

	<p>OFFICE OF THE COMMISSIONER</p> <p>CUSTOM HOUSE, KANDLA</p> <p>NEAR BALAJI TEMPLE, NEW KANDLA</p> <p>Phone : 02836-271468/469 Fax: 02836-271467</p>
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DIN- 20250771ML000000F946		
A	File No.	GEN/ADJ/COMM/66/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-20-2025-26
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	28.07.2025
E	Date of Issue	29.07.2025
F	SCN No. & Date	Waiver of Show cause notice
G	Noticee / Party / Importer / Exporter	M/s. AJD Industries & others

1. This Order-in-Original is granted to the concerned free of charge.
2. 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:

Customs Excise & ServiceTax Appellate Tribunal, West Zonal Bench,
2ndFloor, Bahumali Bhavan Asarwa,
Nr.Girdhar Nagar Bridge, GirdharNagar, Ahmedabad-380004
3. Appeal shall be filed within three months from the date of communication of this order.
4. 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. 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 CourtFees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

Specific intelligence gathered by the officers of P&I Section, KASEZ indicated that certain SEZ Units were importing Flat rolled products of Stainless Steel falling under CTH 7220, from ASEAN countries especially Malaysia in contravention to Rules meant for Determination of Origin of Goods under India ASEAN FTA in order to avail exemption from payment of Basic Custom Duty. Further, the Intelligence suggested that exporters in Malaysia were providing Certificates of Origin to said SEZ Units, mentioning Origin Criteria as either WO (Wholly Obtained) or as the Regional Value Content (hereinafter also referred to as 'RVC') to be above 35%, whereas the same were not actually qualifying the minimum requirement of 35% value addition as per the Notification No. 189/2009-Cus (N.T.) dated 31.12.2009. In view of the above mis-declaration by the said SEZ Units, undue benefits, on the basis of the preferential certificates of origin, were being availed which resulted into misuse of the FTA and evasion of Customs duty.

1.1. The office of KASEZ has received a letter F. No. K-43017(16)/1/2021-SEZ dated 13.07.2021 from Ministry of Commerce and Industry along with DRI letter F. No. DRI/AZU/CI/INT-02/2021/494 dated 09.06.2021 (**RUD-01**). Vide said letter, it has been informed that during the course of inquiry proceedings by the Directorate of Revenue Intelligence (here-in-after referred to as "DRI"), it appeared that certain importers have cleared subject goods from SEZ to DTA without payment of applicable CVD. Further, it has been informed that the said importers have also indulged in other violations like mis-classification, wrong availment of benefit of exemption under Preferential Trade Agreement by producing fake Certificates of Country of Origin, clearance without mandatory SIMS registration etc. Further, DRI has informed that since the inquiry on the same matter had already been initiated by KASEZ customs, in the interest of revenue, DRI transferred all the files and documents related to the case to KASEZ Customs for further investigation.

1.2. Intelligence gathered by KASEZ Customs indicated that an Alert Circular No.: 02/2021-CI dated 10.09.2021 has been issued by DRI, Headquarters highlighting the use of non-authentic Certificates of Origin (COO) (**RUD-02**). During the course of verification of Certificates of Origin received from field formations of Indian Customs, through the Ministry of International Trade and Industry, Malaysia, it has been observed that COOs issued from certain Malaysia based suppliers are non-authentic. In fact, it has been informed that the said COOs were not issued by the Malaysian Customs and Malaysian Customs has never received any COO applications from the respective suppliers as listed in Annexure-A to the above-mentioned Alert Circular. Intelligence gathered by KASEZ Customs indicated that there had been several instances of imports of Steel products from Malaysia from such suppliers and therefore, as a matter of due diligence, KASEZ Customs has initiated an inquiry against all such consignments cleared by the unit's operating in KASEZ.

1.3. During the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed that certain KASEZ units had cleared "Cold Rolled Stainless Steel Sheet in Coils (J3 Grade)" in DTA classifying them under CTH 72209022. Customs duty was paid on these DTA clearances at the rate of 23.35%. Whereas, the Audit team on scrutiny of their "Mill Test Certificate", noticed that these items contained "Chromium-Cr" (12.4% -12.5%) and "Manganese-Mn" (9.2 % -9.4%) in majority and only a small quantum of "Nickel Ni" (1.03% -1.07%). Therefore, Audit team made an observation that the subject goods cleared in DTA were actually "chromium-manganese austenitic type" stainless steel and were correctly classifiable under CTH 72209090 and subsequently, benefit of Notification 50/2018-Cus dated 30.06.2018 was also not admissible for subject goods. The above said observations were communicated by the Audit team to KASEZ vide HM dated 27.09.2021 and subsequently vide LAR dated 03.11.2021 (**RUD-03**).

1.4. Acting on the intelligence gathered by the P&I Section, and input received from DRI Ahmedabad and Audit observation, an inquiry has been initiated against all such

SEZ Units and subject DTA clients. One such SEZ unit is M/s. AJD Industries Pvt Ltd, Kandla Special Economic Zone, Gandhidham, Kutch, which have availed concessional rate of duty using non-authentic Certificate of Origin and have availed concessional rate of duty of the goods originated from China by mis-classifying the goods under 72209022 instead of 72209090.

1.5. M/s. AJD Industries Pvt. Ltd (hereinafter also referred to as 'SEZ Unit'), is situated at Plot No. 4-A, Sector III, Kandla Special Economic Zone, Gandhidham, Kutch in Kandla SEZ having letter of Approval No. 17/2020-21 dated 14.10.2020 valid up to 13.10.2025 issued by the Joint Development Commissioner vide letter F.No. KASEZ/IA/17/2020-21/2824 dated 14.10.2020 **(RUD-04)** by the Development Commissioner, Kandla SEZ under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit and carry out authorized operations of warehousing and trading activity.

1.6. During the investigation, Statement of Director/Partner of AJD Industries Pvt Ltd, KASEZ and other persons involved were recorded under Section 108 of Customs Act, 1962 wherein they have accepted the fact that the preferential certificate provided by their supplier M/s Artfransi International SDN BHD and utilized by them are non-authentic. During the course of Investigation, M/s AJD Industries Pvt Ltd, the SEZ unit, voluntarily paid the differential duty Rs 1,14,00,714/- vide various challans along with interest Rs 25,28,283/- and 15% Penalty Rs 29,84,302/- w.r.t wrong availment of Preferential Trade Agreement using non authentic Certificate of Origin and wrong availment of APTA benefits by mis-classifying the goods and intimated the same vide their various letters dated 28.01.2022, 18.02.2022, 21.02.2022, etc **(RUD-05)**. The details of the differential duty payment in respect of their DTA Client as submitted by the SEZ unit are as under: -

Table I: Details of Differential Duty, Interest and Penalty amount paid

Name of SEZ Unit	DTA Client/Importer	Duty Deposit	Declared COO.	Interest	Penalty
M/s AJD Industries Pvt Ltd	Atmiya Enterprise	38,07,649	Malaysia	1280196	1233401
	A.D Enterprise	15,56,878			
	RMC Enterprise	9,90,372			
	Unique Steel	18,67,774			
	Artfransi International	16,63,909	China	626401	249586
	NG Impex	15,14,132	China	626686	227119
	Total	1,14,00,714/-		25,33,283/-	17,10,106/-

2.1 Outcome of IEC verification Reports from the Jurisdictional Commissionerate:

Further, Jurisdictional Customs Commissionerate were requested to carry out IEC verification for the subject DTA Importers. The outcome of the verification proceedings has been detailed below **(RUD-06)**:

Sr. No.	Name of DTA Importer (M/s.)	Declared address of DTA Importer.	Outcome of IEC verification proceedings.
1.	M/s RMC Enterprise.	Office No. 4, Plot No. 261, Shanti Prakash Market Building, Ward No. 12-B, Gandhidham.	"Does not exist"

2.	M/s Unique Steel.	104, 1st Floor, "Rishabh Arcade", Plot No. 83, Subhash Nagar, Ward 8/A, Gandhidham, Kutch-370205.	Does not exist at the given address however after enquiry it came to know that the said firm has changed their address and presently working at Plot No. 285, Duplex No. 6, Ward 8/A, Subhash Nagar, Gandhidham. Accordingly, verification has been made at the new address and Importer has submitted that the firm is doing business at the new place and he will change address in other documents shortly.
3.	M/s Atmiya Enterprise.	Office NO.01,Plot No.02, WARD7/B, GANDHIDHAM,370201	GST is suomoto cancelled w.e.f. 30.09.2021 and physical verification report is awaited yet.
4.	M/s A.D Enterprise.	D-06 Plot No 285, Ward 8/A, Subhash Nagar, Gandhidham, Gujarat PIN-370201	Verification not received from Jurisdictional Commissionerate.
5.	M/s Artfransi International Pvt Ltd.	Office No.S/2 Adinath Arcade Plot No.583 Ward 12/C Gandhidham	
6.	M/s N G Impex.	Property No A-30, Wazirpur Industrial Area Delhi-110052	

2.2. Details of letters/emails not responded for various reasons.

2.2.1. The subject DTA importers were requested to provide the following documents to KASEZ Customs for further scrutiny and investigation **(RUD-07)**:

1. Details of clearance of goods with Country of Origin declared as Malaysia.
2. Details of all communications, emails, correspondence with the overseas suppliers.
3. Details of all communications, emails, correspondence with the SEZ units.
4. KYC Details, Copy of Rent Agreement and Electricity Bills for last 3 years.
5. Copy of Purchase Order/Sales Contract and BRCs.
6. Purchase and Sales Registers/Printouts thereof in respect of the imported goods/trading Activities.
7. Balance sheets for last 3 years along with copies of Schedules and Annexure.
8. Copy of ITRs and Bank statement for last 3 years.
9. Transportation documents including Vehicle number, Invoices, details of e-way bills, name of transporters engaged in clearance of subject goods into DTA.
- 10.Details of persons (PAN Card, Aadhar Card, Gate Pass issued by competent authority etc) involved in presentation of goods before Custom Officer at the time of DTA Clearance.
- 11.Details of persons (PAN Card, Aadhar Card, Gate Pass issued by competent authority etc.) involved in dealing with processing of DTA BEs at KASEZ and person maintaining accounts.
- 12.Mode of receipt of COOs/Imported documents and documents/ details of payments made thereof.
- 13.Details of Clearing Agents/Forwarders/Indentors along with copy of authorization/agreement with them.
- 14.Details of Warehousing Charges paid to SEZ Units, invoices, and expenditure incurred in respect of loading/ unloading of goods, documents related to Insurance etc for past 3 years.
- 15.End Use of Imported goods.
- 16.Details of proceedings initiated under the Customs Act, 1962/SEZ Act 2005 in last 5 years along with documents.

2.3. The outcome of request letters/summons has been detailed below: -

Sr. No.	Name of the Unit (M/s.)	Letter/email details (F. No./Date)	Remarks
1	RMC Enterprise	Letter dated 02.12.2021 / Summons dated 31.03.2023 and 23.06.2023	Not responded
2	Unique Steel		
3	AD Enterprise		
4	Atmiya Enterprise		
5	Artfransi International Pvt Ltd		
6	N G Impex		

3. Statements recorded of concerned persons.

3.1. During the course of investigation, Statement of Shri Bhargav Thakkar, Director of M/s AJD Industries Pvt Ltd were recorded on 18.02.2021 (**RUD-08**) under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- that he is one of the Directors of M/s AJD Industries Pvt Ltd and all the day today work related to administration, marketing, accounting, finance and warehousing are looked after by him.
- that M/s AJD Industries Pvt Ltd is engaged in providing services related to warehousing of imported goods. They are registered for manufacturing activity and Warehousing Services Activities since October, 2020 and produced the copy of Letter of Approval No. 17/2020-21 dated 14.10.2020 valid up to 13.10.2025 issued by the Joint Development Commissioner vide letter F.No. KASEZ/IA/17/2020-21/2824 dated 14.10.2020. that they are providing warehouse service for importing various products falling under CTH 39,72, 73 etc. of Customs Tariff and manufacturing activity CTH 39,54 and 63 but the manufacturing activities have not commenced till now. Further he stated that goods were imported duty free by various units/importers and warehoused at their godown situated in KASEZ and thereafter same were sold in DTA on payment of applicable rate of duty and at the same time some goods were exported by various firms.
- that M/s AJD Industries Pvt Ltd is engaged in providing services related to warehousing of imported goods as per Rule 18 (5) and Rule 76 of the SEZ Rules, 2006 and Instruction no 60 dated 06.07.2010. For warehousing purpose, they have executed the Bond-cum-Legal undertaking having Sr no 16066 of 2020 dtd 15.10.2020 as prescribed under the SEZ Rules, 2006. That they file the Bill of Entry for warehousing and DTA Clearance through SEZ Online System.
- that they just started the warehousing activities in the month of November 2020 only. In the month February, 2021 they started providing other services viz. Customs clearing, transportation, loading, unloading, re-packing on customized basis. Further he stated that when any importer/customer approach them for warehousing of goods, they offer them warehousing charges and additionally offer them composite charges which includes Customs clearing, transportation, loading, unloading, repacking on customized basis and offer them choice to either go with our offer or nominate their own Customs broker, transporter, handling agent and labour contracts. Thereafter, based on their rates quoted, customers decide which package they have to accept. If any customer, accept their customized package, then they provide all services, which includes Customs clearing, transportation, loading, unloading, re-packing on customized basis. Further he stated that for customs clearance work related to import/export & DTA clearance of all goods they have not nominated any person but generally they gave the work of clearance to M/s A.D. Mehta Clearing Agency who also arrange transport from port to KASEZ. He further stated that as per the

requirement of customer, they also arranged transportation after clearance of goods from KASEZ to desired destination.

- that regarding warehousing of Stainless-Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil falling under CTH 7219 & 7220 of Customs Tariff Act, he stated that they have warehoused the goods falling under CTH 7219 & 7220 of Customs Tariff Act for three customers viz. M/s Unique Steel, Gandhidham, M/s AD Enterprises, Gandhidham, and M/s RMC Enterprise, Gandhidham. Further, he stated that they were providing the transport service to Shri Deepak Munuja for transportation of goods from KASEZ to other parts of the country whom goods were sold by Shri Deepak Munuja. During that time, they also requested Shri Deepak Munuja to give work related to warehousing. As he was providing service of transportation and Shri Deepak was known to him, he also gave him work related to warehousing of goods imported by his firms viz. M/s Unique Steel, M/s AD Enterprises, M/s RMC Enterprise. Further, he stated that apart from warehousing services and transportation services after clearance of goods from KASEZ, they have not provided any service to the firms of Shri Deepak. They have taken only Rs. 10000/- per container as warehousing charges for 30 days from Shri Deepak.
- that he knows Shri Deepak Manuja is the proprietor of M/s Unique Steel and Smt. Shivani Juyal wife of Shri Deepak Manuia is the proprietor of M/s AD Enterprises but he do not know Shri Rahul Mavjibhai Chavda, who is the proprietor of M/s RMC Enterprise. He further stated that regarding KYC of M/s Unique Steel, Gandhidham, M/s AD Enterprises, Gandhidham and M/s RMC Enterprise, Gandhidham, he stated that KYC was done by him and documents viz GST Registration certificate, GST return, IC copy and copy of PAN no. etc. were given by Shri Deepak Manuja.
- that activities related to transportation of goods from Munda to KASEZ and clearance from customs were looked after by M/s A.D.Mehta Clearing Agency and loading and unloading of goods were done by persons arranged by Shri Deepak. He further stated that, that till date they have not raised any bills for warehousing charges and not taken the charges as accounting part is pending.
- that regarding filling of bill of entry for import of Stainless Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil falling under CTH 7219 & 7220 of Customs Tariff Act, he stated that same were filled by M/s AJD Industries Pvt Ltd on behalf of importer being SEZ registered Warehousing unit but as he told earlier same were prepared by M/s A.D. Mehta Clearing Agency after directly consultation with importer/customer as these importers were known to M/s A.D. Mehta Clearing Agency and they provided only warehousing services and transportation services after clearance of goods from KASEZ.
- that Bill of Entry for DTA Clarence were filled by M/S AJD Industries Pvt. Ltd on behalf of importer as SEZ registered Warehousing unit but same were prepared by M/s A.D. Mehta Clearing Agency after directly consultation with importer/customer. He further stated that id and password provided to M/s AJD Industries Pvt Ltd by SEZ online system for filling of documents was given to M/s AJD Industries Pvt Ltd by them for filling bills of Entry for in-bond and DTAA clearance and accordingly they filed the documents.
- that he does not have any knowledge of classification of goods, payment of Custom duty, GST and other Anti-dumping duties and CVD etc, as Shri Deepak Manuja nominated M/s A.D. Mehta Clearing Agency for looking these Custom clearance work related to his importing firms.

3.2. During the course of investigation, statement of Shri Deepak Manuja (**RUD-09**), Proprietor of M/s. Unique Steel, Gandhidham was recorded on 29.01.2021 under Section 108 of Customs Act, 1962. The relevant portion of the statement is as under:

- that, he is the proprietor of M/s Unique Steel, his wife, Smt Shivani Manuja is the proprietor of M/s AD Enterprises and his elder brother, Shri Sandeep Manuja is the proprietor of M/s D.S. Trading Company. That, all the companies were established by himself only and his wife as well as his brother were not involved in any activities of the companies. That, all the day today work related to all the activities like sales, purchase etc. was looked after by him only.
- that, M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company, are engaged in trading of Flat rolled products of Stainless-Steel Cold Rolled Coils/Hot Rolled Coil/ Circles. That, first they purchased Flat rolled products of Stainless-Steel Cold Rolled Coils/Hot Rolled Coil/Circle from overseas supplier based in China and Malaysia and further imported the consignments in bulk and warehoused the same in KASEZ. That, thereafter, from KASEZ, they cleared in DTA on payment of applicable duties and sold to various Importers in Domestic market.
- that, initially he contacted Shri Devang Mehta of M/s AD Mehta Clearing Agency as he had been knowing Shri Devang Mehta since he was working in KASEZ unit and informed him that he wants to import the goods i.e. Stainless-Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil/ Stainless Steel Circle for warehousing in KASEZ and then after cleared it in DTA. That, thereafter, Shri Devang Mehta gave him rates of the composite charges which include Customs clearing, transportation, warehousing, loading, unloading, re-packing on customized basis. Based on the rates given by Shri Devang Mehta, he accepted his customized package for providing all services stated above and also filling of BoE for DTA clearance.
- that, on being asked regarding warehousing of Flat rolled products of Stainless Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil falling under CTH 7219 & 7220 of Customs Tariff Act., he stated that M/s Commodities Trading being SEZ registered Warehousing unit have filled warehouse Bill of Entry of the goods falling under CTH 7219 & 7220 of Customs Tariff Act on behalf of M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company and the said goods were warehoused in KASEZ at warehouse of M/s Commodities Trading and further, M/s Commodities Trading filed Bills of entry for DTA clearance on behalf of DTA Importers. That, charges for agency, warehousing, transportation, insurance, container lift on and lift up etc, were given by them to M/s A.D. Mehta Clearing Agency who had arranged all the above services.
- that, regarding classification of goods, availment of any exemption viz. Asian Pacific Trade Agreement (APTA), payment of Custom duty, GST and other Anti-dumping duties and CVD etc. he stated that he has some knowledge of customs and accordingly, based on the documents received from the overseas suppliers, they filed the Bill of entry.
- that, he contacted overseas suppliers for supply of Flat rolled products of Stainless-Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil/ Stainless Steel Circle and did not issue any purchase order but they received proforma Invoice and accordingly they made the advance payment through banks as no credit limit or time was given by overseas supplier.
- that, on being asked about the operation of the bank accounts, he informed that his brother, Sandeep Manuja operated the accounts of all the three firms viz. M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company and they did not operate the account of M/s RMC Enterprise and M/s AJ Steel.
- that, their main Importers are M/s AJ Steel, Delhi, M/s Artfransi International Pvt. Ltd. Gandhidham, M/s RJ Enterprise, Delhi and M/s Karthik Kitchen,

Rajkot. No sales or purchase orders were issued. That, they do not know the end use of product viz. Flat rolled products of Stainless-Steel Cold Rolled Coils/Hot Rolled Stainless Steel Coil/ Stainless Steel Circle and they do not have any end-use certificate also.

- that, on perusal of ledgers of M/s. AD Enterprises and M/s. D.S. Trading Company produced, it was seen that in similar manner, M/s. AJ Steel has given large amount to M/s. AD Enterprises and M/s. D.S. Trading Company for sale of goods to M/s. AJ Steel.
- that, under CTH 72 goods mainly steel product i.e., S.S. Coil/pipe are classified. That, there are two types of coils i.e., HRC (Hot Rolled Coil) and CRC (Cold Rolled Coil). That, as far as difference between HRC and CRC is concerned, it is depend on the rolling mechanism, temperature used on it, and CRC is made from HRC after finishing of it. That, they have imported both types of coils. That, under CTH 7219, Flat-rolled products of stainless steel of a width of 600 mm or more have been classified whereas under CTH 7220, Flat-rolled products of stainless steel of a width of less than 600 mm have been classified.
- that, they have filed the Bills of Entry for the goods with description of Cold Rolled Coils under CTH 72209022 Nickel Chromium Austenitic Type' and for the goods with description of Hot Rolled Coils under CTH 72201222 with description 'Nickel Chromium Austenitic Type. That, they filed the Bills of Entry under said CTH for taking benefit of SAPTA Notification under the description of 'Nickel Chromium Austenitic Type.
- that, they classified the imported goods under said CTH for taking benefit of SAFTA and further, he accepted that it is does not fall under category of Nickel Chromium Austenitic Type.
- that, on being asked to go through the CTH 7220, he found that the correct classification of imported goods with description of Hot Rolled Stainless Steel have to be classified under CTH 72201290 and imported goods with description of Hot Rolled Stainless Steel have to be classified under 72209090.
- that, SIMS (Steel Import Monitoring System) registration is required for the import of steel. Importer has to register it. As far as goods imported by M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company, we have not had SIMS registration.
- that, Initially, they received the documents from their overseas supplier with HS code or CTH mentioned in 6 digits i.e. 7220.90 but as the CTH mentioned in SAPTA Notification no. 50/2018 the eligible HS code to claim benefit on BCD is mentioned as 72209022 therefore, they asked their suppliers to mention HS code 72209022 on the import documents where as their goods imported are of HS Code 72209090.
- that, as said imported goods are not falling under category of Nickel Chromium Austenitic, therefore, it appears that SAFTA benefit is not applicable on the said products by M/s Unique Steel, M/s AD Enterprises and M/s D.S. Trading Company.

3.3. Further, Statement of Shri Bhargav Thakkar **(RUD-10)**, Director of M/s AJD Industries Pvt Ltd were recorded on 28.05.2021 again under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- that since inception in Nov. 2020 to present, there are four Directors in the firm namely Sh. Bhargav Thakkar, Sh. Hardik Thakkar, Smt Mita Thakkar and Sh. Durgesh Kathrarni.
- that they take the KYC of the party such as copy of IEC, Details of Firm, GST registration certificate, PAN card, Adahar card and a photograph for identification.
- that they verify the company registered with GST from GST portal and further verify the credentials from Aadhar card portal also. Moreover, they had known some of the DTA clients as he was providing them Transportation services through his other business i.e. M/s Ambica Transworld LLP.
- that they have all the authorization from their respective clients to file Bills of entry on their behalf as per SEZ rule.
- that have started to warehouse goods falling under CTH 72 from November-2020.
- that he does not have such technical knowledge regarding procedure of clearance from SEZ, as he merely has overview of this business and he just have overview of all the general activities in his firm. Moreover, all technical matters like filing of Bill of Entry/ Shipping Bills related to Customs clearance is handled by M/s A D Mehta, Gandhidham.
- that they filed DTA bills of entry of goods falling under CTH 72 on behalf of their DTA client through M/s A D Mehta, Gandhidham.
- that in respect of warehousing of Flat rolled products of Stainless Steel Cold Rolled Coils/ Hot Rolled Stainless Steel Coil falling under CTH 7219 & 7220 of Customs Tariff Act, they have filed warehouse Bill of Entry of the goods falling under CTH 7219 & 7220 of Customs Tariff Act for five customers viz. (a) M/s. Unique Steel, Gandhidham, (b) M/s. AD Enterprises, Gandhidham, (c) M/s. AJ Steel, New Delhi, (d) M/s D.S. Trading Company, Gandhidham and (e) M/s RMC Enterprise, Gandhidham.
- that their DTA clients have directly submitted the relevant documents for Customs Clearance to M/s AD Mehta and they have only warehoused the goods in his warehouse. Later on, after clearance, the documents are forwarded to them by M/s AD Mehta.
- regarding the authenticity of the shipment, he stated they have seen physical inward movement of goods falling under CTH 72 in their warehouse via import containers and have also seen moving them out physically after payment of duty as per the Assessed BoE. He further stated that they are doing business with M/s AD Mehta from last one years since inception of their LoA, and they have trust-based relation with them. They did not doubt the integrity of Transaction but as he already stated told that he did not had the technical knowledge of the transaction and hence did not go deep into the technical aspects of the same.
- that they have warehoused the goods for i) M/s AD Enterprises, Gandhidham i) M/s Atmiya Enterprises, Gandhidham (ji) M/s Unique Steel, Gandhidham (iv) M/s RMC Enterprise, Gandhidham (v) M/s Bhaumik Overseas, Delhi, (vi) N G Impex, Delhi, (vii) Artfransi International Pvt Ltd, Gandhidham.
- that they have not verified the documents, except the basic verification of KYC, as all the documents were directly submitted by the DTA clients to M/s AD Mehta and they know M/s AD Mehta for one year personally.

- that they do not know the actual country of Origin and have no idea regarding the same.
- that prior to warehousing of goods on behalf of DTA clients, he had provided transport services to some of the DTA clients as per their requirements. Moreover, when they started a new venture of providing warehousing services at KASEZ in Nov-20, they have approached the DTA clients for availing our services. Further, all the documents are filed by M/s AD Mehta on behalf of them in providing the Warehousing Services.
- that M/s AD Mehta was receiving all the documents from the clients directly and filing the BE and they have not verified the genuineness of the documents of the same.
- that after the incidence of levy of CVD on import of Steel coils, KASEZ Customs insisted that all the DTA clearance of imported steel coils from Malaysia will be made against the submission of necessary bank Guarantee and accordingly, they have submitted the necessary bank Guarantee.

3.4. Further, another Statement of Shri Bhargav Thakkar (**RUD-11**), Director of M/s AJD Industries Pvt Ltd were recorded on 14.04.2023 after the receipt of the verification report of the Certificate of Origin, under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- that, he has been shown the sheet mentioning the goods, which were declared to be originated from Malaysia and cleared into DTA from their warehouse unit M/s AJD industries Pvt Ltd, Kandla SEZ. In token of being seen, he put his dated signature on the said sheet running in 02 pages containing details of 12 Bills of Entry. Further, he stated that the benefits of the Preferential Certificate of Origin under ASEAN-India Free Trade Area, Agreement was availed by the DTA clients based on the original documents which were produced by the DTA Clients at the time of Customs clearance.
- that, state that M/s Artfransi International SD BHD, Malaysia is the only supplier of Ss Steel Coils in total 12 Bills of Entry and cleared from their SEZ warehouse after availing the Preferential Duty Benefits.
- that, he has been informed that the KASEZ, Customs had sent the Certificates of Origin issued by the Ministry of International Trade and Industry of Malaysia for verification of the authenticity of the said COO(s) through proper channel and shown him the email dated 25.03.2021 received by the Customs. He further stated that as per the above-mentioned email and letter dated 15.04.2021 received from FTA Cell, CBIC, Delhi, the subject certificates utilized by the DTA client and provided by M/s Artfransi International SDN BHD are non-authentic.
- that he has been shown the DRI alert Circular no 02/2021 dated 10.09.2021 running into 03 pages, on the subject matter "Import of Steel Products availing the concessional rate of duty under ASEAN- India Preferential Trade Agreement and India-Malaysia Preferential Trade Agreement". He put his dated signature on the same in token of being seen. He further stated that as per the DRI alert circular also, the certificates provided the supplier M/s Artfransi International SD BHD are non-authentic.
- that at the material time, when investigation was under process and when they come to know that the Certificates of Origin issued from Malaysia are found to be non-authentic, they had paid the differential customs duty along with applicable interest and penalty of 15 percent to conclude the Investigation process.

- that he doesn't have any knowledge about the actual origin of the goods. From the Bill of Lading, it could be seen that the goods are shipped from Malaysia therefore we had to believe that the country of origin of the subject goods is Malaysia.
- that, he has been informed that letters were written to all their DTA clients by the KASEZ, Customs, but none of the DTA clients have reverted, and most of the letters have remained undelivered and returned back to KASEZ Customs. On being asked about the genuineness of the DTA Clients, he stated that at the time of the Customs Clearance, all the DTA clients appeared to be genuine as they have appeared for taking the delivery of the goods. Also, when the documents of the DTA Clients were produced before them such as PAN Card, IEC, GST Registration etc, they verified the same on the respective government websites and all found to be verified, therefore at the time they did not have any reason to doubt about their genuineness. However, after the investigation is done by the DRI and the verification report of the COO(s) received from FTA cell, it could be said that the DTA clients are not genuine. Had they been genuine, they would have never used the non -authentic COO and replied to the letter by KASEZ Customs promptly.
- that all the documents for clearance of the goods, including the Certificate of Origin were provided directly to M/s AD Mehta by the DTA Clients. They have never received the documents directly from the DTA Clients. After the clearance, the documents were forwarded to them for record purpose.
- that, that all the bills of entry of the same commodity, which were declared to be originated from China were filed in the month of February-2021. The CVD on the Stainless Steel is not applicable from 01.02.2021.

3.5. Further, another Statement of Shri Bhargav Thakkar (**RUD-12**), Director of M/s AJD Industries Pvt Ltd were recorded on 10.07.2023 w.r.t the mis-classification of the subject goods under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated:-

- that he has been shown the sheet mentioning the goods, which were declared to be originated from China and cleared into DTA from their warehouse unit M/s AJD industries Pvt Ltd, Kandla SEZ. In token of being seen, he put dated signature on the said sheet running in 01 pages containing details of 18 Bills of Entry; that the benefits of the Preferential Certificate of Origin under APTA, Agreement was availed by the DTA clients based on the original documents which were produced by the DTA Clients at the time of Customs clearance.
- that CTH No 72209022 is declared in the Bills of Entry on the basis of the CTH mentioned on the Bill of Lading and Certificate of Origin issued under APTA.
- that the "J3 Grade" in the Coil imported by their SEZ Unit, is a grade of Steel and on being asked about the types of grade in Steel Coils, he stated that he do not have much knowledge of the types of Grade in Steel Coil.
- that he has been shown the meaning of "J3 Grade" of steel coil given under the website [link "https://www.yaoyistainlesssteel.com/grade-j3/#:~:text=J3%20Grade%20is%20a%20chromium,Cr%20for%20increased%20corrosion%20resistance"](https://www.yaoyistainlesssteel.com/grade-j3/#:~:text=J3%20Grade%20is%20a%20chromium,Cr%20for%20increased%20corrosion%20resistance) according to which "J3 Grade" is a Chromium-Manganese Austenitic Stainless Steel (13-15% Cr and 7.5 % to 13% Mn) with moderate amounts of Copper, Nickel And Nitrogen; that the said compositions of Cr, Mn for J3 Grade also matches with the MTC certificates submitted by DTA Clients. Therefore, there is no mis-declaration of the description of the goods by the DTA Clients in the Bills of Entry.

- that the Customs Tariff Item No 7220 9022 in Customs Tariff Act under Chapter-72, is for **“Nickel Chromium Austenitic Type”**; that the subject goods i.e. “J3 Grade Steel Coil” in the Bills of Entry are classified by them under the same CTI i.e. 7220 9022; that as per the website shown, the “J3 Grade” is **“Chromium-Manganese Austenitic Stainless Steel”** whereas the classification (i.e 7220 9022) chosen by them is for “Nickel-Chromium Austenitic Type”. At the time of filing, we didn’t check the website and filed the Bills of Entry on the basis of the import documents submitted by the DTA Clients.
- that he has filed the Bills of Entry on the basis of the documents submitted and they e verified the APTA notification with Customs Tariff Book and found that the benefits under APTA are applicable to the goods classified under 7220 9022. Further he stated that he doesn’t know the proper classification of J3 Grade” (Chromium-Manganese Austenitic Stainless Steel)

3.6. During the course of investigation, statement of Shri Devang Mehta (**RUD-13**), Partner of M/s. AD Mehta Clearing Agency, was recorded under Section 108 of Customs Act, 1962 wherein he, inter alia, stated that:-

- they were the consultant and transporter for M/s AJD Industries Pvt Ltd and they had file some of the Bills of Entry in SEZ online system of M/s AJD Industries Pvt Ltd., Kandla SEZ unit based on the documents provided by clients introduced to them through Mr Bhargav Thakkar (9913777767) or Hardik Thakkar (Director/Brother mob +91-9924963111) or Mr Deepak Manuja (Unique steel) for all the DTA Clients of the said KASEZ unit. Email of Mr Hardik received as contact on AJD Industries Pvt Ltd is hardik@artfransi.com. Further the warehousing agreement was executed by M/s AJD Industries Pvt Ltd., KANDLA SEZ unit and DTA importer/clients directly.
- that they have filed the documents in SEZ online system of M/s AJD Industries Pvt Ltd , Kandla SEZ unit based on import documents received by DTA client after the confirmation from the SEZ unit. Only following 9 Bills of Entry for China, 12 Bills of entry for Malaysia, the draft trial was prepared by them. He further submitted the signed copy of the list of the Bills of Entry and out of charge copy of the said DTA Bills of Entry.
- that he has been informed that the KASEZ, Customs had sent the Certificates of Origin issued by the Ministry of International Trade and Industry of Malaysia for verification of the authenticity of the said COO(s) through proper channel and shown them the various letters dated 30.04.2021, 09.06.2021 and email dated 08.06.2021 received by the Customs. On being asked, he stated that as per the above-mentioned letters received from FTA Cell, CBIC, Delhi, the subject certificates utilized by the DTA client and provided by M/s Artfransi International SDN BHD are non-authentic. Further after April they have not filled any document with Malaysian origin.
- that he has been shown the DRI alert Circular no 02/2021 dated 10.09.2021 running into 03 pages, on the subject matter “Import of Steel Products availing the concessional rate of duty under ASEAN- India Preferential Trade Agreement and India- Malaysia Preferential Trade Agreement”. On being asked, he stated that as per the DRI alert circular also, the certificates provided the suppliers M/s Artfransi International SDN BHD are non-authentic. However, the said alert was not available at the time of import.
- that he has been shown the statement of Mr Bhargav Dhirajlal Thakkar dated 28.05.2021, 14.04.2023, 18.02.2021, wherein Mr Bhargav Dhirajlal Thakkar has stated his involvement in the clearance of the goods using non-authentic Certificate of Origin. In this regard, he stated that in shown statement dtd 18.02

21 as per Page 2 (para no 2,3): - Mr Bhargav has stated that he had approached Mr Deepak Manuja and was already working for DTA clients. M/s AJD Industries Pvt Ltd had only nominated them (A D Mehta Clearing Agency) to prepare documents. They have submitted the documents based on client documents and there is no way for them to verify the same. The assessment was done in SEZ online system. The AJD business and license belong to Mr Bhargav and his family and all business was carried out by them. They were only filing documents and transportation till SEZ unit none of the DTA delivery is done by them. Regarding their point on not knowing clients, he submitted a high seas document submitted by M/s AJD Industries Pvt Ltd, wherein Mr Bhargav Thakkar is authorised signatory on behalf of ArtFransi International Pvt Ltd. Some of the warehousing agreement received along with documents is also submitted, which indicates that the DTA Clients and Mr Bhargava Thakkar are well connected to each other and his involvement is only limited to assist Mr Bhargava Thakkar to file Bill of Entry in SEZ online system and providing transportation services.

- Mr Bhargav Dhirajlal Thakkar in his statement has stated that Mr Devang Mehta had introduced the DTA Clients to Mr Bhargav Thakkar. On being asked, he stated that as per the answer given in point no 5 above, it is well evident that the clients belong to them and since they are signing documents as authorised signatory, his statement about Mr Devang introducing him is invalid and contradictory in nature. Also, he stated that the work in M/s AJD Industries had started from M/s Unique Steel company belonging to Mr Deepak Manuja. As per statement shown of Mr Bhargav Thakkar, he has accepted they were working with Mr Deepak Manuja as transporter for shipment.
- that all the documents for clearance of the goods, including the Certificate of Origin were provided to them by Client / Mr Deepak Manuja / staff of Mr Bhargav Thakkar physically or through email on the basis of which they filed the Bills of Entry for clearance of /the goods. He submitted email dated 24.01.2021 in favour of M/s Atmiya Enterprise, email dated 13.01.2021 in favour of M/s RMC from Deepak Manuja, email dated 16.03.2021 sent by them to AJD Industries regarding the confirmation of the receipt of manual documents, email dated 18.12.2021 in favour of M/s AD Enterprise sent by Deepak Manuja, email dated 07.02.2021 regarding submission of import documents sent by M/s NJ Steel to M/s Artfransi International.
- that classification of goods i.e. SS Steel Colled Rolled Coil; Grade: J3 under CTH 72209022, he stated that the said classification of the goods is done on the basis of the import documents (COO, Mill Test, thickness of the goods) submitted by the DTA Clients/ Mr Deepak Manuja / staff of Mr Bhargav Thakkar physically or through email. They filed the Bills of entry with description of cold rolled coils under CTH 72209022 for "Nickel Chromium Austenitic Type".
- that the DTA Clients have given us SIMS registration details. The subject goods i.e SS Steel Coils are freely importable subject to registration under SIMS as per the DGFT Policy. Further, they mentioned that we had intimated the requirement of SIMS for the import to the DTA Client/importer, however he is not aware whether they have submitted SIMS or not with the Bills of Entry on the SEZ Online System. He further submitted email chain dated 17.02.2021, 18.02.2021 in support of his answer.
- that as per previous statements and details accepted by Mr Deepak Manuja during DRI investigation, we were in no way beneficiary or had any mens rea to any benefits or preferential duty availed by the DTA clients.

4. Scrutiny of documents and analysis of evidences gathered during investigation

4.1. On scrutiny of the documents pertaining to subject bills, the major issues/contraventions made by members of smuggling syndicate appears to emerge as under-

- (i) **Wrong availment of benefit of exemption using non-authentic COO:** The said SEZ Unit along with DTA importers have wrongly availed the benefit of BCD Duty exemption on goods imported from Malaysia by producing non-authentic Country of origin certificate at the time of assessment of DTA bills of entry, under Notification No. 18/2018-Customs dated 31.12.2018.
- (ii) **Mis-classification of imported goods:** The said SEZ Unit along with DTA Importers have mis-classified the goods imported under CTH 72209022 to claim the benefit of Asian Pacific Trade Agreement (APTA) under Notification No. 50/2018 dated 30.06.2018, wherein benefit/ exemption of @45% on the BCD on the goods imported from China is available. The actual classification of these goods should be 7220 9090 which has been corroborated as per the Mill test reports and also the admissions in the statements recorded under Section 108 of the Customs Act, 1962.
- (iii) **Import without SIMS registration:** Whereas, DGFT vide notification no. 33/2015-2020 dated 28.09.2020 has amended the import policy for goods falling under Chapter 72 from "Free" to "Free subject to compulsory registration under Steel Import Monitoring System (SIMS)". During the course of investigation, it emerged that subject SEZ unit in connivance with DTA importers have imported subject goods without compulsory registration under SIMS as mandated by prevailing import policy notified by DGFT.
- (iv) **Use of dummy importer/fake IECs:** During the course of investigation, IEC verification report received from jurisdictional Commissionerate indicates the use of few dummy importers/fake IEC for the subject DTA clearances of the goods by the said SEZ Unit in connivance with DTA importers. Further, it emerges that all these acts had been done with well and pre-planned strategy so as to illegally enrich the said SEZ unit and DTA importers through evasion of Customs duty. Further non reply of the letter issued by the KASEZ Customs for submission of the documents, also indicates that the importers are not genuine.

5. Discussion related to legal contraventions:

5.1. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported /export goods while presenting bill of entry or shipping bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules, all inward or outward movements of the goods into or from SEZ by the Unit/Developer shall be based on self-declaration made by the Unit/Developer. While importing subject goods, the said SEZ unit and DTA importers were bound for true and correct declaration and assessment. As the said SEZ unit engaged in business of providing warehousing services in respect of subject goods, they were fully aware of specifications, characteristics, nature and description of the goods imported and warehoused on behalf of DTA client. Whereas, Section 46(4A) of the Customs Act, 1962, the importer, who is presenting the bill of entry should ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any,

relating to the goods under the Customs Act, 1962 or under any other law for the time being in force.

Use of Non-Authentic Certificate of Origin

5.2 The legal contraventions caused out of acts of omissions and commission on the part of the DTA Clients and the SEZ Unit for use of non-authentic/fake COOs, use of dummy DTA Importers/fake IECs resulted in evasion of Customs duty to the tune of Rs. 82,22,674/- (Rupees Eighty-Two Lakh twenty-two thousand Six Hundred Seventy-four), would have not come to the notice of Customs authorities except for intelligence gathering, inputs from reliable sources and further investigation by Customs. From the verification letters received by the KASEZ Customs and the said DRI Alert Circular regarding the non-authenticity of the Country-of-Origin Certificate by Malaysia, and using these non-authentic certificates with an intent to evade customs duty by way of availing non-eligible benefits of connectional rate of duty under India-ASEAN FTA, appears to be a clear case of willful mis-statement and suppression of facts and thereby attracts the invocation of extended period of demand of duty under Section 28(4) of the Customs Act, 1962. During the course of investigation, IEC verification report received from jurisdictional Commissionerate indicates the use of dummy importers/fake IEC for the subject DTA clearances of the goods by the said SEZ Unit in connivance with DTA importers. Further, it emerges that all these acts had been done with well and pre-planned strategy so as to illegally enrich the said SEZ unit and DTA importers through evasion of Customs duty.

5.3 During the course of Investigation, it emerges that the said SEZ Unit along with DTA importers have wrongly availed the benefit of exemption on goods imported from Malaysia by producing non-authentic Country of origin certificate at the time of assessment of DTA Bills of Entry, under Notification No. 18/2018-Customs dated 31.12.2018. Such indulgence and endeavor on the part of said SEZ Unit and DTA importers are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable for confiscation in terms of Section 111(m) and Section 111(o) of the Customs Act, 1962 and said SEZ unit and their DTA importers liable for penalty under Section 112, Section 114A and section 114AA of the Customs Act, 1962.

Mis-classification of the goods to avail undue APTA benefits:

5.4 During the course of Investigation, it emerges that the said SEZ Unit along with DTA Importers have mis-classified the goods imported under CTH **7220-9022** to claim the benefit of Asian Pacific Trade Agreement (APTA) under Notification No. 50/2018 dated 30.06.2018, wherein benefit/ exemption of @45% on the BCD on the goods imported from China, resulted in the short payment in Customs Duty to the tune of **Rs 37,78,042/-**. The actual classification of these goods should be **7220-9090 (Chromium-Manganese Austenitic Stainless Steel)** which has been corroborated as per the Mill test reports and also the admissions in the statements recorded under Section 108 of the Customs Act, 1962 that their goods are "J3 grade" Steel Coil, which is **Chromium-Manganese Austenitic Stainless Steel**. Such indulgence and endeavor on the part of said SEZ Unit and DTA importers are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable for confiscation in terms of Section 111(m) and Section 111(o) of the Customs Act, 1962 and said SEZ unit and their DTA importers liable for penalty under Section 112, Section 114A and Section 114AA of the Customs Act, 1962.

Clearance of the goods without SIMS Registration.

5.5 Whereas, DGFT vide notification no. 33/2015-2020 dated 28.09.2020 has amended the import policy for goods falling under Chapter 72 from "Free" to "Free subject to compulsory registration under Steel Import Monitoring System (SIMS)".

During the course of investigation, it emerged that subject SEZ unit in connivance with DTA importers have imported subject goods without compulsory registration under SIMS as mandated by prevailing import policy notified by DGFT.

5.6 Whereas, it is noticed that the M/s AJD Industries Pvt Ltd, has submitted a letter dated 10.04.2024 (**RUD-14**) in reply to the letter dated 04.04.2024, wherein few SIMS certificates were submitted with a reply that *“majority of SIMS certificate as provided by our warehousing clients and issued under their IEC through DGFT towards import / DTA Clearances from KASEZ under our service unit”*. After considering the reply and the SIMS certificates submitted by the SEZ unit, it was found that are 18 bills of entry for which the SEZ unit has not submitted any SIMS certificate as detailed in Annexure D attached to the SCN. The SEZ unit has mentioned the SIMS no on the Bills of Entry however they have neither uploaded the same on the NSDL system nor submitted the same in physical copy. Therefore, it appears that the SEZ unit and the DTA clients have cleared the goods to the tune of **Rs 11,28,19,019/-** as mentioned in the **Annexure D** attached to the Notice, without the mandatory sims certificate

5.7 Such indulgence and endeavor on the part of said SEZ Unit and DTA importers are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable for confiscation in terms of Section 111(d) and Section 111(o) of the Customs Act, 1962 and said SEZ unit and their DTA importers liable for penalty under Section 112, Section 114A and section 114AA of the Customs Act, 1962.

6. Quantification of Duty Evasion.

6.1. Whereas, from the investigation carried out so far, it appears that the SEZ unit and their DTA clients have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally used non-authentic certificates of origin, intentionally misclassified the subject goods to avail the benefits of Concessional rate of duty, filed Bills of Entry for import of subject goods without SIMS Registration, cleared goods after availing the benefits of concessional rate of duty. All these acts and omissions on their part have rendered the goods having total assessable value of Rs. **15,70,10,669/-** (Rupees Fifteen Crore Seventy Lakh Then Thousand Six Hundred Sixty-Nine only) liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to this SCN.

6.2 Further, the total differential customs duty amounting to **Rs. 1,14,00,715/-** (Rupees One Crore Fourteen Lakhs, Seven Hundred Fifteen only) on the said goods imported, as shown in the **Annexure-C** to this Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA Clients, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

6.3 Whereas, from the investigation carried out so far, it appears that M/s A.D Enterprise has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally used non-authentic certificates of origin, filed Bills of Entry for import of subject goods without SIMS Registration and cleared goods after availing the benefits of concessional rate of duty. All these acts and omissions on their part have rendered the goods having total assessable value of Rs. **1,59,92,588/-** (Rupees One crore Ninety-Nine lakh twenty-five thousand five hundred and eighty-eight only) liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to this SCN. Further, the total differential customs duty amounting to **Rs. 15,56,878/-** (Rupees Fifteen Lakh Fifty-Six Thousand Eight Hundred Seventy-Eight only), on the said goods imported, as shown in the **Annexure-C** to this Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA clients under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962

6.4 Whereas, from the investigation carried out so far, it appears that M/s. Atmiya Enterprise has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally used non-authentic certificates of origin, filed Bills of Entry for import of subject goods without SIMS Registration and cleared goods after availing the benefits of concessional rate of duty. All these acts and omissions on their part have rendered the goods having total assessable value of **Rs. 3,91,12,979/-** (Rupees Three Crore Ninety-One Lakh Twelve Thousand Nine Only) are liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to this SCN. Further, the total differential customs duty amounting to Rs. **38,07,648/-** (Rupees Thirty-Eight Lakh Seven Thousand Six Hundred Forty-Eight Rs only), on the said goods imported, as shown in the **Annexure-C** to this Show Cause Notice on the subject goods, which was lawfully payable by them is liable to be recovered from the said respective DTA clients under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

6.5 Whereas, from the investigation carried out so far, it appears that M/s RMC Enterprise have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally used non-authentic certificates of origin, filed Bills of Entry for import of subject goods without SIMS Registration and cleared goods after availing the benefits of concessional rate of duty. All these acts and omissions on their part have rendered the goods liable **Rs. 1,01,73,316/-** (Rupees One crore one lakh seventy-eight thousand four hundred and sixty-five only) to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in Annexure-C to this SCN. Therefore, the total differential customs duty amounting to **Rs. 9,90,372 /-** (Rupees Nine Lakh Ninety Thousand Three Hundred Seventy-Two Only), on the said goods imported, as shown in the **Annexure-C** to this Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA clients under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

6.6 Whereas, from the investigation carried out so far, it appears that M/s. Unique Steel, Gandhidham has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally used non-authentic certificates of origin, filed Bills of Entry for import of subject goods without SIMS Registration and cleared goods after wrongly availing the benefits of concessional rate of duty using non authentic Certificate of Origin. All these acts and omissions on their part have rendered the goods having total assessable value of **Rs. 1,91,86,180/-** (Rs One Crore Ninety-One Lakh Eighty-Six Thousand One Hundred Eighty Only) are liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in Annexure-C to this SCN. Further, the total differential customs duty amounting to **Rs. 18,67,775/-** (Rupees Eighteen Lakh Sixty-Seven Thousand Seven Hundred Seventy-Five Only), on the said goods imported, as shown in the Annexure-C to this Show Cause Notice on the subject goods, which was lawfully payable by them is liable to be recovered from the said respective DTA clients under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

6.7 Whereas, from the investigation carried out so far, it appears that M/s. Artfransi International Pvt Ltd, Gandhidham have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally mis-classified the imported goods under CTH **7220-9022** to claim the benefit of Asian Pacific Trade Agreement (APTA) under Notification No. 50/2018 dated 30.06.2018, wherein benefit/ exemption of @45% on the BCD on the goods imported from China is there, resulted in the short payment in Customs Duty to the tune of **Rs 16,63,909/-** and cleared the goods without having valid SIMS registration. All these acts and omissions on their part have rendered the goods having total assessable value of **Rs. 3,79,82,296/-** (Rupees Three Crore Seventy-Nine Lakh Eighty-Two Thousand Two Hundred Ninety-Six only) liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to this SCN. Further, the total differential customs duty amounting to Rs. **Rs 16,63,909/-**, on the aforementioned said goods imported, as

shown in the **Annexure-C** to this Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA clients under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

6.8. Whereas, from the investigation carried out so far, it appears that M/s. NG Impex, New Delhi have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally mis-classified the imported goods under CTH **7220-9022** to claim the benefit of Asian Pacific Trade Agreement (APTA) under Notification No. 50/2018 dated 30.06.2018, wherein benefit/ exemption of @45% on the BCD on the goods imported from China is there, resulted in the short payment in Customs Duty to the tune of **Rs 15,14,132/-** and cleared the goods without having valid SIMS registration. All these acts and omissions on their part have rendered the goods having total assessable value of **Rs. 3,45,63,309/-** (Rupees Three Crore Forty-Five Lakh Sixty-Three Thousand One Hundred Thirty Two only) liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to this SCN. Further, the total differential customs duty amounting to Rs. **Rs 15,14,132/-**, on the aforementioned said goods imported, as shown in the Annexure-C to this Show Cause Notice, which was lawfully payable by them is liable to be recovered from the said respective DTA clients under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

7. Role played by various Persons.

7.1.1. Role played by SEZ Unit i.e. M/s. AJD Industries, KASEZ and Shri Bhargav Thakkar, Director of M/s. AJD Industries.

From the investigation carried out, the role played by M/s. AJD Industries, KASEZ Shri Bhargav Thakkar, Director of M/s. AJD Industries, members of smuggling syndicate appear to emerge asunder:

- Whereas, the said SEZ unit has filed Bill of Entry for warehousing and DTA clearance of subject goods through SEZ Online System.
- Whereas, the said SEZ unit has accepted customise package from said DTA Importers and provided them services like Customs clearing, Transportation, Loading and Unloading of Subject goods.
- Whereas, ID and Password provided to unit by SEZ Online System for filing the documents were shared to M/s. A. D. Mehta Clearing Agency.
- Whereas, the director of the said SEZ unit has accepted the fact about the use of non-authentic Country of Origin Certificate to avail the benefits of concessional rate of duty
- Whereas, the director of the said SEZ unit has accepted that they do not know any of their DTA clients of the goods under CTH 72 and all the DTA clients are basically clients of M/s. A. D. Mehta Clearing Agency.
- Whereas the director of the said SEZ unit has failed to do the due diligence before filing and clearing the impugned goods into DTA.
- Whereas, the director of the SEZ unit appears to have conspired with Mr Deepak Manuja and DTA Clients to avail the undue benefits and cleared the goods without having the valid SIMS registration.

7.1.2. In view of the facts discussed in the fore going paras and the material evidence available on the record and the deposition of the concerned person involved, it appears that M/s. AJD Industries, KASEZ and their DTA clients have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they used non-authentic

certificates of origin, filed Bills of Entry for import of subject goods without SIMS Registration and cleared goods after availing the benefits of concessional rate of duty. All these acts and omissions on their part have rendered the goods liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to this SCN and same tantamount to “smuggling” within the meaning of Section 2(39) of the Customs Act, 1962.

7.1.3. It also appears that M/s. AJD Industries, KASEZ and the said DTA Clients of CTH 72 had deliberately availed the Custom duty exemptions by means of non-authentic Certificates of origin, thereby indulging in willful mis-statement and suppression of facts and contravened various provisions of the Customs Act, 1962 and rules made thereunder, as discussed in the foregoing paras above, with intent to evade payment of Customs duty at the time of DTA clearance from the SEZ. Further, it is pertinent to note that the use of forged/fabricate/non-authentic Certificates of origin to evade Customs duty has been confirmed based on Alert Circular No. 02/2021-CI dated 10.09.2021. Investigation revealed that the subject Certificates of origin were not issued by the competent authority and they are not authentic. All these acts had been done with well and preplanned strategy so as to illegally enrich the said SEZ unit and their DTA clients through evasion of Customs duty, which resulted in evasion of Customs duty. Therefore, the total differential customs duty amounting to **Rs. 1,14,00,715/-** (Rupees One Crore Fourteen Lakhs, Seven Hundred Fifteen only) on the said goods imported, as shown in the **Annexure-C** to this Show Cause Notice on the subject goods, which was lawfully payable by the DTA Clients is liable to be recovered from the said respective DTA clients, individually and separately, under Section 28(4) of the Customs Act, 1962 as shown against their names in the said **Annexure-C**, along with applicable interest under Section 28AA of the Customs Act, 1962. M/s. AJD Industries, KASEZ in the name of warehousing unit of SEZ appears to have acted as a facilitator and abettor of the smuggling activity to defraud the govt exchequer. Therefore, they appear to be liable to for penal action under the provisions of FTD&R Act 1992.

Also, they intentionally and deliberately signed, made, used or caused to be made Bills of Entry, invoices, declarations and other statements which they knew were false and incorrect in crucial/ aspects in the course of imports into KASEZ and clearance into the DTA. The said acts of omission and commission on the part of M/s. AJD Industries and the said DTA importers along with their persons like Mr Deepak Manuja, who acted as facilitators of the said modus operandi, have rendered themselves liable for penalty, individually and separately, under the provisions of Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962 and FTD&R Act 1992.

8. Role played by Shri Deepak Manuja, Proprietor of M/s. Unique Steel, Gandhidham.

8.1 From the investigation carried out, the role played by M/s. Unique Steel, Gandhidham and its proprietor, Shri Deepak Manuja, the members of smuggling syndicate appear to emerge as under:

- Whereas, Shri Deepak Manuja stated that all the companies like M/s. Unique Steel, M/s. A.D. Enterprises and M/s. D.S. Trading have been established by him and he looks after the day-to-day work related to all the activities like sales, purchases etc.
- Whereas, he stated that Shri Devang Mehta has given him rates of composite charges which included Customs clearing, transportation, warehousing, loading, unloading, repacking on customized basis and he accepted the customized package. He has given all documents to Shri Devang Mehta for all formalities. He stated that he has given charges for the subject goods like agency charges, warehousing charges, transportation services to M/s. A.D. Mehta Clearing Agency. He stated that he has received documents from the overseas supplier and made payments

- Whereas, he stated that he has filed Bills of entry and mis-classified the subject goods with sole intent to claim benefit of the SAPTA notification and admitted the correct classification as re-determined during the course of investigation.
- Whereas, he stated that although SIMS registrations are mandatory for the import of the steel but in their case the subject DTA clients failed to register the same.
- Whereas, he has admitted that he has filed bills of entry under wrong classification and admits mistake on his part.
- Whereas, he has admitted that he has not paid the applicable CVD and has stated during the course of investigation that he has started paying past duty liabilities along with applicable interest.
- Whereas, Mr Bhargav Thakkar in his statement dated 18.02.2021 accepted that all the work of Stainless-Steel Clearance work is given by Mr Deepak Manuja. He also stated that that their clients' firms are basically the firms of Mr Manuja's family member.
- Whereas, the import documents are submitted directly to M/s AD Mehta directly by the DTA Clients, which were introduced to Mr Thakkar by Mr Deepak Manuja.

8.2. In view of the facts discussed in the foregoing paras and the material evidence available on the record and the deposition of the concerned person involved, it appears that Shri Deepak Manuja, Proprietor of M/s. Unique Steel, Gandhidham along with other DTA clients have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally misclassified the subject goods, used non-authentic certificates of origin, filed Bills of Entry for import of subject goods without SIMS Registration, cleared goods without payment of applicable CVD and cleared goods to DTA clients which in many cases were dummy importers. All these acts and omissions on their part have rendered the goods liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** to this SCN and as discussed herein above and is tantamount to "smuggling" within the meaning of Section 2(39) of the Customs Act, 1962.

8.3. It also appears that Shri Deepak Manuja, Proprietor of M/s. Unique Steel, Gandhidham and other DTA importers had deliberately availed the Custom duty exemptions by means of non-authentic Certificates of origin, thereby indulging in willful mis-statement and suppression of facts and contravened various provisions of the Customs Act, 1962 and rules made thereunder, as discussed in the foregoing paras above, with sole intent to evade payment of Customs duty at the time of DTA clearance from the SEZ. Therefore, the total differential customs duty amounting to **Rs. 1,14,00,715/-** (Rupees One Crore Fourteen Lakhs, Seven Hundred Fifteen only) in total, on the said goods imported, as shown in the Annexure-C to this Show Cause Notice on the subject goods, which was lawfully payable by them is liable to be recovered from the said respective DTA importers under Section 28(4) of the Customs Act, 1962 as shown against their names in the said **Annexure-C**, along with applicable interest under Section 28AA of the Customs Act, 1962. Also, they intentionally and deliberately signed, made, used or caused to be made Bills of Entry, invoices, declarations and other statements which they knew were false and incorrect in crucial/ aspects in the course imports into KASEZ and DTA. They also were part of larger conspiracy and organized smuggling syndicate and tried to mislead investigations by giving contradictory statements, evasive replies and generally not cooperated with investigation. Further Mr Deepak Manuja appears to have acted as a Pivot in the whole smuggling syndicate as he appears to have brought together all the DTA Clients and SEZ Unit and used the services of Customs Consultant M/s AD Mehta Clearing Agency to defraud the Govt Exchequer. The said acts of omission and commission on the part of Shri Deepak Manuja, Proprietor of M/s. Unique Steel, Gandhidham and other DTA clients along with SEZ unit M/s AJD

Industries, who acted as facilitators of the said modus operandi, have rendered them liable for penalty, individually and separately, under the provisions of Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962 read with Section 11(2) of the FTDR Act, 1992.

8.4. From the above it appears that the said DTA Importer started their operations in SEZ with preplanned intent of defrauding the Government Exchequer and evading of Customs Duty. To carry out their intent, they committed various acts of commission and omission, as discussed in detail, in foregoing paras above, which were in violation of the SEZ Act, 2005 and rules made thereunder and the Customs Act, 1962. Whereas, the said SEZ Unit fell into the prey of the DTA Importers and Mr Deepak Manuja to make import of subject goods by luring them by promising of heavy profit. Accordingly, the said DTA importers would be required to pay less duty as compared to the duty payable on the goods imported directly from the ports by them. Investigation established preplanned and premeditated intention to carry out illegal activities on their part. They, together, accordingly formed and organized syndicate and the same was executed with formulation of well-planned strategy to cause them illegal gains and loss to government exchequer. Thereafter, the said modus was adopted and fully effected causing huge losses to the public exchequer. The facts related to mis-classification, import without mandatory SIMS registration, use of non-authentic Certificate of Origin to avail duty benefits have categorically been admitted by the concerned persons in their respective statements recorded under Section 108 of the Customs Act, 1962, duly corroborated by the material/documentary evidences available on record, confirming the legal contraventions in the subject imports, as discussed above. Further, it is pertinent to note that the use of forged/fabricate/non-authentic Certificates of origin to evade Customs duty has been confirmed based on Alert Circular no. 02/2021-CI dated 10.09.2021. Investigation revealed that the subject Certificates of origin were not issued by the competent authority and they are not authentic. Further, IEC verification report received from jurisdictional Commissionerate indicates the use of dummy importers/fake IEC for the subject DTA clearances of the goods by the said SEZ Unit. The DTA clients neither reverted to all the letters issued by the Customs nor responded to the Summons issued under Section 108 of the Customs Act, 1962. All these acts had been done with well and preplanned strategy so as to illegally enrich M/s. DTA Clients through evasion of Customs duty, which resulted in evasion of Customs duty amounting to **Rs. 1,14,00,715/-** (Rupees One Crore Fourteen Lakhs, Seven Hundred Fifteen only) as detailed in the aforesaid Annexure-C, attached to this Show Cause Notice. All the aforesaid acts of omissions and commissions on the part of Mr Deepak Manuja have rendered the impugned goods having assessable value of **Rs. 3,45,63,309/-** (Rupees Three Crore Forty Five Lakh Sixty Three Thousand One Hundred Thirty Two only) liable for confiscation under Section 111(d), 111(m), (o) of the Customs Act, 1962 read with the SEZ Act, 2005 and the rules made thereunder. Further, Shri Deepak Manuja had consciously dealt with the said imported goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962 read with the SEZ Act, 2005 and rules made thereunder. For the acts of contraventions and commissions, Shri Deepak Manuja, proprietor of M/s. Unique Steel had rendered themselves to penalty, individually and separately, under Section 112(a) and 112(b) of the Customs Act, 1962 read with Section 11(2) of FTDR Act, 1992.

9. Role played by M/s. A. D. Mehta Clearing Agency and Shri Devang Mehta, Partner of M/s. A. D. Mehta Clearing Agency.

9.1. From the investigation carried out, the role played by M/s. A.D. Mehta Clearing Agency and Shri Devang Mehta, partner of M/s. A.D. Mehta Clearing Agency, it emerges that

- Whereas, most of the Customs clearance work related to import and DTA clearance of the goods has been dealt by M/s. A.D. Mehta Clearing Agency.

- Whereas, M/s. A.D. Mehta Clearing Agency had been receiving the documents directly from their DTA Clients and Mr Deepak Manuja the same are being used for clearance of the goods in to DTA.
- Whereas, the said SEZ Unit has admitted that all the activities related to subject goods except warehousing, looked after by M/s. A.D. Mehta Clearing Agency and even the KYC was done by the person of M/s. A.D. Mehta Clearing Agency.
- Whereas, investigation revealed that Bills of Entry for subject goods were filed by the SEZ Unit but the same were prepared by M/s. A.D. Mehta Clearing Agency after directly consulting the said DTA Clients. The login ID and password provided to said SEZ Unit for filing of documents were shared to M/s. A.D. Mehta Clearing Agency.
- Whereas, Shri Devang Mehta, partner of M/s. A.D. Mehta Clearing Agency has provided customized package to DTA importers in respect of services like Custom clearing, transportation, loading, unloading and repacking.
- Whereas, Shri Devang Mehta gave the SEZ Unit, the rates of the composite charges which included Custom Clearing, Transportation, Warehousing, loading, unloading and repacking on customized basis and gave to SEZ Unit the KYC documents for the said IECs including those of dummy IECs.
- Whereas classification of goods i.e. SS Steel Cold Rolled Coil; Grade: J3 under CTH 72209022, is done on the basis of the import documents (COO, Mill Test, thickness of the goods) submitted by the DTA Clients/ Mr Deepak Manuja / staff of Mr Bhargav Thakkar physically or through email. They filed the Bills of entry with description of cold rolled coils under CTH 72209022 for "Nickel Chromium Austenitic Type".

9.2. In view of the facts discussed in the foregoing paras and the material evidence available on the record and the deposition of the concerned person involved, it appears that M/s. A.D. Mehta Clearing Agency and Shri Devang Mehta, partner of M/s. A.D. Mehta Clearing Agency have assisted DTA importers and the said SEZ Unit in contravening the provisions of Section 46(4) of the Customs Act, 1962 in as much as they assisted the SEZ unit to file Bills of Entry for import of subject goods without SIMS Registration and cleared goods after availing the benefits of concessional rate of duty and mis-classification of the goods to avail APTA benefits and use of non-authentic COO to avail the duty benefits. All these acts and omissions on their part have rendered the goods liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in Annexure-C to this SCN.

9.3. It also appears that M/s. A.D. Mehta Clearing Agency and Shri Devang Mehta, partner of M/s. A.D. Mehta Clearing Agency have assisted DTA importers and the said SEZ Unit in availing the Custom duty exemptions by means of non-authentic Certificates of origin, thereby indulging in willful mis-statement and suppression of facts and contravened various provisions of the Customs Act, 1962 and rules made thereunder, as discussed in the foregoing paras above, with intent to evade payment of Customs duty at the time of DTA clearance from the SEZ. Also, they intentionally and deliberately signed, made, used or caused to be made Bills of Entry, invoices, declarations and other statements which they knew were false and incorrect in crucial/ aspects in the course imports into KASEZ and DTA. The said acts of omission and commission on the part of M/s. A.D. Mehta Clearing Agency and Shri Devang Mehta, partner of M/s. A.D. Mehta Clearing Agency along with the said SEZ Unit and their DTA clients have rendered them liable for penalty, individually and separately, under the provisions of Section 114AA of the Customs Act, 1962.

9.4 Role played by the DTA Clients namely M/s. Atmiya Enterprise, Gandhidham, M/s A.D Enterprise, M/s RMC Enterprises, M/s. Unique Steel, Gandhidham.

9.4.1 Whereas, letter dated 02.12.2021 and summons under Section 108 of the Customs Act, 1962 dated 31.03.2023 and 23.06.2023 was issued to the DTA Clients for submission of the information, however none of the DTA clients have reverted and the letters/summons have returned back. In view of the facts discussed in the foregoing paras and the material evidence available on the record and the deposition of the concerned person involved, it appears that M/s. Atmiya Enterprise, Gandhidham, M/s RMC Enterprise, M/s A.D Enterprise, M/s. Unique Steel, Gandhidham, M/s Artfransi International, Gandhidham, M/s NG Impex, New Delhi have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they used non-authentic certificates of origin to avail concessional rate of duty, mis-classified the goods under wrong CTH to avail the benefits of APTA and cleared goods without SIMS Registration. All these acts and omissions on their part have rendered the goods liable to confiscation under the provisions of Section 111(d), 111(m) & 111(o) of the Customs Act, 1962 as detailed in **Annexure-C** and **Annexure-D** to this SCN and same tantamount to “smuggling” within the meaning of Section 2(39) of the Customs Act, 1962.

9.4.2. It also appears that DTA importers had deliberately availed the Custom duty exemptions by means of non-authentic Certificates of origin, thereby indulging in willful mis-statement and suppression of facts and contravened various provisions of the Customs Act, 1962 and rules made thereunder, as discussed in the foregoing paras above, with intent to evade payment of Customs duty at the time of DTA clearance from the SEZ. Therefore, the total differential customs duty amounting to **Rs. 1,14,00,715/-** (Rupees One Crore Fourteen Lakhs, Seven Hundred Fifteen only) in total, on the said goods imported, as shown in the **Annexure-C** to this Show Cause Notice on the subject goods, which was lawfully payable by them is liable to be recovered from the said respective DTA importers under Section 28(4) of the Customs Act, 1962 as shown against their names in the said **Annexure**, along with applicable interest under Section 28AA of the Customs Act, 1962. Also, they intentionally and deliberately signed, made, used or caused to be made Bills of Entry, invoices, declarations and other statements which they knew were false and incorrect in crucial/ aspects in the course imports into KASEZ and DTA. The said acts of omission and commission on the part of M/s. Atmiya Enterprise, Gandhidham, M/s RMC Enterprise, M/s A.D Enterprise, M/s. Unique Steel, Gandhidham, New Delhi along with their responsible persons like Shri Devang Mehta, who acted as facilitators of the said modus operandi, have rendered them liable for penalty, individually and separately, under the provisions of Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962.

10. Statement of charges and Authority to adjudicate the subject charges

10.1. Now, therefore, **M/s. AJD Industries, KASEZ** having Letter of Approval No. KASEZ/IA/ 17/2020-21 dated 14.10.2020 is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why:

- I. The goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' having declared assessable value of **Rs. 8,44,65,063/-** (Rupees Eight crore Forty-Four lakh Sixty-Five thousand Sixty-Three only) should not be confiscated under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty. and the differential duty amount of Rs **82,22,674/-** (Rupees Eighty-two Lakh Twenty-Two Thousand Six Hundred Seventy-Four) as detailed in '**Annexure-A**' to the Show Cause Notice, should not be demanded and recovered from their DTA Clients under the provisions of Section 28(4) of the Customs Act, 1962,

along with interest, under the provisions of Section 28AA of the Customs Act, 1962;

- II. The declared classification i.e. under CTI **7220 9022** of the imported goods and cleared into DTA vide bills of entry as detailed in **Annexure-C** having declared assessable value of **Rs. 15,70,10,669/-** (Rupees Fifteen Crore Seventy Lakh Ten Thousand Six Hundred Sixty-Nine only) should not be rejected and should not be re-classified under Custom tariff Item 7220 9090 and accordingly should not be confiscated under Section 111 (m) of the Customs Act, 1962. The differential duty amount of **Rs 31,78,042 /-** (Rupees Thirty-One Lakh Seventy-Eight Thousand Forty-Two Only) as detailed in '**Annexure-B**' to the Show Cause Notice, should not be demanded and recovered from their DTA Clients under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962.
- III. The imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-C' having declared assessable value of **Rs. 15,70,10,669/-** (Rupees Fifteen Crore Seventy Lakh Ten Thousand Six Hundred Sixty-Nine only) should not be confiscated under Section 111 (m) of the Customs Act, 1962 for misclassifying the goods under CTI 7220 9022.
- IV. The imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' having declared assessable value of **Rs. 12,02,50,823/-** (Rupees Twelve Crore Two Lakh Fifty Thousand Eight Hundred Twenty Three only) should not be confiscated under Section 111(d) and 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- V. The differential duty amount of **Rs 1,14,00,714/-** along with Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- VI. Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;
- VII. Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the duty and other liabilities arising out of subject goods removed from the said SEZ unit to DTA as detailed in **Annexure-C**.

10.2. Now, therefore, Shri Bhargava Thakkar, Director of **M/s. AJD Industries, KASEZ** is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The imported goods i.e., "Flat Rolled Products of Stainless Steel" cleared into DTA vide Bills of Entry as detailed in '**Annexure-C**' having declared assessable value of **Rs. 15,70,10,669/-** (Rupees Fifteen Crore Seventy Lakh Ten Thousand Six Hundred Sixty-Nine only) should not be confiscated under Section 111 (m) of the Customs Act, 1962 for misclassifying the goods under CTI 7220 9022.
- II. The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-D**' having declared assessable value of **Rs. 12,02,50,823/-** (Rupees Twelve Crore Two Lakh Fifty Thousand Eight Hundred Twenty Three only) should not be confiscated under Section 111(d) and 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

- III. The differential duty amount of **Rs 1,14,00,714/-** alongwith Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- IV. Penalty under Section 112(a) & (b) and Section 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.3. Now, therefore, Mr Deepak Manuja is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The imported goods i.e., “Flat Rolled Products of Stainless Steel” cleared into DTA vide Bills of Entry as detailed in '**Annexure-C**' having declared assessable value of **Rs. 15,70,10,669/-** (Rupees Fifteen Crore Seventy Lakh Ten Thousand Six Hundred Sixty-Nine only) should not be confiscated under Section 111 (m) of the Customs Act, 1962;
- II. The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-D**' having declared assessable value of **Rs. 12,02,50,823/-** (Rupees Twelve Crore Two Lakh Fifty Thousand Eight Hundred Twenty Three only) should not be confiscated under Section 111 (d) and 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- III. Penalty under Section 112 and Section 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.4. Now, therefore, M/s. A.D. Mehta Clearing Agency is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The imported goods i.e., “Flat Rolled Products of Stainless Steel” cleared into DTA vide Bills of Entry as detailed in '**Annexure-C**' having declared assessable value of **Rs. 15,70,10,669/-** (Rupees Fifteen Crore Seventy Lakh Ten Thousand Six Hundred Sixty-Nine only) should not be confiscated under Section 111 (m) of the Customs Act, 1962;
- II. The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-D**' having declared assessable value of **Rs. 12,02,50,823/-** (Rupees Twelve Crore Two Lakh Fifty Thousand Eight Hundred Twenty Three only) should not be confiscated under Section 111(d) and 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- III. Penalty under Section 112 and Section 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.5. Now, therefore, Shri Devang Mehta, partner of M/s. A. D. Mehta Clearing Agency is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The imported goods i.e., “Flat Rolled Products of Stainless Steel” cleared into DTA vide Bills of Entry as detailed in '**Annexure-C**' having declared assessable value of **Rs. 15,70,10,669/-** (Rupees Fifteen Crore Seventy Lakh Ten Thousand Six Hundred Sixty-Nine only) should not be confiscated under Section 111 (m) of the Customs Act, 1962;
- II. The imported goods cleared into DTA vide Bills of Entry as detailed in '**Annexure-D**' having declared assessable value of **Rs. 12,02,50,823/-** (Rupees Twelve Crore Two Lakh Fifty Thousand Eight Hundred Twenty Three only) should not be confiscated under Section 111(d) and 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- III. Penalty under Section 112 and Section 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.6. Now, therefore, the DTA importer, namely, M/s A D Enterprises (IEC: ANXPJ0043L) is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' having declared assessable value of **Rs. 1,59,92,588/-** (Rupees One Crore Fifty-nine lakhs twenty-five thousand five hundred eighty-eight only) should not be confiscated under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty. and the differential duty amount of Rs **15,56,878/-** (Rupees Fifteen Lakh Fifty Six Thousand Eight Hundred Seventy-Eight) as detailed in '**Annexure-A**' to the Show Cause Notice, should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962;
- II. The declared classification i.e. under CTI **7220 9022** of the imported goods and cleared into DTA vide bills of entry as detailed in **Annexure-C** having declared assessable value of **Rs. 1,59,92,588/-** (Rupees One Crore Fifty-nine lakhs twenty-five thousand five hundred eighty-eight only) should not be rejected and should not be re-classified under Custom tariff Item 7220 9090 and accordingly should not be confiscated under Section 111 (m) of the Customs Act, 1962.
- III. The imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' having declared assessable value of **Rs. 1,59,92,588/-** (Rupees One Crore Fifty-nine lakhs twenty-five thousand five hundred eighty-eight only) should not be confiscated under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- IV. The differential duty amount of **Rs 15,56,878/-** along with Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- V. Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.7. Now, therefore, the DTA importer, namely, M/s Atmiya Steel, Gandhidham (IEC: BKNPD4060P) is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' having declared assessable value of **Rs. 3,91,12,979/-**

(Rupees Three Crore Ninety-One Lakh Twelve Thousand Nine Hundred Seventy-Nine Only) should not be confiscated under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty and accordingly the differential duty amount of Rs **38,07,648/-** (Rupees Thirty Eight Lakh Seven thousand six hundred forty-eight Only) as detailed in '**Annexure-A**' to the Show Cause Notice, should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962;

- II. The declared classification i.e. under CTI **7220 9022** of the imported goods and cleared into DTA vide bills of entry as detailed in **Annexure-C** having declared assessable value of **Rs. 3,91,12,979/-** (Rupees Three Crore Ninety-One Lakh Twelve Thousand Nine Hundred Seventy-Nine Only) should not be rejected and should not be re-classified under Custom tariff Item 7220 9090 and accordingly should not be confiscated under Section 111 (m) of the Customs Act, 1962.
- III. The imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' having declared assessable value of of **Rs. 3,91,12,979/-** (Rupees Three Crore Ninety-One Lakh Twelve Thousand Nine Hundred Seventy-Nine Only) should not be confiscated under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- IV. The differential duty amount of **Rs 38,07,649/-** along with Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- V. Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.8. Now, therefore, the DTA importer, namely, M/s RMC Enterprise (IEC: AYIPC1522H) is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' having declared assessable value of **Rs 1,01,73,316/-** (Rupees One Crore One Lakh Seventy-three Thousand Three Hundred Sixteen Only) should not be confiscated under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty and the differential duty amount of Rs **9,90,372/-** (Rupees Nine Lakh Ninety Thousand Three Hundred Seventy Two Only) as detailed in '**Annexure-A**' to the Show Cause Notice, should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962;
- II. The declared classification i.e. under CTI **7220 9022** of the imported goods and cleared into DTA vide bills of entry as detailed in **Annexure-C** having declared assessable value of **Rs 1,01,73,316/-** (Rupees One Crore One Lakh Seventy-three Thousand Three Hundred Sixteen Only) should not be rejected and should not be re-classified under Custom tariff Item 7220 9090 and accordingly should not be confiscated under Section 111 (m) of the Customs Act, 1962.
- III. The imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' having declared assessable value of of **Rs 1,01,73,316/-** (Rupees One Crore One Lakh Seventy-three Thousand Three Hundred Sixteen Only) should not be confiscated under Section 111(d) and Section 111(o) of the Customs Act, 1962 for

clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

- IV. The differential duty amount of Rs **9,90,372/-** (Rupees Nine Lakh Ninety Thousand Three Hundred Seventy Two Only) along with Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- V. Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.9. Now, therefore, the DTA importer, namely, M/s Unique Steel (IEC: APKPM0221L) is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' having declared assessable value of **Rs 1,91,86,180/-** (Rupees One Crore Ninety-one Lakh Eighty-Six Thousand One Hundred Eighty Only) should not be confiscated under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty and the differential duty amount of Rs **18,67,775/-** (Rupees Eighteen Lakh Sixty Seven Thousand Seven Hundred Seventy Five Only) as detailed in '**Annexure-A**' to the Show Cause Notice, should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962;
- II. The declared classification i.e. under CTI **7220 9022** of the imported goods and cleared into DTA vide bills of entry as detailed in **Annexure-C** having declared assessable value of **Rs 1,91,86,180/-** (Rupees One Crore Ninety-one Lakh Eighty-Six Thousand One Hundred Eighty Only) should not be rejected and should not be re-classified under Custom tariff Item 7220 9090 and accordingly should not be confiscated under Section 111 (m) of the Customs Act, 1962.
- III. The imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' having declared assessable value of Rs **1,91,86,180/-** (Rupees One Crore Ninety-one Lakh Eighty-Six Thousand One Hundred Eighty Only) should not be confiscated under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- IV. The differential duty amount of **Rs 18,67,774/-** along with Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- V. Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.10 Now, therefore, the DTA importer, namely, M/s Artfransi International Pvt Ltd (IEC: AASCA3100G) is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The declared classification i.e. under CTI **7220 9022** of the imported goods and cleared into DTA vide bills of entry as detailed in **Annexure-C** having declared assessable value of **Rs 3,79,82,296/-** (Rupees Three Crore Seventy-Nine Lakh Eighty-two Thousand Two Hundred Ninety-Six Only) should not be rejected and re-classified under Custom tariff Item 7220 9090 and accordingly should not be confiscated under Section 111 (m) of the Customs Act, 1962.

- II. The goods imported from China and cleared into DTA vide Bills of Entry as detailed in 'Annexure-C' having declared assessable value of **Rs 3,79,82,296/-** (Rupees Three Crore Seventy-Nine Lakh Eighty-two Thousand Two Hundred Ninety-Six Only) should not be confiscated under Section 111 (m) & 111(o) of the Customs Act, 1962 for availing the benefits of Notification No. 50/2018-Cus. Dated 30.06.2018, as amended by misclassifying the goods and accordingly differential duty amount of Rs **16,63,909/-** (Rupees Sixteen Lakh Sixty-Three Thousand Nine Hundred Nine Only) as detailed in '**Annexure-C**' to the Show Cause Notice, should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962;
- III. The imported goods cleared into DTA vide Bills of Entry having declared assessable value of **Rs 1,28,78,653/-** (Rupees One Crore Twenty-Eight Lakh Seventy-eight Thousand Six Hundred Fifty-three Only) as detailed in Annexure-D to the SCN should not be confiscated under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.
- IV. The differential duty **Rs 16,63,901 /-** along with Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- V. Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

10.11 Now, therefore, the DTA importer, namely, M/s N G Impex, New Delhi (IEC: 0502028351) is hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why: -

- I. The declared classification i.e. under CTI **7220 9022** of the imported goods and cleared into DTA vide bills of entry as detailed in **Annexure-C** having declared assessable value of **Rs 3,45,63,309 /-** (Three Crore Forty-Five Lakh Sixty-Three Thousand Three hundred nine only) should not be rejected and re-classified under Custom tariff Item 7220 9090 and accordingly should not be confiscated under Section 111 (m) of the Customs Act, 1962.
- II. The goods imported from China and cleared into DTA vide Bills of Entry as detailed in 'Annexure-C' having declared assessable value of **Rs 3,45,63,309 /-** (Three Crore Forty-Five Lakh Sixty-Three Thousand Three hundred nine only) should not be confiscated under Section 111 (m) & 111(o) of the Customs Act, 1962 for availing the benefits of Notification No. 50/2018-Cus. Dated 30.06.2018, as amended by misclassifying the goods and accordingly differential duty amount of Rs **15,14,132/-** (Rupees Fifteen Lakh Forty Thousand One Hundred Thirty-two Only) as detailed in '**Annexure-C**' to the Show Cause Notice, should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962;
- III. The imported goods cleared into DTA vide Bills of Entry having declared assessable value of **Rs 2,29,07,108** (Rupees Two Crore Twenty Nine Lakh Seven Thousand One Hundred Eight Only) as detailed in Annexure-D to the SCN should not be confiscated under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

- IV. The differential duty **Rs 15,14,132 /-** along with Interest and Penalty (as per Table-I above) paid during the period of investigation, should not be appropriated against the above demands.
- V. Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on them in relation to the said goods;

11. Waiver of Show cause notice-

11.1 M/s. AJD Industries vide letter/email dated 03.02.2024/07.02.2024 requested for waiver of show cause notice. M/s. Artfransi and M/s. Unique Steel vide letters both dated 06.02.2024 requested for waiver of Show cause notice. M/s. NG Impex, M/s. AD Enterprises, M/s. RMC Enterprise and M/s. Atmiya Enterprises vide letters dated 07.02.2024 requested for waiver of show cause notice. M/s. A.D. Mehta clearing agency vide letter dated 17.07.2025 requested for waiver of show cause notice. All the noticees (SEZ Unit/DTA clients) were provided the summary of Investigation Report/DSCN intimating the charges and contraventions thereof.

11.2 The Hon'ble Supreme Court (Three Judge Bench) in their Order dated 04.04.2002 in the case of Commissioner of Customs, Mumbai Vs. Virgo Steels reported in 2002 (141) E.L.T. 598 (SC) has held that the Show Cause Notice has to be issued to the party before raising demand and that mandatory requirement of issuing a Show Cause Notice can be waived by the Noticee under Section 28 of the Customs Act. As the right of receiving the Show Cause Notice under Sec 28 is being personal to the person concerned, the same can be waived by that person.

DEFENCE SUBMISSION-

12. The noticees in their submission dated 14.02.2024 have inter-alia submitted the following-

- (i) The SEZ unit had been approved as a warehousing service unit in Kandla SEZ and operating as warehousing custodian on behalf of their clients.
- (ii) The SEZ unit had been taking necessary clearances on the basis of documents/instructions provided by their principal clients.
- (iii) The SEZ unit received import documents from DTA clients for the goods imported into Kandla SEZ under their warehousing service unit for warehousing and accordingly, the preferential claims filed as well. However, upon being made aware of the non-conformance to the subject Preferential claim certificate of Origin, they had immediately ensured that duty liability was paid alongwith interest and 15% waiver penalty.
- (iv) The CTH 72209022 for the material imported from the overseas supplier was as per the mention in their Import Document/Bill of Lading provided through the principal clients. It is further pertinent to note here that test samples were as well forwarded for the purpose of verification to the registered customs laboratory and the same has well been confirmed in positive in their favour. However, without disputing the same and basis the results in the mill test report, their clients had paid the duty, interest and 15% penalty as well. The CTH 72209022 was described in the overseas supplier Bill of lading and the same had been relied upon with no intention to mis-classify or to claim undue benefits of lower duty. Also the test results of the samples drawn stood in their favour.
- (v) The SEZ unit had taken SIMS registration for all their consignments and the details are already incorporated in the import bill of entry itself.

- (vi) All the importers are genuine and in existence. For the same they forwarded the online-IEC prints.
- (vii) They have further given an undertaking that basis the finalization for relief for the claimed benefits, they shall not be filing any appeal in any forum.

13. M/s. AJD Industries vide submission dated 26.07.2024, interalia, submitted the following-

- (i) That the IEC of their principal clients mentioned in KASEZ Bill of Entries are very much correct/genuine and for the same needful IEC certificates have been already produced earlier to KASEZ as well.
- (ii) However, for the purpose of establishing their genuineness they have attached the following documents:-
 - (a) Copy of IEC issued by DGFT for all the clients;
 - (b) Copy of GST Returns- for all the clients;
 - (c) Declaration from the Principal supplier on the later closing of overseas business profile.
- (iii) Pertinent to mention that at the time of removal of goods into DTA from SEZ, IEC is not essential and any GST Registered Unit can file their DTA Bill of Entries. For the purpose we had then taken all needful KYC as well as Registration certificates from the clients.
- (iv) SIMS is uploaded on the NSDL SEZ Online system. Pertinently, the assessment of Bill of Entries through the KASEZ assessing officer happened only upon verification of the documents and post the same even the Preventive Officer posted during customs clearance verifies the same again.
- (v) Basis the import documents received from the overseas suppliers and forwarded to them through their warehousing service unit for warehousing; the same was relied upon and accordingly the preferential claims filed as well.
- (vi) However, upon being made aware of the non-conformance to the subject Preferential Claim COO, they had immediately ensured that their principals refund the claimed benefit in full alongwith interest and 15% waiver penalty.
- (vii) the CTH 72209022 for the imported material from the overseas suppliers is as per the mention in the Import Document/Bill of Lading provided through the principal clients. It is pertinent to note here that test samples were as well forwarded for the purpose of verification to registered custom laboratory and the sample has as well been confirmed in positive in their favour.
- (viii) They are just the warehousing service provider in KASEZ and not the owner of the goods in concern.
- (ix) Basis the reliance on the authentic Government issued Registration certificates provided by their principal clients they had accordingly filed the same with neither there being a connivance and nor be the intention to evade duty or to claim undue benefits of FTP.

Discussion and findings:-

14. I have carefully gone through the Investigation report/DSCN, request letters for waiver of show cause notice and other relied upon documents supplied by the office of KASEZ.

15. I find that M/s. AJD Industries Pvt Ltd ('SEZ Unit'), situated at Plot No. 4-A, Sector III, Kandla Special Economic Zone, Gandhidham, Kutch in Kandla SEZ were having letter of Approval No. 17/2020-21 dated 14.10.2020 valid up to 13.10.2025 issued by the Joint Development Commissioner vide letter F.No KASEZ/IA/17/2020-21/2824 dated 14.10.2020 by the Development Commissioner, Kandla SEZ under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit and carry out authorized operations of warehousing and trading activity.

ISSUE OF NON-AUTHENTIC COO-

16. I find that during the course of verification of Certificates of Origin received from field formations of Indian Customs, through Ministry of International Trade and Industry, Malaysia, it was observed that COOs issued from certain Malaysia based suppliers were non-authentic. In fact, it was informed that the said COOs were not issued by the Malaysian Customs and Malaysian Customs had never received any COO applications from the respective suppliers as listed in Annexure-A to the Alert Circular No.: 02/2021-CI dated 10.09.2021, issued by DRI Headquarter.

17. I find that during the investigation, various statements of persons involved were recorded under Section 108 of Customs Act, 1962 wherein they have accepted the fact that the preferential certificate provided by their supplier M/s Artfransi International SDN BHD and utilized by them were non- authentic.

18. Therefore, they are liable to pay duties of Customs amounting to Rs. 82,22,674/- in terms of Annexure-A to the DSCN/Investigation report under the provision of Section 28(4) of the Customs Act, 1962.

ISSUE OF CLASSIFICATION ON THE BASIS OF MILL TEST CERTIFICATES-

19. I further find that during the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed that certain KASEZ units had cleared "Cold Rolled Stainless Steel Sheet in Coils (J3 Grade)" in DTA classifying them under CTH 72209022. Customs duty was paid on these DTA clearances at the rate of 23.35%. It is further observed that the Audit team on scrutiny of their "Mill Test Certificate", noticed that these items contained "Chromium-Cr" (12.4% -12.5%) and "Manganese-Mn" (9.2 % -9.4%) in majority and only a small quantum of "Nickel Ni" (1.03% -1.07%). Therefore, Audit team made an observation that the subject goods cleared in DTA were actually "chromium-manganese austenitic type" stainless steel and were correctly classifiable under CTH 72209090 and subsequently, benefit of Notification 50/2018-Cus was also not admissible for subject goods. The above said observations were communicated by the Audit team to KASEZ vide HM dated 27.09.2021 and subsequently vide LAR dated 03.11.2021.

19.1 In this regard, I find that the noticees have argued that the CTH 72209022 for the material imported from the overseas supplier was as per the mention in their Import Document/Bill of Lading provided through the principal clients. They have further argued that the test samples were forwarded for the purpose of verification to the registered customs laboratory and the same had well been confirmed in positive in their favour.

19.2 While going through the said Test reports, I find that, on being asked, the noticees could not establish that the said Test reports were in respect of the subject goods, therefore, the test reports can't be relied upon.

19.3 In this regard, I find that the noticees imported and cleared in DTA "Cold Rolled Stainless Steel Sheet in Coils (J3 Grade)" by classifying them under CTH 72209022 and on payment of Customs duty at the rate of 23.35%. While going through the "Mill Test Certificates of the supplier, I find that these items contained "Chromium-Cr" (12.4% - 12.5%) and "Manganese-Mn" (9.2 % -9.4%) in majority and only a small quantum of "Nickel Ni" (1.03% -1.07%). Thus, it is apparent that the subject goods were “Managanese Chromium austenitic type”. Therefore, the goods can't be classified under CTH 72209022 as “Nickel Chromium austenitic” stainless steel and were correctly classifiable under CTH 72209090 as other. In view of the same, I hold that benefit of the Notification 50/2018-Cus is not admissible in respect of the subject goods. In view of the same, the noticees (DTA importers) are liable to pay Customs duty amounting to Rs 31,78,042 /- alongwith interest and penalty under the provisions of Section 28(4) of the Customs Act, 1962.

20. I find that during the course of Investigation, M/s AJD Industries Pvt Ltd, the SEZ unit, have voluntarily paid the differential duty Rs 1,14,00,714/- vide various challans along with interest Rs 25,28,283/- and 15% Penalty Rs 29,84,302/- w.r.t wrong availment of Preferential Trade Agreement using non authentic Certificate of Origin and wrong availment of APTA benefits by mis-classifying the goods and intimated the same vide their various letters dated 28.01.2022, 18.02.2022, 21.02.2022, etc (RUD-05). The details of the differential duty payment in respect of their DTA Client as submitted by the SEZ unit are as under: -

Table I: Details of Differential Duty, Interest and Penalty amount paid

Name of SEZ Unit	DTA Client/Importer	Duty Deposit	Declared COO.	Interest	Penalty
M/s AJD Industries Pvt Ltd	Atmiya Enterprise	38,07,649	Malaysia	1280196	1233401
	A.D Enterprise	15,56,878			
	RMC Enterprise	9,90,372			
	Unique Steel	18,67,774			
	Artfransi International	16,63,909	China	626401	249586
	NG Impex	15,14,132	China	626686	227119
	Total	1,14,00,714/-		25,33,283/-	17,10,106/-

21. I find that the noticees have paid the differential duty of Customs alongwith interest at applicable rate and penalty at 15% under the provisions of Section 28(5) of the Customs Act, 1962 and requested to conclude the proceedings under Section 28(6) of the Customs Act, 1962.

22. I find that the noticees have paid the differential duty of Customs alongwith applicable interest and penalty at 15% under the provisions of Section 28(5) of the Customs Act, 1962 and requested for conclusion of proceedings under Section 28(6) of the Customs Act, 1962. In this regard, it is pertinent to reproduce the extract of relevant sections:

(5) Where any ¹²[duty has not been levied or not paid or has been short-levied or short paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to 13 [fifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

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

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

23. On perusal of the above provisions, I find that the same is a beneficial piece of legislation with an intention to reduce the litigation proceedings where the taxpayer satisfies the condition of the said section. The language makes it clear that the provisions provide for deemed conclusion of the proceedings against the taxpayer or other persons if the payment as regards the duty, interest and 15% penalty thereof stands made by the taxpayer within a period of thirty days of the receipt of SCN. It is further worth noting that the provision is applicable even in the cases of demand having been arisen on account of collusion, wilfull mis-statement or suppression i.e. even in respect of illegal activities of the taxpayer, if the same stands accepted by them and the respective duty alongwith proportionate interest and the required penalty stands paid.

24. With regard to penal actions under Section 112, 114A and 114AA of the Customs Act, 1962 upon all the noticees, I find that the same are duly covered under the deemed conclusion of proceedings under Section 28(6)(i) of the Customs Act, 1962. In this regard, I refer to the decision of Hon'ble CESTAT- Bangalore in the matter of N.S. MAHESH Versus COMMISSIONER OF CUSTOMS, COCHIN, 2018 (363) E.L.T. 644 (Tri. - Bang.) wherein the Hon'ble Tribunal held that-

"7. In view of the statutory provisions cited supra, I am of the considered view that the case of the appellant is covered by Section 28(6) and therefore I hold that the proceedings against him also stands concluded once the importer has accepted the undervaluation and paid the differential duty along with interest and penalty. Consequently, I allow all the three appeals of the appellant and drop penalties of Rs. 1 lakh, Rs. 10,000/- and Rs. 50,000/- imposed under Section 112(a) of the Customs Act, 1962."

25. Therefore, in terms of provisions under Section 28(6)(i) of the Customs Act, 1962, the proceedings, in respect of the SEZ unit, all the DTA clients/importers and clearing agent to whom the Investigation Report has proposed to show cause under the provisions of Section 28(4) of the Customs Act, 1962, shall be deemed to be conclusive as to the matters stated in the Investigation report/DSCN.

CONFISCATION AND REDEMPTION FINE WHEN PROCEEDINGS ARE CONCLUDED UNDER 28(6)-

26. In light of the first proviso to Section 125(1) of the Customs Act, 1962, I find that even when proceedings are concluded under Section 28(6)(i), confiscation and redemption fine are attracted provided that the imported goods are either prohibited or restricted. In the instant case, the goods were imported by mis-classification, on the basis of unauthentic COO and importation without having Steel Import Monitoring System (SIMS) registration, proposing the same to be held liable for confiscation under

Section 111(d), 111(m) and 111(o) of the Customs Act, 1962. The first proviso to Section 125(1) of the Customs Act, 1962 is reproduced below for examination:-

125. Option to pay fine in lieu of confiscation.

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

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

27. Now the issue to be decided is whether the subject goods are prohibited or restricted in nature? In this regard, I find that the subject goods are falling under Chapter 72209090. DGFT vide notification no. 33/2015-2020 dated 28.09.2020 has amended the import policy for goods falling under Chapter 72 from **“Free” to “Free subject to compulsory registration under Steel Import Monitoring System (SIMS)”**.

28. I find that the Investigation report/DSCN has proposed that the imported goods cleared into DTA vide Bills of Entry as detailed in Annexure-D having declared assessable value of Rs. 12,02,50,823/- for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of Notification No. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

29. The next question that arises is whether such condition of ‘compulsory registration under SIMS’ from Policy condition Free to Restricted or Prohibited. It is not disputed that the goods were imported and cleared into DTA without obtaining SIMS registration as mandated vide DGFT Notifications mentioned supra.

30. I find that the policy condition in respect of goods falling under chapter 72 has been amended from “Free” to “Free subject to compulsory registration under SIMS” vide DGFT Notification No. 17/2015-2020 dated 05.09.2019 as amended vide Notification No. 33/2015-2020 dated 28.09.2020.

31. The term prohibited is defined in Customs Act, 1962 as well as FTP 2015-2020 as given below:-

As per Customs Act, 1962-

2(33)- “Prohibited goods”- means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but doesn’t include any goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with it;

32. The first part of the term ‘prohibited goods’ defines the goods the import or export of which is subject to any prohibition under Customs Act or any other law for the time being in force. I find that the instant imported goods have not been made prohibited under this act or any other law.

33. On examining the second part of the definition, it is observed that the term prohibited goods doesn’t include goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with it. Thus, it can be inferred that the definition includes the goods on which the conditions subject to which the goods are permitted to be imported or exported have not been complied with it. The issue has been carefully examined by the Hon’ble High Court of Delhi in the matter of Nidhi Kapoor Versus Principal Commissioner and Additional Secretary (2023) 9 Centax 328 (Del.) in light of the decision of the Hon’ble Supreme

Court in the matter of Union of India vs Raj Grow Impex, 2021 (377) E.L.T. 145 (S.C.),. The relevant paragraphs of the decision of Hon'ble High Court is reproduced below:-

"145. In summation, we note that Section 2(33) of the Act while defining prohibited goods firstly brings within its dragnet all goods in respect of which a prohibitory notification or order may have been issued. That order could be one promulgated either under section 11 of the Act, Section 3(2) of the FTDR or any other law for the time being in force. However, a reading of the latter part of Section 2(33) clearly leads us to conclude that goods which have been imported in violation of a condition for import would also fall within its ambit. If Section 2(33) were envisaged to extend only to goods the import of which were explicitly proscribed alone, there would have been no occasion for the authors of the statute to have spoken of goods imported in compliance with import conditions falling outside the scope of "prohibited goods".

146. Our conclusion is further fortified when we move on to Section 11 and which while principally dealing with the power to prohibit again speaks of an absolute prohibition or import being subject to conditions that may be prescribed. It is thus manifest that a prohibition could be either in absolutist terms or subject to a regime of restriction or regulation. It is this theme which stands reiterated in Section 3(2) of the FTDR which again speaks of a power to prohibit, restrict or regulate. It becomes pertinent to bear in mind that in terms of the said provision, all orders whether prohibiting, restricting or regulating are deemed, by way of a legal fiction, to fall within the ambit of Section 11 of the Act. This in fact reaffirms our conclusion that Section 2(33) would not only cover situations where an import may be prohibited but also those where the import of goods is either restricted or regulated. A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods".

147. We are further of the considered opinion that the absence of a notification issued under section 11 of the Act or Section 3(2) of the FTDR would have no material bearing since a restriction on import of gold stands constructed in terms of the FTP and the specific prescriptions forming part of the ITC (HS). Those restrictions which are clearly referable to Section 5 of the FTDR and the relevant provisions of that enactment would clearly be a restriction imposed under a law for the time being in force. Once the concept of prohibited goods is understood to extend to a restrictive or regulatory measure of control, there would exist no justification to discern or discover an embargo erected either in terms of Section 11 of the Act or Section 3(2) of the FTDR. This more so since, for reasons aforesaid, we have already found that the power to prohibit as embodied in those two provisions itself envisages a notification or order which may stop short of a complete proscription and merely introduce a restriction or condition for import."

34. In view of the above decision, I find that the goods in the instant case have been imported without complying with the condition laid down in Notification No. 17/2015-2020 dated 05.09.2019 as amended vide Notification No. 33/2015-2020 dated 28.09.2020 which requires mandatory registration under SIMS. The said registration under SIMS enables the Government of India to not only monitor but also regulate the import or export of such products and formulate the policies on import or export to ensure that no harm is done to the domestic manufacturers. Failing to comply with the mandatory registration makes the imported goods 'prohibited' in nature.

35. Thus, the subject goods imported in violation of the mandatory conditions envisaged under DGFT Notifications are liable for confiscation under Section 111(d) of the Custom Act, 1962. Therefore, in terms of Section 125 of the Customs Act, 1962, Redemption fine is required to be imposed on the goods imported in violation of the compulsory registration under SIMS as mandated in Notification No. 17/2015-2020 dated 05.09.2019 as amended vide Notification No. 33/2015-2020 dated 28.09.2020. The details of such goods is provided under Annexure-D as given below:-

Annexure-D									
List of Bills of Entry for which SIMS is not provided									
Sr NO	DTA Client	THOKA / NOTING NUMBER	REQUEST SUBMISSION DATE	STL No mentioned on the Bill of Entry	CTH NO.	ITEM DESCRIPTION	COUNTRY OF ORIGIN	Assesssable Value	Differential Duty
1	AD ENTERPRISES	2010929	22-Dec-20	STL181867	72209022	SS Steel Coil CR	Malaysia	7,736,576	753156
2	AD ENTERPRISES	2011115	26-Dec-20	STL181867	72209022	SS Steel Coil CR	Malaysia	8,256,012	803723
								15,992,588	1556879
3	ATMIYA ENTERPRISE	2001762	11-Feb-21	STL181867	72209022	SS Steel Coil CR	Malaysia	13,919,794	1355092
4	ATMIYA ENTERPRISE	2001764	11-Feb-21	STL181867	72209022	SS Steel Coil CR	Malaysia	11,648,035	1133936
5	ATMIYA ENTERPRISE	2001760	11-Feb-21	STL181867	72209022	SS Steel Coil CR	Malaysia	11,473,712	1116966
6	ATMIYA ENTERPRISE	2001761	11-Feb-21	STL181867	72209022	SS Steel Coil CR	Malaysia	2,071,438	201654
								39,112,979	3807648
7	RMC ENTERPRISE	2002113	22-Feb-21	STL207727	72209022	SS Steel Coil CR	Malaysia	2,211,597	215299
8	RMC ENTERPRISE,	2000301	9-Jan-21	STL181868	72209022	SS Steel Coil CR	Malaysia	6,110,892	594895
9	RMC ENTERPRISE,	2000058	4-Jan-21	STL181868	72209022	SS Steel Coil CR	Malaysia	1,850,827	180178
								10,173,316	990372
10	UNIQUE STEEL,	2010927	22-Dec-20	STL181867	72209022	SS Steel Coil CR	Malaysia	1,772,848	172587
11	UNIQUE STEEL,	2010928	22-Dec-20	STL181867	72209022	SS Steel Coil CR	Malaysia	5,171,357	503432
12	UNIQUE STEEL,	2011114	26-Dec-20	STL181867	72209022	SS Steel Coil CR	Malaysia	12,241,976	1191756
								19,186,180	1867775
13	ARTFRANSI INTERNATIONAL PVT LTD	2003083	18-Mar-21	STL225518	72209022	COLD ROLLED STAINLESS	China	8,669,985	379810
14	ARTFRANSI INTERNATIONAL PVT LTD	2002178	23-Feb-21	Not mentioned	72209022	COLD ROLLED STAINLESS	China	2,052,044	89895
15	ARTFRANSI INTERNATIONAL PVT LTD	2002382	1-Mar-21	STL223765	72209022	COLD ROLLED STAINLESS	China	2,156,624	94476
								12,878,653	564181
16	N G IMPEX, NEW	2004056	15-Apr-21	STL230907	72209022	COLD ROLLED	China	8,379,159	367070
17	N G IMPEX, NEW	2004054	15-Apr-21	STL232185	72209022	COLD ROLLED	China	6,284,524	275309
18	N G IMPEX, NEW	2003306	24-Mar-21	STL230905	72209022	COLD ROLLED	China	8,243,425	361124
								22,907,108	1003503
	Total							120,250,823	9790358

36. I find that as per the Annexure-D STL Nos have been mentioned on the Bills of Entry. However, the noticees could not provide SIMS registration certificate in order to establish the genuineness of the same. Thus, the Redemption fine is required to be imposed under Section 125 on the goods imported in violation of Notification mentioned above, even when the proceedings under Section 28(4) is concluded as per Section 28(6) of the Customs Act, 1962.

37. Such redemption fine is required to be paid by DTA importers being the owner of goods, even though goods are not available for confiscation in terms of the decision in Visteon Automotive Systems India Limited v. CESTAT, Chennai 2018 (9) G.S.T.L. 142 (Mad.) and Synergy Fertichem Pvt. Ltd v. State of Gujarat 2020 (33) G.S.T.L. 513 (Guj.) wherein it is held that the availability of the goods is unnecessary for imposing the redemption fine or penalty.

37.1 Further, while imposing the redemption fine under Section 125 of the Customs Act, 1962, the following points require consideration:-

- (i) The DTA importers have paid the duty alongwith interest and 15% penalty;
- (ii) The amount of evasion of duty in respect of goods imported and cleared into DTA without SIMS is Rs. 97,90,358/-, which stands paid;
- (iii) In many of the cases, the DTA importers have mentioned STL no but could not provide the registration certificate at the relevant time;
- (iv) The non-compliance of SIMS doesn't result in loss of revenue or demand of duty as it is only a monitoring system maintained by the Ministry of Steel.
- (v) There is no margin of profit for importing goods without SIMS as the same has no revenue implication.

37.2. In view of the above, a lenient view is required to be taken while imposing redemption fine.

CONFISCATION OF GOODS ON ACCOUNT OF MIS-CLASSIFICATION AND USE OF NON-AUTHENTIC COO-

38. I find that the DTA importers have wrongly availed the benefit of exemption on goods imported from Malaysia by producing non-authentic Country of Origin certificate at the time of assessment of DTA Bills of Entry under Notification No. 18/2018-Customs dated 31.12.2018. Thus the said goods having assessable value of Rs. 8,44,65,063/- (as per Annexure-A) are liable to confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

39. I further find that DTA importers have willfully mis-classified the goods imported under CTH 72209022 to claim the benefit of APTA under Notification No. 50/2018 dated 30.06.2018, wherein benefit/exemption of @45% on the BCD on the goods imported from China, resulted in short payment in customs duty which has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

40. However, confiscation of goods on account of wrong availment of exemption by producing non-authentic Certificate of Origin and mis-classification of goods doesn't make the goods prohibited or restricted in nature. Such indulgence and endeavor on their part only result in payment of differential duties of customs and confiscation of goods. Thus, in such cases, no redemption fine is imposable, in terms of first proviso to Section 125 of the Customs Act, 1962, even when the goods are liable for confiscation.

41. In view of the above discussion and findings, I hereby pass the following order-

A. ORDER IN RESPECT OF REQUEST OF DTA IMPORTERS/SEZ UNIT/OTHER PERSONS TO CONCLUDE PROCEEDINGS UNDER SECTION 28(6)(i) OF THE CUSTOMS ACT, 1962 -

Since the DTA importers have paid the amount of differential duty of Rs. 1,14,00,714/- alongwith interest amount of Rs. 25,33,283/- and 15% penalty amounting to Rs. 17,10,106/- under Section 28(5) of the Customs Act, 1962, the issues stated in DSCN/Investigation report forwarded vide letter dated 02.05.2024 are deemed to be conclusive in respect of all the DTA importers, SEZ Unit as well as all other persons, as given below:-

- (i) M/s. AJD Industries Pvt Ltd, KASEZ, Gandhidham.
- (ii) Shri Bhargav Thakkar, Director of M/s. AJD Industries, KASEZ
- (iii) Mr. Deepak Manuja
- (iv) M/s. A.D. Mehta clearing agency, R/O PLOT NO. 312, Ward 3A, Adipur Gandhidham
- (v) Shri Devang Mehta, Partner OF M/s A. D. Mehta Clearing Agency R/O PLOT NO. 312, Ward 3A, Adipur Gandhidham.
- (vi) M/s Atmiya Steel, Plot No.2, Office No.01, Ward 7/B, Gandhidham,Gujarat.
- (vii) M/s. Unique steel, 104, 1st floor, "Rishabh Arcade", Plot no. 83, Subhash Nagar, Ward 8/a, Gandhidham, Kutch-370205
- (viii) M/s. AD Enterprise, D-06, Plot No.285 Ward, 8-A, Subash Nagar, Gandhidham-Kutch, Gujarat-370201.
- (ix) M/S. RMC Enterprise R/O House NO. 524, Block NO. 50, Near Kandla Free Trade Zone, Gujarat Housing Board, Gandhidham.
- (x) M/s Artfransi International Pvt Ltd, Adinath Arcade, Office No S/2 Plot No 583,Ward 12/C Gandhidham Gujarat, 370201.
- (xi) M/s NG Impex, New Delhi

B. ORDER IN RESPECT OF DTA IMPORTER M/S A D ENTERPRISES-

- (i) I hold that the goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' are liable for confiscation under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions, no redemption fine is imposable under Section 125 of the Customs Act.

- (ii) I reject the declared classification i.e. under CTI 7220 9022 of the imported goods and cleared into DTA vide bills of entry as detailed in Annexure-C and order to re-classify the same under Custom tariff Item 7220 9090 and accordingly hold that the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (iii) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

Since the goods are prohibited in nature in view of the said contravention, I impose redemption fine of Rs.1,50,000/-(Rupees One Lakh Fifty Thousand only) in terms of first proviso to Section 125(1) of the Customs Act, 1962.

C. ORDER IN RESPECT OF DTA IMPORTER, NAMELY, M/S ATMIYA STEEL-

- (i) I hold that the goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' are liable for confiscation under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty;

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (ii) I reject the declared classification i.e. under CTI 7220 9022 of the imported goods and cleared into DTA vide bills of entry as detailed in Annexure-C and order to re-classify under Custom tariff Item 7220 9090 and accordingly hold that the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (iii) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

Since the goods are prohibited in nature in view of the said contravention, I impose redemption fine of Rs. 3,80,000/-(Rupees Three Lakhs Eighty Thousand only) in terms of first proviso to Section 125(1) of the Customs Act, 1962.

D. ORDER IN RESPECT OF DTA IMPORTER, NAMELY, M/S RMC ENTERPRISE-

- (i) I hold that the goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (ii) I reject the declared classification i.e. under CTI 7220 9022 of the imported goods and cleared into DTA vide bills of entry as detailed in Annexure-C and order to reclassify under Custom tariff Item 7220 9090 and accordingly hold that the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (iii) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

Since the goods are prohibited in nature in view of the said contravention, I impose redemption fine of Rs.1,00,000/-(Rupees One Lakh only) in terms of first proviso to Section 125(1) of the Customs Act, 1962.

E. ORDER IN RESPECT OF DTA IMPORTER, NAMELY, M/S UNIQUE STEEL-

- (i) I hold that the goods imported from Malaysia and cleared into DTA vide Bills of Entry as detailed in 'Annexure-A' are liable for confiscation under Section 111 (m) & 111(o) of the Customs Act, 1962 for the use of non-authentic Certificates of Origin to evade Custom Duty.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (ii) I reject the declared classification i.e. under CTI 7220 9022 of the imported goods and cleared into DTA vide bills of entry as detailed in Annexure-C and order to re-classify under Custom tariff Item 7220 9090 and accordingly hold the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (iii) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in 'Annexure-D' under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

Since the goods are prohibited in nature in view of the said contravention, I impose redemption fine of Rs.1,80,000/-(Rupees One Lakh Eighty Thousand only) in terms of first proviso to Section 125(1) of the Customs Act, 1962.

F. ORDER IN RESPECT OF DTA IMPORTER, NAMELY, M/S ARTFRANSI INTERNATIONAL PVT LTD

- (i) I reject the declared classification i.e. under CTI 7220 9022 of the imported goods and cleared into DTA vide bills of entry as detailed in Annexure-C and order to re-classify under Custom tariff Item 7220 9090 and accordingly hold that the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (ii) I hold that the goods imported from China and cleared into DTA vide Bills of Entry as detailed in 'Annexure-C' are liable to confiscation under Section 111 (m) & 111(o) of the Customs Act, 1962 for availing the benefits of Notification No. 50/2018-Cus. Dated 30.06.2018, as amended by misclassifying the goods.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (iii) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in Annexure-D to the SCN under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

Since the goods are prohibited in nature in view of the said contravention, I impose redemption fine of Rs. 90,000/-(Rupees Ninety Thousand only) in terms of first proviso to Section 125(1) of the Customs Act, 1962

G. ORDER IN RESPECT OF DTA importer, NAMELY, M/S N G IMPEX-

- (i) I reject the declared classification i.e. under CTI 7220 9022 of the imported goods and cleared into DTA vide bills of entry as detailed in Annexure-C and order to re-classify under Custom tariff Item 7220 9090 and accordingly hold that the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act.

- (ii) I hold that the goods imported from China and cleared into DTA vide Bills of Entry as detailed in 'Annexure-C' under Section 111 (m) & 111(o) of the

Customs Act, 1962 for availing the benefits of Notification No. 50/2018-Cus. Dated 30.06.2018, as amended by misclassifying the goods.

Since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 and the goods are neither prohibited nor restricted in view of the contraventions mentioned above, no redemption fine is imposable under Section 125 of the Customs Act

- (iii) I order to confiscate the imported goods cleared into DTA vide Bills of Entry as detailed in Annexure-D to the SCN under Section 111(d) and Section 111(o) of the Customs Act, 1962 for clearing the goods in DTA without mandatory SIMS in terms of. Notification no. 33/2015-2020 dated 28.09.2020 issued by the DGFT.

Since the goods are prohibited in nature in view of the said contravention, I impose redemption fine of Rs.1,00,000/-(Rupees One lakh only) in terms of first proviso to Section 125(1) of the Customs Act, 1962.

42. This order is issued without prejudice to any action that can be taken against any person under the provisions of Section 135, 135A and 140 of the Customs Act, 1962 or any other law for the time being in force.

(M. Ram Mohan Rao)
Commissioner of Customs,
Custom House, Kandla

F.No-GEN/ADJ/COMM/66/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20250771ML000000F946

By Speed Post/Courier

To,

- (i) M/s. AJD Industries Pvt Ltd, KASEZ, Gandhidham.
- (ii) M/s Atmiya Enterprises, Plot No.2, Office No.01, Ward 7/B, Gandhidham,Gujarat.
- (iii) M/s. Unique steel, 104, 1st floor, "Rishabh Arcade", Plot no. 83, Subhash Nagar, Ward 8/a, Gandhidham, Kutch-370205
- (iv) M/s. AD Enterprise, D-06, Plot No.285 Ward, 8-A, Subash Nagar, Gandhidham-Kutch, Gujarat-370201.
- (v) M/S. RMC Enterprise R/O House NO. 524, Block NO. 50, Near Kandla Free Trade Zone, Gujarat Housing Board, Gandhidham.
- (vi) M/s Artfransi International Pvt Ltd, Adinath Arcade, Office No S/2 Plot No 583, Ward 12/C Gandhidham Gujarat, 370201.
- (vii) M/s NG Impex, 104, Property NO A 30, Wazirpur Industrial Area, North East Delhi, Delhi-110052.
- (viii) M/s NG Impex, 104, Unit no 327, Plot no 1 , 3rd floor, RG Complex, Community Centre, Sector-4 , Rohini, Delhi-110085
- (ix) Shri Devang Mehta, Partner OF M/s A. D. Mehta Clearing Agency R/O PLOT NO. 312, Ward 3A, Adipur Gandhidham.

Copy to:

1. The Chief Commissioner, Customs Zone, Gujarat, for the purpose of Review.
2. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
3. The Principal ADG, DRI, Ahmedabad Zonal Unit, Ahmedabad for kind information.
4. The Deputy Commissioner of Customs, KASEZ, Gandhidham.
5. The Superintendent (EDI/TRC), Customs Kandla for necessary action.
6. Guard file