



**सीमा शुल्क आयुक्त का कार्यालय, एनएस-III**  
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III  
**केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन**  
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,  
**न्हावा शेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707**  
NJAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707

File No: **S/10-64/2025-26/CC/GR.IV/NS-III/CAC/JNCH**  
SCN No: **48/2025-26/CC/Gr.4/NS-III/CAC/JNCH** dated **17.04.2025**

Date : 23.12.2025

**DIN:20251278NX0000914658**

आदेश सं. Order No.	:	312/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 312/2025-26/Commr./NS-III/CAC/JNCH
पारितकर्ता Passed by	:	श्री विजय रिशी SH. VIJAY RISI
पक्षकार (पार्टी) / नोटिसी का नाम Name of Party/ Noticee	:	आयुक्त, सीमा शुल्क (एनएस-III), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva

**मूल आदेश**

**ORDER-IN-ORIGINAL**

- इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

- इस आदेश से व्यक्ति कोई भी व्यक्ति सीमा शुल्क अधिनियम १९६२ की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सीईएस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीजनल बैंच), ३४, पी.डी.मेलोरोड, मस्जिद (पूर्व), मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।  
Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

- अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal: -

<b>फार्म</b> <b>Form</b>	:	फार्म न. सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)
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Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)

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<b>समय सीमा</b>	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर
<b>Time Limit</b>	Within 3 months from the date of communication of this order.
<b>फीस</b>	: (क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है।
<b>Fee</b>	<p>(a) Rs. One Thousand - Where amount of duty &amp; interest demanded &amp; penalty imposed is Rs. 5 Lakh or less.</p> <p>(ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।</p> <p>(ब) Rs. Five Thousand - Where amount of duty &amp; interest demanded &amp; penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh</p> <p>(ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है।</p> <p>(c) Rs. Ten Thousand - Where amount of duty &amp; interest demanded &amp; penalty imposed is more than Rs. 50 Lakh.</p>
<b>भुगतान की रीति</b>	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो।
<b>Mode of Payment</b>	A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
<b>सामान्य</b>	: विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९६२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।
	For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

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4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी ।

Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

The proceedings of the present case emanate out of **Show Cause Notice No.: 48/2025-26/CC/Gr. IV/NS-III/CAC/JNCH dated 17.04.2025** (hereinafter called in short as “SCN”), issued by the Commissioner of Customs, NS-III, JNCH, Mumbai Customs Zone-II to **M/s. Shreenathji Industries**, having their registered address at Bamanbore GIDC Plot No. 420 and 421, Village Bamanbore Chotila, Gujarat – 363021 (IEC - DTVPP0253D) & **Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries** (hereinafter referred to as the “Importer” or “Noticee”).

### **BRIEF FACTS OF THE CASE**

1.1. DRI HQ New Delhi vide their letter dated 07.06.2022 forwarded various letters of FTA Cell, CBIC, enclosing 87 inauthentic Certificates of Origin, said to be issued in Malaysia for export of Stainless-Steel Coils and Sheets (HS Codes 72209090, 721990, 721934 and 721935) from Malaysia to India under ASEAN-INDIA FTA along with preliminary analysis conducted by their office for further necessary action. In continuation with the said letter dated 07.06.2022, DRI HQ, New Delhi vide their letter F. No. DRI/HQ-CI/B-Cell/50D/Enq-01/2020-CI dated 25.07.2022, also forwarded 42 CoOs reported to be inauthentic by the issuing authority in Malaysia.

1.2. Vide the above letters of DRI HQ, several risky import consignments pertaining to various importers were shared to DRI, AZU, Ahmedabad for comprehensive investigation. Out of the shared import consignments, following import consignments imported by M/s. Shreenathji Industries was also reported for conducting investigation:

Sl. No.	BOE/Date	ITEM DESCRIPTION	CTI	Declared Country of Origin	Declared Manufacturer's Name
1	As per Annexure-A (20 bill of entries)	Cold Rolled Stainless Steel Coils Grade J3	72209090	Malaysia	1. M/s. EZY METAL ENTERPRISE 2. M/s. MH MEGAH MAJU ENTERPRISE

**Details of Bills of Entry as per Annexure-A, are given in TABLE-I, as follows:**

**TABLE-I**

Sr. No.	BE No	BE Date	Sup Name	Declared Country of Origin	CTH	Invoice No.	Item No.	Item Desc	AIFTA COO REF NO.	Qty	Unit	Assess Val (Rs.)	Duty (Rs.)
1	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.55MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-069314	40,624	KGS	3,577,755	643,996
	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 1.03MM X WIDTH 78MM X LENGTH 1000MM)		4,922	KGS	400,805	72,145
	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.68MM X WIDTH 78MM X LENGTH 1000MM)		3,368	KGS	272,128	48,983
	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.68MM X WIDTH 78MM X LENGTH 1000MM)		3,346	KGS	287,332	51,720
2	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.55MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-069368	10,060	KGS	930,945	167,770
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 1.01MM X WIDTH 78MM X LENGTH 1000MM)		3,400	KGS	269,140	48,445
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.78MM X WIDTH 78MM X LENGTH 1000MM)		15,156	KGS	1,301,495	234,269
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.90MM X WIDTH 78MM X LENGTH 1000MM)		3,350	KGS	270,673	48,721
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	5	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 1.20MM X WIDTH 78MM X LENGTH 1000MM)		7,598	KGS	601,448	108,261
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	6	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.68MM X WIDTH 78MM X LENGTH 1000MM)		10,092	KGS	888,802	159,984
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	7	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.68MM X WIDTH 78MM X LENGTH 1000MM)		2,240	KGS	197,277	35,510
	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL120500) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-069415	16,878	KGS	1,693,564	304,841
3	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL120500) (THICKNESS 0.30 MM X WIDTH 78MM X LENGTH 1000MM)		4,750	KGS	476,622	85,792
	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL120500) (THICKNESS 0.50 MM X WIDTH 78MM X LENGTH 1000MM)		3,222	KGS	298,161	53,669
	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL120500) (THICKNESS 0.62 MM X WIDTH 78MM X LENGTH 1000MM)		27,016	KGS	2,435,290	438,352
	8416764	8/9/2020	M/S MH MEGAH MAJU ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL STRIPS COILS (COIL NO. J3) (STOCK (NICKEL BELOW 1.50%) (SDMS NO. STL120500) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM))	KL-2020-AI-21-068213	52,712	KGS	5,150,885	927,159
5	8458722	8/21/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL120500) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM)		53,884	KGS	5,417,507	975,151
	6	8548747	8/21/2020	M/S MH MEGAH MAJU ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1.50%) (SDMS NO. STL120500) (THICKNESS 0.30 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-073172	27,084	KGS	2,723,030
7	8738529	9/8/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.55MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-077195	39,073	KGS	3,690,969	664,375
	8738529	9/8/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.68MM X WIDTH 78MM X LENGTH 1000MM)		7,000	KGS	745,273	134,149
8	8738529	9/8/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.78MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-077254	6,890	KGS	609,499	109,710
	88696330	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.30MM X WIDTH 78MM X LENGTH 1000MM)		26,898	KGS	2,872,555	517,060
9	8869621	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.29MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-077359	54,977	KGS	5,871,234	1,056,822
	8869641	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.55MM X WIDTH 78MM X LENGTH 1000MM)		38,044	KGS	3,770,563	678,701
10	8869641	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.68MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-077307	16,126	KGS	1,492,393	268,631
	8869796	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.55MM X WIDTH 78MM X LENGTH 1000MM)		30,946	KGS	2,930,870	527,557
11	8869796	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.68MM X WIDTH 485MM X LENGTH 1000MM)	KL-2020-AI-21-077328	3,162	KGS	292,630	52,673
	8869796	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNESS 0.78MM X WIDTH 550MM X LENGTH 1000MM)		20,566	KGS	1,823,517	328,233
12	8879258	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL142102) (THICKNESS 0.55 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-084172	49,263	KGS	4,665,658	839,819
	8879258	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL142102) (THICKNESS 0.68 MM X WIDTH 78MM X LENGTH 1000MM)		3,210	KGS	297,072	53,473
13	8879389	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL135246) (THICKNESS 0.40 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-084211	10,124	KGS	1,047,955	188,632
	8879389	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL135246) (THICKNESS 0.50 MM X WIDTH 78MM X LENGTH 1000MM)		6,546	KGS	648,778	116,780
14	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL135246) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-084397	37,742	KGS	4,030,633	725,514
	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL142332) (THICKNESS 0.35 MM X WIDTH 78MM X LENGTH 1000MM)		16,464	KGS	1,559,292	280,673
15	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL142332) (THICKNESS 0.68 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-086785	15,886	KGS	1,470,182	264,633
	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL142332) (THICKNESS 0.78 MM X WIDTH 78MM X LENGTH 1000MM)		14,370	KGS	1,274,139	229,345
16	9011735	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL144055) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-086753	54,024	KGS	5,769,459	1,038,503
	16	9011744	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL144055) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM)	54,162	KGS	5,784,197	1,041,156
17	9012545	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL145795) (THICKNESS 0.55 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-086819	36,750	KGS	3,480,362	626,501
	9012545	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL145795) (THICKNESS 0.50 MM X WIDTH 78MM X LENGTH 1000MM)		15,254	KGS	1,444,694	260,045
18	9012551	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL145795) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM)	KL-2020-AI-21-086847	53,328	KGS	5,695,130	1,025,124
	9012551	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SDMS NO. STL152502) (THICKNESS 0.29 MM X WIDTH 78MM X LENGTH 1000MM)		53,976	KGS	5,857,520	1,054,354
20	9490230	11/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (EX STOCK (SDMS NO. STL156999)) (WIDTH BELOW 600MM X LENGTH 1000MM)	KL-2020-AI-21-095847	27,060	KGS	2,521,613	453,890
	9490230	11/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (EX STOCK (SDMS NO. STL156999)) (WIDTH BELOW 600MM X LENGTH 1000MM)		16,284	KGS	1,474,610	265,430
	9490230	11/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (EX STOCK (SDMS NO. STL156999)) (WIDTH BELOW 600MM X LENGTH 1000MM)		3,012	KGS	264,832	47,670
	9490230	11/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (EX STOCK (SDMS NO. STL156999)) (WIDTH BELOW 600MM X LENGTH 1000MM)		6,672	KGS	571,596	102,887
TOTAL												99,892,077	17,980,574

**2.1** Accordingly, an enquiry was initiated by DRI, AZU, Ahmedabad against M/s. Shreenathji Industries, having their registered address at Bamanbore GIDC Plot No. 420 and 421, Village Bamanbore Chotila, Gujarat – 363021 (hereinafter referred to as the “importer”), by way of issuance of summons dated 19.04.2023 and Summons dated 04.10.2023 asking them to submit import documents relating to import of “Stainless Steel Coil” from Malaysia for the period 2020. Subsequently data in respect of the consignments imported by M/s. Shreenathji Industries was also extracted from the government portal available with this office, the details of which are as under:

**TABLE-II**

<b>Sr. No.</b>	<b>Particular</b>	<b>Details</b>
1.	Name of Importer	M/s. Shreenathji Industries, Bamanbore GIDC Plot No. 420 and 421, Village Bamanbore Chotila, Gujarat – 363021 (IEC - DTVPP0253D)
•	PAN	DTVPP0253DFT001
•	Bill of Entry No. & date	Details as per <b>TABLE-I</b> (20 Bills of Entry)
•	Name of Supplier	M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise
•	Declared Country of Origin	Malaysia
•	Item Description	Cold Rolled Stainless Steel Coils Grade J3
•	CTI	72202090
•	Custom exemption notification	46/2011 [967(I)] Bill of Entry wise Supplier Name & AIFTA COO Ref No. is detailed in <b>TABLE-III</b>
•	Total Assessable Value	Rs. 9,98,92,078/-
•	Basic Custom Duty paid	NIL
•	IGST paid	Rs. 1,79,80,574/-

**TABLE-III**  
**Bill of Entry wise Supplier Name & AIFTA COO Ref No. is as follows:**

<b>Sr. No.</b>	<b>BE No</b>	<b>BE Date</b>	<b>Supplier Name</b>	<b>AIFTA COO REF NO.</b>
1	8404944	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069314
2	8405007	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069368
3	8405165	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 069415
4	8416764	8/9/2020	M/S. MH MEGAH MAJU ENTERPRISE	KL-2020-AI-21- 068213
5	8548722	8/21/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -073497
6	8548747	8/21/2020	M/S. MH MEGAH MAJU ENTERPRISE	KL-2020-AI-21 -073172
7	8738529	9/8/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077195
8	8869330	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077254
9	8869621	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077359
10	8869641	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077307
11	8869796	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077328
12	8879258	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -084172

13	8879389	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 084211
14	8880299	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -084397
15	9011735	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -086785
16	9011744	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086753
17	9012545	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-086819
18	9012551	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086847
19	9219760	10/18/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 092511
20	9490230	11/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-095847

2.2. Examination of the data indicate that M/s. Shreenathji Industries had imported "Cold Rolled Stainless Steel Coils Grade J3 from Malaysia and availed the benefit of preferential duty treatment under Notification No. 46/2011-Customs dated 01.06.2011, (Sr. No. 967(I)) as amended, by claiming the country of origin as Malaysia. "Cold Rolled Stainless Steel Coils Grade J3, is classified under CTH 7220 of the first schedule to the Customs Tariff Act and the effective rate of basic customs duty on this product is 7.5% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017 (Sr. no. 376E), as amended. However, by claiming the preferential duty treatment on the strength of CoO claimed to be issued by the authority of Malaysia, the importer had claimed exemption from the payment of whole basic customs duty.

3.1. As per the provisions made in the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31st December 2009, the Certificate of Origin was to constitute the principal basis for the purposes of extension of preferential treatment. In extension of the FTA, CBIC proceeded to issue Exemption Notification 46/2011 dated 01 June 2011 granting benefit of "nil" rate of Basic Custom Duty on goods falling in Chapter "72" when imported into India from a country listed in Appendix I of the said Exemption Notification.

3.2. Benefits of exemption under Notification No. 46/2011-Customs dated 01.06.2011 are available to the importer when goods mentioned therein is/are imported into the Republic of India from a country listed in APPENDIX I, which includes Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia, Brunei Darussalam, Lao People's Democratic Republic & Cambodia, provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. The origin of the imported goods was to be verified in accordance with the 2009 Rules.

3.3. "Verification" means verifying genuineness of a certificate of origin or correctness of the information contained therein in the manner prescribed by the respective Rules of Origin. The Government of India, Ministry of Finance (Department of Revenue) issued a set of rules called the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (in short CAROTAR, 2020) vide Notification No. 81/2020-Cus. (N.T.), dated 21-8-2020 and these rules apply to import of goods into India where the importer makes claim of preferential rate of duty in terms of a trade agreements.

4.1. CBIC vide letter reference file no. 456/451/2020-Cus.V dated 27.04.2021 issued from FTA Cell of CBIC as forwarded by DRI, HQ indicated that 87 Certificates of Origin said to be issued in Malaysia under ASEAN-India Free Trade Area (AIFTA) for the export of Cold Rolled Stainless Coil Grade to India were referred to the issuing authorities for causing retroactive verification in respect of genuineness and authenticity of the same. In response, Ministry of International Trade and Industry (MITI), Malaysia vide its email dated 14.04.2021 informed that the said 87 COOs were not authentic and were not issued by their office. MITI, Malaysia also informed that they had never received any CoO application from the respective companies. Vide their email dated 15.04.2021, MITI, Malaysia forwarded list of 87 Certificates of Origin, which were found to be inauthentic and the same were not issued by them. Such list has been placed below:

**TABLE-IV**

**LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)**

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
1	KL-2019-AI-21-085278	MH MEGAH MAJU ENTERPRISE	30.09.2019
2	KL-2019-AI-21-072695	MZH MAJU INDUSTRY	01.08.2019
3	KL-2019-AI-21-077386	MH MEGAH MAJU ENTERPRISE	19.08.2019
4	KL-2019-AI-21-085859	MH MEGAH MAJU ENTERPRISE	01.10.2019
5	KL-2019-AI-21-086871	MH MEGAH MAJU ENTERPRISE	09.10.2019
6	KL-2019-AI-21-088746	MH MEGAH MAJU ENTERPRISE	25.10.2019
7	KL-2019-AI-21-091327	MH MEGAH MAJU ENTERPRISE	12.11.2019
8	KL-2019-AI-21-091319	MH MEGAH MAJU ENTERPRISE	12.11.2019
9	KL-2019-AI-21-095563	MH MEGAH MAJU ENTERPRISE	26.11.2019
10	KL-2019-AI-21-095873	MH MEGAH MAJU ENTERPRISE	27.11.2019
11	KL-2019-AI-21-075801	MH MEGAH MAJU ENTERPRISE	15.08.2019
12	KL-2019-AI-21-077378	MH MEGAH MAJU ENTERPRISE	19.08.2019
13	KL-2019-AI-21-077411	MH MEGAH MAJU ENTERPRISE	19.08.2019
14	KL-2019-AI-21-080137	MH MEGAH MAJU ENTERPRISE	28.08.2019
15	KL-2019-AI-21-080172	MH MEGAH MAJU ENTERPRISE	28.08.2019
16	KL-2019-AI-21-085898	MH MEGAH MAJU ENTERPRISE	02.10.2019
17	KL-2019-AI-21-086855	MH MEGAH MAJU ENTERPRISE	09.10.2019
18	KL-2019-AI-21-086834	MH MEGAH MAJU ENTERPRISE	09.10.2019
19	KL-2019-AI-21-086829	MH MEGAH MAJU ENTERPRISE	09.10.2019
20	KL-2019-AI-21-06958	SETICA INDUSTRIES (M) SDN BHD	22.01.2019
21	KL-2019-AI-21-06591	SETICA INDUSTRIES (M) SDN BHD	07.02.2019
22	KL-2018-AI-21-139316	JENTAYU INDUSTRY	28.12.2018
23	KL-2019-AI-21-03293	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
24	KL-2019-AI-21-05483	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
25	KL-2019-AI-21-07132	SETICA INDUSTRIES (M) SDN BHD	15.02.2019
26	KL-2019-AI-21-099652	MH MEGAH MAJU ENTERPRISE	31.12.2019
27	KL-2020-AI-21-001958	MH MEGAH MAJU ENTERPRISE	22.01.2020
28	KL-2019-AI-21-02866	SETICA INDUSTRIES (M) SDN BHD	25.01.2019
29	KL-2020-AI-21-003235	MH MEGAH MAJU ENTERPRISE	04.02.2020
30	KL-2019-AI-21-091247	MH MEGAH MAJU ENTERPRISE	12.11.2019
31	KL-2020-AI-21-005078	CEKAP PRIMA SDN BHD	29.01.2020
32	KL-2019-AI-21-010992	ARTFRANSI INTERNATIONAL SDN BHD	24.09.2019
33	KL-2019-AI-21-010967	ARTFRANSI INTERNATIONAL SDN BHD	11.10.2019
34	KL-2019-AI-21-010979	ARTFRANSI INTERNATIONAL SDN BHD	31.10.2019
35	KL-2019-AI-21-010989	ARTFRANSI INTERNATIONAL SDN BHD	19.11.2019
36	KL-2019-AI-21-088361	MH MEGAH MAJU ENTERPRISE	21.10.2019
37	KL-2020-AI-21-000862	MH MEGAH MAJU ENTERPRISE	20.01.2020
38	KL-2019-AI-21-018819	HARD METAL TRADE SDN BHD	16.12.2019
39	KL-2019-AI-21-014873	SETICA INDUSTRIES (M) SDN BHD	09.04.2019
40	KL-2019-AI-21-015487	SETICA INDUSTRIES (M) SDN BHD	12.04.2019
41	KL-2019-AI-21-039871	MH MEGAH MAJU ENTERPRISE	23.04.2019
42	KL-2019-AI-21-043235	CEKAP PRIMA SDN BHD	12.12.2019
43	KL-2019-AI-21-038903	SETICA INDUSTRIES (M) SDN BHD	N/A
44	KL-2019-AI-21-072613	MZH MAJU INDUSTRY	01.08.2019

**LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY  
THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)**

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
45	KL-2019-AI-21-093214	EZY METAL ENTERPRISE	15.11.2019
46	KL-2019-AI-21-095525	MH MEGAH MAJU ENTERPRISE	26.11.2019
47	KL-2019-AI-21-095473	MH MEGAH MAJU ENTERPRISE	26.11.2019
48	KL-2019-AI-21-027975	MALY METAL INDUSTRY SDN BHD	30.09.2019
49	KL-2019-AI-21-033688	MALY METAL INDUSTRY SDN BHD	13.11.2019
50	KL-2019-AI-21-039022	MALY METAL INDUSTRY SDN BHD	25.11.2019
51	KL-2019-AI-21-043662	MALY METAL INDUSTRY SDN BHD	16.12.2019
52	KL-2019-AI-21-088477	MH MEGAH MAJU ENTERPRISE	22.10.2019
53	KL-2019-AI-21-088408	CEKAP PRIMA SDN BHD	12.11.2019
54	KL-2019-AI-21-033027	MH MEGAH MAJU ENTERPRISE	22.10.2019
55	KL-2019-AI-21-038395	CEKAP PRIMA SDN BHD	27.11.2019
56	KL-2019-AI-21-0101023	ARTFRANSI INTERNATIONAL SDN BHD	02.12.2019
57	KL-2019-AI-21-043670	MALY METAL INDUSTRY SDN BHD	16.12.2019
58	KL-2019-AI-21-099382	EZY METAL ENTERPRISE	27.12.2019
59	KL-2019-AI-21-044172	MALY METAL INDUSTRY SDN BHD	31.12.2019
60	KL-2019-AI-21-091339	JENTAYU INDUSTRY	30.11.2019
61	KL-2019-AI-21-090139	JENTAYU INDUSTRY	11.11.2019
62	KL-2019-AI-21-093873	JENTAYU INDUSTRY	29.11.2019
63	KL-2019-AI-21-085293	MH MEGAH MAJU ENTERPRISE	30.09.2019
64	KL-2019-AI-21-086925	MH MEGAH MAJU ENTERPRISE	09.10.2019
65	KL-2019-AI-21-017946	PIONEER ULT ENTERPRISE	24.10.2019
66	KL-2019-AI-21-017945	PIONEER ULT ENTERPRISE	24.10.2019
67	KL-2019-AI-21-017896	PIONEER ULT ENTERPRISE	04.11.2019
68	KL-2019-AI-21-017895	PIONEER ULT ENTERPRISE	04.11.2019
69	KL-2019-AI-21-017912	PIONEER ULT ENTERPRISE	15.11.2019
70	KL-2019-AI-21-018082	PIONEER ULT ENTERPRISE	20.11.2019
71	KL-2019-AI-21-018251	PIONEER ULT ENTERPRISE	29.11.2019
72	KL-2019-AI-21-018250	PIONEER ULT ENTERPRISE	29.11.2019
73	KL-2019-AI-21-018252	PIONEER ULT ENTERPRISE	29.11.2019
74	KL-2019-AI-21-018796	PIONEER ULT ENTERPRISE	16.12.2019
75	KL-2019-AI-21-018809	PIONEER ULT ENTERPRISE	16.12.2019
76	KL-2019-AI-21-018800	PIONEER ULT ENTERPRISE	16.12.2019
77	KL-2019-AI-21-018848	PIONEER ULT ENTERPRISE	24.12.2019
78	KL-2019-AI-21-018845	PIONEER ULT ENTERPRISE	24.12.2019
79	KL-2019-AI-21-018843	PIONEER ULT ENTERPRISE	24.12.2019
80	KL-2019-AI-21-018898	PIONEER ULT ENTERPRISE	31.12.2019
81	KL-2020-AI-21-019358	PIONEER ULT ENTERPRISE	15.01.2020
82	KL-2020-AI-21-019428	PIONEER ULT ENTERPRISE	28.01.2020
83	KL-2020-AI-21-019484	PIONEER ULT ENTERPRISE	28.01.2020
84	KL-2020-AI-21-019482	PIONEER ULT ENTERPRISE	28.01.2020
85	KL-2020-AI-21-019480	PIONEER ULT ENTERPRISE	28.01.2020
86	KL-2020-AI-21-019511	PIONEER ULT ENTERPRISE	04.02.2020
87	KL-2019-AI-21-01095	SETICA INDUSTRIES (M) SDN BHD	07.01.2019

4.2. As it is manifest from the aforesaid communications, it is evident that the CBIC had forwarded the retroactive verification request to the Competent Authority in Malaysia and the issuing authorities had reverted affirming that 87 referred CoOs were not issued by them and the same were termed as inauthentic.

5. Now the goods imported by M/s. Shreenathji Industries, as mentioned at **TABLE-I para 1.2 supra** had been supplied by the overseas supplier, namely M/s. Ezy Metal Enterprise, Malaysia and M/s. MH Megah Maju Enterprise. However, both the suppliers were found to be amongst the list of overseas suppliers, which were reportedly found to have exported goods under inauthentic Certificates of Origin as per the list above provided by MITI, Malaysia. COOs No. KL-2019-AI-21-093214 (from M/s. Ezy Metal Enterprise) & KL-2019-AI-21-095525 (from M/s. MH Megah Maju Enterprise) at Sr. No. 45 & 46 respectively in the list forwarded by MITI, Malaysia have been reported to be inauthentic and the same have not been issued by the authority of Malaysia. MITI in its mail has clearly stated that they have never received any CoO applications from the respective companies.

6.1. Consequent upon the summon dated 04.10.2023, statement of Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries was recorded on 19.10.2023 under Section 108 of the Customs Act, 1962, wherein, he inter-alia stated that

- 6.1.1 he started business of trading of SS Coils at Rajkot, in the year 2018.
- 6.1.2 his firm had imported Cold Rolled SS Coils from China and Malaysia.

6.1.3 he used to look after the customs related work, with the help of an accountant.

6.1.4 he used to import SS Coils from Malaysia during 2020-21 and had availed exemptions of Customs duty in respect of 20 bill of entries under ASEAN-India Free Trade Area (AIFTA), which is available under Notification no. 46/2011-Customs (Sr. no. 967(I)) dated 01.06.2011.

6.1.5 he started importing from Malaysia, with the help of an agent, whose name he doesn't remember. He further stated that he had imported goods from two suppliers namely, M/s. Ezy Metal Enterprise (for 18 bill of entries) and M/s. MH Megah Maju Enterprise (for 2 bill of entries).

6.1.6 he was explained Section 28DA of the Customs Act, 1962 wherein he was obligated to verify the CoOs, he admitted that he did not verify the genuineness of the CoOs and did not possess any information with respect to manufacturing process of imported SS coils.

6.1.7 he was shown CBIC's letter vide F. No. 456/451/2020-Cus.V dated 27.04.2021 issued by the OSD (FTA Cell) enclosing a copy of e-mail dated 14.04.2021 sent by Ministry of International Trade and Industry (MITI), Malaysia, wherein name of both his suppliers i.e. M/s. MH Megah Maju Enterprise and M/s. Ezy Metal Enterprise were appearing.

6.1.8 he understood that this verification report is also applicable in the case of identical goods in terms of Rule 7 of CAROTAR 2020 prescribed under Section 28DA of the Customs Act, 1962.

6.1.9 He agreed that his firm is not eligible to avail the exemption benefits of Notification No. 046/2011-Cus dated 01.06.2011 on the import of SS Coils.

6.2. On being confronted with CBIC's letter F. No. 456/451/2020-Cus.V dated 27.04.2021 issued to the Principal Director General, DRI, New Delhi enclosing copy of emails received from High Commission of India, Kuala Lumpur, Malaysia and Ministry of International Trade and Industry (MITI), Malaysia along with its attachments, he stated that 87 Certificates of Origin numbers were featuring in the list shared by MITI, Malaysia, which were not authentic; that name of his both supplier i.e. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise was also appearing in the list at Sr. No. 45 and 46 respectively. He further stated that he understood that the verification report was also applicable in case of identical goods i.e. SS Coils, imported by him from the same supplier/manufacturer/producer i.e. M/s Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, in terms of Rule 7 of CAROTAR 2020 prescribed under Section 28DA of the Customs Act, 1962.

6.3. During the statement, he agreed that it seems his firm was not eligible to avail the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, on the import of SS Coils from M/s Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise. Further, during his Statement, he also provided copies of Bills of Entry along with other supporting documents.

7.1. Examination of documents submitted by Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries during his statement dated 19.10.2023 revealed that the importer had imported "Cold Rolled Stainless Steel Coils Grade J3" from Malaysia and availed the benefit of preferential duty treatment as provided under Notification No. 46/2011-Customs dated 01.06.2011, (Sr. No. 967(I)) as amended, by claiming the country of origin as Malaysia. As a result of verification of 87 CoOs, two CoOs issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas

supplier M/s. MH Megah Maju Enterprise have been termed as inauthentic by MITI, Malaysia and they have explicitly conveyed that they have never received any CoO application from the respective companies and such 87 CoOs are inauthentic. Further, examination of CoOs submitted by the importer led to the findings that the said CoO has been said to be issued for supplier M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise by Ministry of International Trade and Industry (MITI), Malaysia for export of "Cold Rolled Stainless Steel Coil Grade J3" to M/s. Shreenathji Industries, which is contrary to the verification report submitted by the Ministry of International Trade and Industry (MITI), Malaysia, wherein, MITI, Malaysia communicated that they have never received application request for issuance of CoO from all the companies including M/s Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, existing in list shown in the above para 4.1.

7.2. Further, veracity of the above CoOs was also verified on the official Malaysian govt. portal (<https://newepco.dagangnet.com.my/dnex/login/>), wherein, the CoO number was found non-existent, with the following remarks '**Endorsement No does not exist**', as tabulated in TABLE-V, below:

**TABLE-V**

Sr. No.	BE No	BE Date	Supplier Name	AIFTA COO REF NO.	Verification Output on Official Malaysian Govt. Portal
1	8404944	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069314	Endorsement No does not exist
2	8405007	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069368	Endorsement No does not exist
3	8405165	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 069415	Endorsement No does not exist
4	8416764	8/9/2020	M/S. MH MEGA MAJU ENTERPRISE	KL-2020-AI-21- 068213	Endorsement No does not exist
5	8548722	8/21/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 073497	Endorsement No does not exist
6	8548747	8/21/2020	M/S. MH MEGA MAJU ENTERPRISE	KL-2020-AI-21- 073172	Endorsement No does not exist
7	8738529	9/8/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077195	Endorsement No does not exist
8	8869330	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077254	Endorsement No does not exist
9	8869621	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077359	Endorsement No does not exist
10	8869641	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077307	Endorsement No does not exist
11	8869796	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077328	Endorsement No does not exist
12	8879258	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 084172	Endorsement No does not exist
13	8879389	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 084211	Endorsement No does not exist
14	8880299	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 084397	Endorsement No does not exist
15	9011735	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086785	Endorsement No does not exist
16	9011744	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086753	Endorsement No does not exist
17	9012545	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-086819	Endorsement No does not exist
18	9012551	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086847	Endorsement No does not exist
19	9219760	10/18/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 092511	Endorsement No does not exist
20	9490230	11/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-095847	Endorsement No does not exist

Screenshot of the said verification has been enclosed as **Annexure-B** to SCN, are reproduced here, as follows:

**KL-2020-AI-21-073172**

**BILL OF ENTRY NO. 8548747 DATED 21.08.2020**

The screenshot shows a search interface for the COO Verification System. The top bar includes the NSW ePCO logo and the text 'COO Verification System'. A search box contains the endorsement number 'KL-2020-AI-21-073172'. Below the search box is a message: 'Endorsement No does not exist.' with 'RESET' and 'SEARCH' buttons.

**KL-2020-AI-21-068213**

**BILL OF ENTRY NO. 8416764 DATED 09.08.2020**

The screenshot shows a search interface for the COO Verification System. The top bar includes the NSW ePCO logo and the text 'COO Verification System'. A search box contains the endorsement number 'KL-2020-AI-21-068213'. Below the search box is a message: 'Endorsement No does not exist.' with 'RESET' and 'SEARCH' buttons.

**KL-2020-AI-21-095817**

**BILL OF ENTRY NO. 9490230 DATED 07.11.2020**

The screenshot shows a search interface for the COO Verification System. The top bar includes the NSW ePCO logo and the text 'COO Verification System'. A search box contains the endorsement number 'KL-2020-AI-21-095817'. Below the search box is a message: 'Endorsement No does not exist.' with 'RESET' and 'SEARCH' buttons.

**KL-2020-AI-21-092511****BILL OF ENTRY NO. 9219760 DATED 18.10.2020**

https://newepco.dagangnet.com.my/dnex/dnex\_app/#

NSW  
ePCO COO Verification System

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-092511

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-086819****BILL OF ENTRY NO. 9012545 DATED 30.09.2020**

https://newepco.dagangnet.com.my/dnex/dnex\_app/#

NSW  
ePCO COO Verification System

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-086819

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-086847****BILL OF ENTRY NO. 9012551 DATED 30.09.2020**

https://newepco.dagangnet.com.my/dnex/dnex\_app/#

NSW  
ePCO COO Verification System

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-086847

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-086785****BILL OF ENTRY NO. 9011735 DATED 30.09.2020**

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-086785

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-084397****BILL OF ENTRY NO. 8880299 DATED 19.09.2020**

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-084397

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-084172****BILL OF ENTRY NO. 8879258 DATED 19.09.2020**

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-084172

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-084211****BILL OF ENTRY NO. 8879389 DATED 19.09.2020**

https://newepco.dagangnet.com.my/dnrx/dnrx\_app/#

NSW  
ePCO CDO Verification System

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-084211

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-073497****BILL OF ENTRY NO. 8548722 DATED 21.08.2020**

https://newepco.dagangnet.com.my/dnrx/dnrx\_app/#

NSW  
ePCO CDO Verification System

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-073497

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-077307****BILL OF ENTRY NO. 8869641 DATED 19.09.2020**

NSW  
ePCO CDO Verification System

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-077307

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-077328**

**BILL OF ENTRY NO. 8869796 DATED 19.09.2020**

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-077328

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-077254**

**BILL OF ENTRY NO. 8869330 DATED 19.09.2020**

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-077254

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-077359**

**BILL OF ENTRY NO. 8869621 DATED 19.09.2020**

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-077359

RESET SEARCH

Endorsement No does not exist.

KL-2020-AI-21-069314

BILL OF ENTRY NO. 8404944 DATED 07.08.2020

The screenshot shows a search interface for the ePCO COO Verification System. The search bar contains the endorsement number 'KL-2020-AI-21-069314'. A message box in the center states 'Endorsement No does not exist.' with a 'RESET' and 'SEARCH' button below it.

KL-2020-AI-21-069368

BILL OF ENTRY NO. 8405007 DATED 07.08.2020

The screenshot shows a search interface for the ePCO COO Verification System. The search bar contains the endorsement number 'KL-2020-AI-21-069368'. A message box in the center states 'Endorsement No does not exist.' with a 'RESET' and 'SEARCH' button below it.

KL-2020-AI-21-077195

BILL OF ENTRY NO. 8738529 DATED 08.09.2020

The screenshot shows a search interface for the ePCO COO Verification System. The search bar contains the endorsement number 'KL-2020-AI-21-077195'. A message box in the center states 'Endorsement No does not exist.' with a 'RESET' and 'SEARCH' button below it.

**KL-2020-AI-21-069415**

**BILL OF ENTRY NO. 8405165 DATED 07.08.2020**



PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-069415

RESET SEARCH

Endorsement No does not exist.

**KL-2020-AI-21-086753**

**BILL OF ENTRY NO. 9011744 DATED 30.09.2020**



https://newepco.dagangnet.com.my/dneo/dnes\_app/#

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-086753

RESET SEARCH

Endorsement No does not exist.

7.3. Therefore, the preferential rate of duty claimed against the impugned CoO appeared to be improper and stands liable to be rejected as per the provisions of the Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) as notified under Notification No. 81/2020-Cusroms (N.T.) dated 21<sup>st</sup> August 2020 in conjunction with the provisions of sub section 11 of Section 28DA of the customs Act, 1962, for the impugned goods imported against the aforesaid Bill of Entry wherein goods had originated from the disputed overseas suppliers from Malaysia under inauthentic CoOs.

8.1. Based on Bill of Entry submitted by the importer, quantification of short levied/not levied Basic Custom Duty as well as IGST has been worked out in terms of INR and stated below as:

**Details of Bill of Entry, is as follows:**

Sr. No.	BE No	BE Date	Sup Name	Declared Country of Origin	CTH	Invoice No.	Item No.	Item Desc	AIFTA COO REF NO.	Qty	Unit	Assess Val (Rs.)	Duty (Rs.)
1	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.55MM X WIDTH	KL-2020-AI-21-069314	40,624	KGS	3,577,755	643,996
	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 1.03MM X WIDTH		4,922	KGS	400,805	72,145
	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.90MM X WIDTH		3,368	KGS	272,128	48,983
	8404944	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.68MM X WIDTH		3,346	KGS	287,332	51,720
2	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.55MM X WIDTH	KL-2020-AI-21-069368	10,060	KGS	930,945	167,570
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 1.10MM X WIDTH		3,400	KGS	269,140	48,445
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.78MM X WIDTH		15,156	KGS	1,301,495	234,269
	8405007	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.90MM X WIDTH		3,350	KGS	270,673	48,721
3	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL120600)(THICKNESS-0.29 MM X WIDTH-	KL-2020-AI-21-069415	16,878	KGS	1,693,564	304,841
	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL120600)(THICKNESS-0.30 MM X WIDTH-		4,750	KGS	476,622	85,792
	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL120600)(THICKNESS-0.50 MM X WIDTH-		3,222	KGS	298,161	53,669
	8405165	8/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL120600)(THICKNESS-0.62 MM X WIDTH-		27,016	KGS	2,435,290	438,352
4	8416764	8/9/2020	M/S MH MEGAH MAJU ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL STRIPS COILS GRADE J3 EX STOCK (NICKEL BELOW 1.50%)(SIMS	KL-2020-AI-21-069213	52,712	KGS	5,150,885	927,159
	5	8548722	8/21/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL128375)(THICKNESS-0.29 MM X WIDTH -	53,884	KGS	5,417,507	975,151
	6	8548747	8/21/2020	M/S MH MEGAH MAJU ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1.50%)(SIMS	27,084	KGS	2,723,030	490,145
	7	8738529	9/8/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.35MM X WIDTH	39,073	KGS	3,690,969	664,375
8	8738529	9/8/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.35MM X WIDTH	KL-2020-AI-21-077195	7,000	KGS	745,273	134,149
	8738529	9/8/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.78MM X WIDTH		6,890	KGS	609,499	109,710
	8	8869330	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.30MM X WIDTH	26,898	KGS	2,872,555	517,060
	9	8869621	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.29MM X WIDTH	54,977	KGS	5,871,234	1,056,822
10	8869641	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.55MM X WIDTH	KL-2020-AI-21-077307	38,044	KGS	3,770,563	678,701
	8869641	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.68MM X WIDTH		16,126	KGS	1,492,393	268,631
11	8869796	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.55MM X WIDTH	KL-2020-AI-21-077328	30,946	KGS	2,930,870	527,557
	8869796	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.68MM X WIDTH 485		3,162	KGS	292,630	52,673
	8869796	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%)(THICKNESS 0.78MM X WIDTH 550		20,566	KGS	1,823,517	328,233
12	8879258	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL142102)(THICKNESS-0.55 MM X WIDTH-	KL-2020-AI-21-084172	49,263	KGS	4,665,658	839,819
	8879258	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL142102)(THICKNESS-0.68 MM X WIDTH		3,210	KGS	297,072	53,473
13	8879389	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL135246)(THICKNESS-0.40 MM X WIDTH-	KL-2020-AI-21-084211	10,124	KGS	1,047,955	188,632
	8879389	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL135246)(THICKNESS-0.50 MM X WIDTH-		6,546	KGS	648,778	116,780
	8879389	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL135246)(THICKNESS-0.29 MM X WIDTH		37,742	KGS	4,030,633	725,514
14	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL142332)(THICKNESS-0.55 MM X WIDTH-	KL-2020-AI-21-084397	16,464	KGS	1,559,292	280,673
	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL142332)(THICKNESS-0.68 MM X WIDTH		15,886	KGS	1,470,182	264,633
	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL142332)(THICKNESS-0.78 MM X WIDTH		14,370	KGS	1,274,139	229,345
	8880299	9/19/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72209090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL142332)(THICKNESS-0.35 MM X WIDTH		6,946	KGS	741,794	133,523
15	9011735	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL144053)(THICKNESS-0.29 MM X WIDTH	KL-2020-AI-21-086785	54,024	KGS	5,769,459	1,038,503
	9011744	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL144053)(THICKNESS-0.29 MM X WIDTH		54,162	KGS	5,784,197	1,041,156
16	9012545	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL145795)(THICKNESS-0.29 MM X WIDTH	KL-2020-AI-21-086753	36,750	KGS	3,480,562	626,501
	9012545	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL145795)(THICKNESS-0.50 MM X WIDTH		15,254	KGS	1,444,694	260,045
17	9012551	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL145795)(THICKNESS-0.50 MM X WIDTH	KL-2020-AI-21-086847	53,328	KGS	5,695,130	1,025,124
	9012551	9/30/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL145795)(THICKNESS-0.50 MM X WIDTH		3,012	KGS	264,832	47,670
18	9121970	10/18/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL152902)(THICKNESS-0.29 MM X WIDTH	KL-2020-AI-21-086847	53,976	KGS	5,857,520	1,054,354
	9490230	11/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL156999)(WIDTH BELOW 600		27,060	KGS	2,521,613	453,890
20	9490230	11/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO STL156999)(WIDTH BELOW 600	KL-2020-AI-21-095847	16,284	KGS	1,474,610	265,430
	9490230	11/7/2020	M/S EZY METAL ENTERPRISE	MALAYSIA	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (EX STOCK (SIMS NO STL156999)(WIDTH BELOW 600		6,672	KGS	571,596	102,887
								TOTAL				99,892,077	17,980,574

Table A

Duty paid by importer by wrongly claiming exemption under Notification No. 46/2011

Total Assessable Value	BCD Paid	SWS Paid	Total Value including BCD & SWS	IGST paid @ 18% on Grand Total Value	Total Duty paid (BCD+SWS+IGST)
9,98,92,078	0	0	9,98,92,078	1,79,80,574	1,79,80,574

Table B

## Actual Duty payable as per Notification 50/2017

Total Assessable Value	BCD Payable	SWS Payable	Total Value including BCD & SWS	IGST payable @ 18% on Grand Total Value	Total Duty payable (BCD+SWS+IGST)
9,98,92,078	74,91,906	7,49,190	10,81,33,174	1,94,63,971	2,77,05,068

Table C

Short levied/Not levied duty arising out of difference between Table A &amp; Table B

Total Assessable Value	BCD	SWS	Total Value including BCD & SWS	IGST @ 18% on Grand Total Value	Total Duty short levied/not levied (BCD+SWS+IGST)
9,98,92,078	74,91,906	7,49,190	10,81,33,174	1,94,63,971	97,24,494

8.2. The above quantification suggests that wrong availment of exemption benefit under Notification No. 46/2011-Cus dated 01.06.2011 (Asean-India PFA) has resulted in short levy / not levy of total duty to the tune of Rs. 97,24,494/- (BCD - Rs. 74,91,906/- + SWS - Rs. 7,49,190/- + IGST - Rs. 14,83,397/-), which appeared to be recoverable from the importer along with appropriate rate of interest and penalty as applicable.

9. From all the foregoing paras and statement of Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries, it is evident that consignments imported under Bills of Entry as mentioned in Annexure-A by M/s. Shreenathji Industries have been cleared by producing inauthentic certificates of origin and therefore the duty exemption benefit claimed under the ASEAN-India Preferential Trade Agreement under S. No. 967[I] of Notification No. 046/2011.Cus dated 01.06.2011 is improper and illegitimate. The importer has failed to provide the true contents of the Bills of Entry in support of their declaration and has neither ensured the accuracy of the information contained therein, nor the authenticity and validity of the documents (CoOs in this instance) submitted against the bills of entry to supplement their claims of duty exemption as per Notification No. 046/2011-Cus dated 01.06.2011 as amended time to time. This has resulted in the violation of Section 46(4) of the Customs Act, 1962 on the part of the importer. The imported goods as per the mentioned Bills of Entry were cleared on account of inauthentic Certificates of Origin and thereby the importer has failed to fulfill the statutory condition of duty exemption benefit, thus rendering the impugned goods liable to confiscation under Section 111(o) and 111(q) of the Customs Act, 1962.

#### 10. Legal Provisions:

10.1. **Sub-section (4) of Section 46 of the Customs Act, 1962**, specifies that, *the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods.*

10.2. **Section 28 (4), 28 (5) and 28 (6) of the Customs Act, 1962- Recovery of duties not levied or short-levied or erroneously refunded. –**

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

*(a) collusion; or*

- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

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

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

- (i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or
- (ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of<sup>14</sup> [two years] shall be computed from the date of receipt of information under sub-section (5).

### 10.3. Section 28AA. Interest on delayed payment of duty. —

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section 2, whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten percent and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction

by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

#### 10.4. Section 28DA Procedure regarding claim of preferential rate of duty.

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -

- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;
- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;
- (iii) furnish such information in such manner as may be provided by rules;
- (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.

(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may,-

- (i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;
- (ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

**Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.**

**(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.**

**(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-**

- (i) the tariff item is not eligible for preferential tariff treatment;**
- (ii) complete description of goods is not contained in the certificate of origin;**
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;**
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".**

**(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.**

**Explanation-For the purposes of this Chapter,-**

**(a)"certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;**

**(b)"identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;**

**(c)"Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;**

**(d)"trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.**

## **10.5 Customs (Administration of Rules of Origin under Trade Agreements) Rules, CAROTAR, 2020.**

*Notification No. 81/2020 - Customs (N.T.) dated, 21 st August, 2020. In exercise of the powers conferred by section 156 read with section 28DA of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely*

### **Rule 3. Preferential tariff claim. -**

**(1) To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry, -**

**(a) make declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;**

**(b) indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;**

**(c) produce certificate of origin covering each item on which preferential rate of duty is claimed; and**

**(d) enter details of certificate of origin in the bill of entry, namely:**

**(i) certificate of origin reference number;**

**(ii) date of issuance of certificate of origin;**

**(iii) originating criteria;**

- (iv) indicate if accumulation/cumulation is applied;
- (v) indicate if the certificate of origin is issued by a third country (back-to-back); and
- (vi) indicate if goods have been transported directly from country of origin.

(2) Notwithstanding anything contained in these rules, the claim of preferential rate of duty may be denied by the proper officer without verification if the certificate of origin-

- (a) is incomplete and not in accordance with the format as prescribed by the Rules of Origin;
- (b) has any alteration not authenticated by the Issuing Authority;
- (c) is produced after its validity period has expired; or
- (d) is issued for an item which is not eligible for preferential tariff treatment under the trade agreement; and in all such cases, the certificate shall be marked as "INAPPLICABLE".

**Explanation:** Clause (d) of sub-rule (2) includes the cases where goods are not covered in the respective tariff notification or the product specific rule mentioned in the certificate of origin is not applicable to the goods.

**Rule 4. Origin related information to be possessed by importer. -**

The importer claiming preferential rate of duty shall-

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

**Rule 5. Requisition of information from the importer. -**

- (1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.
- (2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.
- (3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.
- (4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.
- (5) Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:
  - (a) The importer relinquishes the claim; or
  - (b) The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

**Rule 6. Verification request. -**

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

- (a) there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;
- (b) there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or
- (c) verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed:

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

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

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

- (a) timeline as prescribed in the respective trade agreement; or
- (b) in absence of such timeline in the agreement, sixty days from the request having been communicated.

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

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

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

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

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

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

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

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

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

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

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

**Rule 7. Identical goods.-**

(1) Where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.

(2) Where a claim on identical goods is rejected under sub-rule (1), the Principal Commissioner of Customs or the Commissioner of Customs shall,

(a) Inform the importer the reasons of rejection in writing including the detail of the cases wherein it was established that the identical goods from the same exporter or producer did not satisfy the origin criteria; and

(b) Restore preferential tariff treatment on identical goods with prospective effect, after it is demonstrated on the basis of information and documents received, that the manufacturing or other origin related conditions have been modified by the exporter or producer so as to fulfil the origin requirement of the Rules of Origin under the trade agreement.

**Rule 8. Miscellaneous. -**

(1) Where an importer fails to provide requisite information and documents by the due date prescribed under rule 5, or where it is established that he has failed to exercise reasonable care to ensure the accuracy and truthfulness of the information furnished under these rules, the proper officer shall, notwithstanding any other action required to be taken under these rules and the Act, verify assessment of all subsequent bills of entry filed with the claim of preferential rate of duty by the importer, in terms of sub-section (2) of section 17 of the Act, in order to prevent any possible misuse of a trade agreement. The system of compulsory verification of assessment shall be discontinued once the importer demonstrates that he is taking reasonable care, as required under section 28DA of the Act, through adequate record-based controls.

(2) Where it is established that an importer has suppressed the facts, made wilful misstatement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.

(3) In the event of a conflict between a provision of these rules and a provision of the Rules of Origin, the provision of the Rules of Origin shall prevail to the extent of the conflict.

(4) The Central Government may, by notification in the Official Gazette, relax such provisions of these rules for such class of persons as may be deemed necessary.

**10.6 The Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.**

NOTIFICATION No. 189/2009-CUSTOMS (N.T.) Dated 31.12.2009.

G.S.R. ... (E) - In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules, namely:-

1. **Short title and commencement. -** (1) These rules may be called the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the

*Governments of Member States of the Association Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009.*

**3. Origin criteria.-** *The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under the following:-*

- (a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,*
- (b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.*

**13. Certificate of Origin .-** *Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III.*

## **10.7 Annexure III**

[see rule 13]

*“Operational Certification Procedures for the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian (ASEAN) and the Republic of India Rules, 2009.*

**For the purposes of implementing the rules, the following Operational Certification Procedures on the issuance and verification of the AIFTA Certificate of Origin and other related administrative matters shall be followed:**

### **AUTHORITIES**

- 1. The AIFTA Certificate of Origin shall be issued by the Government authorities (Issuing Authority) of the exporting party.*
- 2. Each party shall provide 11 original sets of, or through electronic means, specimen signatures and specimen of official seals used by their Issuing Authorities, including their names and addresses, through the ASEAN for dissemination to the other parties. Any change in names, addresses, specimen signatures or official seals shall be promptly informed in the same manner or electronically.*
- 3. For the purposes of determining originating status, the Issuing Authority shall have the right to call for any supporting documentary evidence or carry out any checks considered appropriate.*

### **APPLICATIONS**

- 4. The exporter and/or the manufacturer of the products qualified for preferential tariff treatment shall apply in writing to the Issuing Authority of the exporting party requesting for the pre-exportation verification of the origin products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-*

*exportation*

*verification may not apply to products, the origin of which by their nature can be easily verified.*

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

## **6. PRE-EXPORTATION EXAMINATION**

*(a) The Issuing Authority shall, to the best of their competence and ability, carry out proper examination upon each application for the AIFTA Certificate of Origin to ensure that-*

- (i) the application and the AIFTA Certificate of Origin are duly completed and signed by the authorised signatory;*
- (ii) the origin of the product is in conformity with the Rules;*
- (iii) other statements of the AIFTA Certificate of Origin correspond to supporting documentary evidence submitted; and*
- (iv) description, quantity and weight of goods, marks and numbers on packages, and number and type of packages, as specified, conform to the products to be exported.*

*(b) Multiple items declared on a single invoice and single AIFTA Certificate of Origin shall be allowed, provided that each item qualifies separately in its own right.*

## **VERIFICATION**

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

- (i) the request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA of Origin may be inaccurate, unless the retroactive check is requested on a random basis;*
- (ii) the Issuing Authority shall respond to the request promptly and reply within three months after receipt of the request for retroactive check;*
- (iii) In case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing party may suspend provision of preferential tariff treatment while awaiting the result of verification. may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and*
- (iv) the retroactive check process, including the actual process and the determination of whether the subject good is originating or not, should be completed and the result communicated to the Issuing Authority within six While the process of the retroactive check is being undertaken, sub-paragraph (iii) shall be applied.*

*(b) The Customs Authority of the importing party may request an importer for information or documents relating to the origin of imported good in accordance with its domestic laws and regulations before requesting the check pursuant to paragraph (a)."*

10.8. **Section 111. Confiscation of improperly imported goods, etc. -** *The following goods brought from a place outside India shall be liable to confiscation: -*

(a) ...

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

(p) ...

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

10.9. **Section 112. Penalty for improper importation of goods, etc.-**

*Any person, -*

(a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

(b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -*

(i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*

(ii) *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :*

..... "

10.10 **Section 114A of the Customs Act, 1962 read as Penalty for short-levy or non-levy of duty in certain cases. -**

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:*

..... "

10.11. **Section 114 AA of the Customs Act, 1962 read as – Penalty for use of false and incorrect material. -**

*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

11.1. The Bills of Entry covered under this show cause notice, filed by the importer,

wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per the verification report of Certificates of Origin conducted, the Certificates were found to be inauthentic in respect of supplies in aforesaid bills of entry.

11.2. Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any in respect of the imported goods while presenting Bill of Entry. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by submitting inauthentic Certificates of Origin, it appeared that the importer willfully evaded Customs duty on the impugned goods. In the present case, importer has wrongly availed the benefit of exemption Notification based on inauthentic CoOs. The importer has failed to exercise the reasonable care as to the accuracy and truthfulness of the information provided by exporter/ seller to them.

11.3. The above facts indicate collusion, wilful mis-statement and suppression of facts on the part of the subject importer where they have taken clearance of import consignments against import documents viz. CoOs which are inauthentic and by claiming duty exemption benefit under ASEAN-India PTA against such inauthentic CoOs; they have violated the conditions of rules of origin as required for compliance under Section 28DA of the Customs Act' 1962, thereby causing injury to Revenue for the short levied duty amounts as per the Basic customs Duty exemption claimed under Notification No. 046 / 2011-Cus dated 01.06.2011. Therefore, it appeared that the importer knowingly and deliberately availed the exemption Notification on the goods of Malaysia based origin. It appeared to be indicative of their mens rea. Moreover, the importer appeared to have suppressed the said facts from the Customs authorities and willfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, and has not paid applicable BCD and thereby also short paid applicable IGST. Accordingly, it appeared that the provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case for recovery of total duty of **Rs. 97,24,494/- (BCD - Rs. 74,91,906/- + SWS – Rs. 7,49,190/- + IGST – Rs. 14,83,397/-)**, along with appropriate rate of interest and penalty as applicable for the same reasons.

11.4. As mentioned in the foregoing paras, the imported goods under the said Bills of Entry, as mentioned in para 1.2 supra, have been found to be not fulfilling the condition for claiming the exemption against Certificate of Origin (CoO) in terms of Notification No. 46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported having assessable value of Rs. 9,98,92,078/- (Rupees Nine Crore Ninety-Eight Lakhs Ninety-Two Thousand and Seventy-eight Rupee only) appeared to be liable for confiscation under Section 111(o) & Section 111(q) of the Customs Act, 1962. Therefore, it appeared that the importer is also liable for imposition of penalty under Section 112(a) and 114A of the Customs Act, 1962.

11.5. As discussed above, it appeared that the importer had failed to follow the procedure as prescribed under Section 28DA (1) of Customs Act, 1962, and failed to possess sufficient information as regards to authenticity of Certificate of Origin and failed to exercise reasonable care as to the accuracy and truthfulness of the information supplied by the manufacturer/supplier. The importer was not eligible for exemption benefit as provided

under Notification No. 46/2011-Cus dated 01.06.2011, as amended. The importer has intentionally submitted the documents for claiming the exemption benefit before Customs. Therefore, it appeared that they are also liable for imposition of penalty under **Section 114AA** of the Customs Act, 1962.

12. The Certificate of Origin (CoO) in respect of Bills of Entry as mentioned in Annexure-A, issues by the Ministry of International Trade and Industry (MITI) for 'Cold Rolled Stainless Steel Circles Grade J3' supplied by M/s. Ezy Metal Enterprises and M/s. MH Megah Maju Enterprises is inauthentic, as discussed above.

13. Now therefore, M/s. Shreenathji Industries and Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries, having their registered address at Bamanbore GIDC Plot No. 420 and 421, Village Bamanbore Chotila, Gujarat – 363021 are hereby called upon to show cause to the Commissioner of Customs, Nhava Sheva –III, JNCH, Nhava Sheva, Taluka: Uran, District Raigad, Maharashtra-400707 within 30 days of the receipt of this notice as to why:

- i. The exemption benefit of Notification No. 46/2011 dated 01.06.2011, as amended, availed by the importer against the import of goods under Bills of Entry (as detailed in Annexure A to this show cause notice) filed at JNCH, Nhava Sheva, should not be disallowed in terms of Section 28DA (11) of the Customs Act, 1962 and the applicable BCD in terms of Notification No.50/2017-Cus dated 30.06.2017 should not be charged;
- ii. The impugned goods having total assessable value of **Rs. 9,98,92,078/- (Rupees Nine Crore Ninety-Eight Lakhs Ninety-Two Thousand and Seventy-Eight Rupee only)** as mentioned in Annexure A of this notice and Tables-A to C above should not held liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962;
- iii. The differential Customs duty amounting to **Rs. 97,24,494/- (BCD - Rs. 74,91,906/- + SWS – Rs. 7,49,190/- + IGST – Rs. 14,83,397/-) (as calculated in Table C)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- iv. Penalty should not be imposed on M/s Shreenathji Industries under Section 112(a) & (b)/ 114A & 114 AA of the Customs Act, 1962;
- v. Penalty should not be imposed on Proprietor of M/s. Shreenathji Industries, i.e. Shri Maulik Kumar Somabhai Patel, under Section 112(a) & (b)/ 114A & 114 AA of the Customs Act, 1962.

### **DEFENCE REPLY**

14. The Noticee has not submitted any written reply to the SCN.

### **RECORD OF PERSONAL HEARINGS**

15. In order to follow principle of natural justice, an opportunity of personal hearing was granted to Noticee on 11.11.2025, 24.11.2025, 08.12.2025, 17.12.2025 & 19.12.2025 vide this office letter dated 06.11.2025, 17.11.2025, 27.11.2025, 08.12.2025 & 17.12.2025 respectively. Same were also communicated to the Noticee at the following e-mail

address : shreenathjiindustries99@gmail.com, 112mkumar@gmail.com, maulikpatel61091@gmail.com. However, the same were not availed by the Noticee.

## **DISCUSSION AND FINDINGS**

16. I have carefully gone through the Show Cause Notice (SCN), the applicable legal provisions, material on record and facts of the case. Before going into the merits of the case, I would like to discuss whether the case has reached finality for adjudication.

## **PRINCIPLE OF NATURAL JUSTICE**

17. Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity was granted to the Noticee on 11.11.2025, 24.11.2025, 08.12.2025, 17.12.2025 & 19.12.2025 vide this office letter dated 06.11.2025, 17.11.2025, 27.11.2025, 08.12.2025 & 17.12.2025 respectively. Same were also communicated to the Noticee at the following e-mail address : shreenathjiindustries99@gmail.com, 112mkumar@gmail.com, maulikpatel61091@gmail.com. However, the same were not availed by the Noticee. Moreover, as per the provisions of Section 28(9) of the Customs Act, 1962, this adjudicating authority is under strict legal obligation to complete the adjudication proceedings within a time bound manner. I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

## **FRAMING OF ISSUES**

18. Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- A. **As to whether the exemption benefit of Notification No. 46/2011 dated 01.06.2011, as amended, availed by the importer against the import of goods under impugned Bills of Entry should be disallowed in terms of Section 28DA (11) of the Customs Act, 1962 or otherwise;**
- B. **As to whether the applicable BCD in terms of Notification No.50/2017-Cus dated 30.06.2017 should be charged on the impugned imported goods and differential Customs duty amounting to Rs. 97,24,494/- (BCD - Rs. 74,91,906/- + SWS - Rs. 7,49,190/- + IGST - Rs. 14,83,397 should be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise;**
- C. **As to whether the impugned goods having total assessable value of Rs. 9,98,92,078/- (Rupees Nine Crore Ninety-Eight Lakhs Ninety-Two Thousand and Seventy-Eight Rupee only) should be held liable for confiscation as per the**

**provisions of Section 111(o) and 111 (q) of the Customs Act, 1962, or otherwise;**

D. **As to whether Penalty should be imposed on M/s Shreenathji Industries under Section 112(a) & (b)/ 114A & 114 AA of the Customs Act, 1962 or otherwise;**

E. **As to whether Penalty should be imposed on Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries under Section 112(a) & (b)/ 114A & 114 AA of the Customs Act, 1962, or otherwise.**

**A. NOW I TAKE THE FIRST QUESTION/ISSUE, WHETHER THE EXEMPTION BENEFIT OF NOTIFICATION NO. 46/2011 DATED 01.06.2011, AS AMENDED, AVAILED BY THE IMPORTER AGAINST THE IMPORT OF GOODS UNDER IMPUGNED BILLS OF ENTRY SHOULD BE DISALLOWED IN TERMS OF SECTION 28DA (11) OF THE CUSTOMS ACT, 1962 OR OTHERWISE;**

**19.** It is alleged in the SCN that the imported goods have been cleared by producing inauthentic certificates of origin and therefore the duty exemption benefit claimed under the ASEAN-India Preferential Trade Agreement under Notification No. 046/2011.Cus dated 01.06.2011 is improper and illegitimate. In order to examine the same, I now procced to examine the outcome of the investigation, records before me, legal provisions & statement of the importer, in this regard.

**19.1** I observe that Noticee: **M/s. Shreenathji Industries**, having its registered premises at Bamanbore GIDC, Plot Nos. 420 and 421, Village Bamanbore, Taluka Chotila, District Surendranagar, Gujarat – 363021 (IEC: DTVPP0253D), has imported Cold Rolled Stainless Steel Coils, Grade J3 from Malaysia, under (CTH) 72202090 of the first schedule to the Customs Tariff Act, having declared total assessable value of ₹9,98,92,078/-. The goods were stated to have been procured from M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise. The details of the relevant Bills of Entry, including description, declared value, origin claimed, and duty benefits availed, are given in Table-I above (refer para 1.2 supra). The effective rate of basic customs duty on this product under (CTH) 72202090 is 7.5% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017 (Sr. no. 376E), as amended.

Further, India is a signatory of ASEAN India Free Trade Agreement (AIFTA) agreement wherein the import of subject ‘Cold Rolled Stainless Steel Coils’ are eligible for a concessional rate of “NIL” BCD as per Sl no. 967(I) of Customs Tariff notification no. 46/2011 dated 01.06.2011.

However, subject concessional rate of NIL BCD is subject to strict compliance to the provisions of Section 28 DA of the Customs Act, 1962 and Rules of Origin for the ASEAN – India Free Trade Agreement (AIFTA). The said rules of origin are mandated in terms of the Article 4 of AIFTA Agreement and the same have been duly notified vide Customs notification no. 189 (NT)/2009 date 31.12.2009 under section 5 of the Customs Tariff Act, 1975. The above said concessional NIL rate of BCD is available subject to submission of a true and valid Country of origin certificate (COO) as per Rule 13 of Rules of Origin and Article 4 of the AIFTA agreement. In extension of the ASEAN – India Free Trade Agreement (AIFTA), CBIC proceeded to issue Exemption Notification 46/2011 dated 01 June 2011 granting benefit of "nil" rate of Basic Custom Duty on goods falling in Chapter “72” when imported into India from a country listed in Appendix I of the said Exemption Notification.

In this background, impugned ‘Cold Rolled Stainless Steel Coils’, have been

declared to be imported from ASEAN Country Malaysia, and the Importer availed preferential rate of duty in terms of Notification No. 46/2011-Customs, dated 01.06.2011, issued under the ASEAN-India Free Trade Agreement (AIFTA), under Serial No. 967(I) thereof and claimed exemption from the payment of whole basic customs duty. Importer in total has filed 20 Bill of Entry while claiming concessional NIL rate of BCD on the basis of Importer's declaration in the subject Bills of Entry: - ***"We declare that content of invoice and other relating documents pertaining to the subject goods including the COO certificate are true and correct in every aspect."*** The Importer has accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer have also declared in all the said 20 Bill of entries that the said goods '***qualify as originating goods for preferential rate of duty under the Customs Tariff (Determination of Origin of goods under the Preferential trade agreement between the Government of member states of ASEAN and Republic of India) Rules, 2009 vide notification no. 189/2009-Customs (NT) date 31.12.2009***'.

**19.2** In this context the provisions of Section 17 (1) of the Customs Act, 1962 are important which prescribe as follows:

**“Section 17 Assessment of duty. —**

**4 . An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods”**

Further provisions of Section 28 DA of the Customs Act, 1962 are also important which place the whole responsibility of accuracy and truthfulness of the Country of Origin certificate on the Importer. The said provisions are reproduced below: -

**“Section 28 DA. Procedure regarding claim of preferential rate of duty**

**(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,-**

- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;**
- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;**
- (iii) furnish such information in such manner as may be provided by rules;**
- (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.**

**(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.”**

**19.3 In view of the above, I observe that inescapable and definitive responsibility for producing a genuine and truthful Country of Origin certificate has been placed on Importer in case of claiming benefit of concessional rates of NIL BCD on import of subject from Malaysia.**

However, I observe that there is no dispute about the fact in the instant case that FTA Cell, CBIC, vide letter reference file no. 456/451/2020-Cus.V dated 27.04.2021 informed that as a result of verification of 87 CoOs, (two CoOs issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas supplier M/s.

MH Megah Maju Enterprise) The Ministry of International Trade and Industry (MITI), Malaysia, (the Certificate of Origin issuing authority in Malaysia as per AIFTA) vide its email dated 14.04.2021, has categorically informed that it had never received any Certificate of Origin applications from the respective companies/ suppliers, namely **M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise** amongst others and such 87 CoOs are inauthentic. Thereby informing that the any CoO certificate claimed to be issued by MITI, Malaysia to the supplies M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise was inauthentic.

Further, examination of CoOs submitted by the importer to avail benefit of preferential tariff rate under Notification 46/2011 dated 01.06.2011 for impugned 20 Bills of Entry pertaining to the import of Cold Rolled Stainless Steel Coils, Grade J3, from Malaysia, has led to the findings that the said CoO has been said to be issued for supplier M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise by Ministry of International Trade and Industry (MITI), Malaysia for export of “Cold Rolled Stainless Steel Coil Grade J3” to M/s. Shreenathji Industries, which is contrary to the verification report submitted by the Ministry of International Trade and Industry (MITI), Malaysia, wherein, MITI, Malaysia communicated that they have never received application request for issuance of CoO from all the companies including M/s Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise.

These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority.

Therefore, the impugned Country of Origin certificate used by the Importer are inauthentic. Further, Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic.

**In fact, the investigation has brought on the following evidences on the record:**

**TABLE-VI**

<b>RUD</b>	<b>Description</b>
RUD-1	DRI HQ New Delhi's letter dated 07.06.2022
RUD-2	Summons dated 19.04.2023 and Summons dated 04.10.2023
RUD-3	CBIC Letter reference file no. 456/451/2020-Cus.V dated 27.04.2021 issued from FTA Cell of CBIC
RUD-4	E-mail dated 14.04.2021/15.04.2021 received from MITI
RUD-5	Statement dated 19.10.2023 of Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries
Annexure-A	Details of Bill of Entries imported by M/s. Shreenathji Industries along with duty calculation

Annexure-  
B Screenshot of the COO verification from the official Malaysian govt. portal  
(<https://newepco.dagangnet.com.my/dnex/login/>)

**Details of the imported goods are as follows:**

**TABLE-II**

<b>Sr. No.</b>	<b>Particular</b>	<b>Details</b>
1.	Name of Importer	M/s. Shreenathji Industries, GIDC Plot No. 420 and 421, Village Bamanbore Chotila, Gujarat – 363021 (IEC - DTVPP0253D)
2.	PAN	DTVPP0253DFT001
3.	Bill of Entry No. & date	Details as per <b>TABLE-I</b> (20 Bills of Entry)
4.	Name of Supplier	M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise
5.	Declared Country of Origin	Malaysia
6.	Item Description	Cold Rolled Stainless Steel Coils Grade J3
7.	CTI	72202090
8.	Custom exemption notification	46/2011 [967(I)]
9.	Total Assessable Value	Rs. 9,98,92,078/-
10.	Basic Custom Duty paid	NIL
11.	IGST paid	Rs. 1,79,80,574/-

**Bill of Entry wise Supplier Name & AIFTA COO Ref No. is as follows:**

**Table-III**

<b>Sr. No.</b>	<b>BE No</b>	<b>BE Date</b>	<b>Supplier Name</b>	<b>AIFTA COO REF NO.</b>
1	8404944	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069314
2	8405007	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069368
3	8405165	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 069415
4	8416764	8/9/2020	M/S. MH MEGAH MAJU ENTERPRISE	KL-2020-AI-21- 068213
5	8548722	8/21/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -073497
6	8548747	8/21/2020	M/S. MH MEGAH MAJU ENTERPRISE	KL-2020-AI-21 -073172
7	8738529	9/8/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077195
8	8869330	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077254
9	8869621	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077359
10	8869641	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077307
11	8869796	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077328
12	8879258	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -084172
13	8879389	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 084211
14	8880299	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -084397
15	9011735	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -086785
16	9011744	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086753
17	9012545	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-086819
18	9012551	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086847
19	9219760	10/18/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 092511
20	9490230	11/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-095847

**I. DOCUMENTARY EVIDENCE:****VERIFICATION OF COUNTY OF ORIGIN (CoO) CERTIFICATES FROM THE ISSUING AUTHORITY**

**19.4** I observe that, DRI, Ahmedabad Zonal Unit (AZU), Ahmedabad received letter dated 07.06.2022 from DRI HQ New Delhi forwarding various letters of FTA Cell, CBIC, enclosing 87 inauthentic Certificates of Origin, said to be issued in Malaysia for export of Stainless-Steel Coils and Sheets (HS Codes 72209090, 721990, 721934 and 721935) from Malaysia to India under ASEAN-INDIA FTA along with preliminary analysis for further necessary action. In continuation with the said letter dated 07.06.2022, DRI HQ, New Delhi vide their letter F. No. DRI/HQ-CI/B-Cell/50D/Enq-01/2020-CI dated 25.07.2022, also forwarded 42 CoOs reported to be inauthentic by the issuing authority in Malaysia.

**19.5** I, further observe that, CBIC letter reference file no. 456/451/2020-Cus.V dated 27.04.2021 issued from FTA Cell of CBIC as forwarded by DRI, HQ indicated that 87 Certificates of Origin said to be issued in Malaysia under ASEAN-India Free Trade Area (AIFTA) for the export of Cold Rolled Stainless Coil Grade to India were referred to the issuing authorities for causing retroactive verification in respect of genuineness and authenticity of the same. In response, Ministry of International Trade and Industry (MITI), Malaysia vide its email dated 14.04.2021 informed as follows:

- a. That the said 87 CoO Certificates were not authentic and were not issued by their office.
- b. MITI, Malaysia also informed that they had never received any CoO application from the respective companies.
- c. Vide their email dated 14.04.2021, MITI, Malaysia forwarded list of 87 Certificates of Origin, which were found to be inauthentic and the same were not issued by them. List of 87 CoO found inauthentic by MITI is as follows:

**LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY  
THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)**

28/08/2019

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
1	KL-2019-AI-21-085278	MH MEGAH MAJU ENTERPRISE	30.09.2019
2	KL-2019-AI-21-072695	MZH MAJU INDUSTRY	01.08.2019
3	KL-2019-AI-21-077386	MH MEGAH MAJU ENTERPRISE	19.08.2019
4	KL-2019-AI-21-085859	MH MEGAH MAJU ENTERPRISE	01.10.2019
5	KL-2019-AI-21-086871	MH MEGAH MAJU ENTERPRISE	09.10.2019
6	KL-2019-AI-21-088746	MH MEGAH MAJU ENTERPRISE	25.10.2019
7	KL-2019-AI-21-091327	MH MEGAH MAJU ENTERPRISE	12.11.2019
8	KL-2019-AI-21-091319	MH MEGAH MAJU ENTERPRISE	12.11.2019
9	KL-2019-AI-21-095563	MH MEGAH MAJU ENTERPRISE	26.11.2019
10	KL-2019-AI-21-095873	MH MEGAH MAJU ENTERPRISE	27.11.2019
11	KL-2019-AI-21-075801	MH MEGAH MAJU ENTERPRISE	15.08.2019
12	KL-2019-AI-21-077378	MH MEGAH MAJU ENTERPRISE	19.08.2019
13	KL-2019-AI-21-077411	MH MEGAH MAJU ENTERPRISE	19.08.2019
14	KL-2019-AI-21-080137	MH MEGAH MAJU ENTERPRISE	28.08.2019
15	KL-2019-AI-21-080172	MH MEGAH MAJU ENTERPRISE	28.08.2019
16	KL-2019-AI-21-085898	MH MEGAH MAJU ENTERPRISE	02.10.2019
17	KL-2019-AI-21-086855	MH MEGAH MAJU ENTERPRISE	09.10.2019
18	KL-2019-AI-21-086834	MH MEGAH MAJU ENTERPRISE	09.10.2019
19	KL-2019-AI-21-086829	MH MEGAH MAJU ENTERPRISE	09.10.2019
20	KL-2019-AI-21-06958	SETICA INDUSTRIES (M) SDN BHD	22.01.2019
21	KL-2019-AI-21-06591	SETICA INDUSTRIES (M) SDN BHD	07.02.2019
22	KL-2018-AI-21-139316	JENTAYU INDUSTRY	28.12.2018
23	KL-2019-AI-21-03293	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
24	KL-2019-AI-21-05483	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
25	KL-2019-AI-21-07132	SETICA INDUSTRIES (M) SDN BHD	15.02.2019
26	KL-2019-AI-21-099652	MH MEGAH MAJU ENTERPRISE	31.12.2019
27	KL-2020-AI-21-001958	MH MEGAH MAJU ENTERPRISE	22.01.2020
28	KL-2019-AI-21-02866	SETICA INDUSTRIES (M) SDN BHD	25.01.2019
29	KL-2020-AI-21-003235	MH MEGAH MAJU ENTERPRISE	04.02.2020
30	KL-2019-AI-21-091247	MH MEGAH MAJU ENTERPRISE	12.11.2019
31	KL-2020-AI-21-005078	CEKAP PRIMA SDN BHD	29.01.2020
32	KL-2019-AI-21-010992	ARTFRANSI INTERNATIONAL SDN BHD	24.09.2019
33	KL-2019-AI-21-010967	ARTFRANSI INTERNATIONAL SDN BHD	11.10.2019
34	KL-2019-AI-21-010979	ARTFRANSI INTERNATIONAL SDN BHD	31.10.2019
35	KL-2019-AI-21-010989	ARTFRANSI INTERNATIONAL SDN BHD	19.11.2019
36	KL-2019-AI-21-088361	MH MEGAH MAJU ENTERPRISE	21.10.2019
37	KL-2020-AI-21-000862	MH MEGAH MAJU ENTERPRISE	20.01.2020
38	KL-2019-AI-21-018819	HARD METAL TRADE SDN BHD	16.12.2019
39	KL-2019-AI-21-014873	SETICA INDUSTRIES (M) SDN BHD	09.04.2019
40	KL-2019-AI-21-015487	SETICA INDUSTRIES (M) SDN BHD	12.04.2019
41	KL-2019-AI-21-039871	MH MEGAH MAJU ENTERPRISE	23.04.2019
42	KL-2019-AI-21-043235	CEKAP PRIMA SDN BHD	12.12.2019
43	KL-2019-AI-21-038903	SETICA INDUSTRIES (M) SDN BHD	N/A
44	KL-2019-AI-21-072613	MZH MAJU INDUSTRY	01.08.2019

45	KL-2019-AI-21-093214	EZY METAL ENTERPRISE	15.11.2019
46	KL-2019-AI-21-095525	MH MEGAH MAJU ENTERPRISE	26.11.2019
47	KL-2019-AI-21-095473	MH MEGAH MAJU ENTERPRISE	26.11.2019
48	KL-2019-AI-21-027975	MALY METAL INDUSTRY SDN BHD	30.09.2019
49	KL-2019-AI-21-033688	MALY METAL INDUSTRY SDN BHD	13.11.2019
50	KL-2019-AI-21-039022	MALY METAL INDUSTRY SDN BHD	25.11.2019
51	KL-2019-AI-21-043662	MALY METAL INDUSTRY SDN BHD	16.12.2019
52	KL-2019-AI-21-088477	MH MEGAH MAJU ENTERPRISE	22.10.2019
53	KL-2019-AI-21-088408	CEKAP PRIMA SDN BHD	12.11.2019
54	KL-2019-AI-21-033027	MH MEGAH MAJU ENTERPRISE	22.10.2019
55	KL-2019-AI-21-038395	CEKAP PRIMA SDN BHD	27.11.2019
56	KL-2019-AI-21-0101023	ARTFRANSI INTERNATIONAL SDN BHD	02.12.2019
57	KL-2019-AI-21-043670	MALY METAL INDUSTRY SDN BHD	16.12.2019
58	KL-2019-AI-21-099382	EZY METAL ENTERPRISE	27.12.2019
59	KL-2019-AI-21-044172	MALY METAL INDUSTRY SDN BHD	31.12.2019
60	KL-2019-AI-21-091339	JENTAYU INDUSTRY	30.11.2019
61	KL-2019-AI-21-090139	JENTAYU INDUSTRY	11.11.2019
62	KL-2019-AI-21-093873	JENTAYU INDUSTRY	29.11.2019
63	KL-2019-AI-21-085293	MH MEGAH MAJU ENTERPRISE	30.09.2019
64	KL-2019-AI-21-086925	MH MEGAH MAJU ENTERPRISE	09.10.2019
65	KL-2019-AI-21-017946	PIONEER ULT ENTERPRISE	24.10.2019
66	KL-2019-AI-21-017945	PIONEER ULT ENTERPRISE	24.10.2019
67	KL-2019-AI-21-017896	PIONEER ULT ENTERPRISE	04.11.2019
68	KL-2019-AI-21-017895	PIONEER ULT ENTERPRISE	04.11.2019
69	KL-2019-AI-21-017912	PIONEER ULT ENTERPRISE	15.11.2019
70	KL-2019-AI-21-018082	PIONEER ULT ENTERPRISE	20.11.2019
71	KL-2019-AI-21-018251	PIONEER ULT ENTERPRISE	29.11.2019
72	KL-2019-AI-21-018250	PIONEER ULT ENTERPRISE	29.11.2019
73	KL-2019-AI-21-018252	PIONEER ULT ENTERPRISE	29.11.2019
74	KL-2019-AI-21-018796	PIONEER ULT ENTERPRISE	16.12.2019
75	KL-2019-AI-21-018809	PIONEER ULT ENTERPRISE	16.12.2019
76	KL-2019-AI-21-018800	PIONEER ULT ENTERPRISE	16.12.2019
77	KL-2019-AI-21-018848	PIONEER ULT ENTERPRISE	24.12.2019
78	KL-2019-AI-21-018845	PIONEER ULT ENTERPRISE	24.12.2019
79	KL-2019-AI-21-018843	PIONEER ULT ENTERPRISE	24.12.2019
80	KL-2019-AI-21-018898	PIONEER ULT ENTERPRISE	31.12.2019
81	KL-2020-AI-21-019358	PIONEER ULT ENTERPRISE	15.01.2020
82	KL-2020-AI-21-019428	PIONEER ULT ENTERPRISE	28.01.2020
83	KL-2020-AI-21-019484	PIONEER ULT ENTERPRISE	28.01.2020
84	KL-2020-AI-21-019482	PIONEER ULT ENTERPRISE	28.01.2020
85	KL-2020-AI-21-019480	PIONEER ULT ENTERPRISE	28.01.2020
86	KL-2020-AI-21-019511	PIONEER ULT ENTERPRISE	04.02.2020
87	KL-2019-AI-21-01095	SETICA INDUSTRIES (M) SDN BHD	07.01.2019

**19.6** From the foregoing communications, it is noticed that the CBIC had forwarded the retroactive verification request to the Competent Authority in Malaysia and the issuing authority MITI, Malaysia, via email dated 14.04.2021 had reverted affirming that 87 referred CoOs were not issued by them and the same were termed as inauthentic.

However, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL

**ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

**19.7** Thereafter, examination of CoO Certificates submitted by the importer to avail benefit of preferential tariff rate under Notification 46/2011 dated 01.06.2011 for impugned 20 Bills of Entry pertaining to the import of Cold Rolled Stainless Steel Coils, Grade J3, from Malaysia, has led to the findings that no such said CoO Certificate has been said to be issued for supplier M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise by Ministry of International Trade and Industry (MITI), Malaysia for export of "Cold Rolled Stainless Steel Coil Grade J3" to M/s. Shreenathji Industries, therefore the Importer's claim at the time of filing of said 20 Bills of Entry is contrary to the verification report submitted by the Ministry of International Trade and Industry (MITI), Malaysia, wherein, MITI, Malaysia communicated that they have never received application request for issuance of CoO from all the companies including **M/s Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise**. Therefore, I find that the impugned Country of Origin certificate used by the Importer are inauthentic.

#### **VERIFICATION OF COUNTY OF ORIGIN (CoO) CERTIFICATES FROM THE ONLINE PORTAL OF THE ISSUING AUTHORITY:**

**19.8** Further it is observed that the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, was conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark "Endorsement No does not exist". This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority. Details of Bills of Entry, AIFTA COO Ref no & Verification output is tabulated below:

Sr. No.	BE No	BE Date	Supplier Name	AIFTA COO REF NO.	Verification Output on Official Malaysian Govt. Portal
1	8404944	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069314	Endorsement No does not exist
2	8405007	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-069368	Endorsement No does not exist
3	8405165	8/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 069415	Endorsement No does not exist
4	8416764	8/9/2020	M/S. MH MEGAH MAJU ENTERPRISE	KL-2020-AI-21- 068213	Endorsement No does not exist
5	8548722	8/21/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -073497	Endorsement No does not exist
6	8548747	8/21/2020	M/S. MH MEGAH MAJU ENTERPRISE	KL-2020-AI-21 -073172	Endorsement No does not exist
7	8738529	9/8/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077195	Endorsement No does not exist
8	8869330	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077254	Endorsement No does not exist
9	8869621	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077359	Endorsement No does not exist
10	8869641	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077307	Endorsement No does not exist
11	8869796	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-077328	Endorsement No does not exist
12	8879258	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -084172	Endorsement No does not exist
13	8879389	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 084211	Endorsement No does not exist
14	8880299	9/19/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -084397	Endorsement No does not exist
15	9011735	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21 -086785	Endorsement No does not exist
16	9011744	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086753	Endorsement No does not exist
17	9012545	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-086819	Endorsement No does not exist
18	9012551	9/30/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 086847	Endorsement No does not exist
19	9219760	10/18/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21- 092511	Endorsement No does not exist
20	9490230	11/7/2020	M/S. EZY METAL ENTERPRISE	KL-2020-AI-21-095847	Endorsement No does not exist

**19.9** Screenshot of the said verification has been enclosed for each of 20 Bills of Entry in Para 7.2 supra. Sample screenshot of the said verification for some of the Bills of Entry is reproduced, as follows:

KL-2020-AI-21-077307

BILL OF ENTRY NO. 8869641 DATED 19.09.2020

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-077307

RESET SEARCH

Endorsement No does not exist.

KL-2020-AI-21-077359

BILL OF ENTRY NO. 8869621 DATED 19.09.2020

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-077359

RESET SEARCH

Endorsement No does not exist.

KL-2020-AI-21-077195

BILL OF ENTRY NO. 8738529 DATED 08.09.2020

PLEASE CLICK HERE TO SEARCH

Endorsement No  
KL-2020-AI-21-077195

RESET SEARCH

Endorsement No does not exist.

**19.10** Therefore, I find that the online verification of the veracity of the Certificates of

Origin claimed to be issued by MITI, Malaysia to the suppliers M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, & used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, was carried out on the official Malaysian Government portal (<https://newepco.dagangnet.com.my/dnex/login/>). During such verification, the relevant Certificate of Origin numbers were found to be non-existent, with the system displaying the remark "Endorsement No does not exist". This online verification has reaffirmed the information and inauthenticity report received by FTA Cell, CBIC in response of their letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021. The issuing authority, namely the Ministry of International Trade and Industry (MITI), Malaysia, has, vide its email dated 14.04.2021, categorically informed and confirmed that it had never received any Certificate of Origin applications from the suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise. Therefore, this conclusively establishes that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority. Therefore, I find that the impugned Country of Origin certificate used by the Importer are inauthentic.

## II. ORAL EVIDENCE:

**19.11** I observe that Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, has inter-alia stated, as follows:

**19.11.1**he started business of trading of SS Coils at Rajkot, in the year 2018.his firm had imported Cold Rolled SS Coils from China and Malaysia.

**19.11.2**he used to look after the customs related work, with the help of an accountant.

**19.11.3**he used to import SS Coils from Malaysia during 2020-21 and had availed exemptions of Customs duty in respect of 20 bill of entries under ASEAN-India Free Trade Area (AIFTA), which is available under Notification no. 46/2011-Customs (Sr. no. 967(I)) dated 01.06.2011.

**19.11.4**he started importing from Malaysia, with the help of an agent, whose name he doesn't remember. He further stated that he had imported goods from two suppliers namely, M/s. Ezy Metal Enterprise (for 18 bill of entries) and M/s. MH Megah Maju Enterprise (for 2 bill of entries).

**19.11.5**he was explained Section 28DA of the Customs Act, 1962 wherein he was obligated to verify the CoOs, he admitted that he did not verify the genuineness of the CoOs and did not possess any information with respect to manufacturing process of imported SS coils.

**19.11.6**he was shown CBIC's letter vide F. No. 456/451/2020-Cus.V dated 27.04.2021 issued by the OSD (FTA Cell) enclosing a copy of e-mail dated 14.04.2021 sent by Ministry of International Trade and Industry (MITI), Malaysia, wherein name of both his suppliers i.e. M/s. MH Megah Maju Enterprise and M/s. Ezy Metal Enterprise were appearing.

**19.11.7**he understood that this verification report is also applicable in the case of identical goods in terms of Rule 7 of CAROTAR 2020 prescribed under Section 28DA of the Customs Act, 1962.

**19.11.8****He agreed that his firm is not eligible to avail the exemption benefits of Notification No. 046/2011-Cus dated 01.06.2011 on the import of SS Coils.**

**19.12** From above, it is observed that Shri Maulik Kumar Somabhai Patel Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under

Section 108 of the Customs Act, 1962, stated that he started trading in stainless steel coils at Rajkot in 2018 and that his firm imported Cold Rolled Stainless Steel Coils from China and Malaysia.

**19.12.1** He stated that he handled the customs-related work of the firm with the help of an accountant. During 2020–21, he imported stainless steel coils from Malaysia and availed customs duty exemption in respect of 20 Bills of Entry under the ASEAN–India Free Trade Area (AIFTA), as provided under Notification No. 46/2011-Customs (Sr. No. 967(I)) dated 01.06.2011. The imports were made through an agent, whose name he could not recall, from two suppliers, namely M/s. Ezy Metal Enterprise (18 Bills of Entry) and M/s. MH Megah Maju Enterprise (2 Bills of Entry).

**19.12.2** **He admitted that although Section 28DA of the Customs Act, 1962 requires the importer to verify the Certificates of Origin, he did not verify their genuineness and had no knowledge of the manufacturing process of the imported stainless-steel coils. On being confronted with CBIC's letter F. No. 456/451/2020-Cus.V dated 27.04.2021 issued to the Principal Director General, DRI, New Delhi enclosing copy of emails received from High Commission of India, Kuala Lumpur, Malaysia and Ministry of International Trade and Industry (MITI), Malaysia along with its attachments, he stated that 87 Certificates of Origin numbers were featuring in the list shared by MITI, Malaysia, which were not authentic; that name of his both supplier i.e. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise was also appearing in the list at Sr. No. 45 and 46 respectively. He further stated that he understood that the verification report was also applicable in case of identical goods i.e. SS Coils, imported by him from the same supplier/manufacturer/producer i.e. M/s Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, in terms of Rule 7 of CAROTAR 2020 prescribed under Section 28DA of the Customs Act, 1962.**

**19.12.3** **During the statement, he agreed that it seems his firm was not eligible to avail the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, on the import of SS Coils from M/s Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise.**

**19.13** I find that the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:

- i. Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd. Reported in 2000 (120) E.L.T. 280 (S.C.): Statement recorded by a Customs Officer under Section 108 is a valid evidence
- ii. In 1996 (83) E.L.T. 258 (S.C.) in the case of Shri Naresh J. Sukawani v. Union of India : “ 4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.”
- iii. It was held that statement recorded by the Customs officials can certainly be used

against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)

- iv. State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. “Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.” (Vide Taylors’s Treatise on the Law of Evidence, VI. I).
- v. There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin*, (1997) 3 SCC 721.
- vi. Hon’ble Supreme Court in the case of *Kanhailal Vs. UOI*, 2008 (1) Scale 165 observed: “ The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava’s case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.
- vii. Hon’ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of *KANTILAL M JHALA Vs UNION OF INDIA* vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that **“Confessional statement corroborated by the seized documents, admissible even if retracted”**.
- viii. The Apex Court in the case *Hazari Singh V/s. Union of India* reported in 110 E.L.T. 406, and case of *Surjeet Singh Chhabra V/s. Union of India & Others* reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person.”
- ix. The Hon’ble Supreme Court in the case of *Badaku Joti Savant Vs. State of Mysore* [ 1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench) ] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.
- x. In the case of *BhanaKhalpa Bhai Patel Vs. Asstt. Collr. Of Customs, Bulsar* [1997 (96) E.L.T. 211 (SC)], the Hon’ble Apex Court at Para 7 of the judgment held that :-“ It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide *Romesh Chandra v. State of West Bengal*, AIR 1970 S.C. 940 and *K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin*, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.”
- xi. In the case of *Raj Kumar Karwal Vs. UOI & Others* (1990) 2 SCC 409, the Court held that officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.
- xii. Hon. Supreme Court’s decisions in the case of *Romesh Chandra Mehta Vs. the State of West Bengal* (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence

xiii. Jagjit Singh vs State Of Punjab And Another, Hon'ble Punjab and Haryana High Court in Crl. Appeal No. S-2482-SB of 2009 Date of Decision: October 03, 2013 held that: The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.

**19.14** In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. **I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

**19.15** A thorough examination of the above facts undoubtedly establishes that the Noticee deliberately suppressed material facts while importing the subject goods, with the intent to circumvent the provisions of the Customs Act, 1962 and the relevant exemption notifications, and to obtain undue benefits. It is further evident that **the overseas suppliers, namely M/s. MH Megah Maju Enterprise and M/s. Ezy Metal Enterprise, had never applied for issuance of Certificates of Origin to the designated issuing authority in Malaysia (MITI, Malaysia), and that the Certificates of Origin used were inauthentic.** This clearly establishes that the origin of the imported goods was mis-declared in order to wrongfully avail benefits under the ASEAN-India Free Trade Agreement or other trade agreements. Such a modus operandi enabled the Noticee to misuse the Free Trade Agreement between India and Malaysia and thereby evade payment of the applicable customs duties on the imported goods.

### III. CIRCUMSTANTIAL EVIDENCE:

**19.16** In view of the detailed findings in paragraphs 19.1 to 19.15 above, it is established that legally leviable Customs duty has been evaded by the Noticee, M/s. Shreenathji Industries, through a well-planned conspiracy involving fraud, evasion, and misdeclaration. In paragraphs 19.1 to 19.15 supra, it is clearly brought out that the Noticee, M/s. Shreenathji Industries, deliberately evaded customs duty by fraudulently availing preferential tariff benefits under Notification No. 46/2011-Customs dated 01.06.2011, issued under the ASEAN-India Free Trade Agreement (AIFTA), in respect of imports covered under the impugned 20 Bills of Entry.

The documentary evidence on record conclusively establishes that the Certificates of Origin (CoOs), claimed to have been issued to the suppliers M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise by the issuing authority and submitted by the Noticee in support of its claim for preferential tariff treatment, were unauthentic. The Ministry of International Trade and Industry (MITI), Malaysia, being the designated issuing authority, vide its email dated 14.04.2021, categorically confirmed **that it had neither issued the said Certificates of Origin nor received any applications for issuance of such certificates from the suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise.** These findings were officially communicated by the FTA Cell of CBIC vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021. This documentary evidence directly contradicts the declarations made by the Noticee in the Bills of Entry and establishes that the Certificates of Origin relied upon were inauthentic, fake, and fraudulent.

The digital evidence further corroborates the above findings. Independent online verification carried out on the official Malaysian Government DagNet / ePCO portal revealed that the Certificate of Origin reference numbers corresponding to the impugned 20 Bills of Entry were non-existent, with the system displaying the remark **“Endorsement No**

**does not exist".** This digital verification conclusively demonstrates that the Certificates of Origin were never generated or issued by MITI, Malaysia.

The oral evidence, in the form of the voluntary statement dated 19.10.2023 of Shri Maulik Kumar Somabhai Patel; Proprietor of M/s. Shreenathji Industries, recorded under Section 108 of the Customs Act, 1962, further strengthens the case against the Noticee. In his statement, he admitted that he did not verify the genuineness of the Certificates of Origin despite the statutory obligation cast upon him under Section 28DA of the Customs Act, 1962, and that he had no knowledge of the manufacturing process of the imported stainless-steel coils. He also acknowledged that the names of both his suppliers appeared in the list of exporters whose Certificates of Origin were declared unauthentic by MITI, Malaysia, and conceded that the verification report was applicable to identical goods imported by him from the same suppliers under Rule 7 of CAROTAR, 2020. He further admitted that his firm was not eligible to avail the benefit of Notification No. 46/2011-Customs.

These circumstantial evidences clearly establish that the Noticee consistently mis-declared, in all the impugned Bills of Entry, that the impugned goods qualified as originating goods in terms of the Rules of Origin Notification No. 189/2009 dated 31.12.2009 and that all documents, including the Certificates of Origin, were true and correct. At the same time, the Noticee failed to exercise any due diligence, failed to possess any origin-related information, and failed to furnish any supporting documents as mandated under Section 28DA of the Customs Act, 1962 and Rules 3, 4, and 5 of CAROTAR, 2020.

The inferential evidence emerging from the totality of facts unmistakably points to a conscious and deliberate design on the part of the Noticee to misuse inauthentic Certificates of Origin in order to wrongfully avail exemption from payment of basic customs duty. The use of such inauthentic Certificates of Origin across multiple Bills of Entry, the false declarations made at the time of self-assessment, and the complete absence of any credible explanation **cumulatively establish the presence of 'mens rea'.**

Accordingly, on a cumulative evaluation of the documentary, oral, digital, circumstantial, and inferential evidence available on record, **I find that the evidences present a coherent picture of conspiracy without any contradiction or unanswered gap, clearly establishing that the Noticee used such inauthentic Certificates of Origin with a clear intent to evade legally leviable customs duty.** The acts of misdeclaration, use of inauthentic Certificates of Origin, and deliberate non-compliance with statutory obligations under the Customs Act, 1962 and the rules made thereunder are not accidental or procedural lapses, but form part of a conscious and well-planned course of conduct aimed at wrongful availment of preferential tariff benefit and evasion of lawfully payable customs duty.

**Violation of the provisions of Notification No. 46/2011-Customs dated 01.06.2011, Notification No. 189/2009-Customs (N.T.) dated 31.12.2009, Section 28DA of the Customs Act, 1962, and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020).**

**Violation of the provisions of Preferential Tariff Benefit Notification No. 46/2011-Customs dated 01.06.2011:**

**19.16.1** I observe that the Tariff Notification No. 046/2011 dated 01.06.2011 is applicable for giving duty exemption benefits to specific goods when imported into India from Philippines and other ASEAN countries in view of ASEAN- India FTA (AIFTA). The Notification No. 046/2011 dated 01.06.2011 is further amended time to time. In this case,

relevant provisions of the applicable Notifications are as below:

- **Principal Notification No. 46/2011 dated 1<sup>st</sup> June, 2011-**

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

*Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31<sup>st</sup> December 2009.*

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

- **Amended Notification No. 96/2017-Customs dated 29<sup>th</sup> December, 2017-**

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

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

**19.17** In this case, M/s. Shreenathji Industries Ltd availed duty exemption benefits under Customs Tariff Notification No. 46/2011 dated 01.06.2011 (Sr. No. 967(I)), claiming

Country of Origin benefits as per the ASEAN-India FTA (AIFTA) agreement. To support this claim, the importer submitted Certificate of Origin (COO) certificates claimed to be issued by the Ministry of International Trade and Industry, Malaysia (MITI).

However, CBIC forwarded a request for retroactive verification of Certificates of Origin to the competent authority in Malaysia, and the issuing authority, MITI, Malaysia, vide email dated 14.04.2021, confirmed that 87 Certificates of Origin were not issued by it and were inauthentic.

However, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE, are also inauthentic.**

**I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

The inauthentic nature of the Certificates of Origin was further corroborated by online verification conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government DagNet / ePCO portal, where the Certificate of Origin numbers were found to be non-existent with the remark “Endorsement No does not exist”. Accordingly, it is conclusively established that the Certificates of Origin relied upon by the Noticee were inauthentic and not issued by the designated issuing authority, rendering the claim of preferential tariff benefit inadmissible.

This implies that the Noticee have mis-declared the origin of goods to avail benefits under the ASEAN-India Free Trade Agreement (AIFTA) or other trade agreements and is not eligible for benefit of Notification 46/2011 dated 01.06.2011.

**Violation of the provisions of Rules of Origin under the ASEAN-India Free Trade Agreement (AIFTA) Notification No. 189/2009-Customs (N.T.) dated 31.12.2009:**

**19.18** I observe that, for the purpose of determining the origin of products entitled to preferential tariff treatment under the ASEAN-India Free Trade Agreement (AIFTA) Notification 189/2009 (N.T.) dated 31.12.2009, the rules stipulated in Rule 13, *inter alia*, state that:

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

**19.19** However, in the present case, CBIC forwarded a request for retroactive verification of Certificates of Origin to the competent authority in Malaysia, and the issuing authority, MITI, Malaysia, vide email dated 14.04.2021, confirmed that 87 Certificates of Origin were not issued by it and were inauthentic.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE, are also inauthentic.**

I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGA MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.

The inauthentic nature of the Certificates of Origin was further corroborated by online verification conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government DagNet / ePCO portal, where the Certificate of Origin numbers were found to be non-existent with the remark “Endorsement No does not exist”. Accordingly, it is conclusively established that the Certificates of Origin relied upon by the Noticee were inauthentic and not issued by the designated issuing authority, rendering the claim of preferential tariff benefit inadmissible.

Further, it is pertinent to mention here that the Certificates of Origin verified by MITI, Malaysia to be inauthentic, fake & fraudulent pertain to import of ‘Cold Rolled Stainless Steel Coils’ from Malaysia to India, which are identical to the impugned goods ‘Cold Rolled Stainless Steel Coils’ imported by the Noticee. In terms of Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962, preferential tariff claims for identical goods imported from the same exporters are liable to rejection without further verification.

Therefore, Noticee has clearly violated Rule 13 of Rules of Origin under the ASEAN-India

Free Trade Agreement (AIFTA) Notification No. 189/2009-Customs (N.T.) dated 31.12.2009.

**Violation of the provisions of Section 28DA of the Customs Act, 1962:**

**19.20** Further, Section 28DA Procedure regarding claim of preferential rate of duty, is as follows:

- “(1) *An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -*
- “(i) *make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*
- “(ii) *possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
- “(iii) *furnish such information in such manner as may be provided by rules;*
- “(iv) *exercise reasonable care as to the accuracy and truthfulness of the information furnished.*
- “(2) *The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.”*

**19.21** I observe that Section 28DA(1) of the Customs Act, 1962 casts a statutory obligation on the importer claiming preferential rate of duty to make a correct declaration, to possess sufficient information regarding the origin of the goods, including the applicable origin criteria and regional value content, and to exercise reasonable care as to the truthfulness and accuracy of the information furnished. Section 28DA(2) further clarifies that mere submission of a Certificate of Origin does not absolve the importer of this responsibility. Therefore, from the statutory provisions reproduced above, it is evident that an importer claiming a preferential rate of duty under any trade agreement is under a **positive and mandatory obligation** to ensure compliance with the conditions prescribed therein. The law clearly casts responsibility on the importer to make a correct declaration that the goods qualify as originating goods, to possess sufficient information regarding satisfaction of the country of origin criteria, including regional value content and product-specific rules, and to exercise reasonable care regarding the truthfulness and accuracy of the information furnished. It is further clear that mere submission of a Certificate of Origin issued by an issuing authority does not absolve the importer of this responsibility. Sub-section (2) specifically provides that the importer cannot solely rely upon the Certificate of Origin and must independently exercise reasonable care before claiming the preferential rate of duty.

In the present case, M/s. Shreenathji Industries claimed preferential rate of duty by declaring the country of origin of the imported Cold Rolled Stainless Steel Coils and Sheets as Malaysia and by submitting Certificates of Origin purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia.

In this background of Concessional NIL rate of BCD on ‘Cold Rolled Stainless Steel Coils’, same are imported from ASEAN Country Malaysia, and the Importer the availed preferential rate of duty in terms of Notification No. 46/2011-Customs, dated 01.06.2011, issued under the ASEAN-India Free Trade Agreement (AIFTA), against Serial No. 967(I) thereof and claimed exemption from the payment of whole basic customs duty. Importer in total has filed 20 Bill of Entry while claiming concessional NIL rate of BCD on

the basis of Importer's declaration in the subject Bills of Entry: - ***"We declare that content of invoice and other relating documents pertaining to the subject goods including the COO certificate are true and correct in every aspect."***. The Importer have accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer have also declared in all the said 20 Bill of entries that the said goods '***qualify as originating goods for preferential rate of duty under the Customs Tariff (Determination of Origin of goods under the Preferential trade agreement between the Government of member states of ASEAN and Republic of India) Rules, 2009 vide notification no. 189/2009-Customs (NT) date 31.12.2009***'.

I find that; the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Further, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by M/s. Shreenathji Industries. In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importers while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the country of origin while being presented to the Customs.

However, In the present case, FTA Cell of CBIC, vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, conveyed that as a result of verification of 87 CoOs, (two CoOs issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas supplier M/s. MH Megah Maju Enterprise). The Ministry of International Trade and Industry (MITI), Malaysia, (the Certificate of Origin issuing authority in Malaysia as per AIFTA) vide its email dated 14.04.2021, has categorically informed that it had never received any Certificate of Origin applications from the respective companies/ suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise amongst others and such 87 CoOs are inauthentic. Thereby informing that the any CoO certificate claimed to be issued by MITI, Malaysia to the supplies M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise was inauthentic.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favor of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.

These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority, rendering the claim of preferential tariff benefit inadmissible.

A thorough examination of the above facts undoubtedly establishes that the Noticee deliberately suppressed material facts while importing the subject goods, with the intent to circumvent the provisions of the Customs Act, 1962 and the relevant exemption notifications, and to obtain undue benefits. It is further evident that the overseas suppliers, namely M/s. MH Megah Maju Enterprise and M/s. Ezy Metal Enterprise, had never applied for issuance of Certificates of Origin to the designated issuing authority in Malaysia (MITI, Malaysia), and that the Certificates of Origin used were inauthentic. This clearly indicates that the origin of the imported goods was misrepresented in order to wrongfully avail benefits under the ASEAN-India Free Trade Agreement or other trade agreements. Such a modus operandi enabled the Noticee to misuse the Free Trade Agreement between India and Malaysia and thereby evade payment of the applicable customs duties on the imported goods.

From the foregoing, I find that there is no dispute about the fact that the Certificates of Origin pertaining to the relevant Bills of Entry are inauthentic. In terms of Section 28DA of the Customs Act, 1962, it is the legal responsibility of the importer to ensure the truthfulness and accuracy of the Certificates of Origin, including compliance with the origin criteria and regional value content requirements. The importer failed to discharge this statutory responsibility.

Further, Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic. Instead,

Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that although Section 28DA of the Customs Act, 1962 requires the importer to verify the Certificates of Origin, he did not verify their genuineness and had no knowledge of the manufacturing process of the imported stainless-steel coils. On being confronted with CBIC's letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, issued to the Principal Director General, DRI, New Delhi, enclosing copies of emails received from the High Commission of India, Kuala Lumpur, Malaysia and the Ministry of International Trade and Industry (MITI), Malaysia along with their attachments, he submitted that 87 Certificate of Origin numbers were featured in the list shared by MITI, Malaysia, which were not authentic, and that the names of both his suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, also appeared in the said list at Sr. Nos. 45 and 46 respectively. He further stated that he understood that the said verification report was also applicable in the case of identical goods, i.e. stainless-steel coils, imported by him from the same suppliers/manufacturers/producers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, in terms of Rule 7 of CAROTAR, 2020 prescribed under Section 28DA of the Customs Act, 1962. He also agreed that it appeared that his firm was not eligible to avail the benefit of Notification No. 46/2011-Customs dated 01.06.2011, as amended, on the import of stainless-steel coils from M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise.

Accordingly, I hold that the impugned goods, namely Cold Rolled Stainless Steel Coils and Sheets imported by M/s. Shreenathji Industries, having been imported on a claim of preferential rate of duty in contravention of Section 28DA of the Customs Act, 1962.

**Violation of the provisions of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020):**

**19.22** Further, it is observed that the Importer is required to possess information and knowledge as per Rule 4 read with Rule 5 of the CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. The said Provisions of Rule 4 and Rule 5 are reproduced below: -

**Rule 4.**

***Origin related information to be possessed by importer. -***

*The importer claiming preferential rate of duty shall-*

*(a) possess information, as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.*

*(b) keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.*

*(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.*

**Rule 5.**

***Requisition of information from the importer. -***

*(1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.*

*(2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.*

*(3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.*

*(4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.*

*(5) Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:*

*(a) The importer relinquishes the claim; or*

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

**19.23** I also observe as follows:

- However, in the instant case that there is no dispute about the fact that the Noticee M/s. Shreenathji Industries has taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty, as prescribed in Rule 4 (c) of the CAROTAR, 2020.
- Further, Noticee has failed to provide the above said vital information along with supporting documents as prescribed in Rule 4 (b) of the CAROTAR, 2020 at any relevant point of time namely i) at the time of recording of his statement under section 108 of the Customs Act, 1962, or (ii) in its defence reply. In fact, Noticee has neither given any written submission, nor attended any Personal Hearing Opportunity.
- Additionally, Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a

claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions ; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility.

Therefore, I find that the Noticee has violated Rule 4 & 5 of CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. Further, as mandated by Section 28 DA of the Customs Act, 1962 read with Rule 4 of CAROTAR,2020, The Importer has failed to possess sufficient information as per Form I of the said rules along with supporting documents of the same. Therefore, in terms of Section 28 DA (2) of the Customs Act, 1962, Noticee cannot avoid responsibility of ensuring accuracy and truthfulness of COO certificate, facing the pecuniary consequences in terms of payment of related duty and penalty.

**DENIAL OF PREFERENTIAL DUTY BENEFIT OF NOTIFICATION 46/2011 UNDER RULE 7 OF CAROTAR, 2020 READ WITH SECTION 28DA(11) OF THE CUSTOMS ACT, 1962:**

**19.24** On careful consideration of the above facts of the case & documentary, oral and circumstantial evidences, it is an established fact that the Country-of-Origin Certificates submitted by the Noticee to claim duty exemption under Notification No. 46/2011 dated 01.06.2011 for steel products were inauthentic. It is evident that the overseas suppliers, namely M/s. MH Megah Maju Enterprise and M/s. Ezy Metal Enterprise, had never applied for issuance of Certificates of Origin to the designated issuing authority in Malaysia (MITI, Malaysia), and that the Certificates of Origin used were inauthentic. Investigations revealed that the certificates were not issued by the Ministry of International Trade and Industry, Malaysia (MITI), as claimed. Further, it is undoubtedly establishing that the Noticee deliberately suppressed material facts while importing the subject goods, with the intent to circumvent the provisions of the Customs Act, 1962 and the relevant exemption notifications, and to obtain undue benefits. This clearly indicates that the origin of the imported goods was misrepresented in order to wrongfully avail benefits under the ASEAN-India Free Trade Agreement or other trade agreements. Such a modus operandi enabled the Noticee to misuse the Free Trade Agreement between India and Malaysia and thereby evade payment of the applicable customs duties on the imported goods.

**19.25** Further, for better understanding of the issue in hand, it is imperative to reproduce the relevant portions of Rule 7 of CAROTAR, 2020 and Section 28DA(11) of the Customs Act, 1962, which are as follows:

**Customs (Administration of Rules of Origin under Trade Agreements) Rules, CAROTAR, 2020. Notification No. 81/2020 - Customs (N.T.) dated, 21 st August, 2020.**

*In exercise of the powers conferred by section 156 read with section 28DA of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely Rule 7. Identical goods .-*

*(1) Where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.*

*(2) Where a claim on identical goods is rejected under sub-rule (1), the Principal Commissioner of Customs or the Commissioner of Customs shall,*

*(a) Inform the importer the reasons of rejection in writing including the detail of the cases wherein it was established that the identical goods from the same exporter or producer did not satisfy the origin criteria; and*

*(b) Restore preferential tariff treatment on identical goods with prospective effect, after it is demonstrated on the basis of information and documents received, that the manufacturing or other origin related conditions have been modified by the exporter or producer so as to fulfil the origin requirement of the Rules of Origin under the trade agreement.*

### **Section 28DA Procedure regarding claim of preferential rate of duty.**

***(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.***

**19.26** I observe that, Rule 7 of CAROTAR, 2020, read with Section 28DA(11) of the Customs Act, 1962, provides that where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed under the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer, unless sufficient information is furnished to establish that such identical goods meet the country of origin criteria. Therefore, 3 necessary condition are to be fulfilled:

- i. Supplier/ exporter should be same
- ii. Goods should be identical
- iii. There is no sufficient information to establish that such identical goods meet the country of origin criteria.

**19.26.1** Now, from the discussion in the foregoing para's it is already established that the issuing authority, namely MITI, Malaysia, vide its email dated 14.04.2021, has informed that 87 Certificates of Origin were not issued by it and were inauthentic, and that it had never received any Certificate of Origin applications from the suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, among others.

That, the FTA Cell of CBIC, vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, conveyed that as a result of verification of 87 CoOs, (two CoOs issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas supplier M/s. MH Megah Maju Enterprise), The Ministry of International Trade and Industry (MITI), Malaysia, (the Certificate of Origin issuing authority in Malaysia as per AIFTA) vide its email dated 14.04.2021, has categorically informed that it had never received any Certificate of Origin applications from the respective companies/ suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise amongst others and such 87 CoOs are inauthentic. Thereby informing that the any CoO certificate claimed to be issued by MITI, Malaysia to the supplies M/s. Ezy Metal Enterprise and M/s. MH

Megah Maju Enterprise was inauthentic.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.

Since the suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, are among the list of entities whose Certificates of Origin were found to be inauthentic by MITI, Malaysia, and the same suppliers are involved in the import of the impugned goods by the Noticee, M/s. Shreenathji Industries, **therefore the condition (i) for denial of preferential tariff benefit under Notification No. 46/2011-Customs, in terms of Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962, stands fulfilled in the present case.**

**19.26.2** Further, it is observed that the 87 Certificates of Origin verified by MITI, Malaysia and found to be inauthentic pertain to the import of Cold Rolled Stainless Steel Coils from Malaysia, and the impugned goods imported by the Noticee (as stipulated in Table-I, para 1.2 supra) are also Cold Rolled Stainless Steel Coils. hence the goods are identical. **Therefore the condition (ii) for denial of preferential tariff benefit under Notification No. 46/2011-Customs, in terms of Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962, also stands fulfilled in the present case.**

However, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic**

**Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.

**19.26.3** Further, Importer during the course of investigation has never contested that the subject Country of Origin certificate submitted by the Importer were authentic. Instead, Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that although Section 28DA of the Customs Act, 1962 requires the importer to verify the Certificates of Origin, he did not verify their genuineness and had no knowledge of the manufacturing process of the imported stainless-steel coils. On being confronted with CBIC's letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, issued to the Principal Director General, DRI, New Delhi, enclosing copies of emails received from the High Commission of India, Kuala Lumpur, Malaysia and the Ministry of International Trade and Industry (MITI), Malaysia along with their attachments, he submitted that 87 Certificate of Origin numbers were featured in the list shared by MITI, Malaysia, which were not authentic, and that the names of both his suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, also appeared in the said list at Sr. Nos. 45 and 46 respectively. I find that there is no dispute about the fact that MITI Malaysia has very clearly and unequivocally informed the CBIC that they neither received any application to issue CoO Certificate to M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, nor they actually issue any CoO Certificate to them.

He further stated that he understood that the said verification report was also applicable in the case of identical goods, i.e. stainless-steel coils, imported by him from the same suppliers/manufacturers/producers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, in terms of Rule 7 of CAROTAR, 2020 prescribed under Section 28DA of the Customs Act, 1962. He also agreed that it appeared that his firm was not eligible to avail the benefit of Notification No. 46/2011-Customs dated 01.06.2011, as amended, on the import of stainless-steel coils from M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise.

Also, in the instant case that there is no dispute about the fact that the Noticee M/s. Shreenathji Industries has taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty, as prescribed in Rule 4 (c) of the CAROTAR, 2020. Noticee has also failed to provide the above said vital information along with supporting documents as prescribed in Rule 4 (b) of the CAROTAR, 2020 at any relevant point of time namely i) at the time of recording of his statement under section 108 of the Customs Act, 1962, or (ii) in its defence reply. In fact, Noticee has neither given any written submission, nor attended any Personal Hearing

Opportunity. Additionally, Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions ; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility.

Hence, there is nothing on record to establish that impugned ‘Cold Rolled Stainless Steel Coils’ supplied by M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, meet the country of origin criteria. **Therefore the condition (iii) for denial of preferential tariff benefit under Notification No. 46/2011-Customs, in terms of Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962, also stands fulfilled in the present case.**

Accordingly, I find that the necessary conditions for the applicability of the provisions of Rule 7 of CAROTAR, 2020, read with Section 28DA(11) of the Customs Act, 1962, providing for rejection of other claims of preferential rate of duty for identical goods imported from the same exporter or producer, without further verification, are applicable in the present case. These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority, rendering the claim of preferential tariff benefit inadmissible. Therefore, claim of preferential tariff benefit is inadmissible for the impugned goods.

**19.27** I also find that the case is established on documentary evidences as detailed in foregoing Paras, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon’ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. – Chennai) the Hon’ble CESTAT, South Zonal Bench, Chennai has held as under: -

“Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing

entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means.

**19.28** In view of the foregoing, on careful consideration of the facts of the case, documentary evidence, investigation reports, statutory provisions, and the voluntary statement of the importer, I find that M/s. Shreenathji Industries wrongly availed preferential tariff benefit under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No. 967(I)) in respect of imports of Cold Rolled Stainless Steel Coils, Grade J3, from Malaysia by misrepresenting the country of origin and submitted inauthentic Certificates of Origin (CoOs) to the Customs Authorities.

It stands conclusively established that FTA Cell, CBIC forwarded a request for retroactive verification of Certificates of Origin to the competent authority in Malaysia. In response, the Ministry of International Trade and Industry (MITI), Malaysia, being the designated issuing authority, vide email dated 14.04.2021, categorically confirmed that 87 Certificates of Origin relating to stainless steel exports from Malaysia to India were not issued by it and were inauthentic. MITI, Malaysia further clarified that it had never received any applications for issuance of Certificates of Origin from the suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise. These findings were formally communicated by the FTA Cell of CBIC vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

**I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

These findings are further corroborated by online verification, on the official Malaysian

Government DagNet / ePCO portal (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin reference numbers pertaining to the impugned 20 Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. Thus, it is conclusively established that the Certificates of Origin relied upon by the Noticee were inauthentic and not issued by the designated issuing authority.

I further observe that Rule 13 of the Rules of Origin under the ASEAN-India Free Trade Agreement mandates that a claim for preferential tariff treatment must be supported by a valid Certificate of Origin issued by a designated government authority in accordance with the Operational Certification Procedures. In the present case, this mandatory requirement stands clearly violated.

I also find that Section 28DA(1) of the Customs Act, 1962 casts a statutory obligation on the importer claiming preferential rate of duty to make a correct declaration, to possess sufficient information regarding the origin of the goods—including applicable origin criteria and regional value content—and to exercise reasonable care regarding the truthfulness and accuracy of the information furnished. Section 28DA(2) further clarifies that mere submission of a Certificate of Origin does not absolve the importer of this responsibility. Despite this clear statutory mandate, the Noticee failed to verify the genuineness of the Certificates of Origin and failed to possess or furnish any origin-related information or supporting documents as required under Rules 3, 4, and 5 of CAROTAR, 2020.

The Noticee, while self-assessing duty under Section 17 of the Customs Act, 1962 and subscribing to declarations under Section 46(4) of the Act, declared that the goods qualified as originating goods and that all documents, including Certificates of Origin, were true and correct. However, these declarations have been rendered false and incorrect in material particulars. The proprietor of the Noticee, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin, had no knowledge of the manufacturing process of the imported goods, and accepted that his firm was not eligible to avail the benefit of Notification No. 46/2011-Customs.

I further find that necessary conditions prescribed under Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962—namely, (i) same exporter, (ii) identical goods, and (iii) absence of sufficient information to establish compliance with origin criteria—stand fully satisfied in the present case. Consequently, preferential tariff claims for identical goods imported from the same exporters are liable to be rejected without further verification.

In view of forgoing discussions, it is evident that the Noticee by producing inauthentic CoO Certificate, has failed to comply with the **mandatory and essential condition of Preferential tariff Notification No. 46/2011-Cus., dated 01.06.2011, read with Notification No. 189/2009 (N.T.) dated 31.12.2009 and Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 read with Section 28DA of the Customs Act, 1962**. I observe the said condition is a substantial and crucial condition for availing the exemption benefit under Sl. No. 967 (I) of Notification No. 46/2011-Customs, dated 01.06.2011. In this regard, on 30 July 2018, the constitution bench of the Supreme Court of India (Court), in Commissioner of Customs (Import), Mumbai (Appellant) v Dilip Kumar and Company & Ors. (Respondent) [Civil Appeal No. 3327 OF 2007], has pronounced the principles for the interpretation of exemption notifications in taxation statutes in the following manner: -

“52. To sum up, we answer the reference holding as under

- (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
- (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
- (3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”

Therefore, the benefit under Sl. No. 967 (I) of Notification No. 46/2011-Cus., dated 01.06.2011 cannot be granted the impugned goods, imported by the Noticee. These deviations in-spite of clear-declaration in the subject BOEs to the contrary constitutes non-compliance with the essential condition of said preferential tariff notification and said rules along with constituting misdeclaration which renders the importer liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962, Notification No. 46/2011-Cus., dated 01.06.2011, read with Notification No. 189/2009 (N.T.) dated 31.12.2009 and Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 read with Section 28DA of the Customs Act, 1962.

Therefore, I reject the preferential tariff benefit claimed by M/s. Shreenathji Industries under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No. 967(I)) in respect of the impugned imports of Cold Rolled Stainless Steel Coils from M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise is legally inadmissible. Accordingly, the claim of preferential rate of duty is rejected in terms of Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962.

**B. NOW I TAKE UP THE NEXT ISSUE, AS TO WHETHER THE APPLICABLE BCD IN TERMS OF NOTIFICATION NO. 50/2017-CUS DATED 30.06.2017 (SR NO. 376E) SHOULD BE CHARGED ON THE IMPUGNED IMPORTED GOODS AND DIFFERENTIAL CUSTOMS DUTY AMOUNTING TO RS. 97,24,494/- (BCD - RS. 74,91,906/- + SWS - RS. 7,49,190/- + IGST - RS. 14,83,397 SHOULD BE DEMANDED AND RECOVERED FROM THE IMPORTER UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962 ALONG WITH APPLICABLE INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT, 1962 OR OTHERWISE;**

**20.** It is alleged in the Show Cause Notice that the benefit of preferential tariff under Notification No. 46/2011-Customs, dated 01.06.2011, under Sr. No. 967(I) was illegally claimed by the importer on the basis of inauthentic Certificates of Origin claimed to have been issued by the Ministry of International Trade and Industry (MITI), Malaysia, being the issuing authority under the ASEAN-India Free Trade Agreement, and therefore the importer is liable to pay differential duty amounting to ₹97,24,494/-, as per Sr. No. 367E of Notification 50/2017.

**20.1** The relevant legal provision is as under:

**Section 28 (4) of The Customs Act 1962 provides as follows:**

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

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

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.”*

**Section 28 DA. Of the Customs Act, 1962:**

**Procedure regarding claim of preferential rate of duty**

(1) *An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,-*

- (i) *make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*
- (ii) *possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
- (iii) *furnish such information in such manner as may be provided by rules;*
- (iv) *exercise reasonable care as to the accuracy and truthfulness of the information furnished.*

(2) *the fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.*

**20.2** In this regard, I reiterate my findings recorded at para 19 supra, as the same are applicable mutatis mutandis to the issue in hand. Noticee: M/s. Shreenathji Industries, having its registered premises at Bamanbore GIDC, Plot Nos. 420 and 421, Village Bamanbore, Taluka Chotila, District Surendranagar, Gujarat – 363021 (IEC: DTVPP0253D), has imported Cold Rolled Stainless Steel Coils, Grade J3 from Malaysia, under (CTH) 72202090 of the first schedule to the Customs Tariff Act, having declared total assessable value of ₹9,98,92,078/-. The goods were stated to have been procured from M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise. The details of the relevant Bills of Entry, including description, declared value, origin claimed, and duty benefits availed, are given in Table-I above (refer para 1.2 supra). The effective rate of basic customs duty on this product under (CTH) 72202090 is 7.5% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017 (Sr. no. 376E), as amended.

However, India is a signatory of ASEAN India Free Trade Agreement (AIFTA) agreement wherein the import of subject ‘Cold Rolled Stainless Steel Coils’ are eligible for a concessional rate of “NIL” BCD as per Sl no. 967(I) of Customs Tariff notification no. 46/2011 dated 01.06.2011.

However subject concessional rate of NIL BCD is subject to strict compliance to the provisions of Section 28 DA of the Customs Act, 1962 and Rules of Origin for the ASEAN – Free trade India (AIFTA). The said rules of origin are mandated in terms of the Article 4 of AIFTA Agreement and the same have been duly notified vide Customs notification no. 189 (NT) date 31.12.2007 under section 5 of the Customs Tariff Act, 1975. The above said concessional NIL rate of BCD is available subject to submission of a true and valid Country of origin certificate (COO) as per Rule 13 of Rules of Origin and Article 4 of the AIFTA agreement.

In this background of Concessional NIL rate of BCD on 'Cold Rolled Stainless Steel Coils', same are imported from ASEAN Country Malaysia, and the Importer the availed preferential rate of duty in terms of Notification No. 46/2011-Customs, dated 01.06.2011, issued under the ASEAN-India Free Trade Agreement, against Serial No. 967(I) thereof and claimed exemption from the payment of whole basic customs duty. Importer in total has filed 20 Bills of Entry while claiming concessional NIL rate of BCD on the basis of Importer's declaration in the subject Bills of Entries:- ***"We declare that content of invoice and other relating documents pertaining to the subject goods including the COO certificate are true and correct in every aspect."***. The Importer have accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer have also declared in all the said 20 Bill of entries that the said goods '***qualify as originating goods for preferential rate of duty under the Customs Tariff (Determination of Origin of goods under the Preferential trade agreement between the Government of member states of ASEAN and Republic of India) Rules, 2009 vide notification no. 189/2009-Customs (NT) date 31.12.2009***'.

**20.2.1** In view of the foregoing, on careful consideration of the facts of the case, documentary evidence, investigation reports, statutory provisions, and the voluntary statement of the importer, I find that M/s. Shreenathji Industries wrongly availed preferential tariff benefit under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No. 967(I)) in respect of imports of Cold Rolled Stainless Steel Coils, Grade J3, from Malaysia by misrepresenting the country of origin and submitted inauthentic Certificates of Origin (CoOs) to the Customs Authorities.

It stands conclusively established that FTA Cell, CBIC forwarded a request for retroactive verification of Certificates of Origin to the competent authority in Malaysia. In response, the Ministry of International Trade and Industry (MITI), Malaysia, being the designated issuing authority, vide email dated 14.04.2021, categorically confirmed that 87 Certificates of Origin relating to stainless steel exports from Malaysia to India were not issued by it and were inauthentic. MITI, Malaysia further clarified that ***it had never received any applications for issuance of Certificates of Origin from the suppliers, namely M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise***. These findings were formally communicated by the FTA Cell of CBIC vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

**I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU**

**ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

These findings are further corroborated by online verification, on the official Malaysian Government DagNet / ePCO portal (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin reference numbers pertaining to the impugned 20 Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. Thus, it is conclusively established that the Certificates of Origin relied upon by the Noticee were inauthentic and not issued by the designated issuing authority.

I further observe that Rule 13 of the Rules of Origin under the ASEAN-India Free Trade Agreement mandates that a claim for preferential tariff treatment must be supported by a valid Certificate of Origin issued by a designated government authority in accordance with the Operational Certification Procedures. In the present case, this mandatory requirement stands clearly violated.

I also find that Section 28DA(1) of the Customs Act, 1962 casts a statutory obligation on the importer claiming preferential rate of duty to make a correct declaration, to possess sufficient information regarding the origin of the goods—including applicable origin criteria and regional value content—and to exercise reasonable care regarding the truthfulness and accuracy of the information furnished. Section 28DA(2) further clarifies that mere submission of a Certificate of Origin does not absolve the importer of this responsibility. Despite this clear statutory mandate, the Noticee failed to verify the genuineness of the Certificates of Origin and failed to possess or furnish any origin-related information or supporting documents as required under Rules 3, 4, and 5 of CAROTAR, 2020.

The Noticee, while self-assessing duty under Section 17 of the Customs Act, 1962 and subscribing to declarations under Section 46(4) of the Act, declared that the goods qualified as originating goods and that all documents, including Certificates of Origin, were true and correct. However, these declarations have been rendered false and incorrect in material particulars. The proprietor of the Noticee, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin, had no knowledge of the manufacturing process of the imported goods, and accepted that his firm was not eligible to avail the benefit of Notification No. 46/2011-Customs.

I further find that necessary conditions prescribed under Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962—namely, (i) same exporter, (ii) identical goods, and (iii) absence of sufficient information to establish compliance with origin criteria—stand fully satisfied in the present case. Consequently, preferential tariff claims for identical goods imported from the same exporters are liable to be rejected without further verification.

In view of the foregoing, I reject the preferential tariff benefit claimed by M/s. Shreenathji Industries under Notification No. 46/2011-Customs dated 01.06.2011 (Sr. No. 967(I)) in respect of the impugned imports of Cold Rolled Stainless Steel Coils from M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise is legally inadmissible. Accordingly, the

claim of preferential rate of duty is rejected in terms of Rule 7 of CAROTAR, 2020 read with Section 28DA(11) of the Customs Act, 1962.

**20.2.2** In view of the above discussion in the foregoing paras 19 supra, I find that the investigation has placed on record sufficient evidences, both oral and documentary, to proof that the inauthentic CoO Certificate claimed to be issued by MITI, Malaysia for the suppliers M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise were used by the Noticee M/s. Shreenathji Industries in order to evade Customs duty. In view of the facts and evidences on record, it has been conclusively proven that M/s. Shreenathji Industries, engaged in a deliberate and systematic attempt to evade customs regulations by submitting fake Country of Origin Certificates purportedly issued by Malaysian authorities, the importer misrepresented the origin of goods, thereby wrongfully availing themselves of the concessional/preferential duty rate under Notification No. 46/2011 dated 01.06.2011, as amended. I find that the Importer has very clearly and unambiguously declared and subscribed to the veracity all facts while filing subject 20 Bills of Entry along with the specifically declared and certification that they are eligible of the benefits of the Notification No. 46/2011 dated 01.06.2011 as per Rules of Origin Notification 189/2009 dated 31.12.2009, however the fact remains that the Country of Origin Certificate produced by the Importer are inauthentic, fake and fraudulent. Thus, the Noticee has deliberately suppressed these facts before Customs and submitted counterfeited Country of Origin Certificates misrepresenting that these goods were of Malaysian Origin. Therefore, the goods declared in the impugned Bills of Entry, are liable for the effective rate of basic customs duty on this product under (CTH) 72202090 as per Notification 50/2017-Cus dated 30.06.2017 (Sr. no. 376E), as amended i.e. Basic Customs Duty (BCD) at 7.5%, SWS@ 10% of BCD and IGST at 18% for CTH 7220.

**20.3** I observe that provisions of Section 28 DA of the Customs Act, 1962 place an escapable responsibility on the Importer. It is the duty of the Importer to possess the sufficient information about Country of Origin Certificate criteria, RVC and originality of the COO certificate. The Importer have given an unequivocal declaration about the truthfulness and accuracy of the relevant COO certificate at the time of filling of each Bill of entry.

Therefore, I find that in the instant case, the Noticee had willfully mis-declared the Country of Origin as Malaysia the time of filing of the Bills of Entry to evade payment of correctly leviable duty. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong declaration of the goods and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to mis-declare the COO to take full duty exemption benefit, being fully aware that the CoO were not authentic. This willful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

**20.4** In view of the foregoing, I find that, due to deliberate suppression of country of origin of the goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of this finding of invoking extended period, I rely upon the following court decisions:

(a) 2013(294) E.L.T.222 (Tri. - LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

*“In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified”*

(b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

*Demand – Limitation – Fraud, collusion, willful misstatement, etc. – Extended period can be invoked up to five years anterior to date of service of notice – Assessee’s plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, willful misstatement, etc., rejected as it would lead to strange and anomalous results;*

(c) 2005 (191) E.L.T. 1051 (Tri. – Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

*Demand – Limitation – Blind belief cannot be a substitute for bona fide belief – Section 11A of Central Excise Act, 1944. [para 5]*

(d) 2006 (198) E.L.T. 275 –Interscape v. CCE, Mumbai-I.

*It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;*

**20.5** Further, the Noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

### **Section 28AA.**

#### **Interest on delayed payment of duty—**

*(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

*(2) Interest at such rate not below ten per cent. And not exceeding thirty-six per cent. Per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.*

In this regard, the ratio laid down by Hon’ble Supreme Court in the case of CCE, **Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)]** wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

*“....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is ‘by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade*

*payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."*

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

**20.6** I also observe that as per Schedule-I Customs tariff act 1975, duty rate for CTH 7220 is BCD @ 15%, SWS@10% of BCD & IGST @18%, as follows:

<b>7220</b> <b>FLAT-ROLLED PRODUCTS OF STAINLESS STEEL, OF A WIDTH OF LESS THAN 600 MM</b>					
7220 11	- <i>Not further worked than hot-rolled :</i>				
7220 11 10	-- <i>Of a thickness of 4.75 mm or more :</i>				
	--- Skelp for pipes and tubes	kg.	15%	-	
	--- <i>Strips for pipes and tubes (other than skelp) :</i>				
7220 11 21	---- Chromium type	kg.	15%	-	
7220 11 22	---- Nickel chromium austenitic type	kg.	15%	-	
7220 11 29	---- Other	kg.	15%	-	
7220 11 90	---- Other	kg.	15%	-	
7220 12	-- <i>Of a thickness of less than 4.75 mm :</i>				
7220 12 10	--- Skelp for pipes and tubes	kg.	15%	-	
	--- <i>Strips for pipes and tubes (other than skelp) :</i>				
7220 12 21	---- Chromium type	kg.	15%	-	
7220 12 22	---- Nickel chromium austenitic type	kg.	15%	-	
7220 12 29	---- Other	kg.	15%	-	
7220 12 90	---- Other	kg.	15%	-	
7220 20	- <i>Not further worked than cold-rolled (cold-reduced) :</i>				
7220 20 10	--- Skelp for pipes and tubes	kg.	15%	-	
	--- <i>Strips for pipes and tubes (other than skelp) :</i>				
7220 20 21	---- Chromium type	kg.	15%	-	
7220 20 22	---- Nickel chromium austenitic type	kg.	15%	-	
7220 20 29	---- Other	kg.	15%	-	

\*Amended by Notn. No. 48/18

<b>SECTION-XV</b>		<b>879</b>	<b>CHAPTER-72</b>		
<b>(1)</b>	<b>(2)</b>		<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
7220 20 90	--- Other		kg.	15%	-
7220 90	- <i>Other :</i>				
7220 90 10	--- Skelp (strips for pipes and tubes)		kg.	15%	-
	--- <i>Strips for pipes and tubes (other than skelp) :</i>				
7220 90 21	---- Chromium type		kg.	15%	-
7220 90 22	---- Nickel chromium austenitic type		kg.	15%	-
7220 90 29	---- Other		kg.	15%	-
7220 90 90	--- Other		kg.	15%	-

**20.7** It is noticed that the Show Cause Notice proposes to charge appropriate duty on the goods under BCD @ 7.5 %, SWS@10% of BCD & IGST @18%, as per Notification 50/2017-Cus dated 30.06.2017 (Sr. no. 376E), as amended. However, it is noticed that the Bills of Entry are of the period August 2020 to December 2020, whereas the Sr. No. 367E under Notification 50/2017-Cus dated 30.06.2017 is introduced by Notification No. 2/2021-Customs dated 01.02.2021 w.e.f. 02.02.2021, therefore same shall not be the appropriate Sr. No under Notification 50/2017-Cus dated 30.06.2017 for the impugned goods. Screen shot of the relevant portion of the Notification is reproduced as follows:

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,  
SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

**Notification No. 2/2021-Customs**

New Delhi, the 1<sup>st</sup> February, 2021

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 785(E), dated the 30<sup>th</sup> June, 2017, namely:-

(61) S. Nos. 376 and 376C and the entries relating thereto shall be omitted;  
 (62) after S. No. 376D and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
“376E.	72	All goods other than the following, namely: - (i) goods mentioned against S. Nos. 366, 367, 368, 369, 371A, 371B, 374, 375, 376A, 376B and 376D; (ii) seconds and defectives of goods falling under Chapter 72	7.5%	-	- ”;

V. List 2 and the entries relating thereto shall be omitted.

2. This notification shall come into force on the 2<sup>nd</sup> February 2021.

[F. No.334/02/2021-TRU]

(Rajeev Ranjan)  
Under Secretary to the Government of India.

Note: The principal notification No.50/2017-Customs, dated the 30<sup>th</sup> June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 785(E), dated the 30<sup>th</sup> June, 2017 and last amended *vide* notification No. 43/2020-Customs, dated the 26<sup>th</sup> November, 2020, published *vide* number G.S.R. 736(E), dated the 26<sup>th</sup> November, 2020.

**20.8** However, I find that the above does not affect the Show Cause Notice proceedings, as Serial No. 376 of Notification No. 50/2017-Customs dated 30.06.2017 was applicable to imports made during the period from July 2017 to February 2021 in respect of goods classified under CTH 7220 of the Customs Tariff Act, 1975. Accordingly, Serial No. 376 of

Notification No. 50/2017-Customs dated 30.06.2017 squarely applies to the impugned goods, namely Cold Rolled Stainless Steel Coils, imported under CTH 7220 by the impugned Bills of Entry, i.e., from August 2020 to December 2020.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,  
SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

Notification  
No. 50 /2017 -Customs

New Delhi, the 30th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17<sup>th</sup> March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17<sup>th</sup> March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

Table

S.No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
376.	7219, 7220	All goods other than seconds and defectives	7.5%	-	-

**20.9** Sr. No. 376 has been amended by Notification No.49/2018-Customs, dated 20th June, 2018, as follows:

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,  
SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)  
Notification No.49/2018-Customs

New Delhi, the 20th June, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the

Government of India, Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R. 785(E), dated the 30th June, 2017, namely:-

371B	72191200, 72191300, 72192190, 721990 90	All goods	7.5%	-	- ";
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(15) in S. No. 376, for the entry under column (3), the following entry shall be substituted, namely:-

(3)
"All goods other than those at serial number 371B and seconds and defectives";

I observe that the impugned goods 'Cold Rolled Stainless Steel Coil' classifiable under CTH 7220, are out of preview of Sr. No. 371B and also not seconds and defective. Therefore Sr. No. 376 is squarely applicable to the impugned goods, instead of Sr. No. 376E.

**20.10** I notice that as per Sr. No. 367 the effective rate of Basic Customs Duty for goods falling under CTH 7220 is BCD @ 7.5%, SWS@10% & IGST @18%. And as per Sr. No. 367E the effective rate of Basic Customs Duty for goods falling under CTH 7220 is BCD @ 7.5%, SWS@10% & IGST @18%. Therefore, there is no change in the rate of duty to be charged under Sr. No. 376 and Sr. No. 376E of Notification No. 50/2017 dated 30.06.2017 and therefore the demand of differential duty shall not be affected due to this.

I find that, it is a well-settled principle of law that merely quoting a wrong section or failing to quote the correct section in a Show Cause Notice (SCN) will not vitiate the notice, provided that the substance of the charge is clearly stated and the recipient is not prejudiced. The validity of the SCN hinges on the clarity of the allegations, not on a technical error in citing the law. In this regard, I rely on following case law: -

- In Pruthvirajsingh N Jadeja (D) By Lrs. v Jayeshkumar Chhakaddasm Shah, in Civil Appeal No. 10521 of 2013 on **4 October, 2013** (and similar other cases like **AIRONLINE 2019 SC 1172, 2019 (9) SCC 533, (2019) 137 ALL LR 703, (2019) 13 SCALE 572, (2019) 203 ALLINDCAS 22, (2019) 4 CURCC 12, (2019) 4 RECCIVR 919, (2020) 1 ALL RENTCAS 52, (2020) 1 CIVLJ 239** the Supreme Court reiterated that misstating an incorrect provision is not fatal if the power to grant the order is available to the court.
- Similarly, the court in N. Jagadeesan vs K.Selvam held that simply quoting a wrong provision of law is not a reason to deny relief to a party.
- The ruling in P.K Palanisamy v. N. Arumugham supports the idea that mentioning a wrong provision does not disentitle a person from obtaining the relief they seek.

Accordingly, I find that goods "Cold Rolled Stainless Steel Coils Grade J3 imported by the Noticee M/s. Shreenathji Industries from Malaysia by availing the benefit of preferential duty treatment under Notification No. 46/2011-Customs dated 01.06.2011, (Sr. No. 967(I)) as amended, by claiming the country of origin as Malaysia on the basis of inauthentic CoO, classified under CTH 7220 of the first schedule to the Customs Tariff Act should be

charged the effective rate of basic customs duty @ 7.5% ad-valorem as per Notification 50/2017-Cus dated 30.06.2017 (Sr. no. 376), as amended.

**20.11** Therefore, the imported impugned goods as per Table-I (para 1.2 supra), are to be charged BCD @ 7.5%, SWS@10% & IGST @18% and the detailed differential duty calculation is as follows:

Sl. No.	BOE/Date	ITEM DESCRIPTION	CTI	Declared Country of Origin	Declared Manufacturer's Name
1	As per Table-I (para 1.2 supra)	Cold Rolled Stainless Steel Coils Grade J3	72209090	Malaysia	1. M/s. EZY METAL ENTERPRISE 2. M/s. MH MEGAH MAJU ENTERPRISE

Sr. No.	BE No	BE Date	CTH	Invoice No.	Item No.	Item Desc	Qty	Unit	Assess Val (Rs.)	BCD @ 7.5%	SWS @ 10% of BCD	IGST @ 18%	Total Duty (Rs.)	Duty Paid (Rs.)	Differential Duty Payable (Rs.)
								A		B = 7.5%*A	C = 10%*B	D= (A+B+C)*18%	E=B+C+D	F	G=E-F
1	8404944	8/7/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.55MM X WIDTH 510 MM)	40,624	KGS	3,577,755	268,332	26,833	697,126	992,290	643,996	348,294
	8404944	8/7/2020	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 1.03MM X WIDTH 188 MM)	4,922	KGS	400,805	30,060	3,006	78,097	111,163	72,145	39,018
	8404944	8/7/2020	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.90MM X WIDTH 510 MM)	3,368	KGS	272,128	20,410	2,041	53,024	75,475	48,983	26,492
	8404944	8/7/2020	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.68MM X WIDTH 510 MM)	3,346	KGS	287,332	21,550	2,155	55,987	79,691	51,720	27,972
2	8405007	8/7/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.55MM X WIDTH 510 MM)	10,060	KGS	930,945	69,821	6,982	181,395	258,197	167,570	90,627
	8405007	8/7/2020	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 1.10MM X WIDTH 510 MM)	3,400	KGS	269,140	20,185	2,019	52,442	74,646	48,445	26,201
	8405007	8/7/2020	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.78MM X WIDTH 550 MM)	15,156	KGS	1,301,495	97,612	9,761	253,596	360,970	234,269	126,701
	8405007	8/7/2020	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.90MM X WIDTH 510 MM)	3,350	KGS	270,673	20,300	2,030	52,741	75,071	48,721	26,350
	8405007	8/7/2020	72202090	1	5	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 1.20MM X WIDTH 550 MM)	7,598	KGS	601,448	45,109	4,511	117,192	166,812	108,261	58,551

	8405007	8/7/2020	72202090	1	6	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.68MM X WIDTH 510 MM)	10,092	KGS	888,802	66,660	6,666	173,183	246,509	159,984	86,525
	8405007	8/7/2020	72202090	1	7	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.68MM X WIDTH 580 MM)	2,240	KGS	197,277	14,796	1,480	38,439	54,715	35,510	19,205
	8405165	8/7/2020	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL120600) (THICKNESS-0.29 MM X WIDTH-315 MM)	16,878	KGS	1,693,564	127,017	12,702	329,991	469,710	304,841	164,868
3	8405165	8/7/2020	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL120600) (THICKNESS-0.30 MM X WIDTH-355 MM)	4,750	KGS	476,622	35,747	3,575	92,870	132,191	85,792	46,399
	8405165	8/7/2020	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL120600) (THICKNESS-0.50 MM X WIDTH-510 MM)	3,222	KGS	298,161	22,362	2,236	58,097	82,695	53,669	29,026
	8405165	8/7/2020	72209090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL120600) (THICKNESS-0.62 MM X WIDTH-225 MM)	27,016	KGS	2,435,290	182,647	18,265	474,516	675,428	438,352	237,075
4	8416764	8/9/2020	72209090	1	1	COLD ROLLED STAINLESS STEEL STRIPS COILS GRADE J3 EX STOCK (NICKEL BELOW 1.50%)(SIMS NO.STL120596)(WIDTH BELOW 600 MM)	52,712	KGS	5,150,885	386,316	38,632	1,003,650	1,428,598	927,159	501,439
5	8548722	8/21/2020	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL128375) (THICKNESS-0.29 MM X WIDTH -510 MM)	53,884	KGS	5,417,507	406,313	40,631	1,055,601	1,502,546	975,151	527,394
6	8548747	8/21/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1.50%) (SIMS NO.STL127161) (THICKNESS-0.30 MM WIDTH-510 MM)	27,084	KGS	2,723,030	204,227	20,423	530,582	755,232	490,145	265,087
	8738529	9/8/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.55MM X WIDTH 550 MM)	39,073	KGS	3,690,969	276,823	27,682	719,185	1,023,690	664,375	359,316
7	8738529	9/8/2020	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.35MM X WIDTH 550 MM)	7,000	KGS	745,273	55,896	5,590	145,217	206,702	134,149	72,552
	8738529	9/8/2020	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.78MM X WIDTH 510 MM)	6,890	KGS	609,499	45,712	4,571	118,761	169,044	109,710	59,335
8	8869330	9/19/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.30MM X WIDTH 250 MM)	26,898	KGS	2,872,555	215,442	21,544	559,717	796,703	517,060	279,643
9	8869621	9/19/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.29MM X WIDTH 510 MM)	54,977	KGS	5,871,234	440,343	44,034	1,144,010	1,628,387	1,056,822	571,565
	8869641	9/19/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.55MM X WIDTH 550 MM)	38,044	KGS	3,770,563	282,792	28,279	734,694	1,045,766	678,701	367,064

10	8869641	9/19/2020	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.68MM X WIDTH 485 MM)	16,126	KGS	1,492,393	111,929	11,193	290,793	413,915	268,631	145,284
	8869796	9/19/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.55MM X WIDTH 550 MM)	30,946	KGS	2,930,870	219,815	21,982	571,080	812,877	527,557	285,320
11	8869796	9/19/2020	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.68MM X WIDTH 485 MM)	3,162	KGS	292,630	21,947	2,195	57,019	81,161	52,673	28,487
	8869796	9/19/2020	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (NICKEL BELOW 1%) (THICKNES 0.78MM X WIDTH 550 MM)	20,566	KGS	1,823,517	136,764	13,676	355,312	505,752	328,233	177,519
	8879258	9/19/2020	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL142102) (THICKNESS-0.55 MM X WIDTH- 550 MM)	49,263	KGS	4,665,658	349,924	34,992	909,103	1,294,020	839,819	454,202
12	8879258	9/19/2020	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL142102) (THICKNESS-0.68 MM X WIDTH- 485 MM)	3,210	KGS	297,072	22,280	2,228	57,884	82,393	53,473	28,920
	8879389	9/19/2020	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL135246) (THICKNESS-0.40 MM X WIDTH-510 MM)	10,124	KGS	1,047,955	78,597	7,860	204,194	290,650	188,632	102,018
13	8879389	9/19/2020	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL135246) (THICKNESS-0.50 MM X WIDTH-510 MM)	6,546	KGS	648,778	48,658	4,866	126,414	179,939	116,780	63,159
	8879389	9/19/2020	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL135246) (THICKNESS-0.29 MM X WIDTH-280/406 MM)	37,742	KGS	4,030,633	302,298	30,230	785,369	1,117,896	725,514	392,382
	8880299	9/19/2020	72209090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL142332) (THICKNESS-0.55 MM X WIDTH- 550 MM)	16,464	KGS	1,559,292	116,947	11,695	303,828	432,470	280,673	151,797
	8880299	9/19/2020	72209090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL142332) (THICKNESS-0.68 MM X WIDTH- 485 MM)	15,886	KGS	1,470,182	110,264	11,026	286,465	407,755	264,633	143,122
14	8880299	9/19/2020	72209090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL142332) (THICKNESS-0.78 MM X WIDTH- 550 MM)	14,370	KGS	1,274,139	95,560	9,556	248,266	353,382	229,345	124,037
	8880299	9/19/2020	72209090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL142332) (THICKNESS-0.35 MM X WIDTH- 550 MM)	6,946	KGS	741,794	55,635	5,563	144,539	205,736	133,523	72,214
15	9011735	9/30/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL144053) (THICKNESS-0.29 MM X WIDTH- 510 MM)	54,024	KGS	5,769,459	432,709	43,271	1,124,179	1,600,160	1,038,503	561,657
16	9011744	9/30/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL144055) (THICKNESS-0.29 MM X WIDTH- 510 MM)	54,162	KGS	5,784,197	433,815	43,381	1,127,051	1,604,247	1,041,156	563,092

	9012545	9/30/2020	72202090	1	1	STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL145795) (THICKNESS-0.55 MM X WIDTH-77 MM)	36,750	KGS	3,480,562	261,042	26,104	678,188	965,334	626,501	338,833
17	9012545	9/30/2020	72202090	1	2	WIDTH-77 MM COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL145795) (THICKNESS-0.50 MM X WIDTH-58 MM)	15,254	KGS	1,444,694	108,352	10,835	281,499	400,686	260,045	140,641
18	9012551	9/30/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO.STL145793) (THICKNESS-0.29 MM X WIDTH-510 MM)	53,328	KGS	5,695,130	427,135	42,713	1,109,696	1,579,544	1,025,124	554,421
19	9219760	10/18/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 (SIMS NO. STL152502) (THICKNESS-0.29 MM X WIDTH- 510 MM)	53,976	KGS	5,857,520	439,314	43,931	1,141,338	1,624,583	1,054,354	570,230
	9490230	11/7/2020	72202090	1	1	COLD ROLLED STAINLESS STEEL COILS GRADE J3 EX STOCK (SIMS NO. STL156999)(WIDTH BELOW 600 MM)	27,060	KGS	2,521,613	189,121	18,912	491,336	699,369	453,890	245,479
	9490230	11/7/2020	72202090	1	2	COLD ROLLED STAINLESS STEEL COILS GRADE J3 EX STOCK (SIMS NO. STL156999)(WIDTH BELOW 600 MM)	16,284	KGS	1,474,610	110,596	11,060	287,328	408,983	265,430	143,553
20	9490230	11/7/2020	72202090	1	3	COLD ROLLED STAINLESS STEEL COILS GRADE J3 EX STOCK (SIMS NO. STL156999)(WIDTH BELOW 600 MM)	3,012	KGS	264,832	19,862	1,986	51,602	73,451	47,670	25,781
	9490230	11/7/2020	72202090	1	4	COLD ROLLED STAINLESS STEEL COILS GRADE J3 EX STOCK (SIMS NO. STL156999)(WIDTH BELOW 600 MM)	6,672	KGS	571,596	42,870	4,287	111,375	158,532	102,887	55,645
	TOTAL								99,892,077	7,491,906	749,191	19,463,971	27,705,068	17,980,574	9,724,493

**Table A**

Duty paid by importer by wrongly claiming exemption under Notification No. 46/2011

Total Assessable Value	BCD Paid	SWS Paid	Total Value including BCD & SWS	IGST paid @ 18% on Grand Total Value	Total Duty paid (BCD+SWS+IGST)
9,98,92,078	0	0	9,98,92,078	1,79,80,574	1,79,80,574

**Table B**

Actual Duty payable as per Notification 50/2017, Sr. No. 367

Total Assessable Value	BCD Payable	SWS Payable	Total Value including BCD & SWS	IGST payable @ 18% on Grand Total Value	Total Duty payable (BCD+SWS+IGST)
9,98,92,078	74,91,906	7,49,190	10,81,33,174	1,94,63,971	2,77,05,068

**Table C**

Short levied/Not levied duty arising out of difference between Table A &amp; Table B

Total Assessable Value	BCD	SWS	Total Value including BCD & SWS	IGST @ 18% on Grand Total Value	Total Duty short levied/not levied (BCD+SWS+IGST)
9,98,92,078	74,91,906	7,49,190	10,81,33,174	1,94,63,971	97,24,494

**20.12** Therefore, I find and hold that the Noticee is liable to pay differential Customs duty amounting to **Rs. 97,24,494/-** (BCD: Rs. 74,91,906/- + SWS: Rs. 7,49,190/- + IGST: Rs. 14,83,397) (Rupees Ninety-Seven Lakh Twenty-Four Thousand Four Hundred Ninety-Four only)

**20.13** In view of the facts and findings in above paras, I hold that total differential duty of **Rs. 97,24,494/- (Rupees Ninety-Seven Lakh Twenty-Four Thousand Four Hundred Ninety-Four only)** should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from M/s. Shreenathji Industries along with applicable interest in terms of section 28AA read with Section 28 (10) of the Customs Act, 1962 as proposed in the Show Cause Notice.

**C. NOW I TAKE UP THE NEXT ISSUE, WHETHER THE IMPUGNED GOODS HAVING TOTAL ASSESSABLE VALUE OF RS. 9,98,92,078/- (RUPEES NINE CRORE NINETY-EIGHT LAKHS NINETY-TWO THOUSAND AND SEVENTY-EIGHT RUPEE ONLY) SHOULD BE HELD LIABLE FOR CONFISCATION AS PER THE PROVISIONS OF SECTION 111(O) AND 111 (Q) OF THE CUSTOMS ACT, 1962, OR OTHERWISE**

**21.** In the Show Cause Notice, it is alleged that the impugned goods, namely Cold Rolled Stainless Steel Coils, Grade J3, imported by M/s. Shreenathji Industries by wrongly availing preferential duty benefit under Notification No. 46/2011-Customs dated 01.06.2011 on the basis of inauthentic Certificates of Origin under the ASEAN-India Free Trade Agreement, are liable to confiscation under Sections 111(o) and 111(q) of the Customs Act, 1962.

**21.1** In order to examine the same, it is necessary to refer to the provisions of Section 111(o) and Section 111(q) of the Customs Act, 1962, which are reproduced as follows:

**Section 111. Confiscation of improperly imported goods, etc. -** *The following goods brought from a place outside India shall be liable to confiscation: -*

*(a) ...*

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

*(p) ...*

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

**21.2** I observe that Section 111(o) of the Customs Act, 1962 provides that goods shall be liable to confiscation where any condition of an exemption notification is contravened in respect of the goods. The benefit of preferential tariff under **Notification No. 46/2011-Customs dated 01.06.2011**, issued under the ASEAN-India Free Trade Agreement, is subject to strict compliance with the conditions prescribed therein, read with **Notification No. 189/2009-Customs (Non-Tariff)**, which lays down the procedural and documentary requirements for availing preferential tariff benefits.

Notification No. 189/2009-Customs (Non-Tariff), Rule 13 mandates that the importer claiming preferential tariff benefit must possess a valid and authentic Certificate of Origin issued by the designated issuing authority of the exporting country, in accordance with the Operational Certification Procedures prescribed, which is reproduced as follows:

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

Therefore, compliance with Notification No. 46/2011-Customs, Notification No. 189/2009-Customs (Non-Tariff) Rule 13 and the Operational Certification Procedures in Appendix D is a mandatory pre-condition for availing preferential tariff benefit, and failure to meet any of these requirements renders the claim inadmissible.

**21.2.1** I reiterate my findings recorded at para 19 supra, as the same are applicable mutatis mutandis to the issue in hand. From the facts on record, documentary evidence, investigation findings, and the voluntary statement of the importer, it is established that M/s. Shreenathji Industries wrongly availed the benefit of preferential tariff under Notification No. 46/2011-Customs dated 01.06.2011, under Sr. No. 967(I), in respect of imports of impugned goods ‘Cold Rolled Stainless Steel Coils’, by declaring the country of origin as Malaysia and submitting inauthentic Certificate of Origin.

In the present case, the FTA Cell, CBIC, vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, conveyed that as a result of verification of 87 CoOs, (two CoOs issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas supplier M/s. MH Megah Maju Enterprise), The Ministry of International Trade and Industry (MITI), Malaysia, (the Certificate of Origin issuing authority in Malaysia as per AIFTA) vide its email dated 14.04.2021, has categorically informed that such 87 CoOs are inauthentic. Thereby informing that the any CoO certificate claimed to be issued by MITI, Malaysia to the supplies M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, among others was inauthentic.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favor of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

**I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it**

**has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority, rendering the claim of preferential tariff benefit inadmissible.

These circumstantial evidences clearly establish that the Noticee consistently mis-declared, in all the impugned Bills of Entry, that the impugned goods qualified as originating goods in terms of the Rules of Origin Notification No. 189/2009 dated 31.12.2009 and that all documents, including the Certificates of Origin, were true and correct. At the same time, the Noticee failed to exercise any due diligence, failed to possess any origin-related information, and failed to furnish any supporting documents as mandated under Section 28DA of the Customs Act, 1962 and Rules 3, 4, and 5 of CAROTAR, 2020.

The inferential evidence emerging from the totality of facts unmistakably points to a conscious and deliberate design on the part of the Noticee to misuse inauthentic Certificates of Origin in order to wrongfully avail exemption from payment of basic customs duty. The use of such inauthentic Certificates of Origin across multiple Bills of Entry, the false declarations made at the time of self-assessment, and the complete absence of any credible explanation **cumulatively establish the presence of ‘mens rea’**.

Further, the importer, Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin and instead agreed that the preferential duty benefit availed by relying on such Certificates of Origin was not proper. Such admission clearly establishes that the conditions prescribed under Notification No. 46/2011-Customs and Notification No. 189/2009-Customs (Non-Tariff) were violated.

Accordingly, on a cumulative evaluation of the documentary, oral, digital, circumstantial, and inferential evidence available on record, **I find that the evidences present a coherent picture of conspiracy without any contradiction or unanswered gap, clearly establishing that the Noticee used such inauthentic Certificates of Origin with a clear intent to evade legally leviable customs duty.** The acts of misdeclaration, use of inauthentic Certificates of Origin, and deliberate non-compliance with statutory obligations under the Customs Act, 1962 and the rules made thereunder are not accidental or procedural lapses, but form part of a conscious and well-planned course of conduct aimed at wrongful availment of preferential tariff benefit and evasion of lawfully payable customs duty.

In view of forgoing discussions, it is evident that the Noticee by producing inauthentic CoO Certificate, has failed to comply with the **mandatory and essential condition of**

**Preferential tariff Notification No. 46/2011-Cus., dated 01.06.2011, read with Notification No. 189/2009 (N.T.) dated 31.12.2009 and Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 read with Section 28DA of the Customs Act, 1962.** I observe the said condition is a substantial and crucial condition for availing the exemption benefit under Sl. No. 967 (I) of Notification No. 46/2011-Customs, dated 01.06.2011. In this regard, on 30 July 2018, the constitution bench of the Supreme Court of India (Court), in Commissioner of Customs (Import), Mumbai (Appellant) v Dilip Kumar and Company & Ors. (Respondent) [Civil Appeal No. 3327 OF 2007], has pronounced the principles for the interpretation of exemption notifications in taxation statutes in the following manner: -

*“52. To sum up, we answer the reference holding as under*

*(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

*(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*

*(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”*

Therefore, the benefit under Sl. No. 967 (I) of Notification No. 46/2011-Cus., dated 01.06.2011 cannot be granted the impugned goods, imported by the Noticee. These deviations in-spite of clear-declaration in the subject BOEs to the contrary constitutes non-compliance with the essential condition of said preferential tariff notification and said rules along with constituting misdeclaration which renders the importer liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962, Notification No. 46/2011-Cus., dated 01.06.2011, read with Notification No. 189/2009 (N.T.) dated 31.12.2009 and Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 read with Section 28DA of the Customs Act, 1962.

The said exemption notification is subject to strict compliance with the conditions prescribed therein, read with the Rules of Origin under the ASEAN-India Free Trade Agreement and the provisions of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020). One of the essential conditions for availing the preferential tariff benefit, as prescribed under Rule 13 of the ASEAN-India Free Trade Agreement as per Notification 189/20019 (N.T.) dated 31.12.2009 read with Article 16 of the Operational Certification Procedures set out in Appendix D, is that the importer must possess a valid and authentic Certificate of Origin issued by the designated issuing authority of the exporting country. As a result, the importer failed to fulfil the mandatory condition of possessing a valid and authentic Certificate of Origin, which is a fundamental requirement for availing the benefit under Notification No. 46/2011-Customs.

**21.2.2** Thus, it is evident that the importer has violated the conditions of the exemption notification by wrongly declaring the country of origin and by using inauthentic Certificates of Origin with the intent to claim inadmissible preferential tariff benefits. Such violation of the conditions attached to the exemption notification squarely attracts the provisions of Section 111(o) of the Customs Act, 1962, which provides for confiscation of goods where any condition of an exemption notification is contravened.

Accordingly, I hold that the impugned goods, namely Cold Rolled Stainless Steel Coils imported by M/s. Shreenathji Industries, are liable to confiscation under Section 111(o) of the Customs Act, 1962.

**21.3** Further, Section 28DA Procedure regarding claim of preferential rate of duty, is as follows:

- “(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -*
- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*
- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
- (iii) furnish such information in such manner as may be provided by rules;*
- (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.*
- (2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.”*

I observe that Section 28DA(1) of the Customs Act, 1962 casts a statutory obligation on the importer claiming preferential rate of duty to make a correct declaration, to possess sufficient information regarding the origin of the goods, including the applicable origin criteria and regional value content, and to exercise reasonable care as to the truthfulness and accuracy of the information furnished. Section 28DA(2) further clarifies that mere submission of a Certificate of Origin does not absolve the importer of this responsibility. Therefore, from the statutory provisions reproduced above, it is evident that an importer claiming a preferential rate of duty under any trade agreement is under a **positive and mandatory obligation** to ensure compliance with the conditions prescribed therein. The law clearly casts responsibility on the importer to make a correct declaration that the goods qualify as originating goods, to possess sufficient information regarding satisfaction of the country of origin criteria, including regional value content and product-specific rules, and to exercise reasonable care regarding the truthfulness and accuracy of the information furnished. It is further clear that mere submission of a Certificate of Origin issued by an issuing authority does not absolve the importer of this responsibility. Sub-section (2) specifically provides that the importer cannot solely rely upon the Certificate of Origin and must independently exercise reasonable care before claiming the preferential rate of duty.

**21.4** Section 111(q) of the Customs Act, 1962 provides that any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder shall be liable to confiscation. Chapter VAA of the Customs Act, 1962, comprising Section 28DA, read with the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020), governs the statutory conditions and obligations relating to claims of preferential tariff treatment under trade agreements.

In the present case, M/s. Shreenathji Industries claimed preferential rate of duty under Notification 46/2011 dated 01.06.2011 (Sr. No. 967 (I)) by declaring the country of origin of the imported Cold Rolled Stainless Steel Coils as Malaysia and by submitting inauthentic Certificates of Origin purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia.

In this background of Concessional NIL rate of BCD on ‘Cold Rolled Stainless

Steel Coils', same are imported from ASEAN Country Malaysia, and the Importer the availed preferential rate of duty in terms of Notification No. 46/2011-Customs, dated 01.06.2011, issued under the ASEAN-India Free Trade Agreement (AIFTA), against Serial No. 967(I) thereof and claimed exemption from the payment of whole basic customs duty. Importer in total has filed 20 Bill of Entry while claiming concessional NIL rate of BCD on the basis of Importer's declaration in the subject Bills of Entry: - ***"We declare that content of invoice and other relating documents pertaining to the subject goods including the COO certificate are true and correct in every aspect."***. The Importer have accordingly declared in the all said Bill of entries confirming to the veracity and genuineness of all the documents. In addition to the afore said the Importer have also declared in all the said 20 Bill of entries that the said goods '***qualify as originating goods for preferential rate of duty under the Customs Tariff (Determination of Origin of goods under the Preferential trade agreement between the Government of member states of ASEAN and Republic of India) Rules, 2009 vide notification no. 189/2009-Customs (NT) date 31.12.2009***'.

I find that; the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by M/s. Shreenathji Industries. In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importers while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the country of origin while being presented to the Customs.

In the present case, FTA Cell of CBIC, vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, conveyed that as a result of verification of 87 CoOs, (two CoOs issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas supplier M/s. MH Megah Maju Enterprise), The Ministry of International Trade and Industry (MITI), Malaysia, (the Certificate of Origin issuing authority in Malaysia as per AIFTA) vide its email dated 14.04.2021, has categorically informed that such 87 CoOs are inauthentic. Thereby informing that the any CoO certificate claimed to be issued by MITI, Malaysia to the suppliers M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise was inauthentic.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by

producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

**I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority, rendering the claim of preferential tariff benefit inadmissible.

A thorough examination of the above facts undoubtedly establishes that the Noticee deliberately suppressed material facts while importing the subject goods, with the intent to circumvent the provisions of the Customs Act, 1962 and the relevant exemption notifications, and to obtain undue benefits. It is further evident that the overseas suppliers, namely M/s. MH Megah Maju Enterprise and M/s. Ezy Metal Enterprise, had never applied for issuance of Certificates of Origin to the designated issuing authority in Malaysia (MITI, Malaysia), and that the Certificates of Origin used were inauthentic. This clearly establishes that the origin of the imported goods was mis-declared in order to wrongfully avail benefits under the ASEAN-India Free Trade Agreement or other trade agreements. Such a modus operandi enabled the Noticee to misuse the Free Trade Agreement between India and Malaysia and thereby evade payment of the applicable customs duties on the imported goods.

Further, I find that there is no dispute about the fact that COO certificates of the said Bills of entries are inauthentic, fake and fraudulent, whereas per the provisions of section 28 DA of the Customs Act, 1962, it is the legal responsibility of the Importer to ensure the truthfulness and accuracy of the certificate along with COO certificate criteria and RVC contents. As per section 28 DA (2) of the Customs Act, 1962, the responsibility is with the

Importer. Moreover, the Importer have unequivocally declared in the impugned 20 Bills of Entry before the Customs about the truthfulness and accuracy about the relevant COO certificate. Therefore, I have already held in foregoing paras that the importer had willfully claimed preferential rate of duty. They had evaded correct Customs duty by intentionally mis-represented/mis-stated the country of origin of the impugned goods & wrongly availed Customs duty benefits. By resorting to this deliberate suppression of facts and willful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this willful and deliberate act was done with the fraudulent intention to claim ineligible Nil rate of duty.

Further, Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic. Instead, Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin, did not possess sufficient information regarding the origin of the imported goods, and failed to exercise reasonable care as required under Section 28DA of the Customs Act, 1962. He also acknowledged that the preferential duty benefit availed was not admissible.

**21.4.1** I further observe that in the instant case that there is no dispute about the fact that the Noticee M/s. Shreenathji Industries has taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty, as prescribed in Rule 4 (c) of the CAROTAR, 2020. Further, Noticee has failed to provide the above said vital information along with supporting documents as prescribed in Rule 4 (b) of the CAROTAR, 2020 at any relevant point of time namely i) at the time of recording of his statement under section 108 of the Customs Act, 1962, or (ii) in its defence reply. In fact, Noticee has neither given any written submission, nor attended any Personal Hearing Opportunity. Additionally, Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions ; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility.

Therefore, I find that the Noticee has violated CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. As mandated by Section 28 DA of the Customs Act, 1962 read with Rule 4 of CAROTAR,2020, The Importer has failed to possess sufficient information as per Form I of the said rules along with supporting documents of the same. Therefore, in terms of CAROTAR, 2020 read with Section 28 DA (2) of the Customs Act, 1962, Noticee cannot avoid responsibility of ensuring accuracy and truthfulness of COO certificate, facing the pecuniary consequences in terms of payment of related duty and penalty. I observe that Importer has failed to comply with the essential condition of producing genuine CoO Certificate as per Preferential Tariff Notification 46/2011 dated 01.06.2011

Accordingly, I hold that the impugned goods, namely Cold Rolled Stainless Steel Coils imported by M/s. Shreenathji Industries, having been imported on a claim of preferential rate of duty in contravention of Section 28DA of the Customs Act, 1962 read with CAROTAR, 2020, are liable to confiscation under Section 111(o) & 111(q) of the Customs Act, 1962.

**21.4.2** Therefore, on account of the aforesaid discussion and findings, the impugned goods having a total Assessable Value of Rs. 9,98,92,078/- (Rupees Nine Crore Ninety-Eight Lakhs Ninety-Two Thousand and Seventy-Eight Rupee only) are liable for confiscation under Section 111(o) & 111(q), of the Customs Act, 1962.

**21.5** I also find that the case is established based on documentary, oral and circumstantial evidences as detailed in Paras above in respect of past imports, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon'ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. – Chennai) the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under: -

“Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means. ‘

**21.6** I therefore hold that the said imported goods are liable for confiscation under the provisions of Section 111(o) & 111(q) of the Customs Act, 1962, as proposed in the Show Cause Notice. The subject goods imported are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

*“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine, followed by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be rectified, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine.*

*The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act...”, bring out the point clearly. The power to impose*

*redemption fine springs from the **authorisation** of confiscation of goods provided for under Section 111 of the Act. When once the power of **authorisation** for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant.*

*The redemption fine is, in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Therefore, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

**21.6.1** I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.).

**21.6.2** I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

**21.6.3** It is established under the law that the declaration under section 46 (4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods – Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”

- Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. As reported in

2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon’ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon’ble Supreme Court in the case of Weston Components.”

**21.6.4** In view of the above, I find that the decision of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon’ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon’ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case.

**21.6.5** In view of the above facts, findings, and legal provisions, I find that it is an admitted fact that the Noticee willfully declared an incorrect country of origin in the Bills of Entry and used inauthentic Certificates of Origin, with an intent to illegally and illegitimately claim preferential tariff on the impugned imported goods, thereby defrauding the Government exchequer to the extent of ₹97,24,494/- . Therefore, I hold that the acts and omissions of the importer, by way of willful mis-declaration of Origin of Goods & use of inauthentic Certificates of Origin, have rendered the goods liable to confiscation under section 111(o) & 111(q) of the Customs Act, 1962. Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.

**D. NOW I TAKE UP THE NEXT ISSUE, WHETHER THE PENALTY SHOULD BE IMPOSED ON M/S SHREENATHJI INDUSTRIES UNDER SECTION 112(A) & (B)/ 114A & 114 AA OF THE CUSTOMS ACT, 1962 OR OTHERWISE;**

**22.** I observe that the Show Cause Notice proposed penalties on M/s. Shreenathji Industries under section 112(a) & (b)/ 114A & 114AA of The Customs Act, 1962. In order to examine the same, it is necessary to refer to the provisions of Section 112(a) & (b)/ 114A & 114AA of the Customs Act, 1962, which are reproduced as follows:

**22.1 Section 112. Penalty for improper importation of goods, etc.-**

*Any person, -*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*

*(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions*

*of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :*

**Section 114A of the Customs Act, 1962 read as Penalty for short-levy or non-levy of duty in certain cases. –**

*“Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined .....”*

**Section 114 AA of the Customs Act, 1962 read as –Penalty for use of false and incorrect material. -**

*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

**IMPOSITION OF PENALTY UNDER SECTION 112(A) & 112 (B) OF THE CUSTOMS ACT, 1962:**

**22.2** Section 112(a) of the Customs Act, 1962 provides that any person who, in relation to any goods, does or omits to do any act which act or omission renders such goods liable to confiscation under Section 111 of the Customs Act, 1962, or abets the doing or omission of such an act, shall be liable to penalty.

In the present case, it has already been conclusively held in the foregoing findings that the impugned goods, namely Cold Rolled Stainless Steel Coils imported by M/s. Shreenathji Industries, are liable to confiscation under Section 111(o) of the Customs Act, 1962 for contravention of the conditions of the exemption notification governing preferential tariff benefit, and under Section 111(q) of the Customs Act, 1962 for having been imported on a claim of preferential rate of duty in contravention of the provisions of Chapter VAA of the Customs Act, 1962 read with CAROTAR, 2020.

It is observed that M/s. Shreenathji Industries, through its proprietor Shri Maulik Kumar Somabhai Patel, actively undertook acts and omissions which directly rendered the goods liable to confiscation. The importer declared the country of origin of the goods as Malaysia, claimed preferential rate of duty, and submitted Certificates of Origin which were later conclusively established as inauthentic. The importer failed to comply with the statutory obligations cast under Section 28DA of the Customs Act, 1962 and the mandatory requirements of CAROTAR, 2020, despite making declarations in the Bills of Entry regarding the correctness and authenticity of the origin claim.

Further, Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic. Instead, Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin, did not possess sufficient information regarding the origin of the imported goods-

RVC content, and failed to exercise reasonable care as required under law. Such acts of mis-declaration of origin, use of inauthentic Certificates of Origin, and failure to exercise statutory due diligence constitute clear acts and omissions on the part of the importer which rendered the goods liable to confiscation under Sections 111(o) and 111(q) of the Customs Act, 1962.

Accordingly, I hold that M/s. Shreenathji Industries, by its acts of commission and omission in relation to the impugned imports, has rendered the goods liable to confiscation under Section 111(o) and Section 111(q) of the Customs Act, 1962, and is therefore liable to penalty under Section 112(a) of the Customs Act, 1962.

**22.3** Section 112(b) of the Customs Act, 1962 provides for imposition of penalty on any person who acquires possession of, or is in any manner concerned in carrying, removing, depositing, keeping, concealing, selling, purchasing, or otherwise dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962.

In the present case, it has already been held in the foregoing findings that the impugned goods, **namely Cold Rolled Stainless Steel Coils imported by M/s. Shreenathji Industries**, are liable to confiscation under Section 111(o) of the Customs Act, 1962 for contravention of the conditions of the applicable exemption notification governing preferential tariff benefit, and under Section 111(q) of the Customs Act, 1962 for having been imported on a claim of preferential rate of duty in contravention of Chapter VAA of the Customs Act, 1962 read with CAROTAR, 2020, by use of inauthentic Certificates of Origin.

It is observed that M/s. Shreenathji Industries, through its proprietor Shri Maulik Kumar Somabhai Patel, imported, cleared, and took possession of the impugned goods and dealt with the same by availing preferential tariff benefit on the basis of Certificates of Origin which have been conclusively established as inauthentic. The importer failed to comply with the statutory obligations cast under Section 28DA of the Customs Act, 1962 and the mandatory requirements under CAROTAR, 2020, despite making declarations in the Bills of Entry regarding the correctness of the origin claim.

Further, Further, Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic. Instead, Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin, did not possess sufficient information regarding the origin of the imported goods- RVC content, and failed to exercise reasonable care as required under law. He also acknowledged that the preferential duty benefit availed was not admissible.

**22.3.1** I reiterate my findings recorded at para 19 supra, as the same are applicable mutatis mutandis to the issue in hand. From the facts on record, documentary evidence, investigation findings, and the voluntary statement of the importer, it is established that M/s. Shreenathji Industries wrongly availed the benefit of preferential tariff under Notification No. 46/2011-Customs dated 01.06.2011, under Sr. No. 967(I), in respect of imports of impugned goods ‘Cold Rolled Stainless Steel Coils’, by declaring the country of origin as Malaysia and submitting inauthentic Certificate of Origin.

In the present case, the FTA Cell, CBIC, vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, conveyed that as a result of verification of 87 CoOs, (two CoOs

issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas supplier M/s. MH Megah Maju Enterprise), The Ministry of International Trade and Industry (MITI), Malaysia, (the Certificate of Origin issuing authority in Malaysia as per AIFTA) vide its email dated 14.04.2021, has categorically informed that such 87 CoOs are inauthentic. Thereby informing that the any CoO certificate claimed to be issued by MITI, Malaysia to the supplies M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise, among others was inauthentic.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favor of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

**I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority, rendering the claim of preferential tariff benefit inadmissible.

These circumstantial evidences clearly establish that the Noticee consistently mis-declared, in all the impugned Bills of Entry, that the impugned goods qualified as originating goods in terms of the Rules of Origin Notification No. 189/2009 dated 31.12.2009 and that all documents, including the Certificates of Origin, were true and correct. At the same time, the Noticee failed to exercise any due diligence, failed to possess any origin-related information, and failed to furnish any supporting documents as mandated under Section 28DA of the Customs Act, 1962 and Rules 3, 4, and 5 of CAROTAR, 2020.

The inferential evidence emerging from the totality of facts unmistakably points to a

conscious and deliberate design on the part of the Noticee to misuse inauthentic Certificates of Origin in order to wrongfully avail exemption from payment of basic customs duty. The use of such inauthentic Certificates of Origin across multiple Bills of Entry, the false declarations made at the time of self-assessment, and the complete absence of any credible explanation **cumulatively establish the presence of 'mens rea'**.

Further, the importer, Shri Maulik Kumar Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin and instead agreed that the preferential duty benefit availed by relying on such Certificates of Origin was not proper. Such admission clearly establishes that the conditions prescribed under Notification No. 46/2011-Customs and Notification No. 189/2009-Customs (Non-Tariff) were violated.

Accordingly, on a cumulative evaluation of the documentary, oral, digital, circumstantial, and inferential evidence available on record, **I find that the evidences present a coherent picture of conspiracy without any contradiction or unanswered gap, clearly establishing that the Noticee used such inauthentic Certificates of Origin with a clear intent to evade legally leviable customs duty.** The acts of misdeclaration, use of inauthentic Certificates of Origin, and deliberate non-compliance with statutory obligations under the Customs Act, 1962 and the rules made thereunder are not accidental or procedural lapses, but form part of a conscious and well-planned course of conduct aimed at wrongful availment of preferential tariff benefit and evasion of lawfully payable customs duty.

In view of forgoing discussions, it is evident that the Noticee by producing inauthentic CoO Certificate, has failed to comply with the **mandatory and essential condition of Preferential tariff Notification No. 46/2011-Cus., dated 01.06.2011, read with Notification No. 189/2009 (N.T.) dated 31.12.2009 and Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 read with Section 28DA of the Customs Act, 1962.** I observe the said condition is a substantial and crucial condition for availing the exemption benefit under Sl. No. 967 (I) of Notification No. 46/2011-Customs, dated 01.06.2011. In this regard, on 30 July 2018, the constitution bench of the Supreme Court of India (Court), in Commissioner of Customs (Import), Mumbai (Appellant) v Dilip Kumar and Company & Ors. (Respondent) [Civil Appeal No. 3327 OF 2007], has pronounced the principles for the interpretation of exemption notifications in taxation statutes in the following manner: -

*“52. To sum up, we answer the reference holding as under*

*(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

*(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*

*(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”*

Therefore, the benefit under Sl. No. 967 (I) of Notification No. 46/2011-Cus., dated 01.06.2011 cannot be granted the impugned goods, imported by the Noticee. These deviations in-spite of clear-declaration in the subject BOEs to the contrary constitutes non-

compliance with the essential condition of said preferential tariff notification and said rules along with constituting misdeclaration which renders the importer liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962, Notification No. 46/2011-Cus., dated 01.06.2011, read with Notification No. 189/2009 (N.T.) dated 31.12.2009 and Customs (Administration of Rules of origin under Trade Agreements) Rules, 2020 read with Section 28DA of the Customs Act, 1962.

The said exemption notification is subject to strict compliance with the conditions prescribed therein, read with the Rules of Origin under the ASEAN-India Free Trade Agreement and the provisions of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020). One of the essential conditions for availing the preferential tariff benefit, as prescribed under Rule 13 of the ASEAN-India Free Trade Agreement as per Notification 189/2009 (N.T.) dated 31.12.2009 read with Article 16 of the Operational Certification Procedures set out in Appendix D, is that the importer must possess a valid and authentic Certificate of Origin issued by the designated issuing authority of the exporting country. As a result, the importer failed to fulfil the mandatory condition of possessing a valid and authentic Certificate of Origin, which is a fundamental requirement for availing the benefit under Notification No. 46/2011-Customs. Such violation of the conditions attached to the exemption notification squarely attracts the provisions of Section 111(o) of the Customs Act, 1962, which provides for confiscation of goods where any condition of an exemption notification is contravened.

Further, I find that there is no dispute about the fact that COO certificates of the said Bills of entries are inauthentic, fake and fraudulent, whereas per the provisions of section 28 DA of the Customs Act, 1962, it is the legal responsibility of the Importer to ensure the truthfulness and accuracy of the certificate along with COO certificate criteria and RVC contents. As per section 28 DA (2) of the Customs Act, 1962, the responsibility is with the Importer. Moreover, the Importer have unequivocally declared in the impugned 20 Bills of Entry before the Customs about the truthfulness and accuracy about the relevant COO certificate. Therefore, I have already held in foregoing paras that the importer had willfully claimed preferential rate of duty. They had evaded correct Customs duty by intentionally mis-represented/mis-stated the country of origin of the impugned goods & wrongly availed Customs duty benefits. By resorting to this deliberate suppression of facts and willful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this willful and deliberate act was done with the fraudulent intention to claim ineligible Nil rate of duty.

I, further observe that in the instant case that there is no dispute about the fact that the Noticee M/s. Shreenathji Industries has taken no step or ensured any due diligence to prove the said vital information to be eligible for the concessional rate of Basic Custom Duty, as prescribed in Rule 4 (c) of the CAROTAR, 2020. Further, Noticee has failed to provide the above said vital information along with supporting documents as prescribed in Rule 4 (b) of the CAROTAR, 2020 at any relevant point of time namely i) at the time of recording of his statement under section 108 of the Customs Act, 1962, or (ii) in its defence reply. In fact, Noticee has neither given any written submission, nor attended any Personal Hearing Opportunity. Additionally, Form-I of Rule 4 requires from importer to possess a very elaborate information with supporting documents to be eligible for BCD benefits. In terms of the said rule and Section 28DA of the Customs Act 1962, an importer making a claim for preferential rate of duty is required to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied. As per

Form-1 of Rule 4, the importer is required to have elaborate information and supporting documents about the contents and ingredients of the subject goods to the effect as to what is the extent of use of local and non-local materials obtained from other countries/regions ; what is the effect of production process in the export country in terms of value addition and change in tariff classification ; what is the treatment of packaging material ; what is the value of processes and materials used in the subject goods etc. However, there is no dispute about the fact that importer has completely failed to fulfil any of such responsibility.

Therefore, I find that the Noticee has violated CAROTAR (Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. As mandated by Section 28 DA of the Customs Act, 1962 read with Rule 4 of CAROTAR, 2020, The Importer has failed to possess sufficient information as per Form I of the said rules along with supporting documents of the same. Therefore, in terms of CAROTAR, 2020 read with Section 28 DA (2) of the Customs Act, 1962, Noticee cannot avoid responsibility of ensuring accuracy and truthfulness of COO certificate, facing the pecuniary consequences in terms of payment of related duty and penalty.

Accordingly, I hold that the impugned goods, namely Cold Rolled Stainless Steel Coils imported by M/s. Shreenathji Industries, having been imported on a claim of preferential rate of duty in contravention of Section 28DA of the Customs Act, 1962 read with CAROTAR, 2020, are liable to confiscation under Section 111(o) & 111(q) of the Customs Act, 1962.

**22.3.2** In view of the above facts and admissions, it is evident that the importer was not only concerned with the import, clearance, possession, and use of the impugned goods, but also had sufficient reason to believe that the goods were liable to confiscation under Section 111 of the Customs Act, 1962, on account of non-compliance with the mandatory statutory requirements governing preferential tariff claims. The acts and omissions of the importer clearly establish conscious dealing with goods which were liable to confiscation under Section 111 of the Customs Act, 1962.

Accordingly, I hold that M/s. Shreenathji Industries, being concerned in dealing with goods which were liable to confiscation under Sections 111(o) and 111(q) of the Customs Act, 1962, is liable to penalty under Section 112(b) of the Customs Act, 1962.

### **IMPOSITION OF PENALTY UNDER SECTION 114A OF THE CUSTOMS ACT, 1962: -**

**22.4** Section 114A of the Customs Act, 1962 provides that where duty has not been levied or has been short-levied, or interest has not been charged or paid, or has been erroneously refunded, by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay such duty or interest, as determined under Section 28 of the Customs Act, 1962, shall also be liable to a penalty equal to the duty or interest so determined.

**22.4.1** From the facts and circumstances of the case, it is evident that M/s. Shreenathji Industries claimed preferential tariff benefit under Notification No. 46/2011-Customs dated 01.06.2011, under Sr. No. 967(I), in respect of imports of Cold Rolled Stainless Steel Coils by wrongly declaring the country of origin as Malaysia and by submitting inauthentic Certificates of Origin purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia.

The investigation has conclusively established that in the present case, the FTA Cell of

CBIC, vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, conveyed that as a result of verification of 87 CoOs, (two CoOs issued for the overseas supplier M/s Ezy Metal Enterprise and multiple CoOs issued for the overseas supplier M/s. MH Megah Maju Enterprise) The Ministry of International Trade and Industry (MITI), Malaysia, (the Certificate of Origin issuing authority in Malaysia as per AIFTA) vide its email dated 14.04.2021, has categorically informed that such 87 CoOs are inauthentic. Thereby informing that the any CoO certificate claimed to be issued by MITI, Malaysia to the supplies M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise was inauthentic.

Further, in the instant case, it is of utmost importance to note that, in view of the aforesaid facts, it is evident that a number of importers were deliberately evading customs duty by producing fake AIFTA Country of Origin Certificates under AIFTA under wrongful and fraudulent claims and by availing exemption of Basic Customs Duty @ 7.5% under Customs Notification No. 46/2011 dated 01.06.2011.

**MITI, Malaysia, has also informed that it had never received any Country of Origin Certificate applications from the suppliers, namely M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, among others. Therefore, any Country of Origin Certificate, even other than those mentioned in the list of 87 inauthentic Country of Origin Certificates, claimed to have been issued by MITI, Malaysia, in favour of the overseas suppliers M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, are also inauthentic.**

**I observe that there is no dispute in the instant case that the Noticee, M/s. Shreenathji Industries, has imported the impugned goods, as detailed in Table-III, Para 19.3 supra, from M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE. As the competent Country of Origin Certificate issuing authority, namely MITI, Malaysia, has clearly and unequivocally verified and certified that it has not issued any such Country of Origin Certificates to M/s. EZY METAL ENTERPRISE and M/s. MH MEGAH MAJU ENTERPRISE, Malaysia. Therefore, there can be no dispute that the Country of Origin Certificates produced and used for importing the impugned goods under the subject 20 Bills of Entry are inauthentic, totally fake, and fraudulent.**

These findings were further corroborated by online verification of the veracity of the Certificates of Origin used for claiming preferential tariff benefit under Notification No. 46/2011-Customs, in respect of the impugned 20 Bills of Entry, conducted by DRI, Ahmedabad Zonal Unit, on the official Malaysian Government portal, namely the DagNet / ePCO system (<https://newepco.dagangnet.com.my/dnex/login/>), wherein the Certificate of Origin Reference Numbers of 20 impugned Bills of Entry were found to be non-existent, with the system displaying the remark “Endorsement No does not exist”. This conclusively established that the Certificates of Origin relied upon by the importer were inauthentic and were not issued by the said authority, rendering the claim of preferential tariff benefit inadmissible.

Further, Importer during the course of investigation have never contested that the subject Country of Origin certificate submitted by the Importer were authentic. Instead, Shri Maulik Kumar Somabhai Patel, S/o Shri Somabhai Patel, Proprietor of M/s. Shreenathji Industries, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin, did not exercise reasonable care as required under Section 28DA of the Customs

Act, 1962, and also agreed that the preferential duty benefit availed was not proper. This admission clearly establishes that the incorrect availment of preferential tariff benefit was not due to a mere clerical error or bona fide mistake, but arose from deliberate acts and conscious disregard of the statutory obligations cast upon the importer.

**20.4.2** I observe that provisions of Section 28 DA of the Customs Act, 1962 place an escapable responsibility on the Importer. It is the duty of the Importer to possess the sufficient information about Country of Origin Certificate criteria, RVC and originality of the COO certificate. The Importer have given an unequivocal declaration about the truthfulness and accuracy of the relevant COO certificate at the time of filling of each Bill of entry.

Therefore, I find that in the instant case, the Noticee had willfully mis-declared the Country of Origin as Malaysia the time of filing of the Bills of Entry to evade payment of correctly leviable duty. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bona fide wrong declaration of the goods and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to mis-declare the COO to take full duty exemption benefit, being fully aware that the CoO were not authentic. This willful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

**20.4.3** In view of the foregoing, I find that, due to deliberate suppression of country of origin of the goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of this finding of invoking extended period, I rely upon the following court decisions:

(a) 2013(294) E.L.T.222 (Tri. - LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

*"In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified"*

(b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

*Demand – Limitation – Fraud, collusion, willful misstatement, etc. – Extended period can be invoked up to five years anterior to date of service of notice – Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, willful misstatement, etc., rejected as it would lead to strange and anomalous results;*

(c) 2005 (191) E.L.T. 1051 (Tri. – Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

*Demand – Limitation – Blind belief cannot be a substitute for bona fide belief – Section 11A of Central Excise Act, 1944. [para 5]*

(d) 2006 (198) E.L.T. 275 –Interscape v. CCE, Mumbai-I.

*It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;*

**20.4.4** Therefore, by wilfully mis-declaring the country of origin and by using inauthentic Certificates of Origin with the intent to avail inadmissible preferential tariff benefit, the importer suppressed material facts and made false declarations, which directly resulted in short-payment of customs duty amounting to ₹97,24,494/. Such acts squarely fall within the ambit of wilful mis-statement and suppression of facts as contemplated under Section 28(4) of the Customs Act, 1962.

It is therefore evident that the essential ingredients for invocation of Section 114A, namely non-levy or short-levy of duty by reason of wilful mis-statement or suppression of facts, are fully satisfied in the present case. The duty demand has been rightly confirmed under the extended period in terms of Section 28(4) of the Customs Act, 1962.

Accordingly, I hold that M/s. Shreenathji Industries, being the person liable to pay the differential customs duty as determined under Section 28 of the Customs Act, 1962, is also liable to penalty equal to the duty so determined under Section 114A of the Customs Act, 1962.

**22.4.5** In view of the foregoing, it is observed that, it is a settled law that fraud and justice never dwell together (Frauset Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at Para’s 31 and 32 held as follows:

*“31. ”Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].*

*32. ”Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307)ELT 160(Tri. Del). In Samsung case, Hon’ble Tribunal held as under.*

*“If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is*

considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non-existent. So also, no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC I: AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

Therefore, I hold that the conditions prescribed under Section 114A of the Customs Act, 1962 are fully satisfied in the present case, and accordingly, the importer, M/s. Shreenathji Industries, is liable to penalty equal to the duty so determined under Section 114A of the Customs Act, 1962.

**22.5** I observe that the Fifth Proviso to Section 114A of the Customs Act, 1962 provides that where penalty is imposed under Section 114A, no penalty shall be imposed under Section 112 of the Customs Act, 1962 for the same act or omission.

Further, sub-section (ii) of Section 112 of the Customs Act, 1962 provides that the penalty prescribed thereunder in respect of dutiable goods is applicable subject to the provisions of Section 114A of the Act. This clearly establishes the primacy and supremacy of penalty under Section 114A in cases involving evasion of duty on account of wilful misstatement, collusion, or suppression of facts. Accordingly, where penalty under Section 114A is attracted, the penalty under Section 112(ii) operates in a subordinate manner, subject to the overriding applicability of Section 114A.

Since the acts and omissions of the importer, which rendered the goods liable to confiscation and resulted in evasion of duty, have already been adequately covered and penalised under Section 114A of the Customs Act, 1962, imposition of a separate penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962 for the same set of facts would be hit by the Fifth Proviso to Section 114A, read with provision of subsection (ii) of Section 112 of the Customs Act, 1962.

Accordingly, in view of the Fifth Proviso to Section 114A, read with provision of subsection (ii) of Section 112 of the Customs Act, 1962, No separate penalty under Section 112(a) and/or Section 112(b) of the Customs Act, 1962 is warranted in the present case.

#### **IMPOSITION OF PENALTY UNDER SECTION 114AA OF THE CUSTOMS ACT, 1962:**

**22.6** Section 114AA of the Customs Act, 1962 provides that if any person knowingly or intentionally makes, signs, uses, or causes to be made, signed, or used, any declaration, statement, or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, such person shall be liable to a penalty not exceeding five times the value of the goods.

In the present case, on careful consideration of the facts, documentary evidence, investigation reports, statutory provisions, and the voluntary statement of the importer, it stands conclusively established that M/s. Shreenathji Industries knowingly and intentionally used false and incorrect Certificates of Origin and made false declarations to the Customs authorities for the purpose of availing inadmissible preferential tariff benefit under Notification No. 46/2011-Customs dated 01.06.2011.

The Certificates of Origin submitted by the Noticee in respect of the impugned 20 Bills of Entry were purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia to the suppliers M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise. However, retroactive verification carried out through the FTA Cell of CBIC, vide letter bearing reference F. No. 456/451/2020-Cus.V dated 27.04.2021, and confirmation received from MITI, Malaysia vide email dated 14.04.2021, conclusively established that no applications for issuance of any Certificates of Origin were ever received from the suppliers M/s. Ezy Metal Enterprise and M/s. MH Megah Maju Enterprise. These findings were further corroborated by online verification on the official Malaysian Government DagNet / ePCO portal, wherein the Certificate of Origin reference numbers were found to be non-

existent with the remark "Endorsement No does not exist".

The proprietor of the Noticee, in his voluntary statement dated 19.10.2023 recorded under Section 108 of the Customs Act, 1962, admitted that he did not verify the genuineness of the Certificates of Origin, had no knowledge of the manufacturing process of the imported goods, and accepted that his firm was not eligible to avail the benefit of Notification No. 46/2011-Customs. This admission clearly establishes that the Noticee consciously used inauthentic documents and made incorrect declarations to obtain undue duty exemption.

I further find that Section 28DA of the Customs Act, 1962 casts a positive and mandatory obligation on the importer to possess sufficient information regarding the origin of goods, including origin criteria and regional value content, and to exercise reasonable care as to the truthfulness and accuracy of the Certificates of Origin. In the present case, the importer not only failed to verify the genuineness of the Certificates of Origin but also failed to possess or furnish any origin-related information or supporting documents as required under Rules 3, 4 and 5 of CAROTAR, 2020.

Despite this, the Noticee used such inauthentic Certificates of Origin and, while filing the Bills of Entry, made categorical declarations under Section 46(4) of the Customs Act, 1962 that the contents of the Bills of Entry and the supporting documents, including the Certificates of Origin, were true and correct in every respect. Further, while self-assessing duty under Section 17 of the Customs Act, 1962, the Noticee declared that the imported goods qualified as originating goods eligible for preferential tariff treatment. These declarations have been rendered false and incorrect in material particulars.

I therefore find that the acts of the Noticee are not a mere technical or bona fide lapse. On the contrary, the deliberate use of inauthentic Certificates of Origin, coupled with false declarations regarding country of origin at the time of filing Bills of Entry, clearly establishes the presence of **mens rea**. The Noticee knowingly and intentionally made and used false and incorrect documents and declarations in the course of importation with the intent to evade payment of legitimately leviable customs duty.

Accordingly, I hold that the essential ingredients for invocation of Section 114AA of the Customs Act, 1962—namely, knowledge, intention, use of false documents, and false declarations in material particulars—are fully satisfied in the present case. Therefore, M/s. Shreenathji Industries is liable to penalty under Section 114AA of the Customs Act, 1962, for knowingly and intentionally using false and incorrect Certificates of Origin and making false declarations to Customs authorities in connection with the impugned imports.

**E. NOW I TAKE UP THE NEXT ISSUE, WHETHER PENALTY SHOULD BE IMPOSED ON SHRI MAULIK KUMAR SOMABHAI PATEL, PROPRIETOR OF M/S. SHREENATHJI INDUSTRIES UNDER SECTION 112(A) & (B)/ 114A & 114 AA OF THE CUSTOMS ACT, 1962, OR OTHERWISE.**

**2 3 .** It is observed that M/s. Shreenathji Industries is a proprietary concern and Shri Maulik Kumar Somabhai Patel is its sole proprietor. In law, a proprietary concern does not have a separate legal existence distinct from its proprietor, and all acts, omissions, and liabilities of the firm are attributable to the proprietor himself.

In the present case, it has been conclusively established that the imports were made by M/s. Shreenathji Industries through its proprietor, Shri Maulik Kumar Somabhai Patel, who was personally handling the import transactions and customs-related work. The use of inauthentic Certificates of Origin, mis-declaration of country of origin, and wrongful

availment of preferential tariff benefit were carried out in the course of business of the proprietary concern and with the knowledge and involvement of the proprietor. This is further supported by the voluntary statement dated 19.10.2023 of Shri Maulik Kumar Somabhai Patel recorded under Section 108 of the Customs Act, 1962.

Since the proprietary concern and the proprietor are not separate legal entities, penalty cannot be imposed twice for the same act, once on the firm and again on the proprietor, as this would amount to double penalisation for the same offence, which is not permissible in law.

Accordingly, I hold that the penalty is imposable only once, and the same is appropriately imposed on M/s. Shreenathji Industries, being the importer of record, acting through its proprietor Shri Maulik Kumar Somabhai Patel. Consequently, no separate penalty is required to be imposed on Shri Maulik Kumar Somabhai Patel in his individual capacity, for the same acts and omissions. In view of the foregoing, I refrain from imposing any penalty on Shri Maulik Kumar Somabhai Patel, proprietor of M/s. Shreenathji Industries.

**24.** In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

### **ORDER**

- i. I disallow the exemption benefit of Notification No. 46/2011 dated 01.06.2011, as amended, availed by the importer against the import of goods under Bills of Entry (as detailed in Para 20 supra) filed at JNCH, Nhava Sheva, in terms of Section 28DA (11) of the Customs Act, 1962 and charge the applicable BCD in terms of Notification No.50/2017-Cus dated 30.06.2017;
- ii. I hold the impugned goods having total assessable value of **Rs. 9,98,92,078/- (Rupees Nine Crore Ninety-Eight Lakhs Ninety-Two Thousand and Seventy-Eight Rupee only)** (as detailed in Para 20 supra) are liable for confiscation as per the provisions of Section 111(o) and 111 (q) of the Customs Act, 1962, However, I impose a redemption fine of **Rs 2,50,00,000/- (Rupees Two Crore Fifty Lakhs Only)** on M/s Shreenathji Industries in lieu of confiscation under Section 125(1) of the Customs Act, 1962.;
- iii. I confirm the demand of differential Customs duty amounting to **Rs. 97,24,494/- (Rupees Ninety-seven lakh twenty-four thousand four hundred ninety-four only)** (as detailed in Para 20 supra) and recovery from the importer M/s Shreenathji Industries under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA, read with section 28 (10) of the Customs Act, 1962;
- iv. I impose a penalty equivalent to differential duty of **Rs. 97,24,494/- (Rupees Ninety-seven lakh twenty-four thousand four hundred ninety-four only)** and interest accrued there upon on the importing firm, M/s Shreenathji Industries under Section 114A of the Customs Act, 1962. However, in terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order. I refrain from imposing any penalty on the importer under Section 112(a) and/or Section 112(b) of the Customs Act, 1962, in view of the Fifth Proviso to Section 114A, read with sub-section (ii) of Section 112 of the Customs Act, 1962,

v. I impose a penalty of **Rs. 1,00,00,000/- (Rupees One Crore Only)** on M/s. Shreenathji Industries under Section 114 AA of the Customs Act, 1962.

Digitally signed by  
Vijay Risi  
Date: 23-12-2025  
18:44:17  
(VIJAY RISI)  
COMMISSIONER OF CUSTOMS  
NS-III, JNCH

**To,**

M/s. Shreenathji Industries,  
Bamanbore GIDC Plot No. 420 and 421,  
Village Bamanbore Chotila,  
Gujarat – 363021

M/s. Shreenathji Industries  
PLOT NO. 1111 & 1112, BAMANBORE  
G.I.D.C. , AHMEDABAD ROAD, TAL. CHOTILA,  
RAJKOT , SURENDRA NAGAR , GUJARAT, 363520

Shri Maulik Kumar Somabhai Patel,  
Proprietor of M/s. Shreenathji Industries,  
37, Dharti Residency, Visangar Road, Unjha,  
Mehsana, Gujarat – 384170

**Copy to:**

- i. AC/DC, Chief Commissioner's Office, JNCH
- ii. AC/DC, Centralized Revenue Recovery Cell, JNCH
- iii. The AC/DC, Group-IV, JNCH
- iv. The Additional Director, DRI, AZU, Ahmedabad,
- v. The Asst. /Dy. Commissioner of Customs (CAC), JNCH: For uploading on CARMA Portal.
- vi. AC/DC, EDI, JNCH: - For display on JNCH Website.
- vii. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
- viii. Office Copy.