

**OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)**  
**सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय**  
**JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,**  
**जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,**  
**TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707**  
**तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707**

**DIN – 20260178NX0000722203**

**Date of Order: 09.01.2026**

**F. No. S/10-179/2024-25/CC/Gr.VA/NS.V/CAC/JNCH**

**Date of Issue: 09.01.2026**

**SCN No.: 1672/2024-25/COMMR/GR.VA/NS-V/CAC/JNCH**

**SCN Date: 28.01.2025**

**Passed by: Sh. Anil Ramteke**

**Commissioner of Customs, NS-V, JNCH**

**Order No: 352/2025-26/COMMR/NS-V/CAC/JNCH**

**Name of Noticee: M/s. Pahal Solar (IEC: 5216502408)**

**ORDER-IN-ORIGINAL**

**मूल - आदेश**

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

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. 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.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीजनल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal: -

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

**Time Limit -** Within 3 months from the date of communication of this order.

**समय सीमा -** इस आदेश की सूचना की तारीख से 3 महीने के भीतर

**Fee -फ़ीस-**

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

(क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये

या उस से कम है।

- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

**Mode of Payment** - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

**भुगतान की रीति** – क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

**General** - 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.

**सामान्य** - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. 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 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

**Subject: - Adjudication of Show Cause Notice No. 1672/2024-25/Commr/Gr.VA/NS-V/CAC/JNCH dated 28.01.2025 issued to M/s Pahal Solar, Surat (IEC-5216502408) - reg.**

**Brief Fact of the Case**

Specific Intelligence was gathered by Directorate of Revenue Intelligence, Chennai Zonal Unit (hereafter referred to as 'DRI-CZU') to the effect that M/s. Pahal Solar, Surat (IEC-5216502408), having their office at 312, Laxmi Enclave, Opposite to Gajera School, Katargam, Surat-395004, had imported consignments of 'Poly Solar Cells' from Malaysia and cleared the same under CTH 85414200 of the Customs Tariff Act, 1975 by submitting unauthentic Certificate of Origin of Malaysia to avail the benefit of the preferential rate of duty under Notification No.46/2011 [Sr.No.1445(l)] dated 01.06.2011 (Indo-ASEAN FTA), as amended.

2. Preliminary verification of the certificates of origin (COO) submitted during the filing of Bills of Entry indicated that the said importer M/s Pahal Solar, Surat (IEC-5216502408) had wrongly availed the benefit of preferential rate of duty under Notification No. 46/2011-Cus dated 01.06.2011(Indo-ASEAN FTA) as amended, as the imported 'Poly Solar Cells' did not qualify to be 'originating goods' of Malaysia, in terms of Rule 3 read with Rules 5 & 6 of the Custom 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 notified vide Notification No. 189/2009-Customs (N.T.) dated 31.12.2009.

3. The details of the subject consignments imported by M/s Pahal Solar from Malaysia are mentioned below: -

**Table-1**

S. No.	Custom House	Bill of Entry No. and date	Country of Import	Shipper as per the Certificate of Origin	FTA certificate
(1)	(2)	(3)	(4)	(5)	(6)
1.	INNSA1	2885817 14.10.2022	Malaysia	Bumi Resources Trading SDN BHD on behalf of <b>Inspired Energy Co. Ltd</b>	KL-2022-AI-22-0100871
2.	INNSA1	3575243 02.12.2022	Malaysia	Bumi Resources Trading SDN BHD on behalf of <b>Inspired Energy Co. Ltd</b>	KL-2022-AI-22-0101042

3.	INNSA1	3633904 07.12.2022	Malaysia	Bumi Resources Trading SDN BHD on behalf of <b>Inspired Energy Co. Ltd</b>	KL-2022-AI-22- 0101047
4.	INNSA1	4474148 03.02.2023	Malaysia	Beckerford SDN BHD on behalf of <b>Inspired Energy Co. Ltd</b>	KL-2023-AI-23- 0101083
5.	INNSA1	4785646 24.02.2023	Malaysia	Beckerford SDN. BHD.	KL-2023-AI-21-00216

The certificates of origin mentioned above in Table-1 were verified from the website prescribed by the Ministry of International Trade and Industry, Malaysia (MITI) i.e. <https://newepco.dagangnet.com.my/dnex/login/>. On verification "Endorsement No. does not exist" error was displayed by the website for the Certificates of origin mentioned at S. No. 1 to 4 in column (6) Table-1. Further, on verification of the certificate of origin at S. No. 5 of the table above it was found that a certificate with same reference number i.e. KL-2023-AI-21-002162 was already issued to M/s. Pahal Solar dated 23.02.2023 and description of goods was mentioned as "Copper Wire".

**4.** Acting on the said intelligence, on 11.04.2023, the office premises of M/s. Pahal Solar situated at 312, Laxmi Enclave, opposite to Gajera School, Katargam, Surat, 395004 was searched by the officers of Directorate of Revenue Intelligence in the presence of independent witnesses and in the presence of Shri Dasrath Suthar, Marketing Executive of M/s. Pahal Solar, under Panchnama proceedings dated 11.04.2023. During the said search proceedings Shri. Dasrath Suthar informed that all the import and sales related documents of M/s. Pahal Solar were available at their factory premises.

**4.1** The factory premises of M/s. Pahal Solar situated at 189, Block 71, Opp. Shiv Shakti estate, Olpad-Sayan Road, Surat-394540 was also searched by the officers of Directorate of Revenue Intelligence in the presence of independent witnesses and in the presence of Shri. Manish D. Shingala, partner of M/s. Pahal Solar under Panchnama proceedings dated 11.04.2023. During the said search proceedings certain relevant documents duly endorsed by Shri Manish D. Shingala were recovered for the purpose of investigation. Further, the screenshots of the chats between Shri. Manish D. Shingala and one Mr. Peter Song from the "We Chat" App installed in the mobile phone of Shri. Manish D. Shingala i.e., Samsung S10 Plus with IMEI No. 353553100915454 and Serial No. R58M7658NXJ were also recovered with certificate under Section 138C of the Customs Act, 1962 and 65-B of the Indian Evidence Act, 1872.

5. In response to Summons, Shri Manish D. Shingala, Partner of M/s. Pahal Solar, tendered his voluntary statement dated 12.04.2023 under Section 108 of the Customs Act, 1962. In his said statement Shri Manish D. Shingala, had inter alia stated that -

- i. He is engaged in the affairs of purchase and production of M/s. Pahal Solar which is a family concern having partners Shri. Paresh Dhirubhai Shingala, Ishwarbhai Bhimji Shingala and Mahasukh Virajbhai Shingala; Shri. Paresh Dhirubhai Shingala, is engaged in Finance and Marketing and the other partners have no role in the day-to-day affairs of the firm;
- ii. He and Shri. Paresh Dhirubhai Shingala are answerable for all the queries of the firm and his statement is binding upon the other three partners of the firm;
- iii. M/s. Pahal Solar came into existence in 2016 and is engaged in the manufacture of Solar Modules for which 80% of the raw materials are being imported from China and other countries;
- iv. They had imported solar photovoltaic cells from Malaysia and stated that the goods originated from China;
- v. As he was engaged in the purchase of raw materials, he came in contact with one person named Shri. Deepak whom he met at an exhibition at New Delhi; that he exchanged mobile number with Shri. Deepak and Shri. Deepak gave his number as 96196 10074; that Shri. Deepak referred him to Shri. Peter saying that Shri. Peter would supply Solar Cells from a supplier named M/s. Inspired Energy Co. Ltd., Japan; that he was referred to Mr. Peter at the exhibition and Shri. Deepak was the main person who further made inroads in their business of purchase of solar cells;
- vi. Shri. Deepak had sent WeChat ID of Shri. Peter which is "questions you" and his WeChat ID is his mobile number; thereafter Shri. Peter identified himself as Peter from Inspired Energy; that they had a long chat on the WeChat app on the procurement of solar cells;
- vii. In one of their chats Mr. Peter had said that he (Peter) would supply solar cells and he (Peter) had a manufacturing facility at Malaysia having capacity of 100 MW; that Mr. Peter also claimed that he (Peter) would send solar cells manufactured in Malaysia and the documents accompanying would be proper and genuine; that since import goods under Malaysia is governed under FTA agreement, they decided to import goods from Malaysia;
- viii. They have not visited Malaysia and did not ascertain the facts regarding the manufacture of solar cells at Malaysia;
- ix. They had imported five consignments of Solar Cells through Shri. Peter from Malaysia since Oct-22 to Feb-23;
- x. The proforma Invoice was sent by Shri. Peter and accordingly, the payments were made to the supplier M/s. Inspired Energy Co. Ltd., Japan;

- xi. M/s. Bumi Resources Trading SD BHD (1354559-9) was the manufacturer; that Mr. Peter had claimed M/s. Bumi Resources Trading SDN BHD (1354559-9) was his (Peter's) own manufacturing unit;
- xii. The supplier for consignments of solar cells for which the country-of-origin certificates were given were M/s. Bumi Resources Trading SDN BHD (1354559-9) and M/s. Beckerford SDN BHD;
- xiii. He had no knowledge of M/s. Bumi Resources Trading SDN BHD (1354559-9) and he had not visited Malaysia to find its existence;
- xiv. They had stopped procuring solar cells after Feb-23 for the reason that Mumbai Customs raised a query that the COO for a consignment imported did not have the QR code; they talked to Mr. Peter regarding the COO and they withdrew the COO as per his directions, resubmitted another COO after receiving the same from Shri. Peter and the goods were cleared; that they had to pay demurrage charges and other incidental charges for the delay;

In his above statement Shri. Manish D. Shingala, partner of M/s. Pahal Solar has admitted that they have not visited Malaysia and facts regarding the manufacture of solar cells in Malaysia were not verified by them. Shri. Manish D. Shingala further admitted that he had no knowledge of M/s. Bumi Resources SDN BHD (who were the consignor for their 3 out of the total 5 five import consignments from Malaysia) and he had not visited Malaysia to ascertain it's existence. He further admitted that the goods imported by them i.e., solar photovoltaic cells from Malaysia originated from China.

**6.** During the investigation, it came to light that one Shri. Deep Israni had acted as a middleman and had introduced Shri. Manish D. Shingala to Mr. Peter Song. In response to the Summons Shri Deep Israni, proprietor of M/s Dee Pee Enterprises, Mumbai, tendered his voluntary statement dated 25.04.2023 under Section-108 of the Customs Act, 1962. In his said statement Shri Deep Israni, had inter alia stated that-

- i. He has done his Diploma in Computer Technology from Bombay Institute of Technology in 1991; that in the year,1991, he started a manufacturing unit in the name of M/s Dee Pee Electronics for manufacturing lead-in wires used in the manufacturing of electrical lamps, which he closed in the year 2005 and started a trading unit in the name of M/s Dee Pee Enterprises, wherein initially he dealt with local trading of electrical products and in the year 2008, he started with solar industry and started supply of solar ribbons and solar back sheets by arranging introduction of Indian customers to the European suppliers, viz. Gebauer and Griller, Austria for ribbons and Isovoltaic Ag, Austria for back sheets and thereby he used to get fixed commission from the said overseas suppliers; that he had also introduced various Indian

importers in relation to the imports of solar cells to the Chinese suppliers viz. M/s Inspired Energy and M/s Centro Energy, China; that he had visited various countries and never visited Malaysia;

ii. In October, 2019, during the REI (Renewable Energy Expo) Exhibition conducted in Greater Noida, he had met one Mr. Peter Song and Ms. Lisa Lee (assistant of Mr. Peter) both Chinese nationals representing M/s Aiduo Solar, Japan and dealt with business terms of supplying of solar cells of Chinese origin to Indian importers and in the said meeting with Mr. Peter Song & Ms. Lisa Lee, it was decided to provide the contact of interested Indian manufacturers/traders dealing with solar cells to them for which he would be given a commission; that accordingly, he had introduced the Indian importers viz. M/s. Pahal Solar, Surat (Manish Shingala), M/s Solex Energy, Surat (Shri Chetan Shah), M/s GreenBrilliance Energy, Vadodara (Shri Biju Rangunath), etc. to Mr. Peter Song, who was Vice-President of Aiduo Solar and also associated with another company M/s Inspired Energy, China;

iii. After 2019, he did not meet Mr. Peter Song in person; that there was no written agreement between him and Mr. Peter for the commission against the shipments of solar cells effected by Mr. Peter Song; that he used to receive messages from Ms. Lisa Lee about the details of the shipments of solar cells of Chinese origin which were shipped by Mr. Peter to the Indian importers viz. M/s Solex Energy, M/s Green Brilliance Energy etc. and his commission was USD 0.003 per cell (for poly cells) and USD 0.005 per Mono cell and he used to receive his commissions to his company M/s Dee Pee Enterprises bank current A/c 822752402 held with Indian Bank, Oshiwara branch;

iv. On being asked about his role in the imports of solar cells with the Indian importers, he stated that he had an active role in the imports effected by the Indian importers who directly imported solar cells from Mr. Peter; that with regard to import of solar cells shipped by Mr. Peter Song from Malaysia, in respect of three Indian importers viz. M/s Pahal Solar, Surat, M/s Green Brilliance Renewable Energy LLP, Vadodara, and M/s Solex Energy, his role was to oversee the imports and clearances and he ensured that importers/freight forwarders receive all Import documents namely Invoice, Packing list, COO, BL for filing with customs & clearance; that he was also a trouble shooter in the quality of goods and in delayed payment, for LC discrepancies, etc. between these importers and Mr. Peter Song. He was the single point contact between the Indian importers & foreign suppliers and Mr. Peter Song of China;

- v. On being asked to provide the details with regard to the imports of solar cell from Malaysia which were shipped by Mr. Peter Song to the Indian importers including his commission and other details of consignments imported from Malaysia and cleared on the basis of Country of Origin (COO) Certificate/ FTA issued by Malaysian Govt., he stated that M/s Pahal Solar, M/s Solex Energy and M/s Green Brilliance had been importing solar cells from China through Mr. Peter Song and these importers had continued importing solar cells from Malaysia through Mr. Peter Song and cleared the same on the basis of COO with the benefit of basic customs duty; that the import documents including the COO were not generally routed through him and the same were directly received by the importers/freight forwarders from Mr. Peter Song and in few cases he was kept as "cc" in the mails and he used to monitor receipt of all these import documents;
- vi. He knew that Mr. Peter Song had made shipments of solar cells from Malaysia, for which he had also received commission and he was aware that even though the goods were manufactured in China, the above importers in their imports had availed Customs duty benefit by declaring the solar cells being shown as Malaysian origin on the basis of COO and these COO certificates were arranged by Mr. Peter Song;
- vii. He stated that the consignments of solar cells in pallets were shipped from China to Malaysia and he was aware that there was no manufacturing facility or unit held by M/s Inspired Energy and M/s Bumi Resources Trading SDN BHD in Malaysia. However, he was informed by Mr. Peter that he (Peter) would arrange for the COO Certificate from the Govt. of Malaysia for the Chinese goods shipped from China to Malaysia and Mr. Peter Song was in direct contact with the Indian importers;
- viii. He was also aware that Mr. Peter Song had arranged for the COO from Malaysian Govt. and sent to various importers / freight forwarders in India along with the import documents such as BL, Invoice, Packing List directly and he was not involved in the process of dealing with any import documents including obtaining of COO to be sent to the Indian importers but he was aware that these COO are fabricated to avail exemption from basic customs duty, as customs duty was imposed on import of Solar cells from 01.04.2022 if imported from China;
- ix. All the goods were of Chinese origin, originally shipped from China to Malaysia and those consignments were offloaded and kept in Malaysia Export Zone area for about two weeks and after obtaining the COO by Mr.

Peter Song, the said goods were loaded into the container and shipped from Malaysia. On being asked, he stated that as explained by him above, there was no facility for manufacturing solar cell by M/s Inspired Energy and M/s Bumi Resources Trading SDN BHD in Malaysia and accordingly, the imported goods were of Chinese origin and not of Malaysian origin;

- x. On being asked about his knowledge of the COOs sent by Mr. Peter Song to the importers were fake and not genuine, he stated that the COO certificates arranged and sent by Mr. Peter Song were not genuine; Since M/s Inspired Energy did not have manufacturing unit in Malaysia, they had taken this recourse;

Further, Shri. Deep Israni submitted the duly endorsed printouts showing details of messages and WhatsApp chats held with Mr. Peter Song, Ms. Lisa Lee, and others, from his mobile phone. Based on the same, he was further questioned as below: -

- xi. On being shown the WhatsApp chats dated 07.07.2022 and 29.11.2022 held by him with Ms. Lisa Lee, describing that *"Lisa problem with this ASEAN agreement is that company who is supplying should have manufacturing in these countries.... But it is better than not having factory and just routing ... Lisa: ok"* and asked that he was well aware that for benefit of ASEAN agreement, the existence of manufacturing unit be necessary in the country and he had suggested that it was better than not having factory and just routing, he agreed and stated that there was no such manufacturing unit of M/s Inspired Energy and M/s. Bumi Resources Trading SDN BHD controlled by Mr. Peter Song in Malaysia and stated that the import consignments of Solar Cells of Chinese origin were shipped from China to Malaysia and then kept in free trade zone till the documentation including COO certificate is arranged by Mr. Peter Song and then dispatched to India under a fresh bill of lading; that he knew that they could not have established a manufacturing unit in Malaysia and the consignments were merely to be routed through Malaysia;

- xii. On being asked, he stated that he was aware of CAROTOR Rules and its compliance in India for the imported goods cleared on the basis of COO and since the COOs were arranged by Mr. Peter Song for the consignments shipped from Malaysia to the Indian importers and these documents were directly sent by Mr. Peter Song to the importers/ Freight forwarders, he felt that he was not directly involved in the process. However, he admitted that he was aware that those COOs are fake and not genuine;

- xiii. On being shown and asked to explain on a we-chat chat dated 14.04.2023 of Shri. Chetan Shah with Mr. Peter Song describing that *“Good evening Chetan, as per email I have received from Rajesh today, we cannot provide evidence to show that coo was real. This has happen to all factories whoever bought from Malaysia in the past. The coo was issued by officers of ministry at Malaysia however it cannot be proofed to be real since there is no factory at all. If someone from Indian Government come to exam which they should, consider the current situation, the coo will be found fake and there will be penalty....”*, he stated that those chat messages were sent by Mr. Peter Song to Shri Chetan Shah of M/s Solex Energy, Surat, when Shri. Chetan Shah was enquiring about the genuineness of the COOs after DRI had initiated the investigation; to a specific question, he stated that those messages showed that COOs issued in the past could not be proved to be real since there was no factory in Malaysia at all;
- xiv. He stated that the above mentioned three importers had directly dealt with Mr. Peter Song and imported goods from Malaysia and he had acted as trouble shooter in India and since the consignments were cleared through Customs, the shipments were done by Mr. Peter Song as per the orders placed by these importers. He further stated that he was not involved in the process or in obtaining the COO in Malaysia and had also not visited Malaysia.

From the above statement dated 25.04.2023 of Shri. Deep Israni, it appears that he (Deep Israni) had acted as a middleman and introduced Shri Peter Song, of M/s Inspire Energy, China to the Indian importers including M/s Pahal Solar for shipment of solar cells from Malaysia in return of commission; that Shri. Deep Israni had an active role in imports effected by Indian importers which included ensuring that Indian importers receive import documents such as Invoice, Packing List, B/L along with COO certificate and acted as a single point contact as well as troubleshooter for Indian importers. Shri. Deep Israni admitted that he was aware that there was no manufacturing facility or unit held by M/s Inspired Energy and M/s Bumi Resources Trading SDN BHD in Malaysia and Mr. Peter would arrange for the COO Certificate which were fabricated to avail exemption from basic customs duty; Shri. Deep Israni further admitted that all the goods which were imported through Mr. Peter Song were of Chinese origin, originally shipped from China to Malaysia and those consignments were offloaded and kept in Malaysia Export Zone area for about two weeks and shipped to India under different Bills of Lading after fake COOs were obtained by Mr. Peter Song.

7. In response to Summons, Shri Manish D. Shingala, Partner of M/s. Pahal Solar, tendered his voluntary statement dated 27.04.2023 under Section 108 of the Customs Act, 1962. In his said statement Shri Manish D. Shingala, had inter alia stated that-

- i. He had gone through his previous statement dated 12.04.2023 given voluntarily and found its contents to be true and correct; that he would like to make a correction in the previous statement where he had stated the name of the person whom he met at the exhibition at New Delhi as Shri. Deepak; that the actual name of the person is Shri Deep Israni whom he met in 2019 at REI exhibition and Shri. Deep Israni only referred Shri Peter to him for the supply of PV solar cells;
- ii. He had seen the statement of Shri Deep Israni dated 25.04.2023 given under Section 108 of the Customs Act, 1962; that he identified the person from the photo available in the said statement as Shri Deep Israni, whom he met in the REI exhibition and had also referred about him in his earlier statement dated 12.04.2023; that he agrees with reference to the contents of the said statement on their details and consignments;
- iii. For the consignments imported by them Mr. Peter Song (Inspired Energy Co. Ltd) was the contact person and they had cleared all those consignments with benefit of BCD claiming Notification No.46/2011 by submitting COO declaring that the goods were of Malaysian origin;
- iv. They had filed Warehouse Bill of Entry, cleared the goods through Nhava Sheva port and stored them in their Bonded Warehouse within their factory premises controlled by the Bond officer;
- v. during the search proceedings at their office by DRI officers on 11.04.2023, the officers, in his presence, had verified all the 5 COOs through Malaysian Govt. website and found that they were fake as per the search result "Endorsement number does not exist" and in particular for one certificate of origin, the verification revealed that the description of the goods mentioned in the said Certificate of origin was copper wire.
- vi. After Shri. Deep Israni shared the contact details of Mr. Peter Song they had discussion with him (Mr. Peter) for the procurement of PV solar cells through "We chat"; that after the finalization of price Mr. Peter Song would share the proforma invoice from his (Peter's) mail id [peter.song@aiduosolar.jp](mailto:peter.song@aiduosolar.jp) to their mail ID [manish@pahalsolar.com](mailto:manish@pahalsolar.com); that after approval from their company and advance payment Mr. Peter Song would inform them regarding the production of goods; that thereafter they used to make the remaining payment and then Shri Peter would share all the documents viz. Bill of lading, commercial Invoice, packing list, Certificate of origin, Section-III under CAROTAR rules, 2020 and insurance through mail; that the original

certificates of origin would be sent by Shri Peter through courier to their office address; that while sending these documents through mail Shri Deep Israni was kept in "cc" only once or twice and in other cases the documents were directly sent to them;

- vii. The five consignments details of which he had provided were shipped on CIF basis details of which were mentioned in the proforma invoice also; that the booking of the container, appointment of freight forwarder was done by Mr. Peter Song; that once the container reached Nhava Sheva sea port all the charges were taken care by them;
- viii. After the search of DRI on 11.04.2023, he messaged Shri Peter on 24.04.2023 regarding clarification on COO certificates and the payable duty along with applicable penalty and no reply had been received from Shri Peter in that regard till that date;
- ix. He did not pay any commission to Shri Deep Irani for the consignments imported through Mr. Peter Song;
- x. He is aware of the CAROTAR Rules, 2020, Section 28 DA of the Customs Act, 1962 and the Rule 5(2) & Rule 4 of the CAROTAR Rules 2020 and the Form-I was sent by Shri Peter for their 5 import consignments vide mail;
- xi. As mentioned in previous statement dated 11.04.2023 they have not visited Malaysia and did not ascertain the facts regarding the manufacturing of PV solar cells at Malaysia; that other origin related details including the photographs of the production site and other documents demonstrating the process of manufacturing of PV solar cells were not available with them;
- xii. He was aware that there is no manufacturing unit of their supplier of goods in Malaysia and since the COO submitted by them and others were accepted and cleared by Customs, they continued with import of goods from Malaysia and cleared the goods based on the COOs;
- xiii. during Feb-2023 when his consignment was delayed, it was confirmed that the COOs under which the goods were cleared from Malaysia with benefit of BCD were all fake and bogus.

In his above statement Shri. Manish D. Shingala, partner of M/s. Pahal Solar stated that other origin related details including the photographs of the production site and other documents demonstrating the process of manufacturing of PV solar cells were not available with them and subsequently admitted that he was aware that there was no manufacturing unit of their supplier if goods in Malaysia. He further stated that he messaged Shri. Peter on 24.04.2023 regarding clarification on country-of-origin certificates i.e. 13 days after the search conducted by the officers of Directorate of Revenue Intelligence. He also stated that from the delay of the consignment in Feb-2023, it was confirmed that the COOs on the basis of which the benefit of Basic Customs Duty (BCD) was availed were all fake and bogus.

8. Shri Manish D. Shingala, Partner of M/s. Pahal Solar, submitted demand drafts drawn from ICICI Bank, Katargam branch, Surat, towards voluntary deposit of duty liability: -

**Table-2**

Sl. No.	Demand Draft (DD) No.	DD Date	Amount of DD (in Rs.)
(1)	(2)	(3)	(4)
1.	502810 000229000: 001836 16	11.04.2023	2,00,00,000/-
2.	502838 000229000: 001836 16	27.04.2023	1,00,00,000/-
3.	502839 000229000: 001836 16	27.04.2023	1,57,95,787/-
<b>Total</b>			4,57,95,787/-

9. In accordance with Rule 6(1)(c) of CAROTAR Rules, 2020, the matter was taken up with the International Customs Division, CBIC, New Delhi, for verification of the COOs under which the imported consignments from Malaysia were cleared by M/s Pahal Solar availing the benefit under Notification No.46/2011-Cus dated 01.05.2011 under Sl.No.1445(l). In reply, vide letter F.No.456/86/2023-FTA Cell4 dated 20.07.2023, Directorate of International Customs (FTA Cell), Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, New Delhi, it has been informed that the following COOs were not authentic and were not issued by the Ministry of Investment, Trade & Industry of Malaysia (MITI): -

**Table-3**

Sl. No.	COO No.	Dated	Commodity	HSN Code	Name of the Consignee/Importer	Name of the Consigner / Exporter	RVC
1.	KL-2022-AI-22-0100871	Oct 11, 2022	Poly Solar Cell	8541 4200	Pahal Solar	Bumi Resources Trading SDN BHD	RVC 46% +CTSH
2.	KL-2022-AI-22-0101047	Dec 02, 2022	Poly Solar Cell	8541 4200		Bumi Resources Trading SDN BHD	RVC 46% +CTSH
3.	KL-2022-AI-22-0101042	Nov 30, 2022	Poly Solar Cell	8541 4200		Bumi Resources Trading SDN BHD	RVC 46% +CTSH
4.	KL-2023-AI-21-002162	Feb 23, 2023	Poly Solar Cell	8541 4200		Beckerford SDN BHD	RVC 46% +CTSH
5.	KL-2023-AI-23-0101083	Feb 01, 2023	Poly Solar Cell	8541 4200		Beckerford SDN BHD	RVC 46% +CTSH

10. Consequent to the above verification conducted under CAROTAR Rules, 2020, Shri. Manish D. Shingala, Partner of M/s. Pahal Solar, in response to summons tendered his voluntary statement dated 03.10.2023 under Section-108 of the Customs Act, 1962. In his said statement Shri Manish D. Shingala, has inter alia stated that-

- i. he accepted and confirmed the contents of his earlier statements dated 12.04.2023 and 27.04.2023 given voluntarily under Section-108 of the Customs Act, 1962 as true and correct.
- ii. Shri. Deep Israni's role was to introduce to the suppliers i.e., Mr. Peter Song with whom they dealt with respect to imports of their solar cells and Shri Deep Israni was kept informed about the imports affected by them; that Shri Deep Israni is neither indenter nor they paid any commission to him (Deep Israni).
- iii. Out of the total poly solar cells imported vide five Bills of entry (all Warehouse bills of entry) 4,45,735 nos. of poly solar cells were lying in their bonded warehouse as raw material and 19,82,880 nos. of poly solar cells were lying in our bonded warehouse in the form of finished products i.e. PV solar modules.
- iv. After the prices were finalized with Mr. Peter Song, he (Peter) would share the proforma invoice from his (Peter's) mail id [peter.song@aiduosolar.jp](mailto:peter.song@aiduosolar.jp) to their mail ID [manish@pahalsolar.com](mailto:manish@pahalsolar.com); that they used to either send back the signed copy of the proforma invoice giving their consent or the copy of the transaction made on the basis of the proforma invoice but no Purchase Order was issued by them.
- v. On being shown the printout of chat dated 17.03.2023 wherein Mr. Peter had sent him a message saying that *'bro, still waiting for the reissued document from China to Malaysia, but that is trouble, we may to have to send it back and resend from China. It is a serious mistake that Malaysia custom won't allow us to clear it from the port. But second batch of mono will reach Malaysia in 2 days too. And booked vessel at 24<sup>th</sup> from Malaysia to India'* on page no. serially marked as 129 from the made-up file No. 2 recovered during the search proceedings under Panchnama dated 11.04.2023 at M/s. Pahal Solar, Surat he stated that they placed an order for mono solar cells in first week Mar-2023 and the material was not dispatched; that he enquired with Mr. Peter several times regarding the order and the said message is reply to the enquiry; that against the order placed they never received the shipment as they cancelled the same and the payment made in this regard was refunded to them.
- vi. they had not dealt with M/s. Bumi Resources Trading SDN BHD, M/s. Beckerford SDN BHD and the information/declaration in Form – AI for M/s. Bumi Resources Trading SDN BHD and M/s. Beckerford SDN BHD

- submitted by them were provided by Mr. Peter Song; that on receipt of the said information they filed it as it is along with the bills of entry for the clearance of goods imported from Malaysia;
- vii. he is aware of the Rule 4 of the CAROTAR Rules 2020; that they had not visited Malaysia and did not ascertain the facts regarding the manufacture of solar cells at Malaysia; that they also wrote email to Ministry of International Trade and Industry Malaysia (MITI) asking for the verification of AIFTA Preferential Certificate of Origin COO but no reply was received;
- viii. On being shown and asked about the verification report dated 17.07.2023 received from International Customs Division (FTA cell) wherein it is mentioned that the FTA certificate nos. KL-2022-AI-22-0100871, KL-2022-AI-22-0101047, KL-2022-AI-22-0101042, KL-2023-AI-21-002162 and KL-2023-AI-23-0101083 (at S. No 24 and 28) are “*not authentic and were not issued by Ministry of Investment, Trade and Industry Malaysia (MITI)*”, he admitted that these certificates of origin are not authentic and are not issued by MITI.

It appears from the above statement Shri. Manish D. Shingala that Shri Deep Israni was kept informed about the import of solar cells effected by them. Shri. Manish D. Shingala admitted that they had not dealt with either M/s. Bumi Resources Trading SDN BHD or M/s. Beckerford SDN BHD and the documents received by them from Mr. Peter were submitted by them as-it-is while filing the Bills of Entry. Further, Shri. Manish D. Shingala re-iterated that they had not visited Malaysia and did not ascertain the facts regarding the manufacture of solar cells at Malaysia.

#### **SEIZURE OF SOLAR CELLS IMPORTED FROM MALAYSIA**

11. Vide Panchnama dated 13.10.2023 drawn at the premises of M/s. Pahal Solar situated at 189, Block No. 71, Opp. Shiv Shakti Estate, Olpad Sayan Road, Surat-394540, the DRI-SRU placed the solar cells imported from Malaysia as detailed below were placed under seizure:

**Table-4**

S. No.	Warehouse Bill of Entry and date	Qty (Nos)	Assessable value (Rs.)	FTA certificate reference no.
1.	2885817/ 14.10.2022	1,00,000	54,08,720/-	KL-2022-AI-22-0100871
2.	3575243/ 02.12.2022	5,00,000	2,41,90,000/-	KL-2022-AI-22-0101042

3.	3633904/ 07.12.2022	9,00,000	4,34,68,200/-	KL-2022-AI-22 0101047
4.	4474148/ 03.02.2023	9,00,000	3,83,54,625/-	KL-2023-AI-23 0101083
5.	4785646/ 24.02.2023	9,00,000	3,72,66,075/-	KL-2023-AI-21 002162
	<b>Total</b>	<b>33,00,00,000</b>	<b>14,86,87,620/-</b>	

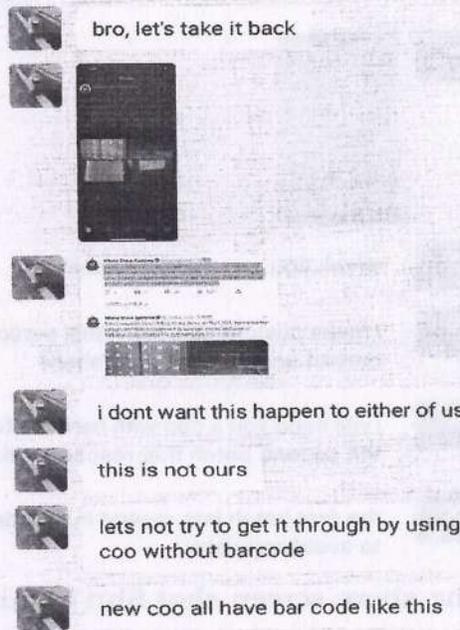
**11.1** Subsequently, Seizure Memo dated 19.10.2023 with respect to the seizure of 33,00,00,000 pcs of solar cells imported from Malaysia under Bills of entry 2885817/14.10.2022, 3575243/02.12.2022, 3633904/07.12.2022, 4474148/03.02.2023 and 4785646/24.02.2023 totally valued at Rs. 14,86,87,620/- was issued to M/s. Pahal Solar.

**11.2** Shri. Manish D. Shingala vide email dated 24.10.2023 requested for the provisional release of seized goods. Subsequently, letter dated 08.11.2023 addressed to the Principal Commissioner of Customs, NS, JNCH, Nhava Sheva, was sent giving details of the duty paid voluntarily in respect of the five import consignments as mentioned in Table-1 and to consider provisional release of the goods by imposing conditions as deemed fit. The Additional Commissioner of Customs, Appraising group VA, NS-V, JNCH, Nhava Sheva issued an Order dated 26.03.2024 for Provisional Release of goods under Section 110A of Customs Act, 1962 ordering the provisional release subject to Execution of bond of Rs. 14,86,87,620/- (Rs. Fourteen Crores Eighty-Six Lakhs Eighty-Seven Thousand Six Hundred and Twenty only) and Bank Guarantee of Rs. 8,00,00,000/- (Rs. Eight Crores Only).

**12.** In response to Summons, Shri Manish D. Shingala, Partner of M/s. Pahal Solar, tendered his voluntary statement dated 04.06.2024 under Section 108 of the Customs Act, 1962. In his said statement Shri Manish D. Shingala, had inter alia stated that-

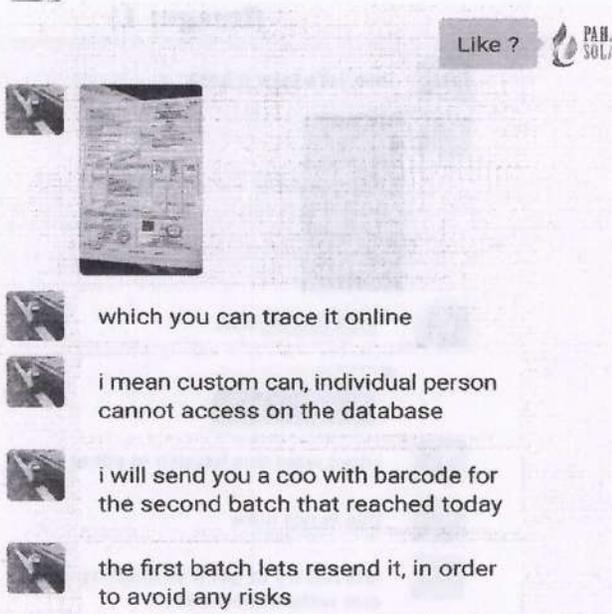
- i. He accepts and confirms the contents of his statement dated 03.10.2023 as true and correct;
- ii. On being shown the panchnama dated 13.10.2023 drawn at M/s. Pahal Solar situated at 189, Block 71, Opp. Shiv Shakti estate, Olpad-Sayan Road, Surat-394540 for the seizure of 33,00,000 pcs poly solar cells he stated that they had received the order for provisional release dated 26.03.2024 and they have not opted for the provisional release of goods.
- iii. *Shri. Manish D. Shingala was then shown the screen shot reproduced below from the printouts of his chat/messages with Mr. Peter Song on 09.02.2023 through We chat part of RUD-02*

**(Image: 1)**



- On being shown the above screen shot Shri Manish D. Shingala stated that in these chats/messages Mr. Peter Song had forwarded him a screenshot of a tweet of Nhava Sheva Customs dated 08.02.2023 regarding one consignment of Poly Solar Cells intercepted by SIIB-Nhava Sheva mis-declared to be of Malaysian origin and claiming FTA duty exemption;
- iv. On being asked to offer comments on Mr. Peter Song's messages "*bro, let's take it back*" and "*I dont this happen to either of us*" he stated that Mr. Peter Song had suggested to ship the consignment cleared by them under Bill of Entry 4474148 dated 03.02.2023 back to Malaysia; that when Mr. Peter Song suggested that this should not happen to them i.e., their consignment also found to be mis-declared of Malaysian origin they got suspicious regarding the authenticity of the certificates of origin provided by Mr. Peter however no verification was initiated by them in this regard.
- v. *Shri. Manish D. Shingala was then shown the screen shot reproduced below from the printouts of his chat/messages with Mr. Peter Song through We chat*

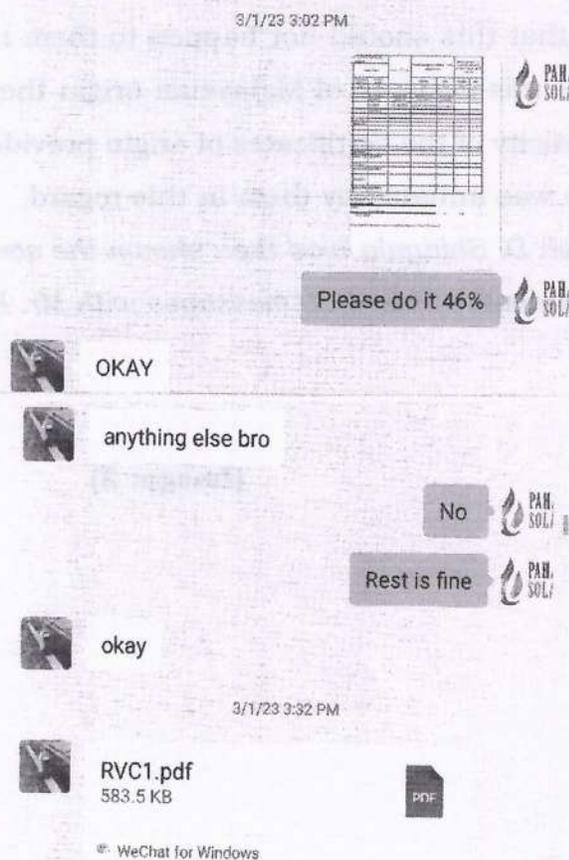
**(Image: 2)**



On being shown the above screen shot Shri Manish D. Shingala stated that Mr. Peter Song told him that for the subsequent consignment he would generate certificate of origin with barcode; that the risk that was being discussed in the chat was about their consignment being stopped by the Customs department and the goods found to be mis-declared of Malaysian origin;

- vi. *Shri. Manish D. Shingala was then shown the screen shot reproduced below from the printouts of his chat/messages with Mr. Peter Song on 01.03.2023 through We chat*

**(Image: 3)**



On being shown the above screen shot Shri Manish D. Shingala stated that in the said chat he had requested Mr. Peter Song to revise the RVC (Regional

Value content) in the document (Section II and Section III as per CAROTAR Rules) sent to him as 46% for the consignment imported and cleared under Bill of entry 4785646 dated 24.02.2023. On being asked why he had requested he stated that he is not able to re-collect any further details in this regard and would like to not offer any further comments;

- vii. *Shri. Manish D. Shingala was then shown the screen shot reproduced below from the printouts of his chat/messages with Mr. Peter Song on 14.03.2023 through We chat*

**(Image: 4)**



mono is sticking at custom, our document from china has mistake on it



asking documeng reissue now

3/14/23 12:59 PM

Dear please do faster



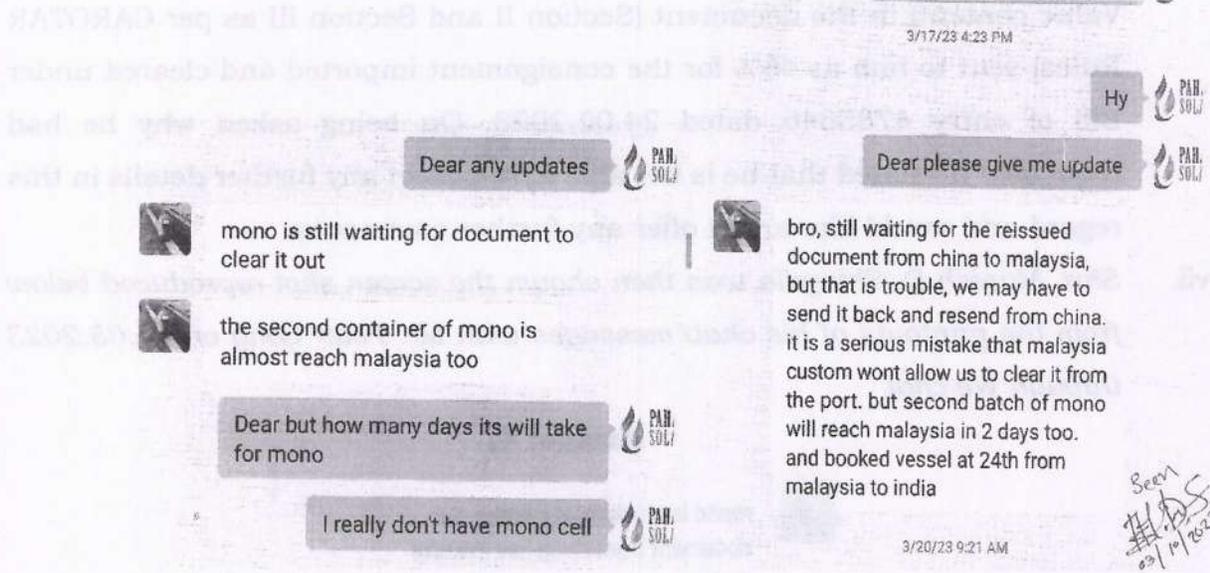
And how many days it will take



On being shown the above screen shot Shri Manish D. Shingala stated that in the said chat they had placed an order of Mono solar cells with Mr. Peter Song and made 30% advance payment on 16.01.2023; that he had asked Mr. Peter Song regarding the status of the shipment to which Mr. Peter Song replied that mono cells were stuck as customs in Malaysia as their documents from China had some mistake; he admitted being aware that Chinese manufactured solar cells were being shipped by Mr. Peter showing the same to be originated in Malaysia using unauthentic COOs.

- viii. *Shri. Manish D. Shingala was then shown the screen shot reproduced below from the printouts of his chat/messages with Mr. Peter Song on 17.03.2023 through We chat*

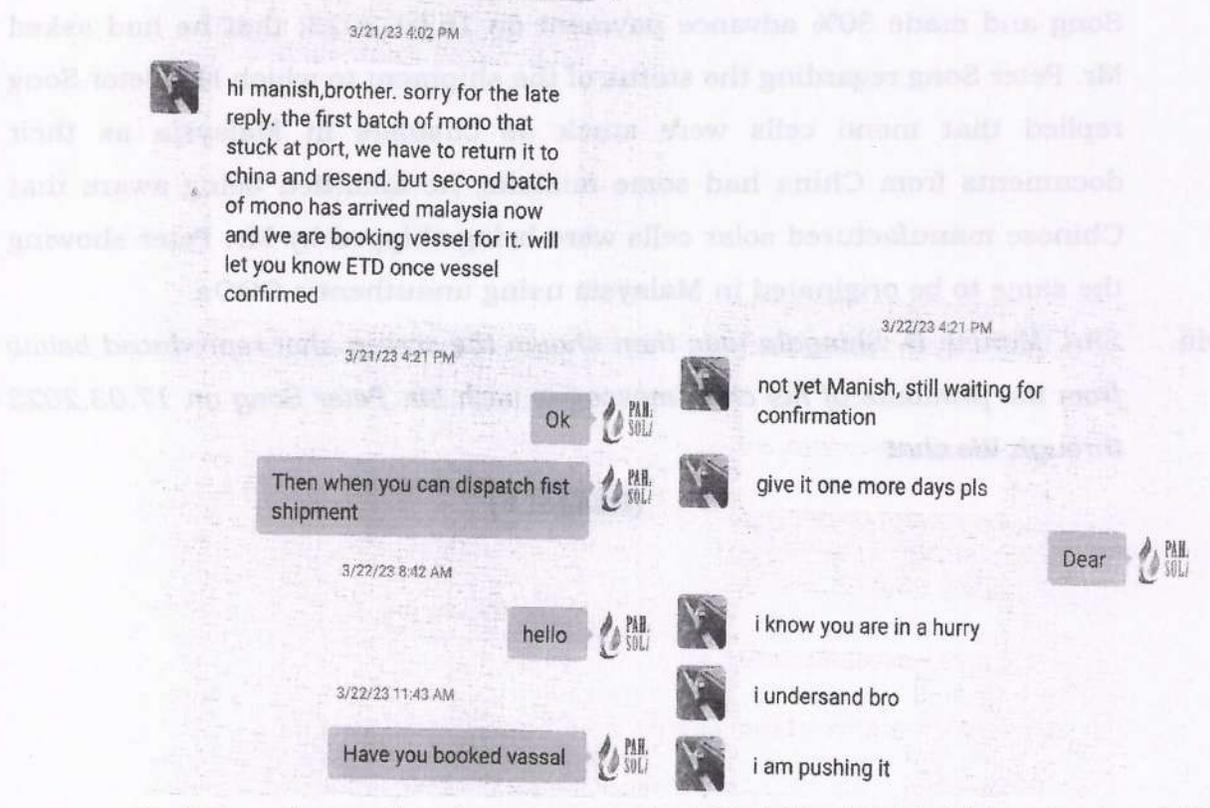
**(Image: 5)**



On being shown the above screen shot Shri Manish D. Shingala admitted that the discussion in the said chat/messages is with respect to Mono solar cells as Mr. Peter Song was booking the vessel from Malaysia to India within two days of the arrival of consignment at Malaysia and those mono cells were originated in China.

- ix. *Shri. Manish D. Shingala was then shown the screen shot reproduced below from the printouts of his chat/ messages with Mr. Peter Song on 21.03.2023 through We chat*

(Image: 6)

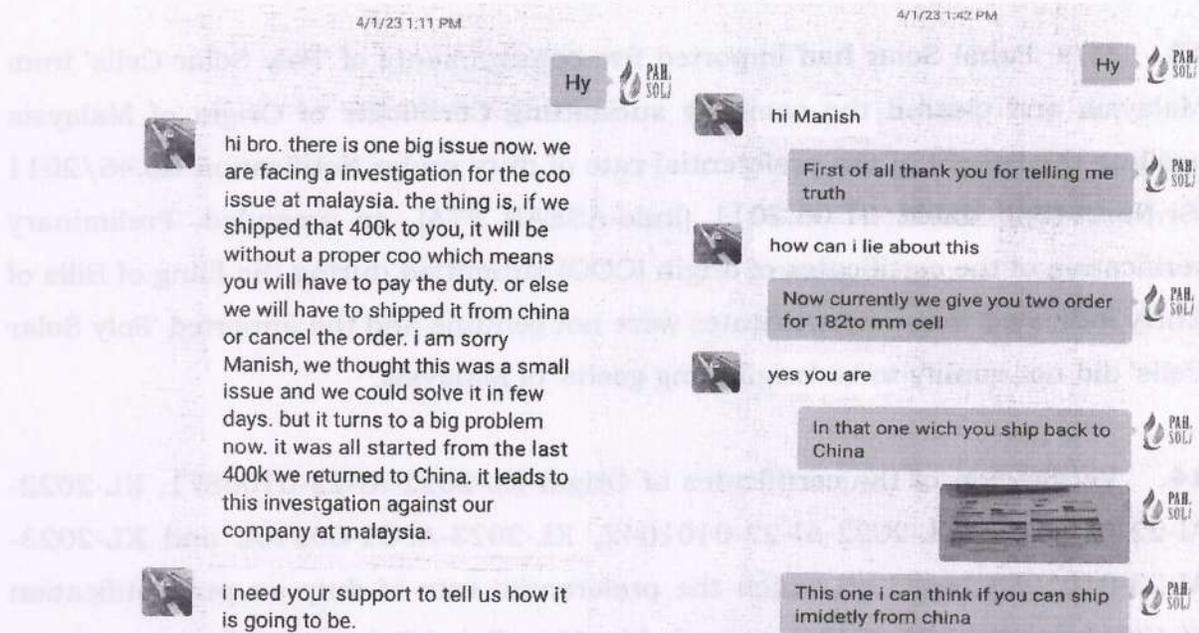


On being shown the above screen shot Shri Manish D. Shingala stated that Mr. Peter Song confirmed that the first of mono solar cells had to be returned to China and re-shipped to Malaysia; that Mr. Peter Song informed them regarding the arrival of second batch of mono solar cells at Malaysia and Mr. Peter Song was booking a vessel for it; that he had asked Mr. Peter Song if

they had booked the vessel for the Chinese originated mono solar cells to India;

- x. *Shri. Manish D. Shingala was then shown the screen shot reproduced below from the printouts of his chat/messages with Mr. Peter Song on 01.04.2023 through We chat*

(Image: 7)



On being shown the above screen shot Shri Manish D. Shingala stated that Mr. Peter Song informed them that they were facing an investigation for COO issue at Malaysia and they could ship the mono solar cells to them without COO; that subsequently they cancelled the mono solar cells order;

- xi. When Shri. Manish D. Shingala was asked whether he admits he had co-conspired with Mr. Peter Song to fraudulently route Chinese manufactured cells through an FTA country (Malaysia) to India in order to claim BCD benefit for which otherwise they would not be eligible he did not offer any comments.

In the above statement dated 04.06.2024 Shri. Manish D. Shingala Raghunath admitted to have discussed about the consignment of solar cells intercepted at Nhava Sheva which was mis-declared to be of Malaysian origin. Subsequently, he had a discussion with Mr. Peter Song regarding shipping back one of their import consignments to avoid the risk of being caught. Further, Shri. Manish D Shingala admitted to have asked Mr. Peter Song to change the regional value content for one of their import consignments of solar cells. When Mr. Peter Song informed Shri. Manish Shingala the arrival of mono solar cells at Malaysia, Shri. Manish Shingala enquired regarding the booking of vessel for the consignment to India the very next day, this makes it evident that he was aware of the entire modus operandi. Further, Shri. Manish Shingala when countered with all the chats/messages he had with Mr. Peter Song regarding consignment of mono solar cells admitted that he was aware that Chinese manufactured solar cells were

shipped to them by Mr. Peter Song. Further, it appears that he had suggested Mr. Peter Song to make the RVC- 46 % for one of their consignments to satisfy ASEAN FTA agreement conditions.

### **ANALYSIS AND FINDINGS**

**13.** M/s. Pahal Solar had imported five consignments of 'Poly Solar Cells' from Malaysia and cleared the same by submitting Certificate of Origin of Malaysia availing the benefit of the preferential rate of duty under Notification No.46/2011 [Sr.No.1445(l)] dated 01.06.2011 (Indo-ASEAN FTA), as amended. Preliminary verification of the certificates of origin (COO) submitted during the filing of Bills of Entry indicated that the certificates were not genuine and the imported 'Poly Solar Cells' did not qualify to be 'originating goods' of Malaysia.

**14.** Verification of the certificates of Origin KL-2022-AI-22-0100871, KL-2022-AI-22-0101047, KL-2022-AI-22-0101042, KL-2023-AI-21-002162 and KL-2023-AI-23-0101083 based on which the preferential rate of duty as per Notification 46/2011 dated 01.06.2011 was availed by M/s. Pahal Solar was taken up with the Directorate of International Customs, CBIC, New Delhi. The Directorate of International Customs (FTA Cell), Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, New Delhi in their reply informed that the COOs KL-2022-AI-22-0100871, KL-2022-AI-22-0101047, KL-2022-AI-22-0101042, KL-2023-AI-21-002162 and KL-2023-AI-23-0101083 were not authentic and were not issued by the Ministry of Investment, Trade & Industry of Malaysia (MITI) which has been undisputedly admitted by M/s. Pahal Solar. Therefore, it has been ascertained that on the basis of fabricated/in-authentic certificates M/s. Pahal Solar Limited has availed ineligible duty exemption.

**15.** In this regard, it is pertinent to mention that in accordance with Section 28DA(1)(i) of the Customs Act, 1962 read with rule 3(1)(a) of the CAROTAR-2020, the Customs (Administration of Rules of Origin under trader agreement) Rules,2020 M/s. Pahal Solar have declared in each of their five Bills of Entry wherein duty exemption has been availed that the goods qualify as originating goods for preferential rate of duty. The declarations filed by M/s Pahal Solar in respect of a representative Bill of Entry 4785646 dated 24.02.2023 before the Customs to avail the exemption of BCD is scanned and placed below for ease of reference:

**(Image: 8)**

  <p><b>INDIAN CUSTOMS</b></p>	Port Code	BE No	BE Date	BE Type	
	INNSA1	4785646	24/02/2023	W	
EC/Br	5216502408/1		FIRST COPY		
GSTIN/TYPE	24AATFP5737A1Z8/G				
CB CODE	AACCI0742ACH002				
TYPE	INV	ITEM	CONT		
Nos	1	1	1		
PKG	19	G.WT (KGS)	12540		
PORT : JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707					BE0240220231636
BILL OF ENTRY FOR WAREHOUSE BE					

**PART - VI - DECLARATION**

Declaration for 0/0: I/We declare that the contents of this Bill of Entry for goods imported against above mentioned Bill of Lading/ Airway Bill /Lorry Receipt/Railway Receipt numbers are in accordance with the above mentioned invoice(s) No(s)and other documents presented herewith.

Declaration for 0/0: I/We declare that the contents of the above mentioned invoice(s) and documents are true and correct in every respect.I/We have not received and do not know of any other documents or information showing a different description, quantity, price, value, of the said goods and that if at any time hereafter I/We discover any document / information showing different facts, I/We will immediately make the same known to the Commissioner of Customs.

Declaration for 1/0: I/We declare that all conditions or restrictions, if any, imposed by the seller of any third party on the disposition or use of the imported goods [as per proviso to Rule 3(2) of the Customs Valuation Rules, 2007] are specified above.

Declaration for 1/0: I/We declare that the price paid or payable by the importer is as per the details provided above, and any price paid or payable in addition to the above will be settled with the seller at the end of a defined period by means of debit note / credit note (post import price adjustment), which are as per the contract attached as a supporting document.

Declaration for 1/0: I/We declare that there are no payments actually paid or payable for the imported goods by way of cost and services [in terms of Rules 10(1)(a)(i), Rule 10(1)(a)(ii), Rule 10 (1) (a) (iii) and Rule 10 (1) (b) of Customs Valuation Rules, 2007], Royalty / Licence Fee / subsequent resale or use of goods /other payment as a condition of sale [(Please see Rule 10 (1) (c), (d) & (e) of Customs Valuation Rules, 2007] other than those declared in the invoice which are mentioned as miscellaneous charges in this Bill of Entry.

Declaration for 1/1: I declare that these goods qualify as originating goods for preferential rate of duty under the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 notified vide Customs Notification No. 81/2020 - Customs (N.T.) dated 21.08.2020

**15.1** Further, at the time of filing their Bills of Entry for clearance of their consignments imported from Malaysia, M/s Pahal Solar have also filed declarations under Section II (to be filed after filing of Bill of Entry), Section III (this information should be possessed before import of goods in Part A & B) as shown ahead, Production Process Flow Chart and Inspection Results, stating “Originating Criteria as 46% and Country of Origin as Malaysia” of Form-I. As a sample, one such declaration filed by M/s Pahal Solar in respect of same Bill of Entry 4785646 dated 24.02.2023 before the Customs to avail the exemption of Basic Customs Duty (BCD) is scanned and placed below for ease of reference:



BECKERFORD SDN BHD  
 4-3-1 BLOCK 4,  
 KOMPLEKS KANTONMEN PRIMA JALAN IPOH,  
 BATU 4 1/2 51200 KUALA LUMPUR W.P.  
 KUALA LUMPUR  
 MALAYSIA

**Section II**  
 (To be filled after filing of Bill of Entry)

- (a) Name of the importer: PAHAL SOLAR  
 (b) Bill of Entry (B/E) No. and Date:  
 (c) Customs Station where B/E was filed:  
 (d) Goods on which preferential rate of duty has been claimed:

Sl.no.	Description	Classification (8 digit)
1	Poly Crystalline Solar Cell	85414200

**Section III**

(This information should be possessed before import of goods) Part A:

1. Briefly describe the production process undertaken in country of origin with respect to production of the imported good. Also, state which of the originating criteria prescribed in the Rules of Origin has been claimed. For example, WO, RVC + CTH/CTSH or CTH or CC or RVC, etc.  
 [WO: Wholly Obtained; RVC: Regional Value Content; CTH: Change in Tariff Head; CTSH: Change in Tariff Sub-Head; CC: Change in Chapter]

**ORIGINATING CRITERIA: 46%**

**Note 1:** Where the good is claimed to be "Wholly Obtained", mention the process through which it is claimed to fall under this category. Each trade agreement lists out such processes under a specific rule and may vary from agreement to agreement.

**Examples:**

- o goods obtained by hunting or trapping within the land territory, or fishing or aquaculture conducted within the internal waters or within the territorial sea of the Party;
- o goods produced on board factory ships from the goods referred to in preceding paragraph, provided that such factory ships are registered or recorded with a Party and fly its flag.

**Note 2:** If the goods are not wholly obtained, the manufacturing/processing undertaken in country of origin must be ascertained.

Description of goods	Production process	Originating Criterion
Solar Cells Poly	Texturing → Diffusion → SE → Oxy → Etching → PECVD/ARC → Printing → Firing → Sorting	CTSH+RVC 46%
Raw Material Wafer (Import) 45% Chemical (Import) 9% Process (Local) 46%		
Manufacturer of goods	Beckerford Sdn Bhd, 4-3-1 BLOCK 4 KOMPLEKS KANTONMEN PRIMA JALAN IPOH, BATU 4 1/2 51200 KUALA LUMPUR W.P. KUALA LUMPUR MALAYSIA	
Applicable FTA	Asian-Indin Free Trade Area Preferential Tariff	
Country of Origin of goods	MALAYSIA	

**Part B:**

(To be filled if originating criteria is NOT wholly obtained, for each of such good under import, on separate sheets)  
 1. State the following information for each originating material or component used in production of good subject to this request. If no originating material/components were used, same should be indicated as "None".

**Description of good under import and its classification (8 digit):**

\*\*\*\*\* (attach separate sheets) \*\*\*\*\*

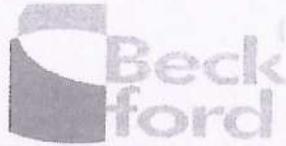


Signature of good under import	Classification (8 digit)
PAHAL SOLAR	85414200

Digitally signed by PAHAL SOLAR  
 Date : 2023.02.28 14:23:16 +05'30'  
 Location : Maharashtra

(Image: 9)

(Image: 10)



BECKERFORD SDN BHD  
 4-3-1 BLOCK 4,  
 KOMPLEKS KANTONMEN PRIMA JALAN IPOH,  
 BATU 4 1/2 S1200 KUALA LUMPUR W.P.,  
 KUALA LUMPUR  
 MALAYSIA

2

THE GAZETTE OF INDIA : EXTRAORDINARY

[PART II—SEC. 3(i)]

Description of the originating Materials or Component	Whether manufactured by producer of final good	Whether procured by producer locally from a third party	In case procured from third party, did producer of final good seek conformation and documentary proof of origin of these component?
	(Yes/No)	(Yes/No)	(Yes/No)
Poly Crystalline Solar Cell	NO	YES	YES

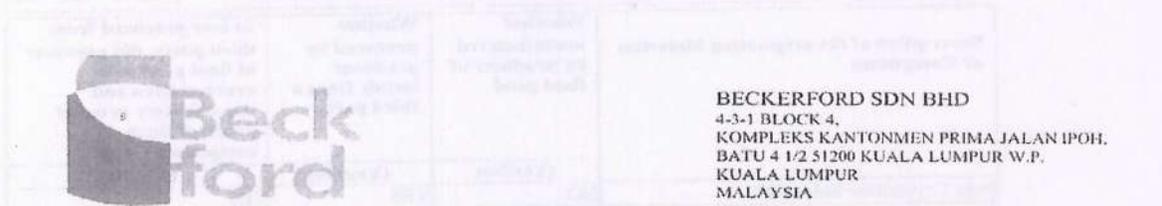
Note: If origin of any of the components used in manufacture of final good cannot be ascertained, same should be treated as non-originating.

2.

a.	Is the de minimis provision used to determine whether the good subject to this request qualifies as an originating good?	No
b.	Is the accumulation/cumulation provision applied to determine whether the good subject to this request qualifies as an originating good?	No
c.	Has any other additional criteria such as indirect/neutral materials, packing materials, etc. used in ascertaining whether the good qualifies as an originating good.	No
d.	Is the originating criteria based on value content?	Yes If yes, provide the following: (i) percentage of local value content: 46.0% (ii) components which constitute value addition, power cost, labour cost, overhead cost, financing cost, profit
e.	Has CTC rule been applied for meeting originating criteria?	Yes If yes, provide HS of non-originating material/components used in production of good: 1) Monomer: 29161200 2) PE film: 39201000
f.	Has process rule been applied in ascertaining origin of good subject to this request?	No
g.	Has the COO been issued retrospectively?	Yes
h.	Has the consignment in question been directly shipped from country of origin?	Yes



(Image: 11)



**ANNEXURE – B**  
**PROCESS FLOW CHART OF MANUFACTURE**

The name of Goods: Poly Crystalline Solar Cell

**PRODUCTION PROCESS FLOW CHART**

Country of Origin: CTSH+RVC 46% in Malaysia.

RAW MATERIALS: Wafer and chemical are imported from multiple countries.

↓  
Chemical process such as Texturing, Diffusion, Oxidized, Etching, PECVD/ARC and Printing for pattern.

↓  
Test under light simulation equipment to present actual output data

↓  
Cleaning and sorting based on quality level and efficiency performance test data.

↓  
Packing and labelling by coloring, functioning.

**INSPECTION RESULTS**

Description: Poly Crystalline Solar Cell  
Color: Blue to Deep Blue  
Efficiency: 18.9% 4.64wp  
Outfit: 5 Bus Bars  
Measurement: 157.00mm\*157.00mm (±0.25mm)  
Storage Store: At room temperature  
Characteristic: Non-toxic, Non- Corrosiveness, Non-explosive

**15.2** Shri. Manish D. Shingala vide his statement dated 03.10.2023 admitted that they had not dealt with M/s. Bumi Resources Trading SDN BHD or M/s. Beckerford SDN BHD and information/declaration were provided by Mr. Peter Song and on receipt of the same they filed it as received, along with the bills of entry availing the FTA benefit. Further, Shri. Manish D. Shingala vide his statement dated 27.04.2023 admitted that there was no facility for manufacturing solar cell for their suppliers in Malaysia. Shri. Manish D. Shingala vide his statement dated 04.06.2024 admitted being aware of the fact that Chinese manufactured solar cells were being shipped by Mr. Peter showing the same to be originated in Malaysia using in-authentic COOs. Therefore, the above declarations filed along with the Bills of Entry by M/s Pahal Solar for clearance, declaring that 'Originating Criteria: 46%' due to the *manufacturing/processing undertaken in country of origin*', production flow chart, inspection, etc., appears to be bogus documents and it

appears that the said declarations have been submitted by M/s Pahal Solar with malafide intention to avail the Basic Customs Duty exemption under Notification No.46/2011.

**16.** During the search proceedings at the factory premises of M/s. Pahal Solar under Panchnama proceedings dated 11.04.2023 the screenshots of the chats between Shri. Manish D. Shingala and one Mr. Peter Song from the We Chat App installed in the mobile phone of Shri. Manish D. Shingala i.e. Samsung S10 Plus with IMEI No. 353553100915454 and Serial No. R58M7658NXL were also recovered (attached with RUD-02). Relevant evidences are discussed as below:

**16.1** From the chats /messages reproduced above in **Image 1 & 2**, it is evident that Mr. Peter Song came to know about the consignment of Poly Solar Cells intercepted by SIIB-Nhava Sheva, on the ground of mis-declaration to be of Malaysian origin. He suggested Shri. Manish D. Shingala not to try to clear it in order to avoid risks. When confronted with these chats/messages Shri. Manish D. Shingala stated 'risk' that was being discussed in the chat was about their consignment too getting detected as mis-declared of Malaysian origin. Therefore, it is evident that both Shri. Manish D. Shingala as well as Mr. Peter Song were aware that the solar cells being imported have originated in China.

**16.2** From the chats /messages reproduced above in **Image 3**, it is evident that Shri. Manish D. Shingala had asked Mr. Peter Song to make the Regional Value content 46%. When confronted with these chats/messages Shri. Manish D. Shingala stated that the said discussion is with respect to solar cells imported and cleared under Bill of entry 4785646 dated 24.02.2023. Therefore, it appears that Shri. Manish D. Shingala was aware declarations filed along with the Bills of Entry by M/s Pahal Solar for clearance, declaring the originating criteria were bogus and were modified by him through Mr. Peter Song as per their requirement.

**16.3** From the chats /messages reproduced above in **Image 5 and 6**, it is evident Shri. Manish D. Shingala had enquired Mr. Peter Song regarding the vessel booking status the very next day after Mr. Peter Song informed him about the arrival of second batch of mono from China to Malaysia. When confronted with these chats/messages Shri. Manish D. Shingala admitted that the said discussion is with respect to mono solar cells. Therefore, it is evident that Shri. Manish D. Shingala was aware of the entire modus and the cells imported by them from Malaysia had originated in China.

**16.4** From the above discussion on the incriminating chats that were gathered during investigation, it appears that M/s. Pahal Solar represented by Shri. Manish was aware that the solar cells being imported by them had originated in China and committed the said fraud with malafide intention of evading the applicable duty.

17. Shri. Deep Israni (the mediator between Shri. Manish S. Shingala and the supplier) vide his statement dated 25.04.2024 submitted duly endorsed printouts showing details of messages and WhatsApp chats held by him with Mr. Peter Song, Ms. Lisa Lee, and others. Relevant evidences are discussed as below: -

17.1 *Excerpt of WhatsApp chat between Shri. Deep Israni and Ms. Lisa Lee (another Chinese national representing M/s. Aiduo Solar, Japan) wherein the ASEAN Free trade agreement is being discussed. This screen shot was taken from the printouts submitted by Shri. Deep Israni vide his voluntary statement dated 25.04.2023.*

**(Image: 12)**

7/7/22, 1:03 PM - deep: Lisa problem with this ASEAN agreement is that company who is supplying should have manufacturing in these countries and their 60% of their raw materials should be locally purchased. This can't happen as there is no wafer manufacturing in Vietnam , Malaysia, Thailand or Cambodia. So this 60% domestic raw materials criteria can never be done  
7/7/22, 1:06 PM - Lisa Aiduo: so if even we have manufacturer in Cambodia of solar cell, it can not meet this agreement.  
7/7/22, 1:07 PM - deep: Actually no  
7/7/22, 1:08 PM - deep: But it is better than not having factory and just routing  
7/7/22, 1:09 PM - Lisa Aiduo: ok  
7/7/22, 1:09 PM - deep: What DRI can do is ask Indian embassy to check if there is actually factory or no. They can't force this factory to share their purchases. So it's better to have atleast factory  
7/7/22, 1:10 PM - Lisa Aiduo: got your point

From the WhatsApp chat reproduced above it can be seen that Shri. Deep Israni is very well aware that as per the provisions of ASEAN Free Trade Agreement 60% local purchase is mandatory for availing the duty benefit and that this cannot be met as there is no wafer manufacturing in Malaysia. Further, he specifically mentioned that DRI can verify the existence of factory through Indian Embassy but cannot force the factory to share the purchases. Therefore, Shri. Deep Israni suggested Ms. Lisa Lee that having a manufacturer with an existing premise is better than not having a factory and just routing to evade any law enforcement action, if any. This indicates the active conspirational role of Shri. Deep Israni in the entire modus with an aim to route Chinese origin solar cells through Malaysia and fraudulently obtain fake COOs so as to evade the Basic Customs Duty.

17.2 *Excerpt of WhatsApp chat between Shri. Deep Israni and Ms. Lisa Lee. This screen shot was taken from the printouts submitted by Shri. Deep Israni vide his voluntary statement dated 25.04.2023.*

**(Image: 13)**

11/29/22, 6:10 PM - deep: Lisa please be frank and tell me about Aiduo and Inspired.  
11/29/22, 6:11 PM - deep: I know there is no manufacturing unit  
11/29/22, 6:11 PM - deep: Are there other employees or just two of you  
11/29/22, 6:11 PM - Lisa Aiduo: yes. both no manufacturing  
11/29/22, 6:14 PM - Lisa Aiduo: one person based in Japan. Peter is responsible for purchase. one purchase. i am sales and have one assistant.  
11/29/22, 6:15 PM - deep: But now you don't go to office  
11/29/22, 6:15 PM - Lisa Aiduo: i have my office in Shanghai  
11/29/22, 6:16 PM - Lisa Aiduo: only peter sit in office

In the WhatsApp chat reproduced above Shri. Deep Israni is himself admitting being aware of the fact that there is no manufacturing unit of M/s. Inspired Energy Limited Co. Ltd. When Shri. Deep Israni enquired regarding the employees of M/s. Inspired Energy Limited Co. Ltd. M/s. Lisa Lee stated that there are only two employees in M/s. Inspired Energy Limited Co. Ltd., herself and Mr. Peter Song and their office is in Shanghai. This WhatsApp chat reiterates the statement of Shri. Deep Israni dated 25.04.2024 in which he admitted being aware of the fact that all the goods which were imported through Mr. Peter Song were of Chinese origin, originally shipped from China to Malaysia and were offloaded and kept in Malaysia Export Zone area for about two weeks before shipping the same to India under different Bills of Lading after fake COOs were arranged by Mr. Peter Song.

**17.3** From the above discussion on the incriminating chats that were gathered during investigation, it appears that M/s. Pahal Solar represented by Shri. Manish D. Shingala colluded with Shri. Deep Israni and committed the said fraud despite knowing that the cargo is not originating at Malaysia.

**18.** From the statements and evidences on record it is evident that the modus operandi adopted by the importer included shipping the solar cells manufactured in China to Malaysia and keeping the same in the export zone area for around two weeks. Thereafter, these Chinese originated solar cells were exported from Malaysia to India under certificates of origin forged by Mr. Peter Song and cleared using the same thereby availing the preferential rate of duty concession under Notification No.46/2011 dated 01.06.2011.

**19.** During the investigation conducted which includes the statements and evidences discussed in paras supra, the following points appear to emerge: -

- (a) Shri. Deep Israni had introduced the Indian importers viz. M/s Pahal Solar, Surat (Shri. Manish D. Shingala), M/s GreenBrilliance Energy, Vadodara (Shri Biju Ragunath), M/s Solex Energy, Surat (Shri Chetan Shah), etc. to Mr. Peter Song who was associated with company M/s Inspired Energy, China.

- (b) Five consignments of Poly solar cells were then imported by M/s Pahal Solar through Mr. Peter Song of M/s. Inspired Energy Co. Ltd.
- (c) Mr. Peter Song had supplied the solar cells using the name M/s. Bumi Resources Trading SDN BHD and M/s. Beckerford SDN BHD to M/s. Pahal Solar.
- (d) Shri. Manish D. Shingala who was looking after the purchases for M/s Pahal Solar admittedly never was in contact with any of the representative of M/s. Bumi Resources Trading SDN BHD and M/s. Beckerford SDN BHD for the two consignments imported by them through Mr. Peter Song.
- (e) Shri. Deep Israni was the single point contact between the importers and Mr. Peter Song and used to receive commissions from Mr. Peter Song with respect to the imports of solar cells consignments effected by the Indian importers.
- (f) Further, Shri. Deep Israni was also aware that there was no manufacturing facility or unit held by M/s Inspired Energy and M/s Bumi Resources Trading SDN BHD in Malaysia which is evident from his WhatsApp chat dated 07.07.2022 and 29.11.2022 as discussed in Para 16.1
- (g) Shri. Deep Israni admitted that consignments of solar cells manufactured in China were offloaded and kept in Malaysia Export Zone area for about two weeks and after obtaining the COO by Mr. Peter Song the said goods were loaded into the container and shipped from Malaysia.
- (h) Shri. Manish D. Shingala admitted that they have not visited Malaysia and did not ascertain the facts regarding the manufacture of solar cells at Malaysia had no knowledge of M/s. Bumi Resources Trading SD BHD;
- (i) The reference number in one of the certificates of origin submitted with respect to import of solar cells from Malaysia was found to same as mentioned in the consignment of copper wire imported by M/s. Pahal Solar from Malaysia.
- (j) When Shri. Manish D. Shingala was confronted with chats/messages he had with Mr. Peter Song wherein the discussions related to risk and delivery of mono solar cells consignment were held, Shri. Manish D. Shingala admitted being aware of the fact that Chinese manufactured solar cells were being shipped by Mr. Peter showing the same to be originated in Malaysia using in-authentic COOs.
- (k) Verification of the five certificates of Origin under which the consignments were imported from Malaysia was carried out and it was revealed that the five certificates of origin were not authentic and were not issued by the Ministry of Investment, Trade & Industry of Malaysia (MITI).

**19.1** The documents furnished and declarations filed along with the Bills of Entry by M/s Pahal Solar, declaring 'Originating Criteria: 46%' when seen in the context of the statements of S/Shri. Manish D. Shingala and Deep Israni and digital

evidences gathered during investigation as discussed above appears to be fraudulent and done with an intention to gain the BCD exemption available under ASEAN Free Trade Agreement. Further, investigation revealed that no efforts were made by M/s. Pahal Solar to verify any of documents/information furnished as mandated under Section 28DA(1)(iv) of the Customs Act, 1962 read with rule 4(c) of the CAROTAR-2020. They were never in touch with the supplier and admittedly had not verified about the existence of any manufacturing facility with the foreign supplier. The above findings become crucial especially when the chats/messages unequivocally indicated that there was a conscious decision to cross load the Chinese origin goods at Malaysian port. It appears from the above findings that they were aware that the documents were forged and fraudulent.

**19.2** In view of above, it also appears that S/Shri. Manish D. Shingala, partner of M/s. Pahal Solar and Deep Israni, the middleman, were well aware prior to the imports that the said consignments were of Chinese origin, documents for which including bogus COO were arranged by Mr. Peter Song and that cargo was routed through Malaysia with the intention to claim the preferential rate of duty concession under Notification No.46/2011 dated 01.06.2011 by mis-declaring the actual country of origin.

## **20 Statutory Provisions**

The extracts of the relevant provisions of following laws relating to self-assessment, import of goods in general, the liability of the goods to confiscation and person concerned to penalty for illegal importation under the Customs Act, 1962 and other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- (i) *Section 2(14) of the Customs Act, 1962: "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid.*
- (ii) *Section 11A (a) of the Customs Act, 1962: "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*
- (iii) *Section 17- Assessment of duty leviable on any imported goods.*
- (iv) *Section 28- Recovery of duties not levied or not paid or short-levied or short- paid] or erroneously refunded.*
- (v) *Section 46- Entry of goods on importation*
- (vi) *Section 28AA — Interest on delayed payment of duty.*
- (vii) *Section 46(4)-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.*

- (viii) Section 46(4A)— *Importer who presents a Bill of entry shall ensure the accuracy and completeness of the information given in the Bill of entry.*
- (ix) Section 28DA: *Procedure regarding claim of preferential rate of duty.*
- (x) Section 111(m) & (o)-*Confiscation of improperly imported goods, which do not correspond in respect of value or in any other particular with the entry made under this Act.*
- (xi) Section 112(a) & 112(b) - *Penalty for improper importation of goods.*
- (xii) Section 114A- *Penalty for short-levy or non-levy of duty in 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 by reason of collusion or any wilful misstatement or suppression of facts.*
- (xiii) Section 114AA- *Penalty for use of false and incorrect material*

**20.1** The relevant extracts of the Notification No.46/2011-Cus dated 01.06.2011 [AIFTA - INDO - ASEAN FTA] are reproduced below:

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

*Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government*

of India in the Ministry of Finance (Department of Revenue), No. 189/2009-  
 Customs (N.T.), dated the 31st December 2009.

**Table**

<b>S. No.</b>	<b>Chapter, Heading, Sub-heading and Tariff Item</b>	<b>Description</b>	<b>Rate (in percentage unless and otherwise specified)</b>	
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
<b>1445</b>	<b>854590 to 854790</b>	All Goods	5.0	5.0

**Appendix I**

<b>S.No.</b>	<b>Name of the Country</b>
1.	<b>Malaysia</b>
2.	Singapore
3.	Thailand
4.	Vietnam
5.	Myanmar
6.	Indonesia
7.	Brunei Darussalam
8.	Lao People's Democratic Republic

**20.2** The relevant provisions of the Custom 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 Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated 31.12.2009 are reproduced as under:

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.

4. *Wholly produced or obtained products.*- For the purpose of clause (a) of rule 3, the following shall be considered as wholly produced or obtained in a party:-

(a) plant and plant products grown and harvested in the party;

*Explanation .- For the purpose of this clause, "plant" means all plant life, including forestry products, fruit, flowers, vegetables, trees, seaweed, fungi and live plants;*

*(b) live animals born and raised in the party;*

*(c) products obtained from live animals referred to in clause (b);*

*Explanation 1.- For the purpose of clauses (b) and (c), "animals" means all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.*

*Explanation 2.- For the purpose of this clause , "products" means those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;*

*(d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the party;*

*(e) minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the party's soil, water, seabed or beneath the seabed;*

*(f) products taken from the water, seabed or beneath the seabed outside the territorial water of the party, provided that that party has the right to exploit such water, seabed and beneath the seabed in accordance with Nations Convention on the Law of the Sea, 1982;*

*(g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the party and entitled to fly the flag of that party;*

*(h) products processed and/or made on board factory ships registered with the party and entitled to fly the flag of that party, exclusively from products referred to in clause (g);*

*(i) articles collected in the party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes;*

*Explanation .- For the purpose of this clause, "article" means all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded*

*packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations;*

(j) products obtained or produced in the party solely from products referred to in clauses (a) to (i).

5. Not wholly produced or obtained products. -

(1) For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if -

(i) the AIFTA content is not less than 35 per cent. of the FOB value; and

(ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digits of the Harmonized System:

Provided that the final process of the manufacture is performed within the territory of the exporting party.

(2) For the purpose of clause (i) of sub-rule (1), the formula for calculating the 35 per cent. AIFTA content is as follows:

.....

6. Cumulative rule of origin. - Unless otherwise provided for, products which comply with origin requirements referred in rule 3 and which are used in a party as materials for a product which is eligible for preferential treatment these rules shall be considered as products originating in that party where working or processing of the product has taken place.

...

8. Direct Consignment. - The following shall be considered as consigned directly from the exporting party to the importing party, -

(a) if the products are transported passing through the territory of any other AIFTA parties;

(b) if the products are transported without passing through the territory of any non-AIFTA parties;

(c) if the products whose transport involves transit through one or more intermediate non - parties with or without transshipment or temporary storage in such non-parties provided that -

(i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;

(ii) the products have not entered into trade or consumption there; and

(iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

....

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 annexed to these rules.

**20.3 The relevant provisions of the Notification No.81/2020-Customs (NT) dated 21.08.2020 are reproduced as under:**

*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 a 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. ....

**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.*

#### **INVOCATION OF SECTION-28(4) FOR DEMAND OF DUTY**

**21.** Investigation revealed that both the importer and middlemen/agent of the importer were very well aware that the goods imported were of Chinese origin but routed through Malaysia for the sole reason to evade the customs duty. The same is evident from the following: -

- i) Shri. Manish D. Shingala in his statement dated 12.04.2024 stated that solar photovoltaic cells imported by them from Malaysia originated from China.
- ii) Shri. Deep Israni in his statement dated 25.04.2024 admitted being aware of the facts that there was no manufacturing facility held by M/s Inspired Energy and M/s Bumi Resources Trading SDN BHD in Malaysia and Mr. Peter arranged for the COO Certificate which were fabricated to avail exemption from basic customs duty. In the said statement he further admitted that all the goods which were imported through Mr. Peter Song

were of Chinese origin, originally shipped from China to Malaysia and those consignments were offloaded and kept in Malaysia Export Zone area for about two weeks and subsequently shipped to India.

- iii) Shri. Manish D. Shingala in his statement dated 27.04.2024 stated that all the 5 COOs were verified through Malaysian Govt. website in his presence and it was found that they were fake as per the search result "Endorsement number does not exist" and in particular for one certificate of origin, the verification revealed that the description of the goods mentioned in the said Certificate of origin was copper wire but the said certificate was used to avail customs duty benefit for import of solar cells.
- iv) Shri. Manish D. Shingala in his statement dated 27.04.2024 admitted being aware that there is no manufacturing unit of their supplier of goods in Malaysia and during Feb-2023 when their consignment was delayed, it was confirmed that the COOs under which the goods were cleared from Malaysia with benefit of BCD were all fake and bogus.
- v) Shri. Manish D. Shingala in his statement dated 27.04.2024 admitted that they had not dealt with M/s. Bumi Resources Trading SDN BHD, M/s. Beckerford SDN BHD and the information/declaration in Form – AI for M/s. Bumi Resources Trading SDN BHD and M/s. Beckerford SDN BHD submitted by them were provided by Mr. Peter Song;
- vi) "We Chat" messages/chats of Shri. Manish D. Shingala with Mr. Peter Song (reproduced above as Image 1) wherein Mr. Peter Song is seen suggesting to take back one of their import consignments. When Shri. Manish D. Shingala was confronted with those messages he stated that when Mr. Peter Song suggested that should not happen to them i.e., their consignment also found to be mis-declared of Malaysian origin they got suspicious regarding the authenticity of the certificates of origin provided by Mr. Peter however no verification was initiated by them in this regard.
- vii) "We Chat" messages/chats of Shri. Manish D. Shingala with Mr. Peter Song (reproduced in the preceding paras as Image 3) wherein Shri. Manish D. Shingala is asking Mr. Peter Song to revise the RVC for one of their consignments which suggests that the entire document is forged as per the requirement of importer.
- viii) WhatsApp messages/chats of Shri. Deep Israni with Ms. Lisa Lee (reproduced in the preceding paras as Image12) wherein Shri. Deep Israni is suggesting her that DRI can verify the existence of factory through Indian Embassy but cannot force the factory to share the purchases. The above indicates well planned conspiracy to evade customs duty.
- ix) WhatsApp messages/chats of Shri. Deep Israni with Ms. Lisa Lee (reproduced above as Image13) wherein Shri. Deep Israni is himself

admitting being aware of the fact that there is no manufacturing unit of M/s. Inspired Energy Limited Co. Ltd.

In view of the evidences discussed above, it appears that Shri Manish D. Shingala, partner of M/s. Pahal Solar and Shri Deep Israni (the mediator between the importer and the overseas supplier), with regard to their imported consignments of solar cells from Malaysia were aware that the said consignments of solar cell were shipped from China to Malaysia and that there was no manufacturing facility or unit held by their overseas supplier at Malaysia. Further, investigation findings as discussed below indicate that they had mala fide intention to derive undue benefits (evading payment of appropriate duty) and had conspired and executed this modus operandi of routing Chinese manufactured goods through an ASEAN FTA country:

**21.1** Shri Manish D. Shingala, Partner of M/s Pahal Solar has admitted that they were not in contact with the overseas shippers of Malaysia viz. M/s. Bumi **Resources** Trading SDN BHD and Beckerford SDN BHD, but had dealt with an individual Mr. Peter Song for the said imports from China; that all the import documents including the COO were directly received by them from the said Mr. Peter Song through e-mail/courier and not from the overseas suppliers. Admittedly, no verification was conducted to ascertain the actual existence of manufacturing facilities for their overseas suppliers, no action was initiated to confirm the authenticity of the Certificates of origin after receipt of COO which could not be verified from the systems of Customs. The reference number in one of the certificates of origin submitted with respect to import of solar cells from Malaysia was found to same as mentioned in the consignment of copper wire imported by M/s. Pahal Solar from Malaysia as discussed in Para 3. These facts combined with the material evidence i.e. WeChat chats/messages that were exchanged between Mr. Peter Song and Shri Manish D. Shingala as discussed in the foregoing paragraphs, indicate that though being well aware that Chinese origin goods are being routed through Malaysia, Shri. Manish D. Shingala of M/s. Pahal Solar **colluded** with Shri. Deep Israni, Mr. Peter Song and orchestrated the plan to submit bogus/unauthentic COO Certificates solely with the intention to avail benefit of preferential duty.

**21.2** When Shri. Deep Israni was enquired about the modus he admitted to being aware that M/s. Inspired Energy Co. Ltd does not have manufacturing unit in Malaysia and the goods were originally shipped from China to Malaysia and the consignments were offloaded and kept in Malaysia Export Zone area for about two weeks and after obtaining the COOs, Mr. Peter Song, had shipped the two consignments from Malaysia under different Bills of Lading. He also admitted that

he was aware of the fact that Mr. Peter Song was fraudulently obtaining the COOs showing the goods as Malaysian origin. Their conspiracy is further corroborated by the WhatsApp chat he had with Ms. Lisa Lee in which he is found to be discussing about the modus operandi with her. When Shri. Manish D. Shingala was confronted with chats/messages he had with Mr. Peter Song wherein the discussions related to risk and delivery of mono solar cells consignment were held, he admitted being aware of the fact that Chinese manufactured solar cells were being shipped by Mr. Peter showing the same to be originated in Malaysia using un-authentic COOs. All these evidences indicate that S/Shri. Manish D. Shingala has colluded with Shri. Deep Israni and Mr. Peter Song and **suppressed the facts** regarding the actual country of origin of goods imported and has therefore, conspired in the evasion of appropriate duty.

**21.3** The Finance Act, 2011 (Act No.08 of 2011) has introduced the concept "Self-Assessment" by substituting Section 17 of the Customs Act, 1962 w.e.f 08.04.2011. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46, self-assess the duty, if any, leviable on such goods. Thus, in the self-assessment era, the onus of assessing the goods by following correct declaration of country of origin, owing to claim benefit, lies absolutely on the importer. Additionally, Section 28DA of the Customs Act, 1962 makes it incumbent upon the importer 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. Further, Section 28DA of the Customs Act, 1962 further mandates that mere submission of a certificate of origin shall not absolve the importer of the responsibility to exercise reasonable care to the accuracy and truthfulness of the information supplied. Further, as per Section 28DA(1)(iv) of the Customs Act, 1962 read with rule 4(c) of the CAROTAR-2020, (the Customs Administration of Rules of Origin under trader agreement Rules, 2020) the importer shall exercise reasonable care to ensure the accuracy and truthfulness of the information and documents furnished. However, the importer failed to ensure the above legal requirement and responsibilities. In view of the above legal obligation of the importer M/s Pahal Solar, have made **willful mis-statement** by mis-declaring the actual origin of the goods, while claiming the benefit under the COO for the subject imported goods while filing the Bills of Entry. It appears from the forgoing paras that M/s Pahal Solar have made deliberate inconsistencies and willful misstatement with an intention to evade payment of appropriate duty.

**21.4** From the above, it appears that extended period of limitation is rightly invocable as per Section 28(4) of the Customs Act, 1962 on M/s Pahal Solar and accordingly the differential duty of applicable BCD in respect of the goods imported

and cleared by submitting unauthentic/manipulated/bogus COOs has to be demanded by invoking extended period of limitation as per section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

**QUANTIFICATION:**

**22.** From the above, it appears that M/s Pahal Solar have imported and cleared the following 5 consignments of Poly solar cells through Nhava Sheva port (INNSA1) claiming benefit of Sr.No.1445(I) of the Notification No.46/2011 dated 01.05.2011 on the basis of unauthentic/ fabricated/ bogus COOs. Accordingly, the differential duty of BCD, SWS & IGST required to be paid by M/s Pahal Solar has been computed as given below:

**TABLE - 5**

S. No	B/E No./ Date	Assessable Value (Declared and assessed) in Rs.	DUTY (in Rs.)					
			BCD		SWS		IGST (12%)	
			Assessed (0%)	Re-determined (25%)	Assessed (0%)	Re-determined (10%)	Assessed	Re-determined
(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)
1	2885817 14.10.2022	5408720	0	1352180	0	135218	649046	827534
2	3575243 02.12.2022	24190000	0	6047500	0	604750	2902800	3701070
3	3633904 07.12.2022	43468200	0	10867050	0	1086705	5216184	6650635
4	4474148 03.02.2023	38354625	0	9588656	0	958866	4602555	5868258
5	4785646 24.02.2023	37266075	0	9316519	0	931652	4471929	5701709
	Total	Rs.14,86,87,620/-						

Duty payable (In Rs.) [(v)+(vii)+ (ix)] [(v)+(vii)+ (ix)]	Duty already paid (In Rs.) [(iv)+(vi)+ (viii)]	Differential Duty (In Rs.) [(x) - (ix)]
(xi)	(x)	(xii)
2314932	649046	1665886
10353320	2902800	7450520
18604390	5216184	13388206
16415780	4602555	11813225
15949880	4471929	11477951
Rs. 6,36,38,301/-	Rs. 1,78,42,514/-	Rs. 4,57,95,787/-

The same is liable to be demanded and recovered from M/s. Pahal Solar under Section 28(4) of the Customs Act,1962. As per Explanation 1 (d) of the Section 28 of the Customs Act,1962 *the date of payment of duty or interest* is the relevant date for demanding duty which has not been levied or not paid or short paid. Hence, in the instant case relevant date for demanding duty is the date of payment of

differential duty i.e. 11.04.2023 onwards. Further, M/s Pahal Solar is also required to pay the applicable Interest on the above differential duty of Rs.4,57,95,787/- under Section 28AA of the Customs Act, 1962.

**VOLUNTARY DUTY PAYMENT:**

**23.** During the course of investigation, M/s Pahal Solar have voluntarily paid amounts through Demand Drafts towards the differential duty payable by them. The details of the said voluntary payments and deposits of the same in the Govt. Treasury under TR6 Challans are given as follows:

**Table- 6**

Sl. No.	Demand Draft No. / Date	Amount (in Rs.)	TR-6 Challan No. / Date
1	502810 / 11.04.2023	2,00,00,000/-	HC-259/ 28.04.2023
2	502838 / 27.04.2023	1,00,00,000/-	HC-78 / 09.05.2023
3	502839 / 27.04.2023	1,57,95,787/-	HC-77 / 09.05.2023
<b>Total</b>		<b>Rs. 4,57,95,787/-</b>	

**CONFISCATION AND PENALTY:**

**24.1** From the findings supra, it is apparent that Shri Manish D. Shingala, Partner of M/s. Pahal Solar submitted unauthentic Certificates of Origin (Form Al) of Malaysia, purportedly issued by MITI to fraudulently showed that subject imported goods in dispute fulfill the criterion of the originating goods prescribed in the Notification No. 189/2009-Cus. (NT) dated 31.12.2009. Thus, it appears that Shri Manish D. Shingala, Partner of M/s. Pahal Solar defrauded the Government of India of its legitimate Revenue by wrongly availing of the benefit of concessional rate of Customs Duty under Notification No. 46/2011-Cus. dated 01.06.2011 as amended.

**24.2.** It appears that, through his acts of commission and omission, Shri Manish D. Shingala, Partner of M/s Pahal Solar have rendered the subject imported goods with declared value of **Rs.14,86,87,620/-** as mentioned at column (iii) of TABLE-5 above liable for confiscation under Section 111 (m) & 111(q) of the Customs Act 1962, in as much as the subject goods did not correspond in respect of country-of-origin details made with the Bills of Entry filed by them at the time of clearance and as much as the subject goods were imported under a fraudulent claim of preferential duty. Consequently, Shri Manish D. Shingala, Partner of M/s Pahal Solar appear to have rendered himself liable for penal action under Section 112 of the Customs Act, 1962.

**24.3.** It appears that, through their acts of commission and omission, M/s. Pahal Solar have rendered the subject imported goods with declared value of

**Rs.14,86,87,620/-** as mentioned at column (iii) of TABLE-5 above liable for confiscation under Section 111 (m) & 111(q) of the Customs Act 1962 in as much as the subject goods did not correspond in respect of country-of-origin details made in the Bills of Entry filed by them at the time of clearance and in as much as the subject goods were imported under a fraudulent claim of preferential duty. Consequently, M/s. Pahal Solar appears to have rendered themselves liable for penal action under Section 112 of the Customs Act, 1962.

**24.4.** It appears that M/s. Pahal Solar had not only willfully misstated the country of origin of the goods but also colluded with Shri. Deep Israni and Mr. Peter Song submitted unauthentic/ fabricated/bogus COOs to claim undue benefit under Notification No.46/2011 dated 01.06.2011 in respect of the subject items imported under Bills of Entry as mentioned TABLE-5 above. This they appear to have done to evade payment of appropriate customs duty and thus the extended period for demand of duty is invokable under Section 28(4) of the Customs Act 1962. For these acts of commission and omission, M/s Pahal Solar appears to have rendered themselves liable for penal action under Section 114A of the Customs Act, 1962.

**24.5.** It also appears that Shri Manish D. Shingala, Partner of M/s Pahal Solar had complete knowledge that their overseas suppliers did not have any manufacturing unit in Malaysia; never was in touch with the Malaysian Shippers and yet filed unauthentic/fabricated/bogus COO declaring that the goods were of Malaysian origin to claim undue customs duty benefit. Thereby, Shri Manish D. Shingala, Partner of M/s Pahal Solar appear to have rendered himself liable for penalty under Section 114AA of the Customs Act, 1962 for knowingly/ intentionally making false declaration at the time of clearance of the subject goods.

**24.6.** With regard to the role of Shri Deep Israni, it appears that he had introduced Shri Peter Song, Chinese national of M/s Inspired Energy to Shri Manish D. Shingala of M/s Pahal Solar for the imports of Chinese origin consignments of solar cells routing through Malaysia to avail the undue country of origin benefits. Shri Deep Israni was kept informed by M/s Pahal Solar with regard to the receipt of all the import documents including the COO certificates from the overseas supplier Shri Peter Song. Admittedly, Shri Deep Israni was aware that the consignments of solar cells of Chinese origin were originally shipped from China, offloaded and kept in Malaysia Export Zone area for about two weeks and after the COO certificates were managed by Shri Peter Song, the said goods were then loaded into other containers and shipped from Malaysia to India under different Bill of Lading and he was also aware that there was no manufacturing facility or unit held by M/s Inspired Energy and M/s Bumi Resources Trading SDN BHD in Malaysia. Based on the material evidences of WhatsApp chats/messages held by him with S/Shri

Peter Song & Ms. Lisa , Shri Deep Israni admitted that the overseas shippers of Malaysia did not have manufacturing factory/unit in Malaysia and yet the COO was arranged by Mr. Peter Song showing the said consignments of solar cells were of Malaysian origin and shipped them from Malaysia and the same were imported into India by M/s Pahal Solar for the purpose of submitting the forged COOs to Customs to avail BCD exemption. In view of above discussions, it appears that Shri Deep Israni, who had aided and abetted Shri. Manish D. Shingala in importing and clearing the subject goods with declared value of **Rs.14,86,87,620/-** which were rendered liable for confiscation under Section 111 (m) & 111(q) of the Customs Act 1962. Thereby, Shri Deep Israni, by all his acts of omission and commission appear to have rendered himself liable for penal action under Section 112 of the Customs Act, 1962.

**24.7.** It also appears that Shri Deep Israni, had complete knowledge that there was no manufacturing unit held by the overseas supplier of the goods in Malaysia and the imported goods were of Chinese origin. Further, Shri. Deep Israni was also aware that the COOs certificate sent by Mr. Peter Song to Shri. Manish D. Shingala of M/s Pahal Solar were unauthentic, who in turn submitted the same along with the Bills of Entry at the time of clearance. Therefore, it appears that Shri Deep Israni, for his acts of omission and commission has rendered himself liable for penal action under Section 114AA of the Customs Act, 1962 for intentionally causing a false declaration to be made by M/s. Pahal Solar.

**JURISDICTION:**

Finance Act, 2022, Section 110AA of the Customs Act, 1962 and Notifications issued thereunder:

**25.** Finance Act 2022, enacted on 30.03.2022, inserted Section 110AA in the Customs Act 1962 and the same is reproduced below:

*"110AA. Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—*

*(a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;*

*(b) any duty has been erroneously refunded;*

*(c) any drawback has been erroneously allowed; or*

*(d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded, then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—*

- (i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or
- (ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5, and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-sec (2) of section 5.”

**25.1.** In the instant case, as there is duty demand under Section 28(4), the subject case is covered under the ambit of Section 110AA of the Customs Act 1962. Subsequent to enactment of Finance Act 2022, the CBIC issued Notification No. 29/2022 Customs (N.T.) dated 31/03/2022 assigning the proper officer for pending cases. In terms of Para B (i) (c) of the said notification No. 29/2022 Customs (N.T.), in case of single jurisdiction involving duty where assessment is already made or duty is erroneously refunded, wherein the duty amount involved is greater than fifty lakhs, the jurisdictional Principal Commissioner of Customs or Commissioner of Customs is assigned as the proper officer. Further, all the imports against which the duty has been demanded were affected only through Nhava Sheva port (INNSA1) and hence the jurisdictional and proper officer for issuing SCN and adjudicating authority is the **Commissioner of Customs, NS-V**, Jawaharlal Nehru Custom House, Nhava Sheva, Taluk. Uran, Dist. Raigad, Maharashtra 400707. Accordingly, the Investigation Report was forwarded to the office of the Commissioner of Customs, NS-V, Nhava Sheva, for further necessary action under Section 28(4), read with Section 124 and Section 110AA of the Customs Act 1962.

**26.** Therefore, **M/s Pahal Solar (IEC-5216502408)** having its registered address as 312, Laxmi Enclave, opposite to Gajera School, Katargam, Surat-395004 was called upon them to show cause in writing to **Commissioner of Customs, NS-V**, JNCH, Taluka Uran, District Raigad, Maharashtra-400707 within 30 days from date of receipt of this notice, as to why:

- i) The benefit of the Notification No.46/2011-Cus. dated 01.05.2011 [S.No.1445(l)], claimed for the goods imported and cleared vide Bills of entry 2885817/14.10.2022, 3575243/02.12.2022, 3633904/07.12.2022, 4474148/ 03.02.2023 and 4785646/24.02.2023 as detailed in TABLE-5 above, should not be denied.
- ii) Consequent to S. No. (i) above differential duty amounting to **Rs. 4,57,95,787/-** (Rupees Four Crores Fifty-Seven Lakhs Ninety-Five

Thousand Seven Hundred Eighty-seven only) as mentioned in TABLE-5 above, should not be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

- iii) The amount of **Rs. 4,57,95,787/-** voluntarily paid towards differential duty, should not be appropriated against the demand proposed in (ii) above.
- iv) The subject goods imported and cleared vide 5 Bills of Entry 2885817/14.10.2022, 3575243/02.12.2022, 3633904/07.12.2022, 4474148/ 03.02.2023 and 4785646/24.02.2023, with total declared value of **Rs.14,86,87,620/-**, should not be held as liable for confiscation under Sections 111(m) and 111(q) of the Customs Act, 1962.
- v) Consequent to S. No. (iv) above penalty under Section 112(a) of the Customs Act, 1962, should not be imposed on them for the omission and commission as discussed in para 24.3 above.
- vi) Consequent to S. No. (ii) above penalty under Section 114A of the Customs Act, 1962 should not be imposed on them for collusion, willful mis-statement and suppression of facts, with an intention to evade appropriate duties, as discussed in para 24.4 above.

**26.1.** Further, Sh. Manish D. Shingala, Partner of M/s. Pahal Solar residing at 20, Dharamnagar, near Dhanmora Katargam, Surat city, Gujarat-395004 was called upon them to show cause in writing to **Commissioner of Customs, NS-V, JNCH, Taluka Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why:

- i) The subject goods imported and cleared using forged COOs vide 5 Bills of Entry 2885817/14.10.2022, 3575243/02.12.2022, 3633904/07.12.2022, 4474148/ 03.02.2023 and 4785646/24.02.2023, with total declared value of **Rs.14,86,87,620/-**, should not be held as liable for confiscation under Sections 111(m) and 111(q) of the Customs Act, 1962;
- ii) Consequent to S. No. (i) above penalty under Section 112 (a) of the Customs Act, 1962, should not be imposed on him for his acts of omission and commission as discussed in para 24.2 above;
- iii) Consequent to S. No. (i) and (ii) above penalty under Section 114AA of the Customs Act, 1962 should not be imposed on him as discussed in para 24.5 above;

**26.2.** Furthermore, Shri Deep Israni residing at A-4, Rohit Apartments, Cross Lane No.3, Lokhandwala Complex, Andheri West, Mumbai 400053 was called upon them to show cause in writing to **Commissioner of Customs, NS-V, JNCH, Taluka**

Uran, District Raigad, Maharashtra-400707 within 30 days from date of receipt of this notice, as to why:

- i) The subject goods imported and cleared using forged COOs vide 5 Bills of Entry 2885817/14.10.2022, 3575243/02.12.2022, 3633904/07.12.2022, 4474148/ 03.02.2023 and 4785646/24.02.2023, with total declared value of **Rs.14,86,87,620/-**, should not be held as liable for confiscation under Sections 111(m) of the Customs Act, 1962 as the goods do not correspond with the entry made under this Act and 111(q) as the goods imported appears to contravene the provisions of Chapter VAA of the Customs Act, 1962;
- ii) Consequent to S. No. (i) above penalty under Section 112 (a) of the Customs Act, 1962, should not be imposed on him for his acts of omission and commission as discussed in para 24.6 above;
- iii) Consequent to S. No. (i) and (ii) above penalty under Section 114AA of the Customs Act, 1962 should not be imposed on him as discussed in para 24.7 above;

**27.** The Noticee No. 1, M/s Pahal Solar and Noticee No. 2, Sh. Manish D. Shingala, Partner of M/s. Pahal Solar had filed applications no. SA(C)13, 14/2025 in the Settlement Commission, Mumbai under Section 127B of the Customs Act,1962. Further, Hon'ble Settlement Commission vide Order No. 09/FO/CUS/SL/2025 dated 22.07.2025 has settled the case for M/s Pahal Solar and Sh. Manish D. Shingala. All the applicant and co-applicants have paid the penalties imposed on them by Hon'ble Settlement Commission. Payments made by M/s Pahal Solar and Sh. Manish D. Shingala have been verified from the ICEGATE payment portals. Hence, the proceedings against them stands concluded. As Noticee No. 3, Mr. Deep Israni have not approached Settlement Commission, hence, the matter is being adjudicated against only him.

## **28 WRITTEN SUBMISSIONS OF THE NOTICEES**

The Noticee, Shri Deep Israni vide his letter dated 11.11.2025 through his Advocate, Mr. Anand M Sachwani submitted written reply to the subject SCN. Vide the above reply, they denied all the allegations made in the SCN and stated interalia as under:

- (i) that all the consignment mentioned in Table -1 of the SCN have been imported by the Noticee No.1 are in his individual capacity and he has not played any role in it.

(ii) He was just a broker who introduced Shri. Peter Song with the Importer i.e., Noticee No.1. Except that he did not play any role in clearance of goods, that he is basically a broker who introduced to overseas supplier on commission basis.

(iii) That there is no other evidence apart from the statements of the co-accused persons and hence based on these uncorroborated statements, the charges against the Noticee cannot be sustained. This is so because the allegation of involvement in doing or omitting to do any act by the Noticee in relation to the alleged import has not been established with any cogent evidence, that the said allegations are merely on the basis of assumption and presumptions.

(iv) that as per page 19 and 20, excerpt of WhatsApp chat between Shr. Deep Israni and Ms. Lisa Lee is relied upon in SCN, however, no screenshot is produced. Only excerpt of WhatsApp chat is produced, that WhatsApp chats are unreliable source of information and cannot be relied upon in the adjudication proceedings. He placed reliance on Hon'ble Supreme Court of India order dated on July 14, 2021 in **A2Z Infraservices Ltd. Versus Quippo Infrastructure Ltd. (Now Known As Viom Infra Ventures Ltd.) SLP(C) No. 8636/2021[1]**. Also placed reliance on, The Delhi High Court order in the case of Dell International India Private Limited v. Adeel Feroze and Ors.

(v) He also relied on Section 138C of the Customs Act, 1962 and submitted that it is trite law that mere production of a document is not proof of its contents as held in the case of Mursaleen Mohammad Vs Union of India reported in 2019 (2) TMI 1315 - CALCUTTA HIGH COURT, that the SCN relies upon certain computer prints outs taken from electronic devices which cannot be used as evidence without having certificate as required under section 138C(4) of the Customs Act, 1962 read with Section 65(B) of the Evidence Act, 1872, that the investigating authority took print out from Mobile without following the due procedure of law as required to be followed under Section 138C (4).

(vi) That the Print-outs on which the DRI seeks to rely on cannot be relied upon in absence of strict compliance of provisions of Section 138C(4) of the Customs Act, 1962 as held by the Hon'ble Supreme Court in the case of Anvar P.V Vs. P.K. Basheer and others 2014 (9) TMI 1007 - Supreme Court and relied upon in S.N. Agrotech & Others 2018 (4) TMI 856 - CESTAT NEW DELHI.

(vii) That a Certificate under section 138C (4) of the Act is required to be submitted and no such Certificate has been obtained, given and annexed as RUD to the SCN, leaving the electronic evidence(s) inadmissible in the eyes of law. On a reference by the Division Bench of the Hon'ble Supreme Court, the requirement of Certificate as a pre-requisite for producing (relying) upon Electronic Records was discussed in the case of Arjun Pandit Rao Vs. Kailash Kushanrao 2020 (7) TMI 740 Supreme Court wherein it was held that the Certificate under Section

65B (4) of the Indian Evidence Act 1872 (pari materia to Section 138C(4) of the Customs Act, 1962 and Section 36B(4) of the Central Excise Act, 1944) is essential for admissibility of electronic records. The Certificate constitutes evidence for identification of an electronic record and provides particulars of any device involved in the production of that electronic record, signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities. This has not been done.

(viii) The Hon'ble Supreme Court has held that Section 65B(1) differentiates between (i) 'original document' - which is the original electronic record contained in the computer in which the original information is first stored; and (ii) the computer output containing such information, which then may be treated as evidence of the contents of the 'original document'. This differentiation is appreciated in legal terms in the manner of the categorization of evidence. The Supreme Court clarified that the Certificate is not necessary if the 'original document' itself is produced (as a primary evidence). This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information was first stored, was owned and/or operated by him. However, in all other cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, the only means of providing information contained in such electronic record can be in accordance with Section 65B (1) together with production of the requisite Certificate under Section 65B(4) of the Indian Evidence Act. 1872. Needless to mention, the judgment of the Hon'ble Supreme Court is Law of the land under Article 141 of the Constitution of India and is binding on all the subordinate courts and quasi-judicial authorities.

(ix) With reference to the aforesaid position, it is respectfully submitted the 'secondary evidences' have been led by the DRI, that in the absence of not following the mandatory procedure laid down in Section 138C(4) of the Customs Act, 1962 coupled with the absence of a "Certificate" as mandated under law, the case of the DRI falters not only on merits but also on account of non-compliance of the provisions of Section 138C(4) of the Customs Act, 1962 read with the judgement of the Hon'ble Supreme Court in the case of Arjun Pandit Rao Vs. Kailash Kushanrao, supra.

(x) That the Printouts of whatsapp chats or Unauthenticated Documents cannot be used to raise Penalty, that these printouts and unauthenticated documents form core and foundation of the show cause notice issued to the noticee. It is a settled provision of law that any document raising a demand has to be authentic

and should be duly authenticated by the issuer and countersigned by an external government agency, in case the same belongs to an overseas party. Hence the reliability, admissibility and relevancy to the documents is of utmost significance and in the absence of reliability and authenticity, the very printouts, which are unauthenticated and unsubstantiated, cannot be pressed into service to raise demand on the notice, that these printouts cannot be called as documents having evidentiary evidences.

(xi) That procedure laid down in Section 138B of the Customs Act, 1962 ought to be followed by your office in the course of the adjudication proceedings, that the Hon'ble SCN Issuing Authority is required to follow the procedure contemplated under Section 138B of the Customs Act, 1962. He relied upon following cases:

(a) G-Tech Industries - 2016 (6) TMI 957 - PUNJAB & HARYANA HIGH COURT = 2016 (339) E.L.T. 209 (P & H); and

(b) Jindal Drugs Pvt Ltd & Another - 2016 (6) TMI 956 - PUNJAB & HARYANA HIGH COURT = 2016 (340) E.L.T. 67 (P & H).

(xii) There can be no denying that when any statement is used against the assessee, an opportunity of cross-examining the persons who made those statements ought to be given to the assessee. The notice was also never confronted with the evidences brought on record. Given this background, it is respectfully submitted that the SCN Issuing Authority can rely upon these statements and data only when the alleged CO-NOTICEES have been extended the benefit of the provisions of Section 138B of the Act. The provisions of Section 138B assume significance in this case primarily and they are un-interlinked to the case of the investigating agency but forms core of the demand. That since the statement and the data go to the route of the SCN, the reliance on this can be made only after the observance of the provisions of Section 138B of the Act.

(xiii) That the statements given during the investigation cannot be relied upon as they have clearly been taken under duress and are contradictory to each other and therefore, in terms of the well settled law that the statements recorded under duress cannot be relied upon and the allegations made by the DRI authorities in the present case cannot draw support from the statement of the Noticees.

(xiv) That some Co-Noticees had allegedly stated the noticee's name but the Statements of various Co-Noticees have not been corroborated in material particulars. Statements of co-noticees cannot be relied upon in the absence of any corroborative evidence to substantiate the same. It is also a well settled law that statements of co-noticee cannot be relied upon in the absence of any

corroborative evidence to substantiate the same. The said view has been upheld in the following judgments:

- (a) Vikram Singh Dahiya 2008 (223) ELT 619 (Tri - Del)
- (b) It is pertinent to note that the above decision was appealed by the department before Hon'ble Delhi High Court which maintained the same view as expressed by the Tribunal and dismissed the said appeal as reported in 2010 (260) ELT 180 (Delhi High Court)
- (c) Jaswinder Singh 1996 (83) ELT 175 (Tribunal)
- (d) Mehul Roadways 2009 (246) ELT 660 (Tri-Ahmd)
- (e) J. I. Gandhi Silk Mills 2009 (237) ELT 103 (Tri - Ahmd)
- (f) KK Jain 2009 (235) ELT 170 (Tri - Ahmd)

(xv) That statements of Co-accused cannot be used as substantive evidence, that the so-called inculpatory statements of the co-accused have been elevated to the status of substantive evidence, there being no other evidence to support the allegations against the notice, as held in the case of Union of India Vs. Bal Mukund reported as 2009 (3) TMI 914 – Supreme Court.

(xvi) That the Adjudication Proceedings Before Quasi-Judicial Authorities cannot survive solely on the basis of statements tendered under Section 108 of the Customs Act, 1962. Can a statement be accepted blindly without corroboration? The answer to the same has been answered by the Hon'ble Supreme Court, various Hon'ble High Courts, Hon'ble CESTAT and various quasi-judicial authorities as a big NO.

(xvii) That the primary purpose of obtaining or recording a statement under Section 108 of the Customs Act, 1962 is for investigation to bring out the truth i.e. to collect information of the contravention of the provisions of the Customs Act, 1962 or concealment of contraband in order to further the cause of contravention of the provisions of the Act, if any for initiation of proceedings i.e. demand of customs, impose penalty or for confiscation of goods and it is certainly not for obtaining confessional statement/admission of liability. Furthermore, the recording a statement under section 108 does not, ipso facto, results into issuance of a show cause notice. The departmental adjudication proceedings arising out the impugned SCN are quasi-judicial in nature. Statement(s) obtained under section 108 of the Customs Act, 1962 are intended to be used for investigation into alleged evasion of customs duty but demand cannot be solely be based on the inculpatory statements. Such statements could be only used for corroborating the case to establish before the quasi-judicial authorities. Department was bound to prove the case based on balance of probabilities as

per well recognised principle of law in the case of departmental adjudication before the quasi-judicial authorities. Ergo, in the event of the statement(s) being the sole evidence to buttress the case of alleged evasion of customs duty, the same cannot survive in the absence of corroboration.

(xviii). that in the absence of any corroboration, statements recorded under Section 108 of the Customs Act, 1962, in isolation, cannot not be relied upon.

(xix) That Penalty under Clause (b) of Section 112 of the Customs Act, 1962 have been imposed, that considering the language of clause (b) of Section 112, it applies in case the Noticee had acquired possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the goods. All these acts can be done post importation. The Section provides penalty to take care of actions in relation to the goods after import as held by Hon'ble CESTAT in the case of V. Lakshmipathy Vs Commissioner of Customs, Cochin [2003 (1) TMI 331 - CESTAT Bangalore = 2003 (153) ELT 640 (Tri Bang)]. It is not the case of the department that our client was concerned in acquiring possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the impugned goods post the clearance of the impugned goods. Neither it is established and proved by evidences brought on record, that, therefore, the noticee did not do any of the acts mentioned in Section 112(b) of the Act in relation to the impugned goods after their importation and hence was not liable to penalty under Section 112(b) of the Act.

(xx) Further it has been held recently in the case of Jorabhai Valabhai Rabari Desai and Premabhai Jethabhai Attya Patel reported as 2021 (7) TMI 1199 - CESTAT AHMEDABAD that it is evident from a plain reading of Section 112(b) of the Customs Act, 1962, which uses the expressions "which he knows or has reason to believe are liable to confiscation under Section 111", that penalty under this Section can be imposed wherever there is an element of mens rea or conscious knowledge, which is a sine qua non for imposition of the said penalty. The facts of the case in hand do not reveal any such element of mens rea or conscious knowledge qua the Noticee and therefore the proposal to impose the penalty on the Noticee under Section 112(b) of Customs Act 1962 is not justified.

(xxi) that the notice never knew or had any reason to believe that the impugned goods were liable to confiscation under Section 111 in any manner and therefore, are not liable to penalty under Section 112(b) of the Customs Act, 1962.

(xxii) That Burden to Prove existence of 'Knowledge' or 'Reason to Believe' on the part of the Noticee not discharged by the Department From the language of Section 112(b) it is clear that for imposition of penalty under this clause on a person, involved in carrying, removing, keeping, concealing etc. of goods, which are to be held liable for confiscation under Section 111, the knowledge or reason to believe on the part of the person about the liability of the goods for confiscation is necessary and the burden to prove its existence would be on the Revenue as held by Hon'ble CESTAT in the case of Green Express Transport Service [2010 (257) ELT 441 (Tri - Del)]. The department has squarely failed to discharge that burden. The proposal for the said penalty, therefore, remains unsubstantiated.

(xxiii) The noticee's job was to simply introduce the party to procure the goods from the supplier and was not concerned with the goods for clearance from customs as he has not filed any Bill of Entry or documents. He did not acquire possession of or was in no way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the impugned goods which he knew or had reason to believe were liable to confiscation under Section 111.

(xxiv) There is nothing in the SCN which even remotely alludes to the noticee doing any of the actions mentioned in clause (b) of Section 112 and hence penalty under clause (b) of Section 112 cannot be imposed.

(xxv) That penalty under Section 114AA of the Customs Act, 1962 have also been imposed. Section 114AA reads as under:

*"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."*

(xxvi) That he did not make, sign or use, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of the business relating to clearance of the impugned goods. In fact the alleged documents are used by the Noticee No.1 for the clearance of the goods and the main party has moved to the Settlement Commission for settling the case as the settlement commission is now in-charge for settling the case ,thereby the entire proceedings of the case will be decided by the Settlement Commission, even on the point of commission of offence or misusing of Country of Origin Certificate .The main noticee at the time of starting of the investigation has paid the entire duty amount along with the interest. Therefore, the revenue was protected on very first day when the case has commenced at DRI, Chennai.

(xxvii) The SCN is again vague & general and does not specify as to whether:

(a) the noticee had made or signed or used any declaration, statement or document which was false or incorrect in any material particular; or

(b) the noticee had caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular.

(xxviii) That the SCN does not mention as to which declaration, statement or document was made, signed or used, or caused to be made, signed or used by him, which was false or incorrect in any material particulars.

(xxix) The fact remains that the Bills of Entry for clearance of the impugned goods were filed by the respective importers on the basis of the import documents received by them from the supplier.

(xxx) He relied upon following cases:

- Hon'ble Order in the case of M/s Access World Wide Cargo reported as 2021 (8) TMI 640 - CESTAT BANGALORE
- the Hon'ble CESTAT order in the case of M/s Interglobe Aviation Ltd reported as 021 (7) TMI 1027 - CESTAT BANGALORE
- Hon'ble CESTAT order in the case of appeal filed by the department against M/s Sri Krishna Sounds & Lightings reported as 2018 (7) TMI 867 - CESTAT CHENNAI.

(xxxi) On plain reading of Section 114AA of the Act, it is clear that there are two essential ingredients that need to be fulfilled for imposition of penalty under the aforesaid Section, i.e., (a) knowledge or intention (mens rea) on the part of our client and (b) the declaration or statement or documents used should be false or incorrect. Since the charge is serious, it has to be proved with conclusive evidence.

(xxxii) To re-iterate and summarise his arguments, he stated as under:

(a) the noticee is not connected the alleged Country of Origin Certificate used in facilitating clearance of impugned goods by Noticee No.1. The noticee has not filed any declarations nor has done any Act for import or clearance of goods or payment of duties.

(b) The importer has imported the 5 impugned consignments in their individual capacity and for which they had provided IEC codes and they were handling their import activities in their individual capacity and had appointed their CHA.

- (c) the noticee had no knowledge regarding the manufacturing unit held by the overseas supplier of the goods in Malaysia which were managed to be shipped by Mr. Peter Song.
- (d) the noticee was just the broker who introduced Mr. Peter Song to Noticee. All other documentation of clearance was handled by Noticee No.1 and Mr. Peter Song in their capacities and he has no role to play in it.
- (e) the noticee therefore has not played any role, much less key role, for import of the so-called goods imported,
- (f) In view of the above, the noticee is not liable to penalty under clause (b) of Section 112.
- (g) Similarly, the noticee is unconnected to the imports. Hence, penalty under Section 114AA of the Customs Act, 1962 cannot be imposed on the noticee.

## **29 RECORD OF PERSONAL HEARINGS**

In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee Mr. Deep Israni was granted opportunity of Personal Hearing (PH) on 11.11.2025, 25.11.2025 & 10.12.2025. On 10.12.2025, Sh. Anand M. Sachwani, Advocate, appeared in person on behalf of Sh. Deep Israni before Adjudicating Authority. During the PH, he reiterated the written submissions dated 11.11.2025 received on 10.12.2025.

## **30 DISCUSSION AND FINDINGS**

**30.1** I have carefully gone through the subject Show Cause Notice (SCN), material on record and facts of the case, as well as written and oral submissions made by the Noticee.

**30.2** I find that Noticee No. 1, M/s. Pahal Solar Pvt. Ltd. and Noticee No. 2, Mr. Manish D. Shingala had filed applications no. SA(C) 13,14/2025 in the Settlement Commission, Mumbai under Section 127B of the Customs Act, 1962. Further, Hon'ble Commission vide Order No. 09/FO/CUS/SL/2025 dated 22.07.2025 has settled the duty liability of Rs. 4,57,95,787/- along with applicable interest under Section 28AA of the Customs Act, 1962. Further, the Settlement Commission passed the following order on penalty:

- (i) *The Board imposes penalty of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) on the Applicant;*

(ii) The Board imposes penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the Co-Applicant Mr. Manish D. Shingala of the firm;

(iii) The Board imposes redemption fine of Rs. 2,00,000/-/- (Rupees Two Lakh only) on the goods that were released provisionally.

**30.3** As directed by Hon'ble Commission, this office vide letter dated 22.08.2025 requested Applicant and Co-applicant to provide the challans of the payment for verification of the payment made against the aforementioned order passed by the Hon'ble Settlement Commission. Further, vide email dated 02.09.2025, M/s. Pahal Solar Pvt. Ltd. submitted the copy of following E-challan/challan paid by them as per the above-mentioned order:

Challan No.	Date of Payment	Liability	Amount (INR)
2583392694	02.09.2025	Penalty on Co- Applicant	2,00,000/-
1229712202	02.09.2025	Redemption fine	2,00,000/-
3935160649	02.09.2025	Penalty on Applicant	25,00,000/-
9195224516	07.03.2025	Interest	66,91,610/-
HC-259	28.04.2023	Differential Duty	2,00,00,000/-
HC-78	09.05.2023		1,00,00,000/-
HC-77	09.05.2023		1,57,95,787/-

**30.4** I find that as per the order of Hon'ble Settlement Commission, the payment made by the Applicant and Co-applicants w.r.t. Penalty, interest, Redemption fine has been verified from the ICEGATE portal viz. <https://foservices.icegate.gov.in/#/epayment/enquiry> and differential duty has been verified from cash section, JNCH. Accordingly, I conclude that proceedings w.r.t. Noticee No. 1, M/s. Pahal Solar Pvt. Ltd, Noticee No. 2, Mr. Manish D. Shingala stands concluded in terms of Order No. 09/FO/CUS/SL/2025 dated 22.07.2025 of Hon'ble Settlement Commission.

**30.5** I now proceed to adjudicate the issue for Noticee No. 3 Mr. Deep Israni. In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the Noticee on 11.11.2025, 25.11.2025 & 10.12.2025. On 10.12.2025, Sh. Anand M. Sachwani, Advocate appeared in person on behalf of Sh. Deep Israni before Adjudicating Authority. During the PH, he reiterated the written submissions dated 11.11.2025 and requested to take lenient view in the matter of charges levelled against the notice in the subject SCN.

**30.6** The Noticees has placed reliance on various judgments of Tribunals on various issues, however, I find that the facts and circumstances involved in these judgements are not similar to facts and circumstances of the case in hand.

Further, I find that the Hon'ble Supreme Court of India in case of Ambica Quarry Works Vs. State of Gujarat & Others [1987(l) S.C. C. 213] observed that "the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it." Further in the case of Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111, the Hon'ble Apex Court observed "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

**30.7** One other reference on the situation, I have noted the decision of the Hon'ble Supreme Court in Ispat Industries Vs. Commissioner of Customs, Mumbai [2004 (202) ELT 56C (SC)], wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

*Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.*

*The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

*"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

**30.8** I now proceed to decide the substantive issues raised in the SCN by examining each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

**30.9 Whether the subject goods imported and cleared using forged COOs vide 5 Bills of Entry 2885817/14.10.2022, 3575243/02.12.2022, 3633904/07.12.2022, 4474148/ 03.02.2023 and 4785646/24.02.2023, with total declared value of Rs.14,86,87,620/-, should not be held as liable for confiscation under Sections 111(m) of the Customs Act, 1962 as the goods do not correspond with the entry made under this Act and 111(q) as the goods imported appears to contravene the provisions of Chapter VAA of the Customs Act, 1962 or otherwise;**

**30.9.1** As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the customs automated system to the proper officer, shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

**30.9.2** I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Act and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 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. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., 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 when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

**30.9.3** It is noted that M/s Pahal Solar, Surat, imported five consignments of poly solar cells under five Bills of Entry, declaring their origin as Malaysia to claim concessional Basic Customs Duty (BCD) under Notification No.46/2011-

Cus (Indo-ASEAN FTA). The importer submitted Certificates of Origin (COOs) purportedly issued by Malaysian authorities. Verification through the MITI website revealed discrepancies, four COOs were invalid, and one reference number was issued for a different commodity. Further checks by the Directorate of International Customs (FTA Cell), CBIC, under Rule 6 of CAROTAR-2020, confirmed all five COOs were forged. Consequently, the consignments cannot be considered Malaysian-origin for duty concession purposes. By suppressing these facts, the importer, contravened the provisions of Section 46 of the Customs Act, 1962. Therefore, I hold that the subject goods are liable for confiscation under Section 111(m) and 111(q) of the Customs Act, 1962.

**30.9.4** However, I note that the principal noticee, M/s Pahal Solar, and the co-noticee, Mr. Manish D. Shingala, approached the Hon'ble Settlement Commission, which, vide Order No. 09/FO/CUS/SL/2025 dated 22.07.2025, settled the case in respect of the same imported goods, after accepting the full and true disclosure of duty liability. While settling the case, the Hon'ble Settlement Commission specifically imposed redemption fine on the impugned goods, along with penalties and interest, and granted immunity as provided under Chapter XIV-A of the Customs Act, 1962.

**30.9.5** Accordingly, while the impugned goods are held liable for confiscation under Sections 111(m) and 111(q) of the Customs Act, 1962, no separate or additional redemption fine is imposed, as the matter of redemption fine stands fully and finally settled by the Hon'ble Settlement Commission.

**30.10 Whether penalty should be imposed on Mr. Deep Israni under Section 112(a) of the Customs Act, 1962 or otherwise;**

**30.10.1** With regard to the role of Shri Deep Israni, I find that he had introduced Shri Peter Song, Chinese national of M/s Inspired Energy to Shri Manish D. Shingala of M/s Pahal Solar for the said imports of Chinese origin consignments of solar cells routing through Malaysia to avail country of origin benefits. Shri Deep Israni was kept informed by M/s Pahal Solar with regard to the receipt of all the import documents including the COO certificate from the overseas supplier, Shri Peter Song. Admittedly, Shri Israni was aware that the consignments of solar cells of Chinese origin were originally shipped from China, offloaded and kept in Malaysia Export Zone area for about two weeks and after the COO/FTA certificates were managed by Shri Peter Song, the said goods were loaded into other containers and shipped from Malaysia to India under different Bill of Landing and he was also aware that there was no manufacturing facility or unit held by M/s Inspired Energy and M/s Bhumi Resources Trading SDN BHD in Malaysia as he was informed by Mr. Peter Song that he (Peter) would

arrange for the COO/FTA Certificate from the Govt. of Malaysia for the Chinese goods shipped from China to Malaysia. Based on the material evidences of WhatsApp chats/messages held by him with S/Shri Peter Song & Ms. Lisa and WhatsApp chats discussed in Para 17.1 and 17.2 of the subject SCN, Shri Israni admitted that the overseas shippers/suppliers of Malaysia did not have manufacturing factory/unit in Malaysia and yet the COO was managed/arranged by Mr. Peter Song showing the said consignments of solar cells were of Malaysian origin and shipped them from Malaysia and the same were imported in India by M/s Pahal Solar for the purpose of submitting the COOs to Customs to avail Nil BCD. It was also admitted by Shri Israni that for the subject consignments shipped from Malaysia and imported in the name of M/s Pahal Solar, he was paid commission by the overseas shipper, Shri Peter Song.

**30.10.2** In view of above discussions, I find that Shri Deep Israni, who had arranged the overseas supplier i.e. Mr. Peter Song (through whom and others, Shri Manish D. Shingala, Partner of M/s Pahal Solar, had imported and cleared the goods valued at Rs.14,86,87,620/- making liable to confiscation under Section 111 (m) & 111(q) of the Customs Act 1962), acted as a single point contact as well as trouble shooter between the importer and overseas supplier, ensured the receipt of import related documents, received commission from Mr. Peter Song for the imports affected by M/s Pahal Solar despite being aware that the imported solar cells were of Chinese Origin, has abetted himself in the attempted evasion of duty. Thereby, Shri Deep Israni, appear to have rendered himself liable for penal action under Section 112 (a) of the Customs Act, 1962.

**30.10.3** Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, Shri Deep Israni under Section 112(a) of the Customs Act, 1962.

**30.10.4** I have also noted that the main noticee and one co-noticees had approached the Hon'ble Settlement Commission, which has settled the dispute by accepting the duty liability and imposing a minimal penalty, thereby granting immunity from further prosecution and penalty as deemed appropriate under Chapter XIV-A of the Customs Act, 1962. It is well settled that when the principal offender's case is settled by the Settlement Commission after full and true disclosure, and the Commission itself has taken a lenient view by imposing only a token penalty, the same becomes a relevant mitigating circumstance while adjudicating the liability of co-noticee who has not independently benefitted from the alleged contravention. In the instant case, Sh Deep Israni has received only

the commission, as no other monetary gains by Sh Deep Israni have been brought on record in the impugned SCN.

**30.10.5** In view of the above facts and circumstances, and following the principle of parity and proportionality, I refrain from imposing substantive penalty.

**30.11 Whether penalty should be imposed on Mr. Deep Israni under Section 114AA of the Customs Act, 1962.**

**30.11.1.** Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 114AA of the Customs Act, 1962 as under

*Section 114AA. Penalty for use of false and incorrect material. -*

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

**30.11.2** Shri. Deep Israni (the mediator between M/s Pahal Solar and its partner Shri Manish D. Shingala,) vide his statement dated 25.04.2023 submitted duly endorsed printouts showing details of messages and WhatsApp chats held by him with Mr. Peter Song, Ms. Lisa Lee, and others. Excerpt of WhatsApp chat dated 07/07/2022, between Shri. Deep Israni and Ms. Lisa Lee (another Chinese national representing M/s. Aiduo Solar, Japan) wherein the ASEAN Free trade agreement is being discussed. This screen shot was taken from the printouts submitted by Shri. Deep Israni vide his voluntary statement dated 25.04.2023.

7/7/22, 1:03 PM - deep: Lisa problem with this ASEAN agreement is that company who is supplying should have manufacturing in these countries and their 60% of their raw materials should be locally purchased. This can't happen as there is no wafer manufacturing in Vietnam , Malaysia, Thailand or Cambodia. So this 60% domestic raw materials criteria can never be done

7/7/22, 1:06 PM - Lisa Aiduo: so if even we have manufacturer in Cambodia of solar cell, it can not meet this agreement.

7/7/22, 1:07 PM - deep: Actually no

7/7/22, 1:08 PM - deep: But it is better than not having factory and just routing

7/7/22, 1:09 PM - Lisa Aiduo: ok

7/7/22, 1:09 PM - deep: What DRI can do is ask Indian embassy to check if there is actually factory or no. They can't force this factory to share their purchases. So it's better to have atleast factory

7/7/22, 1:10 PM - Lisa Aiduo: got your point

11/29/22, 6:10 PM - deep: Lisa please be frank and tell me about Aiduo and Inspired.  
11/29/22, 6:11 PM - deep: I know there is no manufacturing unit  
11/29/22, 6:11 PM - deep: Are there other employees or just two of you  
11/29/22, 6:11 PM - Lisa Aiduo: yes. both no manufacturing  
11/29/22, 6:14 PM - Lisa Aiduo: one person based in Japan. Peter is responsible for purchase. one purchase. i am sales and have one assistant.  
11/29/22, 6:15 PM - deep: But now you don't go to office  
11/29/22, 6:15 PM - Lisa Aiduo: i have my office in Shanghai  
11/29/22, 6:16 PM - Lisa Aiduo: only peter sit in office

**30.11.3.** I find that from the WhatsApp chat submitted by Shri Deep Israni during his statement dated 25.04.2023, it can be seen that Shri. Deep Israni was very well aware that as per the provisions of ASEAN Free Trade Agreement, 60% local purchase is mandatory for availing the duty benefit and that this cannot be met as there is no wafer manufacturing in Malaysia. Further, it is specifically mentioned in the chat above that DRI can verify the existence of factory through Indian Embassy but cannot force the factory to share the purchases. Therefore, Shri. Deep Israni suggested Ms. Lisa Lee that having a manufacturer with an existing premise is better than not having a factory and just routing to evade any law enforcement action, if any. This indicates the active conspirational role of Shri. Deep Israni in the entire modus with an aim to route Chinese origin solar cells through Malaysia and fraudulently obtain fake COOs so as to evade the Basic Customs Duty.

**30.11.4** I find that Shri Deep Israni, had complete knowledge that there was no manufacturing unit held by the overseas supplier of the goods in Malaysia and the imported goods were of Chinese origin. Further, Shri. Deep Israni was also aware that the COOs certificate sent by Mr. Peter Song to Shri Deep Israni and Shri Manish D. Shingala of M/s Pahal Solar were unauthentic, who in turn submitted the same along with the Bills of Entry at the time of clearance. Based on the material evidences of WhatsApp chats/messages held by him with Shri Peter Song & Ms. Lisa , Shri Deep Israni admitted that the overseas shippers of Malaysia did not have manufacturing factory/unit in Malaysia and yet the COO was arranged by Mr. Peter Song showing the said consignments of solar cells were of Malaysian origin and shipped them from Malaysia and the same were imported into India by M/s Pahal Solar for the purpose of submitting the forged COOs to Customs to avail BCD exemption. Sh. Deep Israni acted as a middleman between the importer and the supplier and oversee the imports and clearance of the goods and as discussed above he was aware that the goods were manufactured in China and the COO certificate was forged. Therefore, it appears that Shri Deep Israni, for his acts of omission and commission has rendered himself liable for penal action under Section 114AA of the Customs Act, 1962 for intentionally causing a false declaration to be made by M/s Pahal Solar.

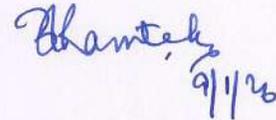
**30.11.5** Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, Shri Deep Israni under Section 114AA of the Customs Act, 1962.

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

**ORDER**

- a) I impose a penalty of **Rs. 12,00,000/- (Rupees Fifteen Lakh Only)**, on Mr. Deep Israni under Section 112(a) of the Customs Act, 1962.
- b) I impose a penalty of **Rs. 3,00,000/- (Rupees Five Lakh Only)**, on Mr. Deep Israni under Section 114AA of the Customs Act, 1962.

**32.** This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/ firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.



**(Anil Ramteke)**

Commissioner of Customs,  
NS-V, JNCH, Nhava Sheva

To:

1. **M/s Pahal Solar** (IEC-5216502408),  
312, Laxmi Enclave, opposite to Gajera School, Katargam, Surat-395004
2. Sh. Manish D. Shingala, Partner of M/s. Pahal Solar,  
20, Dharamnagar, near Dhanmora Katargam, Surat city, Gujarat-395004.
3. Shri Deep Israni, A-4, Rohit Apartments, Cross Lane No.3, Lokhandwala Complex, Andheri West, Mumbai-400053

**Copy to:**

1. The Pr. ADG, DRI Chennai, 27, G.N (Chetty) Road, T.Nagar, Chennai-600 017.
2. The Deputy/Asstt. Commissioner of Customs, Gr. 5A JNCH
3. The Deputy/Asstt. Commissioner of Customs, CRRC JNCH Notice Board
4. EDI Section
5. Notice Board
6. Office copy

