invoked extended period of limitation of five years under Section 28(4) of the Customs Act alleging that the imports were deliberately mis-declared and misclassified by them with an intention to evade the applicable duty, leading to suppression of facts and wilful mis-statement. In this regard, they wish to state that prior to the issue of notification no. 50/2018-Cus, there was no difference in the rate of duty applicable to the heading 7220 9022 as adopted by the Noticee or CTH 7220 9090 as proposed by the Department. However, after the issue of notification no. 50/2018-Cus, they claimed the benefit of the notification by classifying the goods under 7220 9022 as the item imported by them was more appropriately classifiable under this heading. No adverse inference can be drawn against them on the ground that they changed the classification. Every importer is entitled to claim the benefit of an exemption if he has bonafide belief that he is entitled to the avail the benefit of exemption. Similarly, they changed the classification after the DRI investigation to 7220 9090, as this was the classification being adopted by DRI during different investigations. This was done to avoid any further controversy regarding the future consignments as such enquiry has affected their business adversely.

(xxx) The SCN has been issued for the import which took place in September 2018. The SCN has been issued in terms of section 28(4) of Customs Act, 1962 which covers provisions for demand of duty short paid by reason of collusion, misstatement or suppression of facts. In such a case, the department is empowered to issue SCN within five years from the relevant date i.e. within the extended period of limitation. However, when there is no suppression of facts or misstatement etc., the SCN has to be issued within two years of the relevant date in terms of Section 28(1) of the Customs Act, 1962 i.e. within the normal period of limitation. The relevant date is the date when out of charge order is given by the proper officer of Customs. This date can be taken as near to the date of filing of the Bill of Entry, as the date of such

1/1596666/2023

order passed by the proper officer has not been mentioned in the SCN. In this case, the SCN has been issued on 20.05.2022, which is beyond the normal period of two years from the relevant date for 19 out of the 20 Bills of Entry covered in the notice. It is submitted that there is no suppression of facts or misstatement on our part in the present case. Therefore, the SCN could not have been issued in terms of section 28(4) of Customs Act, 1962.

(xxxi) that they had truthfully declared all the material facts at the time of imports. The department had examined their claim at the time of each import and found their claim acceptable. The SCN only makes a bland allegation that they had resorted to misstatement and suppression of facts without specifying as to what specific action was taken by them and how the same can be considered as misstatement and/ or suppression of facts.

(xxxii) Noticees have referred to Compulsory Compliance Requirements as mentioned in the Bill of entry, which are required to be checked by each Customs Officer before the clearance. That they had categorically declared that the item imported was of J3 grade. The invoice also mentions the grade of stainless steel coils imported as J3. The classification claimed was also 7220 9022. In a number of Bills of Entries, the test certificate issued by the manufacturer was also enclosed with the Bills of Entries. The compulsory compliance requirement for this heading was quite clear and unambiguous. The Departmental officers were required to check whether the goods imported fell within the classification claimed or not. They had claimed the classification under heading 7220 9022. The grade of J3 was also specifically mentioned in the Bill of Entry. The compulsory compliance requirement was meant to ensure that the goods covered under heading 7220 9022 meet these requirements including the IS 6911:2017 mentioned therein. As there was no objection from the department and the goods were cleared in accordance with their claim for concessional rate of customs duty, it is clear that their claim was accepted by the department. Now SCN only makes a bland allegation of suppression of facts and misstatement without specifically mentioning as to how exactly this suppression or misstatement was resorted to by them. They categorically deny that any suppression of facts was done by them or they had resorted to any misstatement.

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

(xxxiii) During the course of investigation, they had submitted

I/1596666/2023

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

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

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

(xxxiv) that the SCN proposes to impose penalty under Section 112(a) or 112(b) of the Customs Act. Penalty under this Section is imposed for improper importation of goods. In the present case, there is no act committed by the Noticee which would render the goods liable to confiscation under Section 111 of the Customs Act. As already submitted above, all the relevant information and documents were filed with the Customs authorities at the time of import and there was no suppression of facts on the part of the Noticee. Therefore, there is no penalty which can be imposed under Section 112 of the Customs Act on the Noticee.

REG.: NO PENALTY IMPOSABLE UNDER SECTION 114A

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

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

REG.: NO PENALTY IMPOSABLE UNDER SECTION 114AA

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

REG: NO PENALTY CAN BE IMPOSED UNDER SECTION 117

(xxxviii) The SCN has proposed to impose penalty under Section 117 of the Customs Act even though the ingredients necessary for imposition of such penalty are absent in the present case. In the present case, as already submitted above, there was no contravention of any provisions of the Customs Act or abetment of any such contravention, on the part of the Noticee. Accordingly, no penalty can be imposed under Section 117.

(xxxix) In view of the above, they prayed that all the proposals in the Show Cause Notice may be withdrawn by discharging the Notice in its entirety.

11.1. DEFENSE SUBMISSION BY ASHOK KUMAR, DIRECTOR OF GULSHAN EXIM PRIVATE LIMITED ('GEPL'): Shri Ashok Kumar, Director of GEPL, submitted their reply vide letter dated 06.12.2023, interalia submitted as under:

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

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

REG.: NO PENALTY IMPOSABLE UNDER SECTION 114AA

(ii) that in the present case, there is no false declaration, statement or document made, signed or used by me and as submitted earlier, this is a mere difference of opinion and interpretation of the classification of the product imported. Therefore, no penalty can be imposed under Section 114AA of the Customs Act.

1/1596666/2023

REG: NO PENALTY CAN BE IMPOSED UNDER SECTION 117

- (iii) that in the present case, as already submitted above, there was no contravention of any provisions of the Customs Act or abetment of any such contravention, on the part of the Noticee. Accordingly, no penalty can be imposed under Section 117.
- (iv) In view of the above, they prayed that all the proposals in the Show Cause Notice may be withdrawn by discharging the Notice in its entirety.

11.2. DEFENSE SUBMISSION BY SHRI JITENDRA KUMAR, PROPRIETOR OF SHRI BALAJI LOGISTICS: Shri Jitendra Kumar, Proprietor of Shri Balaji Logistics, submitted their reply vide letter dated 06.12.2023, interalia submitted as under:

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

- (i) that in the present case, there is no act committed by the Noticee which would render the goods liable to confiscation under Section 111 of the Customs Act. As already submitted in the reply filed for GEPL, all the relevant information and documents were filed with the Customs authorities at the time of import and there was no suppression of facts on the part of the Noticee. The issue is one of interpretation of the classification entries and not of suppression, wilful mis-statement or collusion. Even the statement recorded of Mr. Jitendra Kumar does not mention about any act done by the Noticee leading to suppression of facts or wilful mis-statement or connivance and collusion on the part of the Noticee. Therefore, there is no penalty which can be imposed under Section 112 of the Customs Act on the Noticee.

REG.: NO PENALTY IMPOSABLE UNDER SECTION 114AA

- (ii) that the subject SCNs has proposed to impose penalty under Section 114AA of the Customs Act. As per Section 114AA of the Customs Act. In the present case, there is no false declaration, statement or document made, signed or used by me and as submitted earlier, this is a mere difference of opinion and interpretation of the classification of the product imported. Therefore, no penalty can be imposed under Section 114AA of the Customs Act.

REG: NO PENALTY CAN BE IMPOSED UNDER SECTION 117

- (iii) that the SCNs has proposed to impose penalty under Section 117 of the Customs Act even though the ingredients necessary for imposition of such penalty are absent in the present case. In the present case, there was no contravention of any provisions of the Customs Act or abetment of any such contravention, on the part of the Noticee. Accordingly, no penalty can be imposed under Section 117.

- (iv) In view of the above, they prayed that all the proposals in the Show Cause Notice may be withdrawn by discharging the Notice in its entirety.

1/1596666/2023

11.3. DEFENSE SUBMISSION BY THE NOTICEES i.e. SHRI DEEPAK SAWLANI, G-CARD HOLDER; M/S R R LOGISTICS; M/S. SHIVAM CLEARING AGENCY (MUMBAI) PVT. LTD (CUSTOMS BROKERS):

Written reply against subject SCNs was submitted by following persons/firms (i)Shri Deepak Sawlani, G-card holder vide their letter dated 03.07.2023 and 11.10.2023; (ii)M/s R R Logistics vide their letter dated 29.06.2023 and 11.10.2023 and (iii)M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd (Customs brokers) vide their letter dated 03.07.2023 and 11.10.2023, wherein they interalia stated as under:

- (i).** *that they being CHAs were responsible for filing the bills of entry along with the documents like invoices, packing list, authority letters etc. It is an admitted fact that the description as well as quantities of goods covered under the bills of entry were in accordance with the invoices, packing list and other documents accompanying the goods. Once the goods arrived at the customs area a CHAs like them have no means nor are allowed to check the actual contents of the imported goods and the CHA is merely a person who submits documents like invoices, packing list etc. after ensuring that the description, quantity, certificate of origin and other details as shown in the bill of entry are in accordance with the documents accompanying the imported goods. In the present case also the bills of entry submitted by them for the imports of M/s. Gulshan Exim Private Ltd contained the details of the imported goods which were admittedly in accordance with the details appearing in the other documents. Therefore, there is no illegality or irregularity committed by them as CHA.*
- (ii).** *that as per the allegations in the show cause notice, they do not understand as to how they have contravened Regulation 10(d) and 10(e) of the CBLR, 2018. They have in capacity of CHA advised their client correctly to provide correct information and documents for the purpose of customs clearance of the imported goods. The show cause notice also does not allege or rely upon any evidence to show that they have wrongfully advised their client so as not to comply with the customs act and rules framed there under. It is also pertinent to note that if they were actually aware that M/s. Gulshan Exim Private Ltd were importing cold rolled stainless steel coils, they would have informed the Deputy Commissioner of Customs, however, the show cause notice nowhere provides any evidence about their having knowledge that the goods which were being imported were cold rolled stainless steel coils. As mentioned in the above paragraph a customs house agent is supposed to verify the documents like the bills of entry and accompanying documents and to see that all the descriptions match. As mentioned above a CHA is not allowed to check the cargo and the job of the CHA is only doing proper documentation. Therefore, the proposals in the show cause notice are unclear as to how they have not exercised due diligence to ascertain the correctness of the information. It is virtually impossible to know whether the imported cargo is cold rolled stainless steel coils or nickel chromium austenitic type coils, in as much as both the commodities fall under Chapter 72 and are products of the same nature. Therefore, even if a CHA is able to check the cargo, a bare perusal by seeing the cargo would never reveal*

1/1596666/2023

the actual nature of the goods in as much as the goods are of the same chapter i.e. Chapter 72 and are similar in nature. In view of these peculiar facts the allegations made in the show cause notice that they have contravened Regulation 10(d) and 10(e), are allegations which are not supported by any cogent evidence and hence the proposals to invoke the provisions of Regulation 17 and 18 do not warrant any consideration. The proposals in the show cause notice are hence liable to be vacated in the interest of justice.

(iii). *that the issue of mis-declaration made by an importer and its implication on the CHA came for consideration before the Hon'ble Delhi High Court in the case of M/s. Kunal Travels (Cargo) reported at 2017 (354) ELT 447 whereby the Hon'ble Delhi High Court observed that if the goods do not corroborate with description, it cannot be deemed to be a mis-declaration by the CHA and hence there could be no guilt, fault or penalty on the CHA in absence of any specific evidence suggesting active involvement. The Hon'ble Delhi High Court also held that the license of a CHA cannot be cancelled because of such mis-declaration made by the importer. That in another case of M/s. Exim Cargo Services reported at 2019 (368) ELT 1024 the Hon'ble Delhi High Court considered the violation of the CBLR Regulations, 2013 in the event of under valuation of imported goods. The Hon'ble Delhi High Court held that when there is no evidence attributable to the CHA or any of its employee of any conscious or deliberate misstatement on behalf of the importer, when there is no corroborative evidence to show that the CHA having information and knowledge has committed contravention, mis-declaration and under valuation, then in such a case, the license of the CHA cannot be cancelled under the CBLR, 2013. These decisions of the Hon'ble Delhi High Court have been followed by the Hon'ble CESTAT, Bangalore in the case of M/s. United Safe Way India Pvt. Ltd. reported at 2019 (369) ELT 1563 in the context of violation of Regulation 14 and 17 of the CBLR, 2018. The Hon'ble Tribunal has in this case held that the courts have consistently held that extreme penalty of revocation of license should be invoked only when there is clear involvement of the CHA in mis-declaring the value of the goods in order to avail some monetary benefits in absence of there being any such clear evidence, the revocation/suspension of license under CBLR, 2018 would not be sustainable. Therefore, it is a settled legal position that in absence of there being evidence of active involvement in mis-declaration of goods with the intent to avail some benefit, the license of a CHA cannot be revoked or suspended. In view of these decisions of the Hon'ble Delhi High Court and the Hon'ble Tribunal, the proposal to debar them from carrying out the business of customs clearance for a period of 6 months in view of Regulation 17 of the CBLR, 2018, is a proposal which is not sustainable in law and hence liable to be dropped in the interest of justice.*

(iv). *that in the present case, the department has not produced any cogent evidence to show that they have willingly participated in mis-declaring the imported goods and that they have got some monetary or other benefits by voluntarily mis-declaring the description of the goods. Therefore, in view of the decisions mentioned above, when the 'G' Card*

1/1596666/2023

cannot be suspended or revoked without there being clear evidence, penalty can also not be imposed under Regulation 18 of the CBLR, 2018. Hence the proposal to impose penalty also deserves to be vacated in the interest of justice.

(v). **that in the present case there are no proceedings of penalty initiated against them under the provisions of the Customs Act, 1962 and this also proves the fact that they have not made any mis-declaration with the intent to help M/s. Gulshan Exim Private Limited get undue advantage of concessional rate of duty.** In other words, if there was any fault on their part, proceedings ought to have been initiated under the Customs Act, 1962, however in the present facts, there are no such proceedings.

(vi). that the issue of when a CHA is liable under the Customs Act, 1962 has also come up for consideration on various occasions. The Hon'ble Tribunal, Mumbai in the case of M/s. Savithri Jewellers Pvt. Ltd. reported at 2020 (374) ELT 754 has held that when the department has not produced any evidence to establish that the CHA had any knowledge about mis-declaration, and when the CHA has prepared documents in a bona-fide manner based upon the declaration made by the exporter, the CHA cannot be penalized under Sections 114(iii) and 114AA of the Customs Act, 1962. In another case of M/s. Apson Enterprises reported at 2017 (358) ELT 817, the Hon'ble Tribunal, Mumbai has again held that when the department has nothing to show that the CHA was concerned with or aware about the valuation of goods, the CHA cannot be penalized under Section 114(iii) of the Customs, Act, 1962. In the case of Nirmal Kumar Agarwal reported at 2013 (298) ELT 133 the Hon'ble Tribunal has again held that until and unless it is proven that the CHA was aware of the mis-declaration and the ingredients of Section 114(iii) are complete, no penalty can be imposed on the CHA. The Hon'ble Tribunal, Chennai in the case of M/s. Moriks Shipping and Trading Pvt. Ltd. reported at 2008 (227) ELT 577 has categorically held that the customs house agent is not required to go into the authenticity of the declaration made by the exporter in the export documents and in absence of any evidence to show that the CHA not only participated in mis-declaration, penalty under Section 114(iii) cannot be imposed. The department went in appeal against the decision of the Hon'ble CESTAT and the Madras High Court in its decision reported at 2015 (317) ELT 3 has vide a detailed order confirmed the findings given by the Hon'ble Tribunal and has held that in absence of any positive evidence that the CHA was actually involved in mis-declaration, penalty under Section 114 of the Customs Act, 1962 cannot be imposed. Thus the law about imposition of penalty on the CHA is very clear that only when the CHA was well aware and actually participated in facilitating the mis-declaration of goods or value, can the CHA be held accountable. Furthermore, it is also clear that the CHA is not supposed to go into and verify each and every detail provided by the exporter about description and value of goods.

(vii). that the CBLR, 2018 are issued under sub-section (2) of section 146 of the Customs Act 1962 and hence, the decisions which are concerning the issue of penalty under the Customs Act, 1962 are also applicable to

1/1596666/2023

the cases like the present one. Therefore imposition of penalty under the CBLR, 2018 would also be possible only when the CHA has participated in mis-declaring the goods willingly and has derived some benefit by doing that. The burden of proof for imposition of penalty under the CBLR, 2018 is akin to the burden of proof for imposition of penalty on the CHA under the Customs Act, 1962 and hence the department has to consider the same circumstances and standards for both the provisions. In view of the abovementioned decisions, the proposals in the Show Cause Notice are devoid of any merits and hence liable to be vacated in the interest of justice.

(viii). However, M/s. Shivam Logistics (Mumbai) Pvt. Ltd., Mr. Deepak T Sawlani and M/s. R.R. Logistics vide their email dated 20.11.2023 submitted that they don't want any Personal Hearing against said SCN, and requested to adjudicate the said SCN as per merit.

11.4. DEFENSE SUBMISSION BY THE NOTICEES I.E. M/S.MAFFICK LOGISTICS AND SHRI DEVENDRA N THAKKER, PROPRIETOR AND F-CARD HOLDER OF M/S.MAFFICK LOGISTICS, AS FOLLOWS:
M/s.Maffick Logistics and Shri Devendra N Thakker, Proprietor and F-card holder of M/s.Maffick Logistics, submitted their reply dated 08.07.2023, interalia submitted as under:

- (i) that they specifically deny any liability to penalty for attending to the above imports and would submit to deny liability to any provision under the Customs Act and the Rules, Regulations made there under and seek Personal Hearing.
- (ii) that they refer to their reply dated 12.01.2022 submitted before the DRI Officers.
- (iii) that they should be considered to absolve the Customs Broker and its proprietor and employees from any liability on the grounds of withholding the facts. Moreover, from the copies of the Check Lists filed, now enclosed, in all the cases, on behalf of the importers, on perusal will show to have been signed by the importer as true and correct for the claim of First Check Assessment and in all other facts. It would thus be abundantly clear that the importer had requested for First Check Assessment in all BEs with all documents as received from the suppliers including Test Reports uploaded.
- (iv) that No Query Memos were issued by the Proper Officer of the Group or the Examination Officer including the Section 47 Officer and goods were cleared after the final appraisal arrived in this case by the Proper Officer. They have not been questioned on the assessment arrived by them to call for a short levy demand of duty made in the present SCN. In any case the CB or its proprietor and employees are not duty bound to arrive at any assessment under Section 17 of the Customs Act. The liability of an assessment is on the importer and the Proper Officer.
- (v) that the importer vide Check Lists filed, has sought First Check Assessment, therefore his claim for assessment under CTH 7220 9022 and the Notifications as mentioned in the Check Lists are at best Provisional Assessment Request which have been denied and

1/1596666/2023

final assessment under CTH 7220 9022 has been arrived at by the Proper Officer in the circumstances explained herein above. The CB or its proprietor had no role / duty to arrive at the said assessment. Therefore, they cannot be held liable for short duty assessments, if any, to call for consequent penal liabilities as proposed in this SCN.

(vi) that as Customs Broker they have been operating from Ahmedabad and have conducted Custom clearance for imported goods imported by M/s Gulshan Exim Pvt. Ltd (earlier known as M/s Gulshan Timber Pvt. Ltd) as in the chart below :

At Ahmedabad (Sabarmati) ICD

| Sr No. | BE No & DT | CTH | NOTFN CLAIMED | ITEM DESCRIPTION | OOC Date |
|--------|-----------------------|---------------|---|--|------------|
| 1 | 6416402 17.05.2018 | 7220- 2090 | 50/2017 Sr. 376 | NON-MAGHNATIC STAINLESS STEEL COLD ROLL COIL GRADE J1 2B | 25.05.2018 |
| 2 | 7177632 12.07.2018 | 7220- 2090 | 50/2017 Sr. 376 | NON-MAGHNATIC STAINLESS STEEL COLD ROLL COIL STOCK LOT GRADE J1 / J3.2B | 23.07.2018 |
| 3 | 7400487 28.07.2018 | 7220- 2090 | 50/2017 Sr. 376 | NON-MAGHNATIC STAINLESS STEEL COLD ROLL COIL STOCK LOT GRADE J1 2B | 01.08.2018 |
| 4 | 7926226 05.09.2018 | 7220- 9022 | 50/2017 Sr. 376 50/2018 Sr. A734 | NON-MAGHNATIC STAINLESS STEEL COLD ROLL COIL EX- STOCK 2B GRADE J3 0.26 IN DIFFERENT THICKNESS X 410 WIDTH | 11.09.2018 |

and submitted the Checklists, as signed and declared as received from the importer, along with other import and shipping documents along with the CTH declaration claiming the classification of imported entity under CTH declaration 72202090 for the declared description Non-magnetic Stainless Steel, Cold Rolled Coil, Stock Lot, Grade J1 2B 0.20 THICKNESS X 510MM WIDTH and claiming benefit of Notification No. 50/2017 Sr No. 376.

(viii) that they are Licensed Customs Brokers, conducting their business mainly at Ahmedabad. In the normal course of their business, they handled clearance of imported consignments of Stainless Steel Cold Rolled and entered the declaration in the Customs ICEGATE seeking clearance as envisaged u/s 2(16) read with Section 46(4) for the said consignments. All declarations were entered by the CB Office and

1/1596666/2023

were based on approved 'Check List' provided and certified by the importers of the said entities. These 'Check Lists' were "entry declarations" as required under Section 46(4) of the Customs Act which place the burden to the truth of the declarations on the importer only. It is nobody's case i.e., CB, its proprietor or any other employee of CB are the persons who are the importers and are thus required to make declarations. It is also nobody's case that the above said persons are in any manner, privy to any alleged mis-declarations or benefited in any manner by the said imports to bring them under the mischief of the person being a 'beneficial importer' under Section 3(a) or read with 2(26) and Section 112(a) of the Customs Act. They have not knowingly dealt with or acquired the possession of any goods, as provided under Section 112(b) of the Customs Act which may be liable to confiscation u/s 111 of the Act or abetted. There is no reason therefore to bring a penalty provisions, as alleged in the SCN for conducting Ministerial Acts performed by them, in the normal course of business as Customs Broker to upload the declarations made by the importer and received by them and thereafter clear the goods as assessed by the proper officers under Section 17 and 47 of the Customs Act. They have complied with the provisions of Customs Act in performance of their duty as Customs Broker and are not liable to any penalty under Section 117 of the Customs Act read with CBLR.

- (ix) that there is no material to bring in any Act on part of the Customs Broker or their Proprietor or employees to have not guided the importer or to have *men's-reas* with profit motivation of some kind. No such material exists in the entire SCN. As regards penalty u/s 114AA there is no mis-declarations or any false statements made by the Customs Broker, its proprietor or their employees. They have also not induced any other person to make any false statement and produce such material in any proceeding under the Customs Act at any time. Therefore, the invocation by the SCN of Section 114AA, in this case was contrary to the CBIC and Finance Ministry views and penalty liability under this provision is not invocable and one has to refrain from arriving at penalty under this provision.
- (x) In this regard they have placed reliance on various case laws and on the 27th report of the Parliamentary Committee on the comments of the Finance Ministry on the proposed introduction of Section 114AA of the Customs Act, 1962:
 - Sri Krishna Sounds and Lightings 2019 (370) ELT 594 (tri-Chennai).
 - Access World Wide Cargo v CC – 2022 (379) ELT 120.
 - R & B Falcon (A) Pty Ltd., V/s Commissioner of Income Tax – (2008) 12 SCC 466
 - Deshbandhu Gupta & Co & others V/s Delhi Stock Exchange Association Ltd – (1979) 3 SCR 373.
 - Customs / Central Excise Rebate in Spentex Industries Ltd – 2015 (324) ELT 686.
- (xi) that as regards 112(a) and 112(b) the liability of the goods to confiscation u/s 111(m) cannot be arrived since no goods are under

1/1596666/2023

seizure and in a case of classification dispute the goods cannot be seized and confiscation arrived is the settled Law. They have placed reliance upon following case laws:

- NORTHERN PLASTIC LTD 1998 (101) E.L.T. 549 (S.C.).
- BOSTON SCIENTIFIC INTERNATIONAL BV Vs Commissioner of Customs ACC, MUMBAI 2000 (122) E.L.T. 250 (Tribunal)
- SAB NIFE POWER SYSTEMS LTD. Vs Commissioner of Customs 2000 (124) E.L.T. 1080 (Tribunal) Affirmed in Supreme Court 2002(141) ELT A95
- PUSHPIIT STEELS PVT. LTD. Vs Commissioner of Customs 2001 (130) E.L.T. 520 (Tri. - Chennai)
- RELAXO RUBBER LTD. Vs Commissioner of Customs 2001 (132) E.L.T. 56 (Tri. - Del.)
- NISHILAND PARK LTD. Versus COMMISSIONER OF C. EX. & CUS., MUMBAI 2004 (168) E.L.T. 389 (Tri. - Mumbai)
- PIONEER BUSINESS ENTERPRISES Versus COMMISSIONER OF CUSTOMS, BANGALORE 2005 (191) E.L.T. 166 (Tri. - Bang.)
- PEARL ENTERPRISES Versus COMMISSIONER OF CUSTOMS (PORT), KOLKATA 2006 (203) E.L.T. 71 (Tri. - Kolkata)
- CONTESSA COMMERCIAL CO. PVT. LTD. Versus COMMR. OF CUS., FARIDABAD 2007 (208) E.L.T. 299 (Tri. - Kolkata) Affirmed in Supreme Court 2015 (324) ELT 638.
- SUTURES INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS, BANGALORE 2009 (245) E.L.T. 596 (Tri. - Bang.) Maintained in Supreme Court 2010 (255) ELT A85.
- RELIANCE COMMUNICATIONS LTD. Versus C.C. (ACC & IMPORT), MUMBAI 2012 (285) E.L.T. 270 (Tri. - Mumbai)
- S. RAJIV & CO. Versus COMMISSIONER OF CUSTOMS (CSI AIRPORT), MUMBAI 2014 (302) E.L.T. 412 (Tri. - Mumbai)
- STAR INDUSTRIES Versus COMMISSIONER OF CUS. (IMPORTS), NHAVA SHEVA 2014 (312) E.L.T. 209 (Tri. - Mumbai) Affirmed in Supreme Court 2015 (324) ELT 656.
- DEVRAJ M. SALIAN Versus COMMISSIONER OF CUSTOMS (I), MUMBAI 2015 (316) E.L.T. 139 (Tri. - Mumbai) Notice issued in Supreme Court 2016 (331) ELT A194.
- ISGEC HEAVY ENGINEERING LTD. Versus COMMR. OF CUS. (EXPORT), MUMBAI-II 2015 (318) E.L.T. 284 (Tri. - Mumbai)
- SHREE EXPORT Versus COMMR. OF CUS. (EXPORT), NHAVA SHEVA 2015 (318) E.L.T. 695 (Tri. - Mumbai)
- RELIANCE COMMUNICATIONS INFRASTRUCTURE LTD. Versus C.C. (I), NHAVA SHEVA 2015 (320) E.L.T. 306 (Tri. - Mumbai)Appealed to High Court – Admitted in (Bombay High Court) 2017 (349) ELT A222.
- SANCTUM WORKWEAR PVT. LTD. Versus COMMR. OF CUS. (EXPORT), NHAVA SHEVA 2016 (334) E.L.T. 698 (Tri. - Mumbai)
- SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III 2020 (371) E.L.T. 324 (Tri. - Mumbai)

1/1596666/2023

(xii) Therefore, there is no material to arrive at any pre-concert with the importers the Customs Brokers and its proprietor and employees have acted in a bona-fide and clearing the imported consignments in the impugned BE. Therefore, they have not aided abetted or knowingly acquired or dealt with any goods on which they could have reasons to believe that the said goods were liable to confiscation.

(xiii) that no penalty can be called for under the provisions of the said Section 117 as there is no specific charge brought out as to which act has not been complied which was duty of the CB, its proprietor and their employees to comply.

(xiii) that the CB have cleared imported goods which were assessed by the Proper Officer as declared and under Sections 47 the Proper Officer has made an order for home consumption. As per settled position of law, an assessed Bill of Entry is a Quasi-Judicial Order and unless such assessment is set aside in Appeal, no further action is permissible. Reliance is placed on ITC LTD reported in 2019 (368) E.L.T. 216 (S.C.),

(xiv) They have sought a personal hearing in the matter and craved leave to add alter amend the submissions and submit a final reply thereafter.

12. RECORDS OF PERSONAL HEARING:

After following principle of natural justice Personal hearing in the matter was granted to all the noticees on 04.10.2023, on 26.10.2023 and 07.12.2023. Details of the PH are as under:

(i) **1st PH conducted on 04.10.2023** attended by Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics (Customs Broker, wherein he reiterated his reply dated 08.07.2023 submitted against subject SCNs. However, M/s Gulshan Exim Private Ltd., sought adjournment. Whereas, Shri Deepak Sawlani, G-card holder; M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd (Customs brokers) submitted their replies dated 11.10.2023. Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics, Gurgaon (Customs broker), neither attended PH nor submitted any reply.

(ii) **2nd PH conducted on 26.10.2023** attended by Shri Ajay Jain as authorized representative of four noticees viz. M/s. Gulshan Exim Pvt. Ltd., Shri Ashok Kumar, Director of the M/s. Gulshan Exim Pvt. Ltd., and Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics. During PH, Shri Ajay Jain interalia stated that the SCN needs to be dropped on various grounds including being time barred and devoid of suppression of any kind; he also requested 15 days' time for further written submission.

(iii) **3rd PH conducted on 07.12.2023** attended by Shri Ajay Jain as authorized representative of noticee viz. M/s. Gulshan Exim Pvt. Ltd. Shri Ajay Jain interalia during online hearing submitted that written submissions have been made to all the three SCNs in question. Shri Jain among other points stated that the SCNs lack sufficient grounds to allege suppression, wrong reliance is placed on Wikipedia and other online sites

1/1596666/2023

to decide classification. Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics (Customs Broker, submitted vide email dated 07.12.2023 that they did not want any PH in the matter and requested to decide the case as per its merit.

13. DISCUSSION AND FINDINGS:

13.1. I have carefully gone through the **three Show Cause Notices** i.e. (i) SCN No. 11/ADC/NOIDA/CUS/2022-23 dated 24.03.2023 issued by the Additional Commissioner, Noida Customs Commissionerate; (ii) SCN F. No. GEN/ADJ/ADC/478/2022-Adjn/1913 dated 20.05.2022 issued by the Additional Commissioner of Customs, Custom House Mundra and Corrigendum dated 11.04.2023; (iii) SCN F. No. GEN/ADJ/ADC/478/2022-Adjn/1913 dated 12.05.2023 issued by the Commissioner of Customs, Custom House, Mundra, relied upon documents, submissions made by the Noticees and the records available before me.

13.2. The noticees vide their written submission dated 06.12.2023 have contended that the SCN bearing F.No. GEN/ADJ/ADC/478/2022-Adjn dated 20.05.2022 was incorrectly transferred to the call book. I find that after pronouncement of Judgement dated 09.03.2021 of the Hon'ble Apex court in case of M/s. Canon India, the Board had issued an instruction to keep the Adjudication proceedings pending where the SCN were issued by DRI or Investigation was carried out by DRI. In light of instruction issued by the Board such Notices were kept in abeyance till further instruction. Therefore, the Show Cause Notice bearing F.No. GEN/ADJ/ADC/478/2022-Adjn dated 20.05.2022 was transferred to Call Book by the competent authority under the provisions of Section 28(9A) (**inserted w.e.f. 29.03.2018 vide Finance Act, 2018**) of the Customs Act. The same was intimated to the Importer vide this Office letter dated 17.06.2022. In this connection, the Importer should have raised objection, if any, about keeping the case in call book; which they chose not to. However, after passing of more than one year, at the time of Personal Hearing, they objected of keeping the case in call book. I find that such belated action of Importer is a weak attempt to question the foundations of the notice issued to them.

13.3. I have carefully gone through the Section 28(9) of Customs Act, 1962 and above case laws. I find that Section 28(9) of Customs Act, 1962 is followed by Section 28(9A) which provides that in some reasons the time specified in Section 28(9) shall not apply from the date of notice but from the date such reason ceases to exist. Therefore, time limit to adjudicate the instant case is governed by Section 28(9A) of customs Act, 1962. Hence, the contention of the noticees the subject SCN was wrongly kept in the call book, is not valid.

13.4. I find that the submission of the noticees dated 06.12.2023 that the SCN dated 20.05.2022 was taken out of call book vide this Office letter F.No. GEN/ADJ/ADC/478/2022-Adjn/6707 dated 23.01.2023, is erroneous since vide this Office letter dated 23.01.2023 the noticees were intimated for fixation of Personal Hearing on 03.02.2023; and not regarding taking the matter out of call book.

1/1596666/2023

13.5. I find that the instant case arose out of investigation carried out by the DRI that M/s. GEPL imported goods namely 'Cold Rolled Stainless Steel Coils' and misclassified the same under CTH 72209022 and wrongly availed the benefit under Notification No. 50/2018-Customs dated 30.06.2018 during the period from **September 2018 to September 2020**. As per the said Notification no. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on the goods of '**Nickel Chromium Austenitic Type**' falling under CTH 72209022; whereas M/s GEPL imported the goods viz. '**Cold Rolled Stainless Steel Coils**', which were not 'Nickel Chromium Austenitic Type' (classifiable under CTH 72209022). Whereas the Mill Test certificates/Test certificates/Inspection Certificates issued by the overseas suppliers (as discussed in detailed in the subject show cause notices), revealed that M/s. GEPL imported '**Stainless Steel Cold Rolled Coils**', which contains more percentage of Chromium & Magnesium instead of Chromium & Nickel. Therefore, the impugned imported goods did not satisfy the conditions prerequisite to falls under the CTH 72209022 (Nickel Chromium Austenitic Type), instead the subject imported goods appeared classifiable under CTH 72209090. Resultantly, M/s. GEPL allegedly evaded Customs duty of **Rs.54,64,932/- (Fifty Four Thousand Sixty Four thousand Nine Hundred Thirty Two Only)** (as detailed in Annexure-A, B & C attached to subject Show Cause Notices).

THE INVESTIGATION CARRIED OUT BY THE DRI IS AS FOLLOWS:

13.6. **Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics, Gurgaon (Customs broker)** during his statement dated 16.07.2021 after perusal of the Inspection Certificate no. 1801205 dated 07.03.2019 (*issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., for the goods imported under BE No. 2709384 dated 04.04.2019*); stated that as per the Inspection Certificate the coils contain **less than 1.3 % of Nickel and less than 14% chromium**. He agreed that after going through all the contents of Wikipedia and the Mill Test certificates/Test certificates/Inspection Certificates, the coils imported by M/s GEPL would not fall under nickel chromium Austenitic type steels under CTH 72209022 as Nickel is replaced by the Manganese in 200 series SS coils and the benefit under Notification no. 50/2018-Customs dated 30.06.2018 was not applicable on this product.

13.7. Statement of Shri Deepak Sawlani, G-card holder and Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd (Customs brokers) was recorded on 13.12.2023, wherein he interalia stated as under:

- (i) that as per the Test certificate-Inspection Certificate no. 19313-TC dated 28.12.2019 (*issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 6599726 dated 23.01.2020*) the coils i.e. Stainless Steel Cold Rolled Coils Grade-J3 Ex Stock contain less than **0.9 % of Nickel and less than 12.53% chromium**.

1/1596666/2023

(ii) that as per the Mill Test Certificate No. HXL-SZG2018-129TC dated 01.10.2018 (*issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the goods imported under BE No. 8548000 dated 22.10.2018*) the coils i.e. Stainless Steel Cold Rolled Coils Grade-J3 Ex Stock contain **less than 0.85 % of Nickel and less than 12.5% chromium**.

(iii) After perusal of Country of origin certificate (i.e. COO) he stated that in CCO No. CCPIT70001200020688 dated 30.12.2020, the name of supplier i.e. M/s Comet International was mentioned as **nonparty operator** and in CCO No. CCPIT70001180195436 dated 11.10.2018, the name of supplier i.e. M/s. Great China Alliance was mentioned as **nonparty operator**, which were other than the original manufacturer of the goods and country. He also perused the notes on backside of both the country of origin certificates in Box 1, wherein it was clearly mentioned that goods consigned **from "the name must be the same as the exporter described in the invoice"**. He agreed that in their case the name in the Country of Origin Certificate Box No. 1 and the name of exporter in the invoice was not the same.

(iv) He agreed to all the contents of Wikipedia and the Test certificate-Inspection Certificates, the coils imported by M/s GEPL would not fall under nickel chromium Austenitic type steels under CTH 72209022 since Nickel is replaced by the Manganese in 200 series SS coils. Therefore, benefit of Notification no. 50/2018-Customs dated 30.06.2018 as availed by them under 05 BEs was not available to them.

(v) He agreed that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were to abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

13.8. Statement of Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics (Customs Broker) was recorded on 13.01.2022, wherein he inter-alia stated:

- that as per the Test Certificate No. 09.08.2018 (*issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the goods imported under BE No. 7926226 dated 05.09.2018*) the coils i.e. Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3 contain **less than 1.1 % of Nickel and less than 13.36% chromium** and the percentage of **Manganese was equal to 10.81%**; therefore the percentage of nickel and chromium was less than the percentage of manganese and chromium.
- He agreed to all the contents of Wikipedia and the Test certificate-Inspection Certificate, and confirmed that benefit of Notification no. 50/2018-Customs dated 30.06.2018 was not available to M/s. GEPL since the coils imported by them would not fall under nickel chromium Austenitic type steels under CTH 72209022 as Nickel is replaced by Manganese in 200 series SS coils and M/s GEPL had imported J3 grade which was a customized grade of 200 series.

1/1596666/2023

- He agreed that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were to abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the department regarding any malpractice in the import consignments which they were handling.

13.9. Statement of Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited recorded on 19.07.2021 & 08.03.2022, wherein he inter-alia stated that:

- He stated that Cold Rolled Stainless Steel Coils imported by them were used in manufacturing of utensils; that Cold Rolled Stainless Steel Coils/ Stainless Steel Circle were classified under chapter 72. He stated that they had filed most of the Bills of Entry under the heading of 'Nickel Chromium Austenitic Type' with description, Cold Rolled Stainless Steel Coils under CTH 72209022.
- He perused the Inspection Certificate no. FSTT170509-5 dated 07.12.2017 issued by M/s. Tocean Industry Limited, Hong Kong for the goods imported under BE No. 4822064 dated 16.01.2018 and stated that they filed the BE under correct CTH 72209090 as per goods declared but after issuance of Notification no 50/2018 dated 30.06.2018, they filed Bills of entry under CTH 72209022 to claim the benefit of the said Notification.
- With regards the Test Certificate-Inspection Certificate No. 19313-TC dated 28.12.2019, Bill of Lading, Country of Origin certificate for the goods imported under BE No.6599726 dated 23.01.2020; he stated that the coils contain **less than 0.9 % of Nickel and less than 12.52% chromium** but they declared the goods as Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM.
- With regards the Country of Origin Certificate bearing Sr. No. CCPIT 70001200020688 dated 30.12.2019 for the goods imported under BE No. 6599726 dated 23.01.2020, he stated that the name of supplier i.e. M/s. Comet International was mentioned as **nonparty operator** which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd. He also stated that as per the notes written on the said Country of Origin Certificate, "the name must be the same as the exporter described in the invoice" but in the said Country of Origin Certificate name of supplier was not written.
- With regards the Country of Origin certificate bearing Sr. No. B18470ZC58420004 received from the overseas supplier were having CTH 722090 upto six digits so they filed the Bill of Entry under the description of 'Nickel Chromium Austenitic Type' declaring as Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3 under CTH 72209022.
- With regards the Test Certificate dated 09.08.2018, issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the goods imported under BE No. 7926226 dated 05.09.2018 which has

1/1596666/2023

description of goods i.e. Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3; he stated that as per the said Test Certificate the coils contain **less than 1.1 % of Nickel, 13.36 % of chromium and 10.81% of Manganese**; that percentage of Nickel and chromium is less than Manganese and chromium.

- He perused the printout taken from https://nickelinstitute.org/media/1638/austeniticchromium_nickelstainlesssteelsatzerotemp wherein specification of Nickel chromium Austenitic type steels was given and stated that as per the website Nickel chromium Austenitic type steels contains **3.5% to 16% of Nickel and 16% to 26% of Chromium**.
- He perused the printout taken from the webpage of <https://www.asminternational.org> the literature on the topic 'Austenitic Stainless Steels' and stated that it is categorically elaborated that 'Austenitic Stainless Steels' grades were best viewed as a continuum with a lower boundary at 16%Cr -6%Ni and an upper boundary at 19% Cr - 12% Ni. And which represents the range from minimum to maximum austenite stability.
- He stated that after going through the contents of websites, <https://www.aalco.co.uk>, <https://www.asminternational.org>, Mill Test Certificate / Test certificate-Inspection certificate the goods it appears that that the coils imported by them would not falls under nickel chromium Austenitic type steels as Nickel was replaced by Manganese in 200 series SS coils. He stated that documents received from the overseas supplier were having CTH upto six digits so they classified the goods under the description of 'Nickel Chromium Austenitic Type' and filed the Bills of Entry under CTH 72209022 to claim the benefit of Notification no 50/2018 dated 30th June, 2018 but as per the literature available on website it does not fall under category of Nickel Chromium Austenitic Type and the goods imported by them would have been rightly classified under CTH 72209090 for Stainless Steel Cold Rolled Coils, Grade-J3 as described by them prior to the issuance of Notification No 50/2018 dated 30.06.2018.

13.10. I find that Mill Test certificates/Test certificates/ Inspection Certificates along with Commercial Invoice, Packing List, Bill of Lading, Country of Origin Certificates submitted by M/s GEPL vide letter dated 09.07.2021, reveal as under:

13.11. Test certificate-Inspection Certificate No. 19313-TC dated 28.12.2019 issued by M/s. Shenzhen Jinminghui Industry and Trading Co. Ltd., China for the Coils supplied under Commercial Invoice No. CMTSZ19313 dated 28.12.2019 by M/s.Comet International Ltd., Hong Kong to M/s GEPL, mentioned that the coils contain **less than 0.9% of Nickel and less than 12.52% chromium**. The goods supplied by M/s Comet International Ltd., Hong Kong were cleared by M/s GEPL under Bill of entry No. 6599726 dated 23.01.2020 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM' under CTH 72209022.

13.12. Inspection Certificate No. 1801031 dated 09.01.2019 issued by M/s.Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the

1/1596666/2023

Coils supplied under Commercial Invoice No. MCHA190101 dated 09.01.2019 to M/s GEPL, mentioned that the coils contain approximately, **1.25% of Nickel, 13.50% of chromium and 10.50% of Manganese**. The said goods supplied by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd. were cleared by M/s GEPL under Bill of entry No. 9986405 dated 08.02.2019 by declaring description of goods as 'Stainless Steel Cold Rolled Coils Ex Stock Grade- J3' under CTH 72209022.

13.13. Inspection Certificate No. 1801205 dated 07.03.2019 issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the Coils supplied under Commercial Invoice No. MCHA190224 dated 07.03.2019 to M/s GEPL, mentioned that the coils contain approximately, **1.25% of Nickel, 13.50% of chromium and 10.50% of Manganese**. The said goods supplied by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd. was cleared by M/s GEPL under Bill of entry No. 2709384 dated 04.04.2019 by declaring description of goods as 'Stainless Steel (CR) Strips Coils Ex Stock Grade- J3' under CTH 72209022.

13.14. Test certificate dated 09.08.2018 issued by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China for the Coils supplied under Commercial Invoice No. FSTTI70508 dated 09.08.2018 to M/s GEPL, mentioned that the coils contain approximately, **1.1% of Nickel, 13.36% of chromium and 10.81% of Manganese**.

13.15. Further, M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd. has also issued a Country of Origin certificate bearing Sr. No. B18470ZC58420004 for supply of Non-Magnetic Stainless Steel Cold Rolled Coil, which is having CTH 722090 upto six digits. The said coils supplied by M/s. Guizhou Zhongruixianghe Supply Chain Co. Ltd., China were cleared by M/s GEPL under Bill of entry No. 7926226 dated 05.09.2018 by declaring description of goods as 'Non-Magnetic Stainless Steel Cold Rolled Coil Ex stock 2B Grade-J3' under CTH 72209022.

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

13.17. In Country of Origin Certificate No. CCPIT 70001200020688 dated 30.12.2019, the name of supplier i.e. M/s. Comet International, Hong Kong was mentioned as **nonparty operator** which was other than the original manufacturer of the goods i.e. M/s. Shenzhen Jinminghui Industry & Trading Co. Ltd. Further, as per the notes written on the said Country of Origin Certificate, "the name must be the same as the exporter described in the invoice" but in the said Country of Origin Certificate name of supplier was not written.

13.18. The Bill of Entry No. 4822064 dated 16.01.2018 filed by M/s GEPL revealed that M/s GEPL has imported the similar goods from China by declaring it as 'Stainless Steel Cold Rolled Coils Ex Stock Grade-J3 less than 600MM' under CTH 72209090 but after issuance of Notification No.

I/1596666/2023

50/2018-Customs dated 30.06.2018, M/s GEPL started classifying the goods under CTH 72209090 to avail the benefit of said Notification.

13.19. Shri Ashok Kumar, Director of M/s GEPL in his statement recorded on 19.07.2021 & 08.03.2022 himself admitted that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the said coils under CTH 72202090. He also admitted that Stainless Steel Cold Rolled Coils Grade- J3 should be classified under CTH 72202090. Also On verification of import data of M/s GEPL, prior to the issuance of the said notification, M/s GEPL had classified correctly said coils under CTH 72209090.

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

13.21. Therefore, it was alleged that M/s.GEPL had imported the goods namely 'Cold Rolled Stainless Steel Coils' by mis-declaring 'Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)' and by mis-classifying the same under CTH 72209022 and wrongly availed the benefit of Customs Notification No. 50/2018-Customs dated 30.06.2018 during the period from **September'2018 to September'2020**. As per the Notification no. 50/2018-Customs dated 30.06.2018, the exemption was available to goods falling under CTH 72209022 and not to the goods falling under other sub-heading CTH 7220.

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

CUSTOMS NOTIFICATION NO. 50 DATED 30TH JUNE 2018

I/1596666/2023

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 72/2005-Customs, dated the 22nd July, 2005, published in the Gazette of India, Extraordinary, vide number G.S.R.497(E), dated the 22nd July, 2005, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table hereto annexed and falling under the Chapter, Heading No., Sub-heading No. or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in the corresponding entry in column (2) of the said Table, -

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

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

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

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

Table

| SNo. | Chapter, Heading No., Sub-Heading No., or tariff item | Description of goods | Extent of tariff concession (percentage of applied rate of duty; %) |
|---------------|---|----------------------|---|
| Part A | | | |
| (1) | (2) | (3) | (4) |
| 729. | 7220 12 10, 7220 12 21 | All goods | 45 |
| 730. | 7220 12 22 | All goods | 40 |

1/1596666/2023

| | | | |
|-------------|-------------------------------|------------------|-----------|
| 731. | 7220 12 29 | All goods | 15 |
| 732. | 7220 20 10 to 7220 20 29 | All goods | 15 |
| 733. | 7220 90 10 | All goods | 15 |
| 734. | 7220 90 21, 7220 90 22 | All goods | 45 |
| 735. | 7220 90 29 | All goods | 15 |

APPENDIX I

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

APPENDIX II

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

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

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

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

(ii) For the purposes of implementing the Asia-Pacific Trade Agreement Rules, 2006 certain criteria are required to be followed for issuance of

1/1596666/2023

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

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

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

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

(i) As per the said Notification no. 50/2018-Customs dated 30.06.2018, there is "Extent of tariff concession (45% percentage of applied rate of duty)" on the goods of '**Nickel Chromium Austenitic Type**' falling under CTH 72209022; whereas M/s GEPL imported the goods viz. '**Cold Rolled Stainless Steel Coils**', which were not 'Nickel Chromium Austenitic Type' (classifiable under CTH 72209022). Whereas, on scrutiny of the Mill Test certificates/Test certificates/Inspection Certificates issued by the overseas suppliers (as discussed in detailed in the subject show cause notice), it is revealed that M/s. GEPL imported '**Stainless Steel Cold Rolled Coils**', which contains more percentage of Chromium & Magnesium instead of Chromium & Nickel, therefore and for reasons discussed in detail below, the imported goods do not satisfy the conditions prerequisite to falls under the CTH 72209022 (Nickel Chromium Austenitic Type). Instead the subject imported goods are correctly classifiable under CTH 72209090.

16. I find that the information/ literature available on website

1/1596666/2023

(<https://www.aalco.co.uk>) of **M/s. Aalco Metals Limited**; and on website (<https://www.asminternational.org>) of **M/s. ASM International**; indicate that the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%. Whereas, the chemicals compositions shown in the Mill Test certificate/Test certificate/ Inspection Certificate produced by the importer at the time of import shows the content of Chromium (Cr) as **nearly 13% and Nickel as nearly 1%** which ruled out its classification as Austenitic Stainless-Steel grades. Therefore, the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s GEPL is in fact Stainless Steel of other Grades.

17. I have carefully gone through the various technical literature relied upon in the show cause notices as well as other material cited by the noticees in their defence. Broadly, what can be made out is that stainless steel is a generic term used to refer to iron based alloys which contain chromium and there are more than 100 grades of stainless steel. These are differentiated by the percentage of chromium, nickel, molybdenum, and other alloying elements. Each grade is used for specific purposes and comes with its own advantages and disadvantages. The grades are grouped within five main categories: **austenitic, ferritic, martensitic, duplex, and precipitation-hardened (PH)**. Austenitic steel is the most commonly used type of stainless steel, as with its exceptional resistance to heat and corrosion, it is used extensively in many industries including medical, automotive, aerospace, and industrial applications. This category is known for unsurpassed strength and formability and that it can not be hardened by heat treatment.

18. I find that when nickel or nitrogen is added to steel, it becomes "austenite" by nature. The chemical composition determines the specific grade of stainless steel. Technical literature already discussed which includes the trade parlance usage of the term Austenitic stainless steel is also categorical that contains at least 10.5 percent of chromium and 8 to 12 percent nickel, as well as nitrogen, carbon, and many other elements in solution. For example, the 300 series is nickel-based and includes standard austenitic stainless steel, which is grade 304 stainless steel — the most commonly used one. It usually contains 18 percent chromium and eight percent nickel, which is the minimum amount of nickel required to turn ferritic stainless steel into austenitic when that much chromium is present. The 200 series is low in nickel and high in nitrogen, or manganese making it a less expensive alternative to the 300 series. In general the literature available are categorical that significant nickel content of 4%-10%, is necessary to ensure the formation of the austenitic structure. The Cr content is usually about 18 wt% or higher which is well above the critical limit for corrosion resistance, about 12 wt% Cr.

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

1/1596666/2023

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

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

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

21.1. In deciding the matter of classification in the instant case, it has to be understood that the same is not based on entries in Wikipedia. In the SCNs in question, it is clearly not the case also that the Wikipedia has been the sole cornerstone based on which allegations have been made. There have been documented technical literature of other entities who are dealing in the commodity in question. It has to be appreciated that in the matters of classification of goods under taxation statutes, several judicial forums, including the Apex Court, have stressed upon the importance of the identity of the goods in common parlance. Further, there is a plethora of judicial pronouncements which hold that for classification of goods under statutes for taxation, the primary test is their identity in the market, or in other words, their common parlance in the market. Also, it is also a well settled principle of interpretation of statutes that a word not defined in the statute must be construed in its popular sense, meaning essentially 'that sense which people conversant with the subject matter with which the statute is dealing would attribute to it'. The situation in the instant cases is akin in that there are no entry in the statutes or technical codes laying down the technical definition/parameters for the goods in question.

This is a fact that has been accepted by the noticee also. That being the case, relying on trade parlance and available technical literature of Users in the Trade is an acceptable course of action.

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

21.3. Reliance is also placed upon following Judicial pronouncements:

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

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

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

"15. The question that needs to be adverted to is: whether the goods in question can appropriately be classified under Tariff Item 52 or not having been specified elsewhere, they fall under Tariff Item 68. In construing these items, what is the proper test to be applied? Is it the functional test or is it commercial identity test which would determine the issue. It seems to us that this question is no longer res integra. It fell for consideration of this Court earlier and it was laid down that the true test for classification was the test of commercial identity and not the functional test. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise."

1/1596666/2023

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

22. I find that Shri Ashok Kumar, Director of M/s GEPL in his statement recorded on 19.07.2021 & 08.03.2022 himself admitted that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the said coils under CTH 72202090. He also stated that Cold Rolled Stainless Steel Coils imported by them were used in manufacturing of utensils. He further admitted that Stainless Steel Cold Rolled Coils Grade- J3 should be classified under CTH 72202090. Also On verification of import data of M/s GEPL, prior to the issuance of the said notification, M/s GEPL had classified correctly said coils under CTH 72209090.

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

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

24. I find that M/s GEPL had imported 'Cold Rolled Stainless Steel Coils' by wrongly claiming classification under Customs Tariff Heading 72209022 during the period from September 2018 to September 2020. Further, from the evidences available in the form of Test certificate-Inspection Certificate produced by the importer at the time of import which shows the content of Chromium (Cr) as nearly 13% and Nickel as nearly 1%, it rules out its classification as Austenitic Stainless-Steel grades. As per information available on various websites as discussed hereinabove wherein, it is evident that the Austenitic Stainless-Steel grades have significant % of Nickel. Shri Ashok Kumar, Director of M/s GEPL also admitted that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the goods under CTH 72209090. Therefore, the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s GEPL is in fact Stainless Steel of other Grades.

25. I refer that Vide Finance Act, 2011 w.e.f. 08.04.2011, "Self-Assessment" has been introduced under the Customs Act, 1962. Section

1/1596666/2023

17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation carried out by DRI.

26. I have carefully gone through written submission dated 06.12.2023 of the noticees wherein they have submitted that "*the classification adopted by subject SCNs under CTH 7220 9022 is incorrect, if the same were to be disregarded, even in that case the correct classification will be 7220 9029 and not 7220 9090 as proposed by the revenue. In that case also, we will be entitled to an exemption of 15% on the BCD rate under serial number 735 of Notification No. 50/2018-Cus dated 30.06.2018.*"

26.1. I find that Shri Ashok Kumar, Director of M/s GEPL also confirmed in his statements dated 19.07.2021 and 08.03.2022 recorded under Section 108 of the Customs Act, 1962 that **Cold Rolled Stainless Steel Coils** imported by them were used in manufacturing of utensils.

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

SECTION-XV 642 CHAPTER-72

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

26.3. I find that under CTH 7220 9010 covers items of **Skelp (strips for pipes and tubes)** and **Strips for pipes and tubes (other than skelp)**. Therefore, CTH **7220 9010** or its sub-entries **7220 9021, 7220 9022** or **7220 9029** covers items which are used in **manufacturing of pipes and tubes** and do not cover the items used in manufacturing the **Utensils**. However, M/s.GEPL imported goods for manufacturing of utensils as evident from statement 19.07.2021 & 08.03.2022 of director of M/s.GEPL. Therefore, in the present case **M/s. GEPL imported goods for manufacturing of Utensils** then the impugned imported goods are not classifiable under 7220 9010 or its sub-entries 7220 9021, 7220 9022 or 7220 9029; rather these impugned goods are correctly classifiable under

1/1596666/2023

CTH 7220 9090. It is also corroborated by the aforementioned statement of Shri Ashok Kumar, Director of M/s GEPL that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the said coils under CTH 72202090. Also ,On verification of import data of M/s GEPL, prior to the issuance of the said notification, it was observed that M/s GEPL had classified correctly said coils under CTH 72209090.

26.4 Reliance is placed on the following judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

- The Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull- 1983(13)ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh & Ors v s Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement-and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur {2000(117) E.L.t. 515(Tri)}**- wherein Hon'ble Tribunal held that— 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

26.5. In view of above discussion, I find that the impugned imported goods are not used in manufacturing of Pipes and tubes, therefore, cannot be

1/1596666/2023

classified under **CTH 7220 9010 or its sub-entries 7220 9021, 7220 9022 or 7220 9029**. I find that the impugned imported goods were imported by M/s. GEPL for manufacturing of Utensils and not the Pipes and Tubes. **Therefore, I hold that the impugned imported goods are rightly classifiable under CTH 7220 9090.**

27. I find that the noticees vide their written submission dated 06.12.2023 have stated that the invoice issuing exporter's name is mentioned in the 'COO' and just because the same is mentioned in a different column does not render the COO as 'invalid'. In this connection, I find that the benefit of the exemption notifications are subject to strict interpretation.

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

Relevant Para the said judgement is reproduced hereunder;

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

27.2. I hold that M/s GEPL have wrongly availed the benefit under Notification no. 50/2018-Customs dated 30.06.2018 in contravention to the Country of Origin rules, therefore, the benefit of concessional rate of duty is not available to them.

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

29. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962

The relevant legal provisions of Section 28(4) of the Customs Act,

1/1596666/2023

1962 are reproduced below: -

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

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

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

29.1. From the conditions of the Notification No. 50/2018-customs dated 30.06.2018, statement of Director of M/s. GEPL, and other evidences as discussed in detail in Paras hereinabove, it is apparent that M/s. GEPL suppressed the actual classification of the imported goods.

29.2. It is reasonable to assume that the mis-classification of imported goods has been done by M/s. GEPL willfully with sole intention to execute the modus of availing of ineligible benefit of Notification No. 50/2018-customs dated 30.06.2018 by way of mis-classification of imported goods and evasion of Customs duty.

29.3. The mis-classification restored by M/s. GEPL is wilful and with suppression of the actual classification of imported goods. When they have on their own changed the regular classification adopted by them consequent to a change in the statute providing for concessions for some other entry in the same Chapter, that too without any indication that they engaged with the Customs department in any manner while doing so, shows a deliberate intent to misclassify by suppressing the erstwhile classification adopted by them. They cannot, in this factual matrix, claim that all facts were before the Departments and that there was no intent to evade. Therefore, I find that it is appropriate to invoke section 28(4) of the customs act to demand the duty in the instance case. I hold so.

30. CONFISCATION OF THE GOODS UNDER SECTION 111(M) OF THE CUSTOMS ACT, 1962:

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

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

(ii). On plain reading of the above provisions of the Section 111(m) of the

1/1596666/2023

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

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

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

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

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

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

1/1596666/2023

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

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

31.1. ROLE PLAYED BY M/s GEPL:

(i) I find that M/s. GEPL had imported the goods namely 'Cold Rolled Stainless Steel Coils' valued at **Rs.10,64,16,180/-** (as detailed in Annexures to subject SCNs) by mis-declaring 'Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type)'. As discussed in detail hereinabove, the **Austenitic Stainless-Steel** grades have essentially content by weight (%) of alloying elements Chromium (Cr) from 16%-19% and Nickel (Ni) from 4.5%-12%. Whereas, the chemicals compositions shown in the Mill Test certificate/Test certificate/ Inspection Certificate produced by the importer at the time of import shows the content of Chromium (Cr) as **nearly 13% and Nickel as nearly 1%**, which ruled out its classification as Austenitic Stainless-Steel grades. Therefore, the goods imported as Cold Rolled Stainless Steel Coils of Nickel Chromium Austenitic Type by M/s GEPL is in fact Stainless Steel of other Grades. From statement of the Director of M/s.GEPL it is evident that they imported subject goods for manufacturing of Utensils. M/s. GEPL had mis-classified the same under CTH 72209022 and wrongly availed the benefit of Customs Notification No. 50/2018-Customs dated 30.06.2018 during the period from September 2018 to September 2020. As per the Notification no. 50/2018-Customs dated 30.06.2018, the exemption was available to goods falling under CTH 72209022 and not to the goods falling under other sub-heading CTH 7220. Therefore, the subject goods are to be correctly classifiable under CTH 72209090.

(ii) In terms of Section 46(4) of Customs Act, 1962, the importer was required to made a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, while in the instant case, M/s GEPL had failed to fulfill the conditions in respect of the imports of 'Cold Rolled Stainless steel Coils through various ports/ICD's viz. Mundra port (INMUN1), ICD Loni (INLON6) and ICD Sabarmati (INSB16). For these contraventions and violations, the goods fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

(iii) I find that under CTH 72209022 the importer have wrongly availed the benefit of concessional Custom duty of 45% under Notification No. 50/2018-Customs dated 30.06.2018.

31.2. Therefore, I hold that the aforesaid acts of suppression of facts and willful mis-statement by M/s GEPL had led to evasion of Customs duty of **Rs.54,64,932/-**. (*Rs.41,36,129/- in respect of SCN dated 20.05.2022 + Rs.8,81,878/- in respect of SCN dated 24.03.2023+ Rs.4,46,925/- in respect of SCN dated 12.05.2023*); thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the said Customs

1/1596666/2023

duty was evaded by reason of willful mis-statement and suppression of facts with a malafide intention. All the aforesaid acts of omission and commission on the part of M/s GEPL have rendered the subject imported goods totally valued at **Rs.10,64,16,180/-** (*as detailed in Annexures to the subject SCNs*) liable for confiscation under Section 111(m) of the Customs Act, 1962. M/s GEPL are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it is also evident that the full gamut of the facts were only known to the importer about the product and its actual classification. However, they had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and have therefore rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 also. Since M/s GEPL have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962.

(iv) I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also be liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

(v) I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable.

(vii) I find that there is a mandatory provision of penalty under Section 114A of customs act, 1962 where duty is determined under section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under Section 112(a) and Section 112(b) of Customs Act, 1962.

31.3. ROLE PLAYED BY SHRI ASHOK KUMAR, DIRECTOR OF M/S GEPL:

(i) I find that Shri Ashok Kumar, Director of M/s GEPL in his statements recorded on 19.07.2021 and 08.03.2022 himself admitted that prior to the issuance of Notification No 50/2018-Customs dated 30.06.2018, they were classifying the said coils under CTH 72202090. In his statements dated 19.07.2021 and 08.03.2022, he confirmed that they imported goods for manufacturing of utensils. He also admitted that the subject imported goods Stainless Steel Cold Rolled Coils Grade - J3 should be classified under CTH 72202090. Also on verification of import data of M/s GEPL, prior to the issuance of the said notification, M/s GEPL had classified correctly said coils under CTH 72209090. He also agreed to the information available on various websites regarding 'Austenitic Stainless Steels'. As per the literature available on said websites and domestic Steel Majors, it does not fall under category of Nickel Chromium Austenitic Type and the goods imported by them would have been rightly classified under CTH 72209090 for Stainless Steel Cold Rolled Coils, Grade-J3 as described by them prior to the issuance of Notification No 50/2018 dated

1/1596666/2023

30.06.2018.

(ii) I find that clause (a) of Section 112 of the Customs Act, 1962 prescribes penalty for the act of commission and/or omission in illegal import and/or abetment thereto; whereas clause (b) of Section 112 of the Customs Act, 1962 thereof prescribes penalty for knowingly dealing with the illegally imported goods. I find that penalty under section 114AA is imposable only if knowingly or intentionally a false declaration, statement or document is made, signed or used. I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention, etc., not expressly mentioned.

(iii) I find that in the instant case M/s. GEPL evaded Customs Duty by way of mis-classifying of imported goods and Shri Ashok Kumar was aware that the consignments imported by M/s GEPL was actually Cold Rolled Stainless Steel Coils falling under CTH 72209090. All such aforesaid acts of omission and commission on the part of Shri Ashok Kumar have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962; and consequently rendered him liable for penalty under Section 112(a)(ii) of the Customs Act, 1962; I hold so.

(iv) Since the instant case based on all the evidences on records, I do not find any role of Shri Ashok Kumar Director of M/s. GEPL in any act of commission or omission mentioned in Section 112(b) and Section 114AA of the Customs Act, 1962; therefore, I refrain from imposing penalty upon Shri Ashok Kumar under Section 112(b) and Section 114AA of the Customs Act, 1962. I also refrain from imposing penalty upon Shri Ashok Kumar Director of M/s. GEPL under Section 117 of the Customs Act, 1962 since penalty under Section 112(a)(ii) is expressly mentioned.

31.4. Role played by M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics; and their proprietors/ Key managerial persons:

(i) I have examined the allegations made in the subject show cause notices against the Custom Brokers that the mis-classification of the impugned goods in the import documents under Bills of Entry filed by M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd. and M/s. Maffick Logistics on behalf of M/s GEPL before the Customs authorities, was done on the direction of Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s. R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd. and Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics. Shri Ashok Kumar-Director of M/s GEPL handed over the documents to above mentioned Custom Brokers for filing of Bills of Entry and to arrange clearance of the goods. I find that above mentioned Custom Brokers acted as per the directions of Shri Ashok Kumar-Director of M/s GEPL.

(ii) I have also gone through the submission made by the Custom Brokers in their defence reply. I find that the Custom Broker has filed Bills of Entry on behalf of importer on the basis of documents submitted by the importer. The consignments imported by M/s GEPL by declaring as Cold Rolled Stainless Steel Coils (of Nickel Chromium Austenitic Type) was

1/1596666/2023

actually Cold Rolled Stainless Steel Coils falling under heading others of chapter 7220, as it was evident from the documents available in the form of Test certificate-Inspection Certificate, country of origin certificate produced by the importer and admitted by Shri Ashok Kumar Director of M/s GEPL. The present SCNs alleged that M/s GEPL imported the goods namely 'Cold Rolled Stainless Steel Coils' by mis-classifying the same under CTH 72209022 and wrongly availed the benefit under Notification no. 50/2018-Customs dated 30.06.2018. In this regard there appears to be no connivance of CB with importer in evasion of duty by wrongly claiming exemption came out, therefore, the Customs Brokers cannot be penalised.

(iii) Therefore, I hold that these noticees i.e. CBs M/s. Shri Balaji Logistics, M/s. R R Logistics, M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. and M/s. Maffick Logistics; and their proprietors/ authorised persons i.e. Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s. R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd. and Shri Devendra N Thakker, Proprietor and F-card holder of M/s. Maffick Logistics are not liable to penalty under Section 112(a), Section 112(b), Section 114 AA, or Section 117 of the Act ibid.

32. In respect of SCN bearing F.No. GEN/ADJ/ADC/478/2022-Adjn dated 12.05.2023, I find that the subject SCN dated 12.05.2023 vide Para 23.2 on page 23 has stated that the subject SCN pertains to demand of duty involved in the goods imported through the port ICD Sabarmati (INSB16), wherein Bill of Entry 7926226 dated 05.09.20218 was filed; and Penalty is proposed to impose upon Importer M/s. Gulshan Exim Pvt. Ltd. and its director Shri Ashok Kumar. Penalty is also imposed upon other CHAs/ proprietor viz. M/s. Shri Balaji Logistics; M/s. R R Logistics; M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.; M/s. Maffick Logistics; Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics; Shri Deepak Sawlani, G-card holder and Authorized signatory of M/s. R R Logistics; M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.; Shri Devendra N Thakker, Proprietor & F-card holder of M/s. Maffick Logistics.

32.1. I have carefully gone through the written submission dated 08.07.2023 of the Custom Broker M/s. Maffick Logistics (Prop. Shri Devendra N Thakker) whereby it is observed that they had filed Bill of Entry 7926226 dated 05.09.20218 at ICD Sabarmati (INSB16), which is subject matter of SCN dated 12.05.2023. I do not find any role of other CHAs/ proprietors/ authorized signatories in connection to filing of Bill of Entry 7926226 dated 05.09.20218. I find that the present issue being mis-classifying the imported goods by the importer M/s. GEPL in order to avail ineligible benefit under Notification no. 50/2018-Customs dated 30.06.2018; therefore, I find no connivance of CBs with importer in evasion of duty by wrongly claiming exemption. Hence, the Customs Brokers M/s. Maffick Logistics or its Prop. Shri Devendra N Thakker cannot be penalized penalty under Section 112(a), Section 112(b), Section 114 AA, and Section 117 of the Act ibid. **I hold so.**

33. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE

1/1596666/2023

FOLLOWING ORDER:

ORDER

**33.1. IN RESPECT OF SCN BEARING F.NO.GEN/ADJ/ADC/478/2022-
ADJN DATED 20.05.2022 READ WITH CORRIGENDUM DATED
11.04.2023**

- i. I reject the declared classification of the impugned goods in the Bills of Entry as detailed in Annexure attached to subject show cause notice and order to re-classify under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and re-assess the Subject Bills of Entry;
- ii. I order to confiscate the impugned goods valued at **Rs.8,05,40,987/-** (*Rupees Eight Crore Five Lakhs Forty Thousand Nine Hundred Eighty Seven only*) under the provisions of Section 111(m) of the Customs Act, 1962; however the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- iii. I confirm the demand of differential/Short paid Customs duty amounting to **Rs.41,36,129/-** (*Rupees Forty One Lakhs Thirty Six Thousand One Hundred Twenty Nine Only*) (*as detailed in Annexure attached to subject Notice*), and order to recover the same from M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962,
- iv. I order to recover the interest from M/s Gulshan Exim Private Limited (IEC-0505000261) at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty;
- v. I order to appropriate the Customs Duty amounting of **Rs.15,00,000/-** (*Rupees Fifteen Lacs Only*) already paid voluntarily by M/s Gulshan Exim Private Limited during the course of investigation towards their duty liability raised vide subject show cause notice;
- vi. I impose penalty **Rs.41,36,129/-** (*Rupees Forty One Lakhs Thirty Six Thousand One Hundred Twenty Nine Only*) upon M/s Gulshan Exim Private Limited in terms of Section 114A of the Customs Act, 1962 against confirmed demand of duty as mentioned at (iii) above;
- vii. I refrain from imposing penalty under Section of Section 112(a) and 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.
- viii. I impose penalty of Rs 4,00,000 (Rupees Four Lakhs only) upon M/s Gulshan Exim Private Limited (IEC-0505000261)in terms of Section 114AA of the Customs Act, 1962 against demand of duty as mentioned at (iii) above.
- ix. I impose penalty of Rs 1,00,000 (Rupees One lakh only) upon M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section

1/1596666/2023

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

- x. I impose penalty of **Rs.4,13,613/- (Rupees Four Lakhs Thirteen Thousand Six Hundred Thirteen only)** upon Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 112(a)(ii) of the Customs Act, 1962.
- xi. I refrain from imposing penalty upon Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962, for reasons discussed vide Para 31.3 hereinabove.
- xii. I refrain from imposing penalty upon M/s R R Logistics; M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd.; Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd.; in terms of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed hereinabove.

33.2. IN RESPECT OF SCN BEARING C.NO.VIII(30)CUS/ADJ/ICD-DD/GEPL/DRI/03/2023 / DATED 24.03.2023

- i. I reject the declared classification of the impugned goods in the Bills of Entry as detailed in Annexure attached to subject show cause notice and order to re-classify under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and re-assess the impugned goods;
- ii. I order to confiscate the impugned goods valued at **Rs.1,71,72,417/- (Rupees One Crore Seventy One Lakhs Seventy Two Thousand Four Hundred Seventeen only)** under the provisions of Section 111(m) of the Customs Act, 1962; however the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- iii. I confirm the demand of differential/Short paid Customs duty amounting to **Rs.8,81,878/- (Rupees Eight Lakhs Eighty One Thousand Eight Hundred Seventy Eight Only)** (as detailed in Annexure A attached to subject show cause notice), and order to recover the same from the Importer M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962;
- iv. I order to recover the interest from M/s Gulshan Exim Private Limited (IEC-0505000261) at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty.
- v. I impose penalty **Rs.8,81,878/- (Rupees Eight Lakhs Eighty One Thousand Eight Hundred Seventy Eight Only)** upon M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 114A of the Customs Act, 1962 against confirmed demand of duty as mentioned at (iii) above.
- vi. I refrain from imposing penalty upon M/s Gulshan Exim Private

1/1596666/2023

Limited (IEC-0505000261) under Section of Section 112(a) and 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under Section 112 of the Customs Act, 1962 is not imposable.

- vii. I impose penalty of **Rs 50,000/- (Rupees fifty thousand only)** upon M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 114AA of the Customs Act, 1962 against the confirmed demand of duty as mentioned at (iii) above.
- viii. I impose penalty of **Rs 25,000/- (Rupees twenty five thousand only)** upon M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 117 of the Customs Act, 1962 against the confirmed demand of duty as mentioned at (iii) above.
- ix. I impose penalty of **Rs.88,188/- (Rupees Eighty Eight Thousand One Hundred Eighty Eight only)** upon Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 112(a)(ii) of the Customs Act, 1962.
- x. I refrain from imposing penalty upon Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 112(b), Section 114AA, and Section 117 of the Customs Act, 1962. for reasons discussed vide Para 31.3 hereinabove.
- xi. I refrain from imposing penalty upon M/s Shri Balaji Logistics; and Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics; in terms of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed hereinabove.

33.3. IN RESPECT OF SCN BEARING F.No. GEN/ADJ/ADC/478/2022-Adjn dated 12.05.2023.

- i. I reject the declared classification of the impugned goods in the Bills of Entry as detailed in Annexure attached to subject show cause notice and order to re-classified under Customs Tariff Heading No. 72209090 of the First Schedule to the Customs Tariff Act, 1975 and order to re-assess the impugned goods;
- ii. I order to confiscate the impugned goods valued at **Rs.87,02,776/- (Rupees Eighty Seven Lakhs Two Thousand Seven Hundred Seventy Six only)** under the provisions of Section 111(m) of the Customs Act, 1962; however the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- iii. I confirm the demand of differential/Short paid Customs duty amounting to **Rs.4,46,925/- (Rupees Four Lakhs Forty Six Thousand Nine Hundred Twenty Five Only)** (as detailed in Annexure C attached to subject Notice), and order to recovered the same from the M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962;
- iv. I order to recover the interest at appropriate rate from M/s Gulshan

1/1596666/2023

Exim Private Limited (IEC-0505000261) under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty.

- v. I impose penalty **Rs.4,46,925/- (Rupees Four Lakhs Forty Six Thousand Nine Hundred Twenty Five Only)** upon M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 114A of the Customs Act, 1962 against confirmed demand of duty as mentioned at (iii) above.
- vi. I refrain from imposing penalty upon M/s Gulshan Exim Private Limited (IEC-0505000261) under Section of Section 112(a) and 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112 is not imposable.
- vii. I impose penalty of **Rs 20,000 (Rupees Twenty Thousand only)** upon M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 114AA of the Customs Act, 1962 against the confirmed demand of duty as mentioned at (iii) above.
- viii. I impose penalty of **Rs 15,000 (Rupees fifteen thousand only)** upon M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 117 of the Customs Act, 1962 against the confirmed demand of duty as mentioned at (iii) above.
- ix. I impose penalty of **Rs.44,693/- (Rupees Forty Four Thousand Six Hundred Ninety Three only)** upon Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 112(a)(ii) of the Customs Act, 1962.
- x. I refrain imposing penalty upon Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited (IEC-0505000261) in terms of Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for reasons discussed vide Para 31.3 hereinabove.
- xi. I refrain from imposing penalty upon M/s Maffick Logistics, and Shri Devendra N Thakker, Proprietor & F-card holder of M/s. Maffick Logistics, in terms of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed hereinabove.
- xii. I refrain from imposing penalty upon M/s Shri Balaji Logistics; M/s R R Logistics; M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd.; Shri Jitender Kumar-Proprietor of M/s. Shri Balaji Logistics; Shri Deepak Sawlani, G-card holder & Authorized signatory of M/s R R Logistics and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd. for reasons discussed hereinabove vide Para 32.

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

GEN/ADJ/ADC/478/2022-Adjn-O/o Pr Commr-Cus-Mundra

1/1596666/2023

Signed by K Engineer

Date: 11-12-2023 13:17:03

Reason: Approved

(K. Engineer)

Commissioner of Customs,

Custom House Mundra.

Date: 11.12.2023

F.No.CUS/ADJ/COMM/478/2022-Adjn

BY SPEED POST/BY EMAIL/BY HAND/ NOTICE BOARD OR BY OTHER LEGALLY PERMISSIBLE MEANS:

1. M/s Gulshan Exim Private Limited, B-234, 2nd Floor, North Ex Mall, Sector-9, Rohini, New Delhi-110085.
2. Shri Ashok Kumar, Director of M/s Gulshan Exim Private Limited, B-234, 2nd Floor, North Ex Mall, Sector-9, Rohini, New Delhi-110085.
3. M/s Shri Balaji Logistics, S-35/5, DLF, Phase-III, Gurgaon-122002, Haryana (email id-jitender.sehgal@endurancelogistic.com)
4. M/s. R R Logistics, S-1, 2nd floor, Plot No-195, Emarald House, Gandhidham, Kutch-370201 (email id-rrlogisticsgdmh@gmail.com)
5. M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd., Sharda Chamber No 1 31, Keshavji Naik Road, Bhat Bazar, Masjid Bunder Mumbai MH 400009 (email id-info.svjlogistic@gmail.com)
6. M/s Maffick Logistics, 228, Akshar Arcade, Opp. Memnagar Fire station, Navarangpura, Ahmedabad-380014 (email id-info@mafficklogistics.com)
7. Shri Jitender Kumar, Proprietor of M/s. Shri Balaji Logistics, S-35/5, DLF, Phase-III, Gurgaon-122002, Haryana (email id-jitender.sehgal@endurancelogistic.com)
8. Shri Deepak Sawlani, G-card holder & Authorized signatory and of M/s R R Logistics, Plot No-195, Emarald House, S-2, Second Floor, Gandhidham, Kutch and M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd., Sharda Chamber No 1 31, Keshavji Naik Road, Bhat Bazar, Masjid Bunder Mumbai MH. 400009 (email id-info.svjlogistic@gmail.com)
9. Shri Devendra N Thakker, Proprietor and F-card of M/s. Maffick Logistics, 228, Akshar Arcade, Opp. Memnagar Fire station, Navarangpura, Ahmedabad-380014 (email id-info@mafficklogistics.com)

COPY TO:-

1. The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054, for information (email-driazu@nic.in).

1/1596666/2023

- 2) The Additional Commissioner, Noida Customs Commissionerate, Concor Complex, Greter Noida, UP-201311.
- 3) The Additional Commissioner, ICD Khodiyar Jamiyatpura Road Nr. Khodiyar Railway Station S.G. Highway Ta.& Dist Gandhinagar-382423
- 4) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 5) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra
- 6) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 7) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 8) Notice Board
- 9) Guard File.