

**GOVERNMENT OF INDIA**

MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS -
MUMBAI ZONE - I

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)

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F.No. GEN/ADJ/COMM/33/2020-ADJN

Passed by: PRADYUMN KUMAR TRIPATHI
COMMISSIONER OF CUSTOMS (IMPORT-I)

Date of Order: **07.01.2026**Date of Issue: **07.01.2026**C.A.O. No: **125/2025-26/CAC/CC(Import-I)/PKT/Adj(IMP-I)**DIN No. **2026017700000000991**

Name of the Pary/Noticee: -M/S INDER INTERNATIONAL & M/S SHRI LAKSHMI STEELS.

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies to the Regional Bench, Customs, Excise and Service Tax Appellate Tribunal, Jai Centre, 4th & 5th Floor, 34 P. D'Mello Road, Poona Street Masjid Bunder (East), Mumbai 400 009.
3. The appeal is required to be filed as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A.3 appended to said rules. The appeal should be in quadruplicate and needs to be filed within 90 days and shall be accompanied by Four copies of the order appealed against (at least one of which should be certified copy). A crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at a place where the bench is situated for Rs. 1,000/-, Rs. 5,000/- or Rs. 10,000/- as applicable under Sub Section (6) of the Section 129A of the Customs Act, 1962.
4. The appeal shall be presented in person to the Asstt. Registrar of the bench or an Officer authorized in this behalf by him or sent by registered post addressed to the Asstt. Registrar or such Officer.
5. Any person desirous of appealing against this decision or order shall pending the appeal deposit seven and a half per cent of the duty demanded or the 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.



भारत सरकार
वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड – मुंबई अंचल-I, भारतीय सीमाशुल्क
आयुक्त सीमाशुल्क (आयात-I) का कार्यालय
द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : GEN/ADJ/COMMR/33/200-Adjn

के द्वारा जारी किया गया : प्रद्युम्न कुमार त्रिपाठी

आयुक्त सीमाशुल्क (आयात-1)

आदेश दिनांक: 07.01.2026

जारी दिनांक: 07.01.2026

सी.ए.ओ. क्रमांक : 125 / 2025-26 / CAC / CC(Import-I) / PKT / Adj(IMP-I)

Name of the Pary/Noticee:-M/S INDER INTERNATIONAL & M/S SHRI LAKSHMI STEELS.**DIN No. 20260177000000000991**मूल आदेश

- 1- यह प्रति उस व्यक्ति के प्रयोग के लिए निः शुल्क है, जिसके लिए यह पारित किया है।
- 2- इस आदेश के विरुद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पी. डी' मेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व) मुंबई 400 009 को अपील की जा सकती है।
- 3- सीमाशुल्क (अपील) नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरुद्ध अपील की गई हो (इन प्रतियों में कम से कम एक प्रति अभिप्रेमाणित प्रति होनी चाहिए)। अपील के साथ सीमाशुल्क अधिनियम 1962 की धारा 129A की उपधारा (6) के अन्तर्गत लागू रु.1,000/-, रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्राफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।
- 4- अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
- 5- जो व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क की सहादे सात प्रतिशत धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील सीमाशुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।



ADJUDICATION OF SHOW CAUSE NOTICE FOR DEMANDING DIFFERENTIAL CUSTOMS DUTY UNDER SECTION 28 OF THE CUSTOMS ACT, 1962, AND PROPOSING CONFISCATION UNDER SECTION 111 (m) OF THE CUSTOMS ACT, 1962 IN R/O IMPORT CONSIGNMENTS OF COILS/SHEETS IN CASE OF M/S INDER INTERNATIONAL & M/S SHRI LAKSHMI STEELS, LUDHIANA-REG.

BRIEF FACTS OF THE CASE.

The Directorate of Revenue Intelligence, Ludhiana (hereinafter referred as **DRI**) had received an intelligence that **M/s Inder International** H. No. 594, Nirankari Street-1. Overlock Road. Miller Ganj, Ludhiana (IEC-3005000877) (hereinafter referred to as **Noticee No. 1**), and **M/s Shri Lakshmi Steels**, 467. Industrial Area B. Millerganj. Ludhiana - 141003 (IEC: 3012015680) (hereinafter referred to as **Noticee No. 2**), besides certain other Ludhiana based importers, were importing **Hot Rolled flat products of non-alloy steel in coil and sheet form having width more than 600 mm** by mis-declaring these as **Cold Rolled Coils**, thereby evading the provisional safeguard duty @ 20% ad valorem, imposed vide Notification No. 02/15- Customs (SG) dated 14.09.2015. Further, information was also received that the modus-operandi adopted by these importers is that they import these Hot Rolled flat products of non-alloy steel of width greater than 600 mm in pickled & oiled form, so as to avoid their detection by the local Customs authorities. It was also informed that these **Hot Rolled Pickled & Oiled coils** are freed from rust/de-scaled and softened which gives a very smooth finish to these Hot Rolled Coils and hence cannot be easily detected by the Customs department. The Noticee No. 1 firm is a partnership firm having two partners, namely Shri Indresh Jain and Smt. Anuradha Jain whereas the Noticee No. 2 firm is a proprietorship firm having Shri Abhay Jain, brother of Shri Indresh Jain, as its proprietor.

2. In view of the afore-said intelligence, a letter F. No. DRI.LDZU/856/INT/19/2015/2752-2754 dated 14.12.2015 was written by DRI to the office of the Commissioner of Customs. Mumbai Customs Zone-I, New Customs House, Ballard Estate, Mumbai, informing therein that the import consignments of the Noticee Nos. 1 & 2 firms, besides other import firms under alert of DRI, Ludhiana, which were pending customs clearance at their port, be put on hold as the same were to be examined 100% by the DRI/Customs. It was further requested that the future import consignments of the said import firms may not be allowed any amendment in IGM without NOC from DRI, Ludhiana.

3. Searches conducted at the premises of the Noticees:

Based on the aforesaid intelligence, searches were conducted on 14.12.2015 at the business premises of the Noticee No. 1 & 2 (and Panchnamas were drawn). The details of these premises are as given in Table No. 1 below:

TABLE NO.1

Sr. No.	Nature and address of the premise searched
1	Office premises of M/s Inder International, 594, Nirankari Street No. 1, Overlock Road, Miller Ganj, Ludhiana.



2	Office premises of M/s Shri Lakshmi Steels, 467, Industrial Area B, Miller Ganj, Ludhiana.
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3.1 Search conducted at the office premises of M/s Inder International, 594, Nirankari Street No. 1, Overlock Road, Miller Ganj, Ludhiana:

The said searches were conducted on 14.12.2015 and Panchnama dated 14.12.2015 was drawn in the presence of two independent witnesses and Shri Sunil Dutt Jain. Certain physical records/documents were resumed, details as per Annexure to Panchnama dated 14.12.2015 drawn on spot. Further, two laptops, one of HP brand and another of Sony VAIO brand, were also resumed under Panchnama. During the said search, one desktop was found to be lying in the said business premises and backup of data lying in the said desktop was stored in one pen-drive (Cruzer Blade 4 GB) and was also resumed under Panchnama dated 14.12.2015. Further, during the said search certain cash amounting to **Rs. 63,30,000/- (Rupees Sixty Three Lakhs and Thirty Thousand only)** was also found to be lying which could not be properly accounted for by the party representative and hence the aforesaid cash amount of Rs 63,30,000 (Rupees Sixty Three Lakhs and Thirty Thousand only) was **detained** under the provisions of Section 110 of the Customs Act, 1962. The officers also found stocks of sheets lying at the said premises. Shri Sunil Dutt Jain informed that the said stock of sheets lying at his said business premises had been imported by them and were approximately 50 MT by weight. The said quantity of 50 MT of imported sheets, having approximate market value of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** was also detained for further investigations under the provisions of Section 110 of the Customs Act, 1962, on the basis of the reasonable belief that the importers had been mis-declaring their goods to evade appropriate customs duty. The supardari of the said detained stock of 50 MT of imported sheets lying at the said business premises was given to Shri Sunil Dutt Jain, authorized representative of M/s Inder International, Ludhiana, by the DRI officer in front of the Panchas (In this regard, a show cause notice containing detailed charges and proposing confiscation of the said seized goods has been issued vide DRI F NO. DRI/LDZU/856/ENQ-48 (INT-49) 2015/VI/1457-1466 dated 13.06.2016, the said show cause notice also details that the matter pertaining to the resumed cash amount of Rs. 63.30 lakhs was referred to the Income tax authorities for thread bare investigation, and that the office of the Deputy Director of Income Tax (Inv.) - 2, Ludhiana informed vide their letter F. No. DDIT (Inv.) - 2/LDH/2016-17/247 dated 26.05.2016 that the Noticee No. 1 could not substantiate the source of the said resumed cash amount of Rs. 63.30 lacs and that the said case was a fit case of requisition of Rs. 63.30 lacs as per the provisions of the I.T. Act, 1961. The said cash amount has now been seized by the office of the Deputy Director of Income Tax (Investigation), Ludhiana under Section 132A of the Income Tax Act, 1961 on 26.05.2016). Besides this, the aforesaid searches also led to the recovery of incriminating records evidencing the fact that the afore-said import firms have been mis-declaring their import consignments of HR & HROP Coils/Sheets of width greater than 600 mm as CR Coils/ Sheets to evade the appropriate provisional safeguard duty @ 20% ad valorem imposed on the imports of HR flat products of width greater than 600 mm vide **Notification No. 2/2015- Customs (SG) dated 14.09.2015.**



3.2 Search conducted at the office premises of M/s Shri Lakshmi Steels, 467, Industrial Area B, Miller Ganj, Ludhiana:

The search warrant in respect of the aforesaid premises could not be executed as the search team reported that the premises of M/s. Shri Lakshmi Steels had been shifted to premises of M/s Global Impex, B- 1453, Rajpura Road, Chotti Haibowal, Ludhiana.

3.3 Search conducted at the office premises of M/s Global Impex, B-1453, Rajpura Road, Chotti Haibowal, Ludhiana-141001:

The search was conducted under panchnama dated 14.12.2015 in the presence of two independent witnesses and Shri Abhay Jain (son of Shri Sunil Dutt Jain, prop. M/s Global Impex). Shri Abhay Jain informed during the panchnama proceedings that the said premises has been lying closed since last six to seven months and that the business of the said firm is being run from the office of M/s Inder International, Overlock Road, Ludhiana.

4. During searches conducted at the business premises of the Noticee No. 1 under panchnama dated 14.12.2015, the officers of DRI, Ludhiana, resumed a number of incriminating documents. These documents were evidence to the fact that indeed the Noticees were indulging in evasion of applicable customs duties by resorting to the following violations in their imports:

(i) Importing Hot Rolled (HR)/ Hot Rolled Pickled & Oiled (HRPO) Coils in sheet form of width more than 600 mm by mis-declaring the same to be of Cold Rolled nature to evade the appropriate provisional safeguard duty @ 20% ad valorem imposed on the imports of HR flat products of non-alloy and other alloy steel in coils of a width greater than 600 mm vide **Notification No. 2/2015-Customs (SG) dated 14.09.2015;** and

(ii) Importing Hot Rolled products of width more than 600 mm (in both coil and not in coil/ sheet form) from the Republic of Korea by mis-declaring them to be Cold Rolled Coils of width more than 600 mm (in both coil and not in coil form) falling under tariff heading 720917 of the Customs Tariff Act, 1975 so as to get full exemption of the Basic Customs Duty under Preferential Trade Agreement under Notification No. 53/2011-Cus. dated 01.07.2011 (as amended), the rules for which have been notified vide Notification No. 187/2009-Customs (N.T.) dated 31.12.2009.

4.1 The afore-said incriminating documents, resumed from the business premises of the Noticee No. 1 under panchnama dated 14.12.2015, were required to be confronted to Shri Indresh Jain who was controlling the overall business affairs of the Noticee firms. Hence, summons dated 14.12.2015 were issued to the Shri Indresh Jain for his appearance on 15.12.2015 in the office of DRI, Ludhiana to record his statement on the afore-said issue. The said summons was served to Shri Sunil Dutt Jain, father of Shri Indresh Jain, on 14.12.2015 at the time of search. However, Shri Indresh Jain failed to appear on 15.12.2015, and his father submitted vide letter dated 15.12.2015 that his son was not feeling well and that extension of two days be granted. A fresh summons F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/2784 dated 17.12.2015 was again issued to Shri Indresh Jain for appearance on 18.12.2015 which was served to Smt. Mahak Jain, wife of Shri Indresh Jain. However, he failed to appear on the said date also. Shri Indresh Jain appeared on his own only on 28.12.2015 and thereafter spot summons were served on him, and his statement under Section 108 of the Customs Act, 1962 was recorded.



4.2 Further, during searches conducted at the business premises of the Noticee No. 1 firm, the officers of DRI, Ludhiana, also resumed documents pertaining to the pending live import containerised consignments of the Noticee import firms pending at the sea port of Mumbai Customs. The details of the various Shipping Lines which were acting as carriers in respect of the said import goods were ascertained. Thereafter, letters were issued to these Shipping Lines requesting therein that the destination of the said import consignments should not be changed and also that the importer may not be allowed any change in the Bills of Lading and / or IGM without NOC from DRI, Ludhiana. The details of the concerned Shipping lines, Bills of Lading, Container numbers and the correspondences held with the Shipping Lines are as per details given below:

Sr. No.	Name of the import firm	B/L No. & date	Shipping Line	Container No.	Correspondence details with Shipping Line
1	M/s Shri Lakshmi Steels	INC1524419 dt. 31.10.2015	M/s Seahorse Ship Agencies Pvt. Ltd., Mumbai	BEAU2323186, CAXU3156198, GATU1156872, KMTU7286790, KMTU7406073, TCKU3419619, TCLU3447876, TEMU4254035 & TGHU2742135	Letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/2792 dated 17.12.2015)
2	M/s Shri Lakshmi Steels	INC1524739 dt. 07.11.2015		BSIU2613380, CLHU3178770, KMTU7279024, KMTU7428302, SEGU2264784, SEGU2432804, TEMU2469800, TEMU3112360, TGHU3234057, TRHU1706705 & TRHU2982457	
3	M/s Shri Lakshmi Steels	INC1547611 dt. 28.11.2015		BSIU2616034, KMTU7350293, SEGU2458671, TCKU3234003, TEMU0189965, TEMU3341095, TEMU4489929, TEMU5020237, TEMU5699278 & TEMU5734194	
4	M/s Inder International	CGV0134666 dt. 01.11.15	M/s CMA CGM Agencies (India) Pvt. Ltd.,	XINU1536848, CMAU0104458, OPDU2051220, ECMU1502443, TEMU2420538, CMAU0297742,	Letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/2793 dated



			Mumbai	TRLU3763678, TGHU1364880, IPXU3725578, CMAU1647953 & CMAU0573291	17.12.2015
5	M/s Inder International	CGV0134750 dt. 14.11.15		TTNU1846239, CMAU1140254, FCIU3688263, TGHU0739195, CMAU1703173, TRHU3048291, CMAU1906606, CMAU1438974, CNCU1614145, CMAU1202612 & TRLU9344766	
6	M/s Inder International	CGV0134990 dt. 28.11.15		CMAU0455447, ECMU1317466, TGHU1177868, GESU2634288, CMAU1907900, LCRU2693313, ECMU2046137, TEMU2922095, CMAU1876836 & TGHU2471368	
7	M/s Inder International	MSCUEV238 653	M/s MSC Agency (India) Pvt. Ltd., Mumbai	CLHU3214501, CRSU1340824, CRXU3406516, FCIU2626499, MEDU1181328, MEDU1944100, MEDU2894956, MEDU6530607, MSCU3251623, MSCU3438595, MSCU3834533, MSCU6687816 & TGHU3989686	Letter F. No. DRI/LDZU/8 56/ENQ- 48(INT- 19)/2015/27 94 dated 17.12.2015

Apart from the above, the afore-said shipping lines were also requested to inform the office of DRI, Ludhiana, the details of any more import shipments which had been booked by them relating to the noticees.

5. Examination of live import consignments of the Noticee Nos. 1 & 2 at Mumbai sea port and the offer of their release by way of provisional assessment under Section 18 of the Customs Act, 1962:

The office of DRI, Ludhiana, had put on hold the pending live import consignments of the Noticee firms vide letter dated 14.12.2015. Thereafter, summons were issued to the Shri Indresh Jain for recording of his statement



under Section 108 of the Customs Act, 1962 and also to ascertain his stand on several incriminating documents resumed during searches conducted at the business premises of the Noticee No. 1. Shri Indresh Jain initially failed to remain present in response to the summons issued to him, and he appeared on his own on 28.12.2015 after which spot summons were issued to him and his statement dated 28.12.2015 was recorded. Thereafter, letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/2838 dated 28.12.2015 was sent to the office of the Commissioner of Customs (Import), Mumbai Customs Zone- 1, New Customs House, Ballard Estate, Mumbai informing therein that the office of DRI, Ludhiana had put on hold the import consignments of the Noticee firms on the basis of an intelligence that the said firms had been importing their consignments in violation of the Notification No. 02/2015 Cus.(SG) dated 14.09.2015 to evade the provisional safeguards duty imposed on their imports. In view of the same, it was requested that all the import consignments of the said Noticee firms, which were pending customs clearance at their port, be examined 100% by their officers with the assistance of local Chartered Engineer. It was further requested that after 100% examination of the said import consignments, a detailed examination report be prepared and copy of the same be forwarded to the office of DRI, Ludhiana with respect to the nature of the import goods which may invariably include the description, quality, thickness and the width of the said import goods; that photographs of the said import consignments, copies of relevant Bills of Entry, Invoice, Packing List and other import documents in respect of the said import consignments were also desired to be forwarded to the office of DRI, Ludhiana. Vide the said letter dated 28.12.2015, it was further informed that in case any of the goods imported by the said Noticee firms appear to be offending the provisions of the Notification No. 02/2015 Cus. (SG) dated 14.09.2015, then the same be dealt with under the provisions of Section 110 of the Customs Act, 1962 with proper drawl of samples and testing of the same in an authorised government laboratory under intimation to the office of DRI, Ludhiana.

5.1 The Noticee Nos. 1 & 2 vide their letters dated 22.12.2015, 30.12.2015 & 01.01.2016 made requests to the office of DRI, Ludhiana, as well as Mumbai Customs, that the customs duty in respect of their pending live import consignments be assessed provisionally under Section 18 of the Customs Act, 1962. The Noticees made requests vide the afore-said letters for an early intervention in the said matters so as to save their goods from incurring demurrage and detention charges.

5.2 In view of the afore-said request of the Noticees, a reminder letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/I/2897 dated 05.01.2016 was sent to the office of the Commissioner of Customs (Import), Mumbai Customs Zone-I, New Customs House, Ballard Estate, Mumbai by DRI, Ludhiana, informing therein that the Noticee firms are representing before the office of DRI, Ludhiana for speedy examination of their import consignments so as to save them from any further **detention/ground rent charges** and that the concerned officers be directed to examine the pending import consignments of the Noticee firms on priority.

5.3 Another letter F.No. DRI/LDZU/856 ENQ-48(INT-19)/2015/I/2960 dated 05.01.2016 was sent to the office of the Commissioner of Customs (Import), Mumbai Customs Zone- 1, New Customs House, Ballard Estate,



Mumbai informing therein that during searches conducted at the business premises of the Noticee No. 1 firm, the office of DRI, Ludhiana had resumed various incriminating records evidencing the fact that HROP sheets and coils (**HROP** stands for **Hot Rolled Oiled & Pickled**) were imported by them in the guise of CR sheets and /coils in the recent past. Apart from the above, it was also informed that the office of DRI, Ludhiana had also resumed certain records which show that certain consignments of coils cleared from the Mumbai sea port were declared to the Customs to be **Secondary & Defective CR Coils** whereas the same were declared before the Excise & Taxation Department by the party at the state entry barrier to be **HR Coils**. The evidences obtained in this respect of two sample shipments were informed to be as per details given below:

Sr. No.	Bill of Entry No. & date	Declared item description	Quantity (MT S)	CTH declared	Details of Bilty issued by M/s King Transport Company, Navi Mumbai	Transport Vehicle No.	Weight (in Kgs)	Item imported as per Excise & taxation record
1	34027 48 dt. 27.11.15	Defective Secondary Cold Rolled Coils (MS) (Width 600mm-1500mm, Thickness 0.50mm-1.00mm)	310.618	72091 710	22671 dt. 04.12.20 15	RJ 07 GA 9757	27510	HR COIL
					22677 dt. 05.12.20 15	RJ 07 GB 2339	24150	CR COIL
					22651 dt. 03.12.20 15	RJ 07 GB 9785	24000	CR COIL
					22673 dt. 04.12.20 15	RJ 07 GB 3099	29340	HR COIL
					22652 dt. 03.12.20 15	RJ 07 GB 2001	28320	CR COIL
					22591 dt. 01.12.20 15	RJ 07 GB 0684	23800	HR COIL
					22592 dt. 01.12.20 15	RJ 07 GB 2591	24000	CR COIL
					22593 dt. 01.12.20 15	RJ 07 GB 6454	24140	HR COIL



					22594 dt. 01.12.20 15	RJ 07 GC 0623	23850	HR COIL
					22653 dt. 03.12.20 15	RJ 19 GE 1909	27810	HR COIL
					22653 dt. 03.12.20 15	RJ 19 GE 2914	27380	HR COIL
2	34008 56 dt. 27.11. 15	Cold Rolled Coils (Secondary Defective) (M.S)	81.6 76	72091 710	22595 dt. 01.12.20 15	RJ 07 GC 6523	27910	HR COIL
					22596 dt. 01.12.20 15	RJ 07 GB 0425	27250	CR COIL
					22655 dt. 03.12.20 15	RJ 07 GB 3006	27240	NOT AVAILA BLE

Vide the said letter dated 05.01.2016, it was further submitted that these Hot Rolled Pickled & Oiled coils are free from rust/ de-scaled and softened which gives a very smooth finish to these Hot Rolled Coils and that therefore these can be easily detected. It was therefore requested that during examination of the said import consignment, proper samples of the said import consignments be also drawn and proper testing of the said samples be done to ascertain whether HROP coils have been imported by the firms in the guise of CR material.

5.4 Apart from the above, perusal of the resumed records of the Noticee firms also revealed that in respect of goods imported by them from the Republic of Korea, they have claimed duty exemption under the Preferential Trade Agreement under Notification No. 53/2011-Cus. dated 01.07.2011 (as amended) vide which concessional rate of duty has been prescribed. The effective rate of ad valorem customs duty leviable on these Hot & Cold Rolled Coils and / or Sheets imported from Republic of Korea varies depending on the tariff heading of the imported coils. In the afore-said case of imports of flat rolled products by the Notices from the Republic of Korea, the office of DRI, Ludhiana had resumed two sets of import invoices pertaining to same import consignment, a perusal of which revealed that there was difference in the declaration of the thickness of the imported Coils of the Noticees as submitted with the Indian Customs and as found in the parallel import documents. The tariff heading of these imported Hot & Cold Rolled Coils and / or Sheets of width more than 600 mm varies depending on their thickness. The evidence resumed during the said searches at the business premises of the Noticee No. 1 also showed that there was a prima facie case against the Noticee import firms of mis-use of the Preferential Trade Agreement between the Republic of India and the Republic of Korea, the rules for which have been notified vide Notification No 187/2009-Customs (N.T.) dated 31.12.2009. Accordingly, statement dated 12.01.2016 of the Shri Indresh Jain



was recorded on the said issue. However, he remained evasive in his replies. He also tendered the said statement as authorised signatory of M/s Shri Lakshmi Steel (Noticee no. 2). Thereafter, letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/I/2999 dated 13.01.2016 was sent to the office of the Commissioner of Customs (Import), Mumbai Customs Zone -1, New Customs House, Ballard Estate, Mumbai informing therein that on further analysis of the resumed records of the Notice No. 1, the office of DRI, Ludhiana had found two sets of Commercial Invoices pertaining to same consignment imported from the overseas supplier M/s Dong Bang Enterprise Co. Ltd., South Korea vide Invoice No. DB-150930IND-IN dated 30.09.2015; that one invoice (duly attested by the bank) had description of import goods to be **Defective/Secondary Cold Rolled Coils of thickness 0.30 to 4.00 mm** whereas the other parallel set of invoice presented to the Customs at the time of clearance of goods had **thickness** mentioned as **0.50 mm to 1.00 mm**. It was also informed that the corresponding Certificate of Origin has mention of the import goods to be Defective/ Secondary Cold Rolled Coils falling under tariff heading 720917 (upto 6 digit level) of the Customs Tariff and the party has filed Bill of Entry No. 3260140 dated 16.11.2015 seeking exemption of BCD under Notification No. 152/2009-Customs dated 31.12.2009. It was further informed that Defective / Secondary Cold Rolled Coils of thickness less than 0.50 mm and more than 1.00 mm do not fall under heading 720917, and thus they do not correspond to the Certificate of Origin presented by the importer to the Customs; that the government has issued Notification No. 187/2009-Cus. (N.T.) dated 31.12.2009 for making "Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between Governments of the Republic of India and the Republic of Korea) Rules, 2009" and that Rule 15 of the said Rules requires the product of the exporting party to be in accordance with the detailed operational certification procedures as set out in Annexure III of the said Rules; whereas para 12 of the operational certification procedures, mentioned in Annexure III of the said Rules, states that the importing State party may deny claim for preferential tariff treatment or recover unpaid duties in accordance with its law and regulations when the goods do not meet the requirement of the rules. Hence, vide the said letter dated 13.01.2016, it was informed that it was suspected that there are certain live import consignments of the Noticee import firms wherein goods imported from the Republic of Korea were sought to be cleared on the basis of Certificates of Origin, and that the import goods might be different from those mentioned in the corresponding Certificate of Origin and that the said issue be examined in light of the afore-said facts and necessary action be taken under the provisions of the Customs Act 1962 if any discrepancy is noticed.

5.5 The Assistant Commissioner of Customs, SIIB (X - 1), New Customs House, Ballard Estate, Mumbai informed vide their letter F. No. SG/Misc-31/AC/2015-16 SIIB (X - 1) dated 14.01.2016 that the examination of the detained 45 containers of import goods of the Noticee No. 1 were completed by 11.01.2016 whereas the examination of the detained 31 containers of import goods of the Noticee No. 2 were completed by 06.01.2016. It was further informed that the arrangements made by the customs broker M/s Sea Queen Shipping Services (P) Ltd. as regards the examination of the detained goods was very poor and that the following actions were pending:

- a) Weighment of containers due to breakdown of weighbridge at STP yard;



- b) Chartered Engineer Report;
- c) Forwarding of representative samples to the laboratory for testing; and
- d) Photographs of consignment.

5.6 In view of the afore-said letter dated 14.01.2016, received from Mumbai Customs, it was seen that further report on the exact nature of the pending live import consignments of the Noticees was pending. Hence, letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/I/53 dated 19.01.2016 was sent by DRI to the office of the Commissioner of Customs (Import), Mumbai Customs Zone - 1, New Customs House, Ballard Estate, Mumbai informing therein that from perusal of their office letter dated 14.01.2016 it could be seen that the Chartered Engineer has not submitted his report till date and also that the samples drawn by their office are yet to be forwarded to laboratory for necessary testing and that in view of the same it was felt that some more time would be taken by their office for obtaining technical opinion w.r.t the nature of the Coils imported by the Noticees; that only after the receipt of the requisite CE report and / or laboratory Test Report in respect of the live import consignment of the Noticees, it could be ascertained whether the imported coils were cold rolled or hot rolled. It was also informed that the Noticee import firms had been making numerous representations to the office of DRI, Ludhiana as regards payment of detention / demurrage charges on account of delay in examination proceedings & that the Customs duty of their import consignments be assessed provisionally under Section 18 of the Customs Act, 1962. Hence, vide letter dated 19.01.2016, it was informed that the pending live import consignments of Noticee firms be allowed release by resorting to provisional assessment under Section 18 of the Customs Act, 1962, if deemed fit by Mumbai Customs. Subsequently, the Noticee firms were allowed release of their pending live import consignments under Section 18 of the Customs Act, 1962 by Mumbai Customs; however, the Noticee firms did not avail the offer of release of their import goods by resorting to the facility of provisional assessment under Section 18 of the Customs Act 1962.

5.7 The Noticee Nos. 1 & 2 had made representations to the office of DRI, Ludhiana as well as Mumbai Customs for issuance of Detention Memo and directions to the shipping lines, custodians M/s Mumbai Port Trust, Mumbai for waiver of **ground rent** and **detention charges**. They had not availed the offer of release of their import goods by resorting to provisional assessment under Section 18 of the Customs Act, 1962. Hence, letters F. No. DRI/LDZU/856 ENQ-48(INT-19)/2015/II/283-285 dated 05.02.2016 and F. No. DRI/LDZU/856/ENQ-48(INT-19) 2015/II/286-288 dated 05.02.2016 were written to the importer advising them to approach the office of the Commissioner of Customs, New Customs House, Ballard Estate, Mumbai in order to facilitate completion of formalities of provisional assessment for early release of goods. It was also informed vide the said letters dated 05.02.2016 that till date the Mumbai Customs had not reported to the office of DRI, Ludhiana, that the import consignments of the Noticees were of Cold Rolled nature and as per declaration; that therefore any proposal regarding waiver of detention / demurrage charges was not maintainable at that stage with the concerned authorities.

5.8 The Noticee Nos. 1 & 2 however informed vide their letters dated nil, received in the office of DRI, Ludhiana on 09.02.2016, that Detention Memo be issued and goods be released by resorting to final assessment under Section 17



of the Customs Act, 1962 since the Chartered Engineer Report and the Test Report as obtained by the Chartered Engineer from M/s Perfect Laboratory, Pune indicated their import consignments to be Cold Rolled nature and as per declaration.

5.9 Further, the office of DRI, Ludhiana informed the Noticee Nos. 1 & 2 vide letters F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/II/302 dated 09.02.2016 and F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/II/301 dated 09.02.2016 that they have not availed the offer of release of their import consignments by resorting to provisional assessment under Section 18 of the Customs Act, 1962 and have also declined vide letter dated 09.02.2016 avail the facility of provisional assessment to the reasons best known to them, that they were again requested vide afore-said letters dated 09.02.2016 to approach the competent authority for availing the offer of release of their import consignments by resorting to provisional assessment.

5.10 The office of the Commissioner of Customs (Export - 1), Gr. VII H-II, Ballard Estate, Mumbai had been requesting the Noticee Nos. 1 & 2 for submission of PD Bond and Bank Guarantee for release of their import consignments. Letter F. No. S/16-Misc-131/2015-16 VII H-II dated 08.02.2016 was sent by Mumbai Customs to the Noticee Nos. 1& 2 requesting therein to produce PD Bond and Bank Guarantee for release of the consignments under provisional assessment.

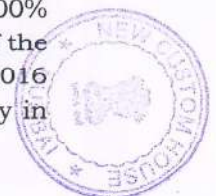
6. Seizure & Provisional Release of the pending live import consignments of the Noticee Nos. 1 & 2 firms imported through Mumbai Sea port:

6.1 The Noticees were offered release of their pending live import consignments by resorting to the facility of provisional assessment under Section 18 of the Customs Act, 1962. However, the Noticees failed to avail the said offer of release; that however other Ludhiana based importers who were offered release of their import goods under provisional assessment immediately availed the said offer. Instead the Noticee Nos. 1 & 2 filed CWP Nos. 185 of 2016 and 572 of 2016 in the Hon'ble High Court of Punjab & Haryana at Chandigarh wherein besides other prayers they sought immediate directions for release of their detained goods and also issuance of directions to the respondents to waive/pay the demurrage/detention charges on the import goods.

6.2 During the hearing of the said matter on 03.02.2016, the Hon'ble High Court passed, inter alia, the following order:

"A perusal of the reply filed in Court today does not indicate any order of detention of goods which in our considered opinion is the starting point of the right available to the respondents to apprehend mis-declared goods."

As such, a letter dated 04.02.2016 was written by DRI, Ludhiana to the Commissioner of Customs (Export), Mumbai Customs Zone - 1, Mumbai, informing therein that no concrete reply had been filed by their office in the Hon'ble High Court of Punjab & Haryana with regard to the examination, sampling testing of the live import consignments and issuance of the order of provisional assessment to the importer, despite the fact that a considerable period of time has elapsed since their office had been requested for 100% examination of live import consignments of the said firms and submission of the examination report. It was further informed vide the said letter dated 04.02.2016 that the office of DRI, Ludhiana, after taking note of the considerable delay in



the examination of goods as reported by the office of Mumbai Customs vide letter F. No. SG/Misc-31/AC/2015-16 SIIB(X-1) dated 14.01 2016 had already recommended release of the pending live import consignments of the Noticee firms & other firms under DRI alert by resorting to provisional assessment under Section 18 of the Customs Act, 1962.

6.3 The Deputy Commissioner of Customs Gr. VII H-II, NCH, Mumbai, vide their letter F. No. S/16-Misc-131/2015-16 Gr. VII H-II dated 09.02.2016, to the Asst. Traffic Manager (MbPT), Mumbai and copy to the Noticee Nos. 1 & 2 and also to DRI, Ludhiana, informed that as directed by DRI, Ludhiana vide letter dated 14.12.2015, the following consignments had been **put on hold/ detained**.

No.	Sr.	Bill of Entry No. / Date	Importer Name
1		3476994 / 04.12.2015	M/s Inder International
2		3749275 / 29.12.2015	—Do—
3		3749279 / 29.12.2015	—Do—
4		3753509 / 29.12.2015	—Do—
5		3480776 / 04.12.2015	M/s Shri Lakshmi Steels
6		3552261 / 11.12.2015	—Do—
7		3749151 / 29.12.2015	—Do—

6.4 The office of the Commissioner of Customs (Export), Mumbai Customs Zone- 1, New Customs House, Ballard Estate, Mumbai-400001 vide letter F. No. S/16-Misc-131/2015-16 VII H-II dated 09.02.2016 also forwarded the photocopies of documents pertaining to the afore-said seven import consignments of the Noticee Nos. 1 & 2, viz. Examination Report, Bill of Entry, Chartered Engineer Certificate along with colour photographs and other import related documents. A perusal of the said report of the Chartered Engineer revealed that he had sent samples on his own to M/s Perfect Laboratory, Pune for its testing and on the basis of the same had opined that all the live import consignments of the Noticee Nos. 1 & 2 were of cold rolled nature. The office of DRI, Ludhiana however sought clarification from the office of the Commissioner of Customs, Mumbai on the said issue and the Deputy Commissioner of Customs, Gr. VII H-II, NCH, Mumbai informed, vide her letter F. No. S/16-Misc-131/2015-16 Gr. VII H-II dated 17.02.2016 that the samples sent by the Chartered Engineer to M/s Perfect Laboratory Pune were not sent by their office.

6.5 Further, the replies on behalf of the Respondent Nos. 5 & 6 (officers of DRI, Ludhiana) and Mumbai Customs was filed in the Hon'ble High Court of Punjab & Haryana at Chandigarh on the next date of hearing viz **11.02.2016**. During the filing of the replies of Mumbai Customs, the office of the



Commissioner of Customs (Export), Mumbai Customs Zone-I, New Customs House, Ballard Estate, Mumbai-400001 submitted copies of 10 Test Reports received by their office from the laboratory of M/s TCR Engineering Services Pvt. Ltd., Mumbai in respect of the Customs drawn representative samples; that however only 7 Test Reports pertained to the Noticee Nos. 1 & 2 whereas remaining 3 Test Reports pertained to other importers who were also under alert of DRI, Ludhiana. The said test reports were submitted by the Mumbai Customs in the Hon'ble High Court; that perusal of the said Test Reports indicated that except for two representative samples all other representative samples appeared to be of Hot Rolled nature. Also, a perusal of the test reports revealed that Bill of Entry details were not mentioned on the said Test Reports due to which there was difficulty in ascertaining the details of the import consignments for which the tests had indicated the material to be of Hot Rolled nature.

6.6 That further the office of the Commissioner of Customs (Export-I), Group VII H-II, New Customs House, Ballard Estate, Mumbai-400001 vide their letter F. No. S/16-Misc.-131/2015-16 Gr. VII H-II dated 19.02.2016 forwarded the copies of the revised Test Report Nos. BF3966 to BF3972 all dated 17.02.2016 which pertained to the consignments of the Noticee Nos. 1 & 2 in respect of their imports made vide Bills of Entry Nos. 3749275 dated 29.12.2015, 3476994 dated 04.12.2015, 3753509 dated 29.12.2015, 3749279 dated 29.12.2015, 3480776 dated 04.12.2015, 3552261 dated 11.12.2015 and 3749151 dated 29.12.2015 with proper endorsements of Bill of Entry number on the Test Reports. The laboratory M/s TCR Engineering Services Pvt. Ltd., Navi Mumbai further clarified vide their letter dated 20.02.2016 that Test Certificate Nos. BF 3966 to BF 3967 were Cold Rolled and BF3968 to BF3975 were Hot Rolled.

6.7 The test report in respect of the imports made vide 2 Bills of Entry Nos. 3749275 dated 29.12.2015 & 3476994 dated 04.12.2015 indicated that the same appeared to be in Cold Rolled condition. Hence, the office of DRI, Ludhiana vide letter F. No. DRI/LDZU/856/ENQ-48(INT- 19) 2015/III/429 dated 22.02.2016 to the office of the Commissioner of Customs (Export-I), New Customs House, Ballard Estate, Mumbai - 400001 granted NOC for their unconditional release and also for issue of detention certificate in respect of these two consignments.

6.8 In view of the above, the live consignments of the Noticee No. 1 imported vide Bills of Entry Nos. 3749279 dated 29.12.2015 and 3753509 dated 29.12.2015 were seized vide letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/III/431- 433 dated 22.02.2016, and further the provisional release of the said goods was allowed by the adjudicating authority, viz. the Additional Commissioner of Customs. Gr. VII H-II, NCH, Mumbai vide letter F. No. S/16-Misc-131/2015-16 Gr. VII H-II dated 23.02/2016 wherein it was mentioned that the earlier order dated 28.01.2016 of provisional assessment would be superseded by the said provisional release order.

6.9 Similarly, the live consignments of the Noticee No. 2 imported vide 3 Bills of Entry Nos. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015 and 3749151 dated 29.12.2015 were seized vide letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/III/460-462 dated 22.02.2016 read with letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/III/467- 469 dated 25.02.2016 and further provisional release of the said seized goods was allowed by the adjudicating authority, viz. the Additional Commissioner of Customs Gr. VII H-II, NCH, Mumbai vide letter F. No S/16-Misc-131/2015-16 Gr. VII H-II dated



07.03.2016 wherein it was mentioned that the earlier order dated 28.01.2016 of provisional assessment would be superseded by the said provisional release order.

7. CWPs filed by the Noticee Nos. 1 and 2 in the Hon'ble High Court of Punjab & Haryana at Chandigarh

7.1 The Notice Nos. 1 & 2 filed CWP Nos. 185 of 2016 & 572 of 2016 in the Hon'ble High Court of Punjab & Haryana at Chandigarh. During the hearing in the said case, the Hon'ble High Court vide Order dated 04.04.2016, besides other directions, directed for fresh drawing of one sample each of the disputed consignments by the Custom Authorities in the presence of the officer/representative of the DRI as well as of the Noticees, under their respective signatures. Further, in Para (9) of the said Order, it was also mentioned that the petitioner Noticee firms undertake to join, the inspection regarding verification of thickness of the imported material in respect of Bills of Entry Nos. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015 and 3749151 dated 29.12.2015. That further as per order dated 04.04.2016 of the Hon'ble High Court, the officers of DRI, Ludhiana were present on 06.04.2016 for examination of thickness of the imported coils of the Noticee No. 2 firm. The goods of the Noticee No. 2, imported vide Bill of Entry No. 3552261 dated 11.12.2015 in container number TEMU2469800, could only be examined on 06.04.2016 by the DRI officers in the presence of the Customs officers and Shri Indresh Jain with respect to measurement of the thickness of the coils imported in the said container. 51 coils were found to be lying in the said Container No. TEMU2469800 and were visually found to be of varying thickness with the variation of thickness noticed in each coil individually. The thickness of each coil was measured to find out the variation range of the thickness in each of the coils, the details are as per examination report dated 06.04.2016. However, Shri Indresh Jain, representative of M/s Shri Lakshmi Steels, Ludhiana, remained evasive while acknowledging the examination report and instead kept on making baseless allegations on the manner of the measurement of thickness and also alleged that his imported goods were not warehoused and also that no samples were drawn. The Noticees did not cooperate in the said examination proceedings, and only after the Order dated 12.04.2016 of the Hon'ble High Court, Shri Abhay Jain, Proprietor of the Noticee No. 2, joined the examination proceedings for measurement of thickness of the imported coils / sheets which was later carried out on 19.04.2016, 20.04.2016, 21.04.2016 and 22.04.2016. The examination was carried out on 06.04.2016 in the presence of Shri Indresh Jain, brother of the proprietor of the petitioner firm. Shri Abhay Jain remained present on 19.04.2016, 20.04.2016 & 21.04.2016 for the said examination of thickness of the imported coils / sheets but signed the said Examination reports only on 19.04.2016 and 20.04.2016 and left the examination spot while preparation of the Examination Report dated 21.04.2016 without any consent of the examining officer. Thereafter, the Noticees failed to remain present for further examination of the thickness of the imported coils, and hence the examination of the thickness of the imported coils / sheets of the petitioner was finally concluded on 22.04.2016 under panchnama in the presence of two independent witnesses. Further, the coils imported by the petitioner were found to be baby coils of varying thickness with the variation of thickness noticed in each coil individually also. The thickness of each of the coils was measured to find out the variation range of the thickness in each of the coils with the help of an electronic vernier calliper. The said CWPs were dismissed as withdrawn by the Hon'ble High Court vide Order dated 09.05. 2016.



7.2 Thereafter the Noticee Nos. 1 and 2 filed fresh CWP Nos. 10036 & 10021 of 2016 respectively in the Hon'ble High Court of Punjab & Haryana at Chandigarh. The Hon'ble High Court vide Order dated 03.06.2016 passed the following order:

"The dispute in the present petitions is whether the steel imported by the petitioners is 'Hot Rolled' or 'Cold Rolled'. The claim of the petitioners is that it is 'Cold Rolled' whereas the stand of the department is that it is 'Hot Rolled'. There is one test report of Perfect Laboratory Services Pune dated 16.01.2016 on record, opining the consignment to be 'Cold Rolled defective coils'. The revenue authority has disputed the fact that the samples which were sent to the Laboratory were taken in their presence. The samples were not sent by the department which may have been sent by the Chartered Engineer, who was appointed by the department. He was appointed only for visual examination of the consignment and was not authorized to take samples and get it tested from any laboratory.

The samples were drawn by the customs between 06th to 13th Jan. 2016, which were sent for testing and after testing, the report was received. In that report, it was opined that the consignment content was 'Hot Rolled Steel'.

Learned counsel for the petitioners submitted that the samples for the testing sent by the department were now taken in the presence of their authorize representatives. He further submitted that as the dispute is only regarding the consignment being either 'Hot Rolled Steel' or 'Cold Rolled Steel', it may be got tested from any Government laboratory.

To this, learned counsel for the Directorate of Revenue Intelligence raised serious objections stating that re-testing is not permissible under the Customs act and whichever report has been received, the same should be accepted. Whatever objection the importer has, the same could be raised at the time of adjudication. In support of his claim, reliance has been made on Harparshad vs. State of Punjab, 1987(1) RCR (Criminal) 649, Joginder Kaur vs. The State of Punjab, 1978 PLR 617, Thana Singh vs. Central Bureau Narcotics 2013(2) SCC 603, Directorate of Revenue vs. Viond Kumar and ors. 2005(1) Crimes 429 and commr. Of customs, New Delhi vs. M/s Punjab Stainless Steel Industries, AIR 2001 SC 3129.

After hearing learned counsel for the parties, in our opinion once there are two reports giving contradictory opinions, that too, from the private laboratories, the material is required to be re-tested from the government laboratory. To the report, the department shall not be debarred from raising objection regarding retesting.

We deem it appropriate to direct that two samples will be drawn. Let the needful be done on 07.06.2016 in the presence of authorized representatives of both the parties. The samples so drawn be sealed in two separate packets, one of which will be sent to Bokaro Steel Plant, Jharkhand for testing and second sample be kept by the department.

Let the report of testing be sent by Bokaro Steel Plant, Jharkhand, directly to this Court in a sealed cover. Learned counsel for the petitioner undertook to bear the expenses for drawl of the samples and for testing. The same may be paid directly. Adjourned to 20.06.2016 for further proceedings, as requested by learned counsel for the parties."

8. In view of the aforesaid directions dated 03.06.2016 of Hon'ble Punjab & Haryana High Court for drawl of fresh samples for re-testing of goods, it was



imperative that the investigation could not be completed within the period of 6 months of seizure (detention) of goods. Therefore, a show cause notice proposing confiscation of seized goods, u/s 124 of Customs Act, 1962 as provided in Section 110(2) of the Customs Act, 1962, could not be issued within the stipulated period of 6 months of seizure (detention) of goods. As such, a show cause notice F. No. S/16-Misc-131/2015-16 Gr.VII H2 dated 09.06.2014 was issued by the commissioner of customs (Export-I). Gr. VII H-II, New Customs House, Mumbai to the **Noticee No. 1** and **Noticee No. 2**, proposing extension of time, on the grounds detailed therein, under the proviso to Section 110(2) of the Customs Act, 1962.

9. Consequently, the Commissioner of Customs (Export -I), Mumbai vide Order-In-Original No. 11/CC/Exp-I/SM/2016-17/Gr. VII H-2 dated 13.06.2016 extended the period to issue show cause notice by another six months i.e. up to 13.12.2016.

10. Meanwhile, The samples were drawn, in view of the Hon'ble High Court order dated 03.06.2016, in r/o five seized import consignments of Noticee No. 1 and Noticee No. 2. The said samples, as per directions of the Hon'ble Punjab & Haryana High Court, were forwarded to the Bokaro Steel Plant by Mumbai Customs.

11. The Hon'ble High Court of Punjab and Haryana at Chandigarh vide order dated 20.06.2016 directed the examination and sampling of remaining two consignments of Noticee No. 1 by the Mumbai Customs on 24.06.2016 (pertaining to Bill of Entry No. 4205063 dated 09.02.2016 and 4289284 dated 17.02.2016) and also that same be got tested from Bokaro Steel Plant, Jharkhand.

12. The Hon'ble High Court at Punjab & Haryana vide order dated 12.07.2016 directed, inter alia, to release the goods to the Noticee No. 1 and Noticee No. 2 on payment of duty whatever is due on the import after adjusting the duty already paid, and with observations as under:

"The reports were received by this Court in sealed cover vide letter 2.7.2016 opining that all seven consignments are "Cold Rolled" products. The copies of the test reports were furnished to learned counsel for the parties. In response thereto, the DRI has filed affidavit dated 12.07.2016 of Santokh Singh, Senior Intelligence Officer, DRI, Ludhiana Zonal Unit, Ludhiana, which taken on record, stating that as per the test report received from Bokaro Steel Plant, Jharkhand, there was mis-declaration with reference to material referred in reports No. 1 and 4 pertaining to bill of entry No. 3552261 and 3480776. Similarly, there was mis-declaration with reference to material referred in reports No. 6 & 7 pertaining to bill of entry No. 4289284. It is stated that the thickness of the coils in the aforesaid consignments was found to be mis-declared. Though it was mentioned as 0.5mm to 1.00mm in the bills of entry, however on testing, these were found in the range 1.5mm to 2.0mm. On account of this mis-declaration, the importers will not be entitled for exemption from payment of Basic Customs Duty under notification Nos. 152 & 187 dated 31.12.2009. Issue was also sought to be raised with regard to test report No.5 referring to inference and the conclusion. At one place in the inference, it was mentioned that microstructure was typical of hot rolled. However, in final conclusion, it was opined that the consignment was of unrolled portion of CR Coils. The report received from Bokaro Steel Plant, Jharkhand controlled by the Steel Authority of India Limited cannot be disputed as such as the dispute with regard to the consignments being of Hot Rolled or Cold Rolled Coils / Sheets has been



settled. For material pertaining to bills of entries No. 3749151 dated 29.12.2015, 3749279 dated 29.12.2015, 3753509 dated 09.12.2015, and 4205063 dated 09.02.2016, there is no dispute regarding the material being Cold Rolled or Hot Rolled Sheets as has been declared at the time of submission. The issue regarding thickness of the sheets and coils imported has been raised by learned counsel for the DRI with reference to exemption of Basic Customs Duty. The goods imported are not prohibited. The only dispute presently is as to whether the consignments, which were found to be of thickness higher than declared by the petitioners

.....

The issue regarding entitlement of the storage and demurrage charges by the shipping Lines and Mumbai Port Trust will be considered separately including the issue regarding entitlement of the petitioners to exemption from payment of basic customs duty on three consignments as noticed above. To the extent of basic customs duty, the exemption of which is sought to be disputed by the respondents, the petitioners shall furnish bank guarantee to the customs authorities and the interest thereon before release of the consignments. It is made clear that the petitioners will clear the freight charges relating to the bills of entries of the shipping lines before the goods are released, if not already paid. In CWP No. 10036 of 2016 the petitioner shall furnish additional bank guarantee to cover up the interest, if any payable on the duty demanded which initially was not paid".

13. The Hon'ble High Court of Punjab and Haryana at Chandigarh vide further order dated 02.08.2016 in CWPs No. 10036/2016 and 10021/2016, directed the department to release the consignments on payment of duty and furnishing the bank guarantee as mentioned in the said order.

14. Mumbai Port Trust filed a Special Leave Petition (Civil) No. 23479-80 of 2016 before Hon'ble Supreme Court of India challenging the order dated 12.07.2016 of the Hon'ble Punjab and Haryana High Court.

15. The department also filed an SLP (C) No. 26180-26183 of 2016 before the Hon'ble Supreme Court of India against orders dated 12.07.2016 and 02.08.2016 passed by the Hon'ble Punjab and Haryana High Court in which, inter alia, the following grounds were pleaded:

"III That all the observations in the impugned orders against the Customs and DRI officials were neither justified nor would they be sustainable.

.....

VII. THAT the Hon'ble High Court erred in holding that the stand taken by the department has been found to be wrong on the ground that it contains Hot Rolled Coils and Sheets whereas the stand taken by the respondents-Firms that the consignments were of Cold Rolled Coils and sheets were found to be correct.

VIII. THAT the Hon'ble High Court erred in directing the Petitioners to release the consignments on payment of duty and furnishing the bank guarantee as under:-

.....

IX. THAT Hon'ble High Court totally ignored the fact that the report obtained by the Department from an NABL accredited laboratory shows the imported material in respect of five import consignments of the import firms to be Hot Rolled in nature".



16. The Hon'ble Supreme Court of India vide order dated 15.09.2016 set aside the orders dated 12.07.2016 and 02.08.2016 of the Hon'ble Punjab and Haryana High Court as follows:

"We set aside the impugned orders dated 12th July, 2016 and 2nd August, 2016 passed by the High Court and request the High Court that the writ petitions may be heard at an early date, to the extent possible. In the meanwhile, until the final decision of the writ petitions, the goods be not released and the auction (if any) will not take place without the leave of the Court."

17. The Hon'ble High Court vide order dated 12.07.2016 had directed for keeping the issue regarding entitlement of the noticees from payment of basic exemption duty (where benefit of Preferential Treatment Agreement was involved) as separate, and has directed that the petitioners shall furnish bank guarantee to the customs authorities to the extent of basic customs duty and interest thereon before release of the goods. However, Mumbai Customs also finally assessed all these bills of entry. Later on the Commissioner of Customs (EXPORT-I), Mumbai, under section 129D(2) of the Customs Act, 1962 reviewed the bills of entry nos. 3480776 dated 04.12.2015, 4289284 dated 17.02.2016 and 3552261 dated 11.12.2015 vide Review Orders No. 89/2016-17, 90/2016-17 and 91/2016-17 respectively, and appeals have been filed against these final assessment orders before the Commissioner (Appeals). Further, the Deputy Commissioner, Customs Zone I, Mumbai, vide email dated 09.12.2016, has informed that the assessment of bill of entry No. 3749151 dated 29/12/2015 has also been reviewed vide Review Order No. 139/2016-17 dated 09.12.2016 and an appeal has been filed before the Commissioner (Appeals).

18. In pursuance of the order dated 15.09.2016 of the Hon'ble Supreme Court of India, as detailed in the para 16, the hearing/ arguments in the CWP's No. 10036/2016 and 10021/2016 have been completed before Hon'ble Punjab and Haryana High Court on 09.11.2016, and the decision has been kept "Reserved" by the Hon'ble High Court.

19. The department filed an affidavit dated 16.10.2016 before the Hon'ble Punjab and Haryana High Court wherein it has been, inter alia, prayed that:

"The Hon'ble High Court vide Order dated 03.06.2016 had ordered for re-testing of samples of disputed imported consignments of the petitioners from Bokaro Steel Plant to ascertain whether the imported goods were of Hot Rolled or Cold Rolled nature. The Test Reports indicated the imported goods to be of Cold Rolled nature; that however the Test Report No. 5 stated that the microstructure of the sample was having equiaxed ferrite grains which is typical of Hot Rolled. However, in the Conclusion part the material has been opined to be Cold Rolled. The dispute in respect of the contradictory facts mentioned in the Test Report was also brought in the knowledge of the Hon'ble High Court vide Affidavit on 12.07.2016. The said issue needs clarification of the testing laboratory."

20. It is re-iterated here that the verification of thickness of the coils imported from Republic of Korea was conducted vide Examination Reports dated 06.04.2016, 19.04.2016, 20.04.2016 & 21.04.2016 and Panchnama-cum-Examination Report dated 22.04.2016, despite lack of cooperation from the importers.

The petitioners had declared their imported coils / sheets to be having thickness from 0.5mm to 1.00mm and declared their import goods to falling



under tariff heading 720917. The tariff heading 720917 pertains to "Flat rolled products of iron or non-alloy steel, of a width of 600mm or more, cold rolled (cold reduced), not clad, plated or coated"

-In coils, not further worked than cold rolled (cold reduced):

- - of a thickness of 0.5mm or more but not exceeding 1mm:

72091710— Plates

72091720—Sheets

72091730— Strip

72091790— Others

and claimed the benefit of Preferential Trade Agreement (in short 'PTA'), based on country of origin certificate which appears not admissible to them, as on examination the goods were found to have varying thickness i.e. more than the declared thickness of 0.5 to 1.0mm and correct Tariff classification on such goods a 720990 where no exemption is admissible.

The Government of India has issued Notification No. 187/2009-Customs (N.T.) dated 31.12.2009 framing there-under Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009. That further the Government of India has also issued Notification No. 152/2009-Cus. dated 31.12.2009 (as amended) vide which effective rate of duty has been prescribed on specified goods imported from Korea. Hot & Cold Rolled Coils and/ or Sheets fall under the customs tariff 7208 and 7209 respectively: that further, the exact tariff heading up to 6 digit level is determined on the basis of their thickness. Further, the effective rate of ad valorem customs duty leviable on these Hot & Cold Rolled Coils and / or Sheets, in respect of these goods originating from the Republic of Korea, is as given below:

Sr. No.	CTH of the import goods	Description of the import goods	Rate (in percentage)
	7208	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, hot-rolled, not clad, plated or coated.	
1	720825	Other, in Coils, not further worked than hot-rolled, pickled - Of a thickness of 4.75 mm or more	5
2	720826	Other, in Coils, not further worked than hot-rolled, pickled - Of a thickness of 3 mm or more but less than 4.75mm	0



3	720827	Other, in Coils, not further worked than hot-rolled, pickled - Of a thickness of 3 mm	1.25
4	720836	Other, in Coils, not further worked than hot-rolled, Of a thickness exceeding 10mm	0
5	720837	Other, in Coils, not further worked than hot-rolled, Of a thickness of 4.75 mm but not exceeding 10 mm	1.25
6	720838	Other, in Coils, not further worked than hot-rolled, Of a thickness of 3 mm but less than 4.75 mm	1.25
7	720839	Other, in Coils, not further worked than hot-rolled, Of a thickness less than 3 mm	1.25
8	720840	Not in Coils, not further worked than hot-rolled, with patterns in relief	1.25
9	720851	Other, not in Coils, not further worked than hot-rolled - Of a thickness exceeding 10 mm	1.25
10	720852	Other, in Coils, not further worked than hot-rolled - Of a thickness of 4.75mm or more but not exceeding 10 mm	0
11	720853	Other, not in Coils, not in further worked than hot-rolled - Of a thickness of 3mm or more but less than 4.75mm	1.25
12	720854	Other, not in Coils, not further worked than hot-rolled - Of a thickness of less than 3mm	1.25
13	720890	Other	5
	7209	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, cold-rolled (cold-reduced),	



		not clad, plated or coated	
14	720915	In coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of 3mm or more	1.25
15	720916	In coils, not further worked than cold-rolled (cold-reduced) - Of a thickness exceeding 1mm but less than 3 mm	1.25
16	720917	In coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of 0.5mm or more but not exceeding 1mm	0
17	720918	In coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of less than 0.5mm	1.25
18	720925	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of 3mm or more	1.25
19	720926	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness exceeding 1mm but less than 3mm	1.25
20	720927	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of 0.5mm or more but not exceeding 1mm	0
21	720928	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of less than 0.5mm	1.25
22	720990	Other	No exemption

That from the above, it can be seen that the rate of customs duty leviable on the imports of Hot-rolled and Cold-rolled flat products varies on the basis of their tariff heading up to 6 digits: that this tariff heading up to 6 digits is determined in respect of these Hot-rolled and Cold-rolled flat products on the



basis of their thickness. It is pertinent to mention here that the earlier the same importers in the case of declared imports of Secondary & Defective Cold Rolled Coils of width greater than 600mm and of varying widths had filed Bills of Entry No. 2591776 dated 14.09.2015 at Mumbai sea port declared their import goods, having country of origin Denmark, under tariff heading 72099000. It is interesting to note that the similar goods imported by the Noticee No.1 from Belgium, vide bill of entry No. 3753509 dated 29.12.2015 (which is also a subject matter of this show cause notice), have been classified under customs tariff 72099000. It is a general practice for the importers to declare their tariff heading in case of imports of Secondary & Defective Cold Rolled Coils of width greater than 600 mm and of varying thicknesses in 72099000 (heading defined as others under the Customs Tariff Act, 1975) because their consignments comprise of coils of different thicknesses, a condition in which the imports of the importers from the Republic of Korea would not have been eligible for any exemption of customs duty. In the present case also goods have been found to be of varying thickness from 0.3 mm to 4.00 mm (variations found in individual coils also) warranting classification of goods under custom tariff heading 720990 and in such a situation the impugned imports from the Republic of Korea would not have been eligible for any exemption of customs duty.

As the thickness was varying in each of the individual coils (being in the range from 0.3 mm to 4.00 mm), none of the consignments imported from the Republic of Korea could be classified under any specific tariff heading (up to 6 digit level) in 7209. In such cases where the goods cannot be classified under one specific tariff heading, these are to be classified under the heading of "Others" for which the correct tariff heading is 720990; that however the said tariff heading is not eligible for any exemption of Basic Customs Duty. The Hon'ble High Court vide Order dated 03.06.2016 in CWP Nos. 10021 & 10036 of 2016 had directed for re-drawl of samples and their testing at Bokaro Steel Plant to determine whether the imported coils / sheets are the Hot Rolled / Cold Rolled. The work assigned to Bokaro Steel Plant by the Hon'ble High Court vide Order dated 03.06.2016 was only to test and report whether the material was Hot Rolled or Cold Rolled. However, the Bokaro Steel Plant while forwarding its Report dated 02.07.2016 also indicated the thickness of the samples of imported coils/ sheets in respect of the material imported from the Republic of Korea. However, these samples did not represent the full import consignment of coils / sheets imported by the petitioner as these were only small pieces of sheets cut from the full coils / sheets (not in coil form). Hence, the Examination Reports dated 06.04.2016, 19.04.2016, 20.04.2016, 21.04.2016, and 22.04.2016 with respect to the verification of thickness of the coils / sheets conducted by the Department in view of Orders dated 04.04.2016 & 12.04.2016 are the proper examination reports on the basis of which the thickness of the coils / sheets imported by the petitioner from the Republic of Korea could be determined. There were in total 4 Bills of Entry representing the consignments of coils / sheets imported by the noticees from the Republic of Korea and the basic customs duty is to be charged at applicable rate of duty which amounts to Rs. 25,60,756/- (Twenty five lakhs sixty thousands seven hundred fifty six) as detailed below:

Sr. No.	Name of the Import	B. E. No. and	Description of the	Tariff item	Country of Origin	Assessable value of the	BCD involved	Examination reports in r/o of	Test Report by
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	er	Date	goods (declared)			goods		measurem ent of thickness as per orders dated 04.04.201 6 and 12.04.201 6 of the Hon'ble High Court in CWP No. 572 & 4641 of 2016	Bokaro Steel Plant
1	M/s Shri Laxmi Steels	348077 6 dt. 04.12.2 015	Defective Secondar y Cold Rolled Coils (M.S) Thicknes s 0.5mm to 1mm. In Commerc ial Invoice and on actual examinat ion Sheets were found.	720 917 10	Repub lic of Korea	5040706. 13	63008 8.27	Examination Report dated 22.04.2016	Test Report No. 4 shows sample to be Cold Rolled with thicknes s of 0.2mm
2	M/s Shri Laxmi Steels	355226 1 dt. 11.12.2 015	Defective Secondar y Cold Rolled Coils (M.S) Thicknes s 0.5mm to 1mm.	720 917 90	Repub lic of Korea	6033590. 06	75419 8.76	Examination Reports dated 06.04.2016 , 19.04.2016 & 22.04.2016 (RUDs- 14, 15 & 18)	Test Report No. 1 shows sample to be Cold Rolled with thicknes s of 1.5mm.
3	M/s Shri Laxmi Steels	374915 1 dt. 29.12.2 015	Defective Secondar y Cold Rolled Coils (M.S) Thicknes	720 917 90	Repub lic of Korea	4850420. 44	60630 2.56	Examination Reports dated 20.04.2016 & 21.04.2016 (RUDs 16-	Test Report No. 2 shows sample to be Cold



			s 0.5mm to 1mm.					17)	Rolled with thickness of 1.0mm.
4	M/s Inder International, Ludhiana	4289284 dt. 17.12.2016	Defective Secondary Cold Rolled Coils (M.S) Thickness 0.5mm to 1mm.	72091790	Republic of Korea	4561338.11	570167.26	NA	Test Report No. 6 & 7 shows sample to be of thickness of 0.25mm & 1.98mm respectively and also to be Cold Rolled.
		TOTAL					2560756.84		

All the test reports, except Test Report No. 2, obtained from Bokaro Steel Plant show the thickness of the sample of sheets / coils imported from the Republic of Korea to be not falling under the declared thickness range of 0.5mm - 1mm. Only Test Report No. 2 shows sample to be having thickness of 1.0mm. These samples were not fully representative of thickness of the imported coils / sheets as the Hon'ble High Court vide Order dated 03.06.2016 in CWP No. 10021 & 10036 of 2016 had only assigned to Bokaro Steel Plant the task of testing and reporting whether the material was Hot Rolled or Cold Rolled. The Hon'ble High Court vide Orders dated 04.04.2016 read with 12.04.2016 of the Hon'ble High Court in CWP Nos. 572 & 4641 of 2016 had directed for measurement of thickness by the DRI officers. During examination conducted by the Department in terms of the afore-said Orders of the Hon'ble High Courts, the thickness of the coils / sheets were found to be varying; that further even if the coils / sheets were taken to be of cold rolled nature as per Bokaro Steel Plant report, the same could not be classified under one specific tariff heading, due to the variation of their thickness. Hence, these coils / sheets imported from the Republic of Korea would merit to be classified under the heading of "**Others**" for which the correct tariff heading would be 720990 (up to six digit level) and the same, it appears, would therefore be not eligible for any exemption of basic customs duty in terms of **Notification No. 152/2009-Cus. Dated 31.12.2009 (as amended) read with Notification No. 187/2009-Customs (N.T.) dated 31.12.2009.**

21. In view of the above, it appears that the goods imported by the Noticee No. 1 vide bill of entry no 4289284 dated 17.02.2016, and Noticee No. 2 vide bills of entry nos. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29.12.2015 had been wilfully misdeclared with respect to their thickness and, therefore, with respect to their classification, in contravention of the provisions of section 17 and 46 of the customs Act, 1962, in order to evade



payment of customs duty by availing inadmissible benefit of Notification No. 152/2009-Cus. dated 31.12.2009 (as amended), thus making them liable for confiscation under Section 111 (m) of the Customs Act, 1962. It appears that benefit of aforesaid Notification No. 152/2009-Cus. dated 31.12.2009 is not admissible to them, and the differential customs duties as detailed in Annexure-A and Annexure-B appears recoverable from them under section 28 (4) of the Customs Act, 1962 along with appropriate interest under Section 28AA *ibid*.

22. As mentioned in paras 12 and 19 above, in the Test Report No. 5 of Bokaro Steel Plant (in r/o Bill of Entry No. 3753509 dated 29.12.2015 pertaining to M/s Inder International in r/o goods imported from Belgium) it was mentioned that microstructure having fine equiaxed ferrite grains is typical of hot rolled; however, in final conclusion, it was opined that the consignment was of unrolled portion of CR Coil. The dispute in respect of the contradictory facts mentioned in the Test Report was also brought in the knowledge of the Hon'ble Punjab and Haryana High Court vide Affidavit on 12.07.2016. Vide additional Affidavit dated 16.10.2016 it was again pleaded before the Hon'ble High Court that the issue needs clarification from the testing laboratory. It is also pertinent to mention here that M/s TCR. Laboratory vide Report No. BR3968 dated 17.02.2016 had also mentioned the goods to be Hot Rolled. The final order in the matter has been kept "Reserved" by the Hon'ble High Court. It is re-iterated that the Commissioner of Customs (Export- I), Gr. VII H-II, 3rd Floor, New Customs House, Ballard Estate, Mumbai - 400001 vide the Order-In Original No. 11/CC/Exp-I/SM/2016-17/Gr. VII H-2 dated 13.06.2016 had extended the period to issue show cause notice by six months i.e. up to 13.12.2016. Though, the matter is sub-judice before the Hon'ble Punjab and Haryana High Court, there is no provision in the law for further extension of period for issue of SCN under the Customs Act, 1962. As such, the only option available with this office to safeguard the Government revenue, when the matter is sub-judice and when there is no stay on demand, is to issue protective demand pending outcome of the proceedings before Hon'ble Punjab and Haryana High Court. In view of the aforesaid, it appears that the goods imported vide Bill of Entry No. 3753509 dated 29.12.2015 by M/s Inder International from Belgium are needed to be considered Hot Rolled (pending finalization of the matter before Hon'ble Punjab and Haryana High Court), and the same appear to be liable to payment of safeguard duty amounting to Rs. 1157486/- under Notification No.2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/2016-Customs (SG) dated 29.03.2016 (Details as per Annexure-C). The Noticee No.1 appear to have contravened of the provisions of section 17 and 46 of the Customs Act, 1962, in order to evade payment of customs duty payable under **Notification No. 2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/2016-Customs (SG) dated 29.03.2016**, thus making them liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the differential customs duty amounting to Rs. 1157486/- recoverable from them under section 28 (4) of the Customs Act, 1962 read with Section 8 B of the Customs Tariff Act, 1975 along with appropriate interest under Section 28AA *ibid*.

23. Thus, from the foregoing paras it appears that:

(i) The Noticee No.1 had filed the bill of entry No. 4289284 dated 17.02.2016 where under they had declared their import consignments to be "Defective Cold Rolled Sheets (MS) under customs tariff heading 72091710, as per their import invoice no. DB-151124IND-IN dated 24.11.2015 from the overseas supplier M/s Dong Bang Enterprises Co. Ltd., Korea, as having thickness 0.5mm to 1mm.



However, the Test Report **Nos.6 & 7** of Bokaro Steel Plant show sample to be of thickness 0.25 mm & 1.98 mm respectively. As the same is of varying thickness, the appropriate customs tariff heading for the same appears to be 720990 as discussed under para 20 above and, it appears, the same would therefore be not eligible for any exemption of basic customs duty in terms of Notification No. 152/2009-Cus. dated 31.12.2009 (as amended) read with Notification No. 187/2009-Customs (NT) dated 31.12.2009. As the goods have been wilfully mis-declared with respect to their thickness and, therefore, with respect to their classification, in contravention of the provisions of section 17 and 46 of the Customs Act, 1962, in order to evade payment of customs duty by availing inadmissible benefit of Notification No. 152/2009-Cus. dated 31.12.2009 (as amended), the same appear liable for confiscation under Section 111 (m) of the Customs Act, 1962, and the differential customs duties amounting to Rs.6,52,479/- (as detailed in Annexure A) appears recoverable from them under section 28 (4) of the Customs Act, 1962 along with appropriate interest under Section 28AA *ibid*;

(ii) The Noticee No.1 had filed the bill of entry No. 3753509 dated 29.12.2015 where under they had declared their import consignments to be "Defective Cold Rolled Coils (M.S)" falling from the overseas supplier M/s Alcers Grosjean Rue de Zone 23, B 6032, Mont-Sur-Marchinne, Belgium. However, the same appears to be hot rolled material falling under customs tariff heading 72089000 (in view of the discussions under para 12, 19 and 22 above), and the same appear to be liable to safeguard duty amounting to Rs. 1157486 under Notification No. 2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/2016-Customs (SG) dated 29.03.2016 (details as per Annexure- C). The Noticee No. 1 appears to have deliberately and wilfully mis-declared the imported goods in contravention of the provisions of section 17 and 46 of the Customs Act, 1962, in order to evade payment of customs duty payable under Notification No. 2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/2016-Customs (SG) dated 29.03.2016, thus making them liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the differential customs duty amounting to Rs. 1157486/- appears recoverable from them under section 28 (4) of the Customs Act, 1962 read with Section 8 B of the Customs Tariff Act, 1975 along with appropriate interest under Section 28AA *ibid.*, as discussed in para 22 and 23 above;

(iii) The Noticee No.2 had filed three bills of entry Nos. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29 12.2015 where under they had declared their import consignments to be "Defective Cold Rolled Coils (M.S)" under customs tariff heading 72091710, as per their import invoices Nos. DB-151027 SHRI-IN dated 27.10.2015, DB-151029 SHRI-IN dated 29.10.2015, and DB-151124 SHRI-IN dated 24.11.2015 respectively from the overseas supplier M/s Dong Bang Enterprises Co. Ltd., Korea, as having thickness 0.5mm to 1mm. However, as discussed in para 20 above, due to varying thickness these appear to be classifiable under tariff heading 72099000 and, it appears, the same would therefore be not eligible for any exemption of basic customs duty in terms of Notification No. 152/2009 Cus. dated 31.12.2009 (as amended) read with Notification No. 187/2009-Customs (N.T.) dated 31.12.2009. As the goods have been wilfully mis-declared with respect to their



thickness and, therefore, with respect to their classification in contravention of the provisions of section 17 and 46 of the Customs Act, 1962 in order to evade payment of customs duty by availing inadmissible benefit of Notification No. 152/2009-Cus. dated 31.12.2009 (as amended), the same appear liable for confiscation under Section 111 (m) of the Customs Act, 1962, and the differential customs duties amounting to Rs 22,68,790/- (as detailed in Annexure-B) appears recoverable from them under section 28 (4) of the Customs Act, 1962 along with appropriate interest under Section 28AA *ibid*;

(iv) It appears the Noticee No. 1 and Noticee No. 2 are liable penal to penal action in terms of sections 112(a) and (b), 114A and 114AA of the Customs Act, 1962 for their acts of omission and commission as detailed in foregoing paras;

(v) Shri Indresh Jain Partner Noticee No. 1 and who looks after the overall affairs of Noticee No. 1 and Noticee No. 2, and Shri Abhay Jain also appear to have rendered themselves liable to penal action under sections 112 (a) and (b) and 114AA of the Customs Act, 1962 for acts of omission and commission as discussed in the foregoing paras, as they knowingly mis-declared the thickness, hence classification, of the goods imported vide bills of entry no. 4289284 dated 17.02.2016, 3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29.12.2015, and also as Shri Indesh Jain appeared to have knowingly mis-declared the goods imported vide Bill of Entry No. 3753509 dated 29.12.2015, by suppressing the material facts from the knowledge of the Customs department and having violated the provisions of Section 17 & Section 46 of the Customs Act, 1962 with intention to evade payment of due customs duty, which have rendered the goods liable for confiscation under section 111 of the Customs Act, 1962.

24. In view of the above findings the Show Cause Notice bearing No. DRI/LDZU/856/ENQ/48/(INT-19)/2015/VIII/673 DATED 13.12.2016 was issued to **M/s Inder International**, H. No. 594, Nirankar Street-1, Overlock Road, Miller Ganj, Ludhiana is called upon to show cause to the Commissioner of Customs (Export-I), Gr. VII H-II, 3rd Floor, New Customs House, Ballard Estate, Mumbai-400001 as to why:-

(i) *the goods imported vide bill of entry No. 4289284 dated 17.02.2016, having varying thickness, should not be classified under Customs Tariff Heading 720990, and why effective tariff rate of customs duty (@ of 12.5% adv.) should not be charged from them instead of concessional rate of customs duty under Notification No. 152/2009-Cus. dated 31.12.2009 (as amended):*

(ii) *the differential customs duty amounting to Rs. 6,52,479/- (Details as per Annexure- A) in r/o bill of entry No. 4289284 dated 17.02.2016 should not be demanded and recovered from them under the provisions of section 28 (4) of the Custom Act, 1962, as the goods had been deliberately wilfully mis-declared in evade the payment of due customs duty payable thereon:*

(iii) *the imported goods valued at Rs.45,61,339/- should not be confiscated under section 111 (m) of the Customs Act, 1962 on the ground of wilful mis-declaration of thickness of the goods with a view to avail admissible benefit of Notification No.*



152/2009-Cus. dated 31.12.2009, and why redemption fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962.

(iv) safeguard duty amounting to Rs.11,57,486/- (Details as per Annexure-C) in r/o bill of entry No. 3753509 dated 29.12.2015 should not be demanded and recovered from them under the provisions of section 28 (4) of the Customs Act, 1962 read with Section 8 B of the Custom Tariff Act, 1975, the goods appear to have been deliberately mis-declared to evade the payment of due customs duty payable thereon:

(v) the imported goods valued at Rs. 57,87,431/- pertaining to bill of entry No. 3753509 dated 29.12.2015, seized vide letter F. No. DRI/LDZU/856/ENQ-48(INT-19)/2015/III/431-433 dated 22.02.2016 should not be confiscated under section 111 (m) the Customs Act, 1962 on the grounds of mis-declaration of the goods as Cold-Rolled instead of Hot-Rolled with a view to avoid payment of safeguard duty payable under Notification No. 2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/ 2016-Customs (SG) dated 29.03.2016, and why redemption fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962.

(vi) Interest at appropriate rate should not be recovered from them on the aforementioned customs duties short paid, as per Annexure A and B, under the provisions of section 28AA of the Custom Act, 1962.

(vii) penalties should not be imposed on them in terms of sections 112(a) and (b). 114(A) and 114AA of the Customs Act, 1962 for their acts of omission and commission as in foregoing paras.

24.1 And M/s Shri Lakshmi Steels, 467, Industrial Area B, Millerganj, Ludhiana – 141003 is called upon to show cause to the Commissioner of Customs (Export-I), Gr. VII H-II, 3rd Floor, New Customs House, Ballard Estate, Mumbai-400001 as to why:-

(i) the goods imported vide bills of entry No.3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29.12.2015, filed by M/s Laxmi Steels having varying thickness, should not be classified under Customs Tariff Heading 720990, and why tariff rate of customs duty (@ of 12.5% adv.) should not be charged from them instead of concessional rate of customs duty under Notification No. 152/2009-Cus. Dated 31.12.2009 (as amended);

(ii) the differential customs duty amounting to Rs.22,68,790/- (Details as per Annexure-B) in r/o bills of entry No. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29.12.2015 should not be demanded and recovered from them under the provisions of section 28(4) of the Customs Act, 1962, as the goods had been deliberately mis-declared to evade the payment of due customs duty payable thereon;

(iii) the goods imported vide bills of entry No. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29.12.2015 valued at Rs. 1,59,24,717/- (Details as per Annexure-B) should not be confiscated under section 111 (m) of the Customs Act, 1962 on the ground of mis-declaration of thickness of the goods with a view to avail inadmissible benefit of Notification No. 152/2009-Cus. Dated



31.12.2009, and why redemption fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962.

(iv) interest at appropriate rate should not be recovered from them on the aforementioned customs duties short paid, as mentioned at 25.2 (ii) above, under the provisions of section 28AA of the Customs Act, 1962.

(v) penalties should not be imposed on them in terms of section 112(a) and (b), 114A and 114AA of the Customs Act, 1962 for their acts of omission and commission as in foregoing paras.

24.2 Shri Indresh Jain Partner of M/s Inder International, H. No. 594, Nirankari Street-1, Overlock road, Miller Ganj, Ludhiana, and who looks after the overall affairs of Noticee No. 1 and Noticee No.2, and Shri Abhay Jain were hereby called upon to show cause to the Commissioner of Customs (Export-1), Gr. VII H-II, 3rd Floor, New Customs House, Ballard Estate, Mumbai - 400001 within 30 days of this show cause notice as to why penalty should not be imposed upon him under sections 112 (a) and (b) and 114AA of the Customs Act, 1962 for acts of omission and commission as discussed in the foregoing paras, which have rendered the goods liable for confiscation under section 111 of the Customs Act, 1962.

24.3 WRITTEN SUBMISSION MADE BY THE NOTICEE No.-1 & 2.

At the outset, the noticee vehemently refused each and every allegation made in the Show Cause Notice and submit their comprehensive reply dated nil during the Personal Hearing in respect of the Show Cause Notice which is as under:-

THE SHOW CAUSE NOTICE ISSUED AGAINST THE PRINCIPLE OF RES JUDICATA

A.1 In this connection it is submitted that it is settled principle of law that once a matter has been decided, the same matter cannot be re-opened again by issuing a fresh Show Cause Notice. The same is barred by the doctrine of Res Judicata.

A.2 It is submitted that as per the doctrine of Res judicata a matter which is already been decided cannot be re-opened. The doctrine of Res Judicata preserves the effect of first judgement and therefore the same case which is already stand decided cannot be taken up again in the same or different Court of India. Given this the proceeding initiated vide impugned SCN is liable to be dropped in the interest of justice.

A.3 Noticees have relied upon the case law of the Hon'ble Supreme Court of India in the case of **Commissioner of Customs, New Delhi v/s Texcomash Export 2015(322)E.L.T 601 (S.C).**

A.4 Reliance is also placed on the decision of hon'ble Apex Court in case of **COMMISSIONER OF CUSTOMS, KANDLA VS. ABM INTERNATIONAL LTD. 2015 (322) E.L.T. 818 (S.C.).**

A.5 It is submitted that in present case, the goods have been finally assessed and the Ld. Adjudicating Authority has passed the final assessment order after considering all the facts. The Ld. Adjudicating Authority has also dealt with the issue of variation of thickness. It is pertinent to mention here that Department had also preferred appeal against the order of Ld Adjudicating Authority before



the Ld. Commissioner (Appeals) and the Ld. Commissioner (Appeals) has remanded the matter back to the Ld. Adjudicating Authority. Copy of order passed by Ld. Commissioner (Appeals) is enclosed as Annexure -1. Hence, the initiation of proceedings vide impugned SCN has resulted into multiplicity of the litigation.

A.6 It is submitted at the time of issuance of impugned SCN, the DRI was aware about the pendency of the subject matter before the higher authority i.e. Commissioner (Appeals). In fact in Para 17 of the impugned SCN, it has been categorically acknowledged that the final assessment orders in respect of aforesaid bill of entries were reviewed by the Ld. Commissioner of Customs, Mumbai and the Ld. Commissioner directed to file Appeal against assessment order passed in Bill of Entry no. 4289284 dated 17.02.2016 on the direction of Ld. Commissioner, the Deputy Commissioner of Customs has filed appeal before the Ld. Commissioner (Appeals).

A.7 The issuance of SCN on the same issue in respect of which the department is already in appeal shall only result in undue and uncalled litigation. Therefore, the said show cause notice is illegal and unlawful.

A.8 Without prejudice to the submissions made above it is submitted that in any case, it is well settled that two parallel proceedings cannot be initiated in respect of same cause of action. The department can not undertake two parallel proceedings i.e. filing of appeal before Ld. Commissioner (Appeals) and issuance of Show cause notice.

A.9 It is submitted that as the department has already preferred an appeal against assessment order passed in respect of Bill of Entry no. 4289284 dated 17.02.2016 therefore the issuance of impugned SCN on the same issued is bad in law. Hence, the proceedings initiated vide above mentioned SCN are liable to be dropped in the interest of justice.

B. THE GOODS IMPORTED FROM KOREA VIDE BILL OF ENTRY NO. 4289284 DATED 17.02.2016 HAS BEEN RIGHTLY CLASSIFIED BY THE NOTICEE.

B.1 The Department has contended that the thickness of goods/coil imported vide Bill of Entry no. 4289284 dated 17.02.2016 from Korea found between 0.3mm to 4mm and accordingly the said goods are classifiable under residual entry i.e. 7209 90 however the Noticee has mis-declared the said goods as "Secondary Defective Cold Rolled Coils/Sheets" having thickness of 0.5mm to 1.00mm under CTH 7209 1710.

B.2 It submitted that the above contention of department/DRI has no basis whatsoever as admittedly there was no testing done of the product except by Bokaro Steel to find out if the product was Hot rolled or Cold rolled. This testing by Bokaro Steel was also done based on the sample that was sent and the entire consignment was never tested or examined by any person.

B.3 Further, in the Interim Order passed in CWP No. 10021 of 2016, the DRI had filed an Affidavit dated 12th July, 2017 of one Mr. Santok Singh who placed on record that there was a mis-declaration with reference to material in the Report pertaining to Bill of Entry No. 4289284 dated 17.02.2016.

B.4 It was further recorded that after the said goods under Bill of Entry No. 4289284 dated 17.02.2016 were tested, the thickness of the coil were found in



the range of 1.5 mm to 2.0 mm. However, there is no contrary evidence whatsoever on record or it was never shared with the Noticee at any point of time to show that the goods were in fact examined. Further, in the SCN it is nowhere mentioned that how the DRI has determined/ measured the thickness of impugned goods. This itself shows that the contention of the DRI is based on the assumptions and presumptions.

B.5 Without prejudice to the submissions made above, even if unsupported statement of the DRI has to be accepted as a basis for assessment, still the classification under residuary of 7209.90, as claimed in the SCN, is not warranted when there is a specific entry for such product preceding the residuary entry and also in light of the Rule 2(b) and 3 of the General Rules of Interpretation. As per the DRI's own admission before Hon'ble High Court that the impugned product has thickness of 1.5 mm to 2 mm (as per the Affidavit filed in the Hon'ble High Court). As such the product can be classified under heading 7209 16 which specifically covers product of thickness 1 mm to 3 mm.

B.6 Further the DRI has not made out any case whatsoever for classification of the goods in the residuary entry of 7209 90 when a heavy burden is cast on them to prove the case of change in classification. The following judgement also supports the aforesaid submissions of the Noticee.

B.7 In the case of **Dunlop India Ltd. vs. Union of India AIR 1977 SC 597** the Hon'ble Supreme Court held that:

"When an article has, by all standards, a reasonable claim to be classified under an enumerated item in Tariff Schedule, it will be against the very principle of classification to deny its parentage and consign it to an orphanage of the residuary clause".

B.8 It is further submitted that the classification under "Others" can be done only when the goods are not specified or classified elsewhere and/or covered by a specific heading. This position is well settled in Judgement of *M/s. Bharat Forge and Press Industries (P) Ltd. vs. Collector of Central Excise, Baroda, Gujarat 1990 (1) SCC*.

B.9 Reliance is also placed in case of **H.P.L Chemicals Ltd. vs. Commissioner of C.Ex., Chandigarh 2006(1 97) ELT 324**.

B.10 In view of the aforesaid facts and Judgment cited hereinabove, it is submitted that the DRI has led no cogent and binding reasons to classify the said goods under 72099000 of the Customs Tariff and thereby denying the benefit of Serial No. 543 of Notification No. 152/2009 to the Noticee. Hence, the proceedings initiated vide impugned SCN are not sustainable and the same are liable to be dropped in the interest of justice.

C. THE GOODS IMPORTED BY THE NOTICEE ARE COLD ROLLED SHEETS

C.1 The DRI has contended that the goods imported by the Noticee vide Bill of Entry no. 3753509 dated 29.12.2015 from Belgium were hot rolled sheets and the Noticee has mis-declared the same as cold rolled sheets.

C.2 In this connection, it is submitted that the goods imported by notices were cold roll sheets only. The Hon'ble High Court Punjab & Haryana while entertaining the writ petition No 10036 of 2016 filed by the Noticee has directed the authorities to send the samples of goods imported against Bill of Entry no.3753509 to Bukaro Steel Plant Jharkhand for testing vide its order dated



03.06.2016 to find out as to whether the consignments are of hot roll Steel or cold roll steel. The report of Burako steel Plant was received by the Hon'ble High Court in sealed Cover vide letter dated 02.07.2016. wherein it was opined that the consignment imported by the Noticee is cold roll sheets and said finding has been recorded by the Hon'ble High Court in its order dated 13.12.2016 where in the Hon'ble High Court has held the Goods Imported against Bill of Entry no.3753509 cold rolled Steel.

C.3 As the Hon'ble High Court has held the product to be Cold Rolled Steel, the contention of the department that the product is hot rolled sheet is not sustainable. Hence the demand of duty proposed in the impugned show cause notice is liable to be dropped.

D. GOODS ALREADY CLEARED FOR HOME CONSUMPTION CANNOT BE CONFISCATED, CONSEQUENTLY REDEMPTION FINE CANNOT BE IMPOSED.

D.1 It is submitted that the Confiscation of goods govern by Section 111 of the Customs Act, 1962. Section 111 of the Customs Act reads as:

"Section 111: Confiscation of improperly imported goods, etc."

on the perusal of Section 111 it can be perceived that confiscation of can be done only in case of imported goods. In other words, the Section 111 of the Act is applicable only to the imported goods.

D.2 The Imported goods are defined under section 2 (25) of the Act, which reads as follows.

*(25) "imported goods means any goods brought into India from a place outside India but **does not include goods which have been cleared for home consumption.**"*

D.3 It is submitted that the definition of imported goods reproduced above specifically excludes those goods which have been cleared for home consumption. Therefore, once the consignment of goods cleared for home consumption, then the goods covered by the consignments cease to be imported goods in terms of Section 2 (25) of the Act.

D.4 It is submitted that, as discussed supra, since, the Section 111 of Act is applicable only to imported goods and imported goods defined under Section 2(25) of the act, does not include the goods which have been cleared for home consumption, therefore the goods which already have been cleared for home consumption cannot be confiscated in terms of section 111 of the Act and consequently redemption fine in lieu of confiscation could not imposed in relation to those goods.

D.5 The above contention of Noticee also gets support from the judgment of Hon'ble Mumbai High Court in case of **Bussa Oversease & properties Pvt. Ltd. Vs. C.L. Mahar, Assit. C.C. Bombay 2004 (163) E.L.T. 304 (Bom.).**

D.6 The aforesaid decision of Hon'ble Bombay High Court is also ratified by Hon'ble Supreme Court by dismissing the special leave petition of the department. The said matter is reported in Excise Law times at **2004 (163) E.L.T. A160 (S.C.).**

D.7 In the instant case the goods pertaining to Bill of Entry no.3753509 dated 29.12.2015 and Bill of Entry no. 4289284 dated 17.02.2016, were finally



assessed and after passing final assessment order the goods were released finally for home consumption after due process of the Custom department in respect of the said bill of entry. The goods have been cleared freely from customs port.

D.8 Since, the goods have already been cleared for home consumption, the same no more qualify as imported goods. Therefore, the goods cannot be confiscated and therefore, no redemption fine can be imposed on said goods.

D.9 The Noticee places the reliance on the decision of the Hon'ble CESTAT, Mumbai Bench in the case of **Commissioner of Customs (EP) Mumbai v/s AMP Export 2017 (354) E.L.T. 624 (Tri. - Mumbai.)**

D.10 In the present case the admittedly the goods were cleared freely without furnishing any bond, given this impugned SCN proposing redemption fine in lieu of confiscation is not sustainable and is liable to be set aside.

D.11 Reliance is also placed on the decision of Hon'ble Tribunal CESTAT, Bangalore in the case of **Southern Enterprises v/s Commissioner of Customs Bangalore.2005(186) ELT,324 (Tri-Bang) where in the same view has been rectified by the Hon'ble Tribunal.**

D.12 In view of the submission made above the redemption fine could not be imposed on the Noticees as in the present case the goods was cleared for Home consumption and the same was ceased. Given this, proceedings initiated vide impugned SCN are liable to be dropped.

E. PENALTY COULD NOT BE IMPOSED

E.1 It is submitted that the penalty under section 112 of the Customs Act, 1962 could be imposed only, when the goods were imported improperly. It is submitted that in the present case, the has imported the goods and discharged appropriated duty on the goods. The goods were released by the customs department after due verification and the goods were cleared by the Noticees from its premises. Therefore, it cannot be held that the goods were improperly imported accordingly the penalty imposed upon the s is liable to be dropped in the interest of justice.

E.2 It is submitted that the provisions of section 114A are applicable only in cases where the central excise duty is not paid by reason of fraud; or collusion; or wilful mis-statement, or suppression of facts; or contravention of any of the provisions of the Act or the rules made there under with intent to evade payment of duty.

E.3 Section 114A can only be attracted where the ingredients of proviso to section 114A are satisfied.

In **J.I.Gandhi Silk Mills Vs Commissioner of Central Excise, Surat 2009 (237) E.L.T. 103 (Tri. Ahmd.)** the Tribunal held that the penalty should not be imposed in an ordinary course, unless it can be shown that the Noticee had acted deliberately in defiance of law.

E.4 Since no act of suppression or fraud with intent to evade duty could be attributed to the Appellant, imposition of penalty upon the Noticees is not warranted specially in the absence of the essential ingredients for imposing penalty under Section 114A. That in the instant case, from the detailed submissions made, it is clear that none of the exigencies envisaged under the



central excise provisions is present and in consequence thereof provisions of section 114A are not invokable.

E.5 It is further submitted that in the instant case none of the acts were backed up with ulterior motive or malafide intention to evade duty and therefore, imposition of penalty is incorrect and uncalled for based on the settled position on the issue.

E.6 Further, the department has proposed the penalty u/s 114AA of the Customs Act, 1962, in this connection it is pertinent to mention that penalty u/s 114AA can be imposed only in case when there is any mis-declaration, misstatement or any false declaration or forged document which states any false or incorrect material particular, in the transaction of nay business. In this case, the noticees have not made any false declaration, the noticees have honestly imported the goods as being declared i.e Cold Rolled Sheet (of width more than 600 mm), on the import documents. There is no incriminatory document / material was found at the premise of the Noticee. Given, this penalty proposed u/s 114AA is not sustainable on the Noticee.

WRITTEN SUBMISSION MADE BY THE NOTICEE No.- 3&4.

F.1 That there is no contravention of any provision of law involved hence no penal action is warranted in the absence of any contraventions of the provision of Rules with intent to evade payment of duty. As a result penalty is not imposable when there is no malafide intention nor any attempt to evade any payment of duty is involved.

F.2 That the revenue has failed to establish that how Noticee is engaged in or abetted the commission of offence, which involves the contravention of law. Here it is further submitted that the Noticee has not in any way committed/ abetted the commission of the offence

F.3 Without prejudice to the submissions made above it is submitted that it is well settled that when partnership firm is penalised, separate penalties cannot be imposed on partners. The Hon'ble High Court at Mumbai in case of Commissioner of Customs Vs. Jupiter Exports 2007 (213) E.L.T. 641 (Bom.) has held that no penalty could be imposed on the partner if penalty already proposed on the Partnership Firm. Relevant extract is reproduced below:

"19. Having heard the rival parties, no fault can be found with the view taken by the Tribunal. **It is now well settled that when partnership is penalised, separate penalties cannot be imposed on the partners.**"

F.4 To support its contention, the Noticees also places reliance on the following judgment:

Pravin N. Shah Vs. Cestat 2014 (305) E.L.T. 480 (Guj.)
Water & Co. Vs. Commissioner Of Central Excise, Chennai-li 2017 (356) E.L.T. 446 (Tri. - Chennai)

In view of the submissions made above, it is humbly prayed that the proceedings initiated against Noticees vide the captioned SCN may kindly be dropped in the interest of justice.



G. ADDITIONAL SUBMISSION MADE BY THE NOTICEE NO. 1 TO 4

G.1 The Noticees reiterates each and every ground made in their Written submissions submitted previously vide email dated 24.08.2022 and 25.08.2022. Further, an additional written submission was made by the Noticees.

G.2 The Noticees state that the Show Cause Notice was issued on 13.12.2016, and as per the unamended provision of Section 28(9)(b) of the Customs i.e., ought to have adjudicated on or before 12.12.2017.

G.3 After the issuance of the Show Cause Notice, the first Personal Hearing Notice which was sent to the Noticees were on 27.06.2019. There has been no explanation provided as to why your office was sitting on the Show Cause from the date of issuance of the Show Cause Notice i.e., 13.12.2016 to the date when the first Personal Hearing Notice was sent i.e., 27.06.2019. The Noticees states that there were various Personal Hearing Notices which was sent by your office from the period of 27.06.2019 to 02.11.2022, out of which many personal hearings were attended by the authorized representative of the Noticees. However, till date no order has been passed by your office. The Noticees state that even if it is assumed that it was not genuinely possible to adjudicate the Show Cause Notice within the period prescribed as per the unamended Section 28(9)(b) of the Act, there is no explanation whatsoever, insofar as the delay in the adjudication from 2016 to 2025 is concerned. The Noticees state that no efforts have been taken by your office to adjudicate the Show Cause Notice within the prescribed time limit or even within a reasonable time period. Reliance is placed on **Swatch Group India Pvt. Ltd. vs. Union of India & Ors. [2023 (8) TMI 864]**.

G.4 The Noticees state that, an appeal is preferred by the Department in the Hon'ble Supreme Court of India vide SLP (C) No. 8408/2025. As on date, the Appeal is still pending in the Hon'ble Supreme Court of India. It is further submitted that the Hon'ble Supreme Court of India has not put any stay on the above-mentioned judgment of the Hon'ble Delhi High Court in the case of Swatch Group India Pvt. Ltd. (supra). Therefore, in the view of the aforesaid, as no stay has been granted by the Apex Court, the judgment of the Hon'ble Delhi High Court is still binding on your office.

G.5 Further reliance is placed on **Vos Technologies India Pvt. Ltd. & Ors. vs. Union of India & Ors. [2024 (12) TMI 624]** whereat it was observed that the Respondents while dealing with all proceedings initiated prior to 29.03.2018 were required to adhere to the precept of reasonable period.

G.6 Therefore, in view of the above it is submitted that the terms "where it is possible to do so" do not grant liberty to your office to keep the matters pending



indefinitely and adjudicate the same at their convenience. Therefore, as held by the Hon'ble Delhi High Court, in case of any delay beyond the statutory times, its is incumbent upon your office to prove that you were genuinely impeded in adjudicating the matter. In the present case, your office has failed to provide any reasons as to why there was a delay of 9 years from the date of issuance of the Show Cause Notice. The Noticees therefore submits that the Show Cause Notice is clearly time barred in terms of unamended Section 28 of the Customs Act, 1962 and therefore, liable to be quashed and set aside of this ground alone.

G.7 The Noticee submits that the aforesaid decision in the case of *Vos Technologies India Pvt. Ltd. (supra)* was challenged by the Revenue before the Hon'ble Supreme Court vide Special Leave to Appeal (C) No. 5392/2025 whereas the Hon'ble Supreme Court was pleased to hold as follows:-

"9. Since we are looking into the larger issues involved in this matter, we may only say that if any matter comes up for hearing before the Tribunal or any of the High Courts on the subject in question, the hearing may be deferred till we take an appropriate call in the matter."

G.8 Thus, Noticees state that, the issue as settled in the case of *Vos Technologies* is pending hearing before the Hon'ble Supreme Court. The Noticees submit that the Supreme Court has deferred the hearing for Tribunals and High Courts. However, no bar has been placed by the Supreme Court. Therefore, the adjudicating authority can still pass an order in the present matter.

G.9 In view of the above facts and circumstances, your office has failed to adjudicate the Show Cause Notice within the time prescribed under law, the proceedings have become time barred and are therefore liable to be set aside forthwith.

G10. In the view of the judgments being passed by the Hon'ble Delhi High Courts are binding upon your office and the principles of judicial discipline require that such orders should be followed unreservedly by the subordinate authorities as held by the Hon'ble Supreme Court in the case of **Union of India vs. Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (S.C.)]**. Hence, your office is duty bound to drop the proceedings initiated vide Show Cause Notice, in light of the substantial delay in the adjudication.

G.11 The Noticees further state that, on 30.03.2021, the Show Cause Notice was further transferred to call book in view of the Instruction No. 04/2021-Cus dated 17.03.2021 issued by the Board. The same was communicated to the



Noticees. However, the Noticees state that, transferring the Show Cause Notice to the call book cannot be valid ground for inordinate delay in adjudication. Reliance is placed on **Nanu Ram Goyal vs. Commissioner of CGST and Central Excise, Delhi & Ors. [2024 (2) TMI 1481]** wherein it was held that placing matters in abeyance for years together or transferring them to the call book would not be liable to be countenanced as factors relevant or germane to explain an inordinate delay in adjudication.

G.12 It is further submitted that, even if the present Show Cause Notice was transferred to call book on 30.03.2021, there still has been a delay of 5 years from the date of issuance of the Show Cause Notice i.e., 13.12.2016. Therefore, in the view of the aforesaid, the show cause notice is liable to be set aside.

G.13. It is respectfully submitted by the noticees that the Hon'ble Apex Court has passed the judgment in the case of Canon India Pvt. Ltd. reported in 2021-TIOL-123-SC-CUS-LB and has inter alia laid down that:

- a) DRI officers are not officers of Customs.
- b) Consequently they (DRI Officers) do not have legal authority to issue SCN under Section 28.
- c) Reassessment can only be done by the officer who has originally assessed the B/E or his successor and not by any other officer/ authority (Para 11, 12 and 13 of judgment). Thus, for reassessment and/or demand of duty, SCN can only be issued by "the proper officer" and "the proper officer" is the Assessing Officer or his successor.

G.14. It is obvious that the re-assessment and recovery of duties i.e. contemplated by Section 28(4) is by the same authority and not by any superior authority such as 9 Appellate or Revisional Authority. It is, therefore, clear to us that the Additional Director General of DRI was not "the" proper officer to exercise the power under Section 28(4) and the initiation of the recovery proceedings in the present case is without any jurisdiction and liable to be set aside."

G.15. The Noticees submit that the Revenue has filed a Review Petition (C) No. 400 of 2021 against the Supreme Court Judgment in the matter of Canon India Private Ltd. v. Commissioner of Customs. The said Review Petition appears to be pending till date. Hereto annexed and marked as "Exhibit A" is a copy of Order dated 19.05.2022 in Commissioner of Customs v. M/s Canon India Private Limited.

G.16 Subsequently, the Finance Bill of 2022, Ministry of Finance had amended various provisions of the Customs Act. Through this amendment, Ministry of Finance has brought the following changes:-



- i) A DRI officer is an officer of Customs;
- ii) The CBIC has been empowered to assign functions to officers under the Customs Act;
- iii) DRI has to transfer the relevant records of the investigation (Investigation Report) to the jurisdictional officer for the issuance of SCN; The aforesaid amendments in the Finance Bill, 2022 are challenged in the aforesaid Review Appeal. Hereto annexed and marked as Exhibit "B" is the copy of the Finance Bill.

G.17 The Central Board of Indirect Taxes and Customs (Ministry of Finance) has issued Circular No.07/2022-Cus dated 31.03.2022. which is annexed and marked Exhibit "C". If the Finance Bill, in respect of Section 110AA is read, the intent is clear that this particular provision was being inserted with a view to affirm the principle that, wherever, an original function duly exercised by an officer of competent jurisdiction the officer, who originally exercised such jurisdiction shall have the sole authority to exercise jurisdiction for further action like re-assessment. The Board Circular also, in the Explanatory Memorandum Extract in relation to Section 110AA has clearly stated that this provision is being inserted with a view to affirm the principle. This clearly means that all actions which question and/or tinker with the original assessment are within the sole domain of the Proper Officer, who had executed the original function of Assessment and which clearly means the functional test principle has been affirmed in the Board Circular.

G.18 It is therefore, respectfully submitted that the amendment in the Act, even as it stands, does not save the Demand Show Cause Notices/Demand Letters, issued by DRI Officers, which impugned actions, which amount to tinkering with the "Assessments" which are assailed/challenged in the various petitions, in any manner.

G19. Had Canon Judgment been reversed in entirety by Budgetary amendment, CBIC would not have pursued Review Petition in Supreme Court and would have withdrawn it. Through amendment vide Finance Act of 2022, only one issue decided by Canon judgment has been reversed. Now after getting assent from the President, DRI officers have become officers of Customs. But the following two issues decided by Hon'ble Apex Court in Canon India have not been reversed and still hold the field and are law for all purposes and binding on all across India:

- (a) DRI Officers do not have legal authority to issue SCN in cases where assessment has been done.
- (b) Reassessment can only be done by the officer who has originally assessed the B/E or his successor and not by any other officer/ authority. Thus for



reassessment SCN can only be issued by "the proper officer" and "the proper officer" is the Assessing Officer or his successor.

G20. Furthermore, the Noticees place its reliance on the Supreme Court Order in the matter of Union of India & Ors. V. Aspam Petrochem Pvt. Ltd., Civil Appeal No 6142/2019 dated 26.07.2022, whereby it has been held that: "Our attention is invited to the Order passed in Review Petition No. 400 of 2021 in the case of Commissioner of Customs v. M/s Cannon India Pvt. Ltd. dated 19.05.2022.

12. In the light thereof, the Noticees plead that the said matter to be listed after the Review Petition No. 400 of 2021 is decided. Furthermore, the Noticees request that till then no Order shall be passed.

Therefore, in the light of the aforesaid, they requested to drop the Show Cause Notice.

24.4 RECORD OF PERSONAL HEARING.

A corrigendum was issued by the Additional Director General, DRI, Ludhiana, vide File No. DRI/LDZU/856/ENQ-48(INT-19)/2015/XII/872-878 dated 04.09.2020, wherein it was clarified that the words "*Commissioner of Customs (Export-I), Gr. VII, 3rd Floor, New Customs House, Ballard Estate, Mumbai-400001*" wherever appearing in the Show Cause Notice shall be read as "*Commissioner of Customs (Import-I), New Customs House, Zone-I, Ballard Estate, Mumbai-400001.*"

Accordingly, following the principal of natural justice and in terms of Section 28(8) read with Section 122A of the Customs Act, 1962, the Noticees no. 1 to 4 were granted opportunities for personal hearing (PH) through virtual mode on 13.10.2025. Ms Maitrayani Bhosale, Advocate (M/s India law Alliance) represented on behalf of all the noticees. During the personal hearing she reiterated the submission made in their written submissions. Further, she also made additional submissions with respect to the delay adjudication in the matter. On being asked if further Personal Hearing are required, she stated that no Personal Hearing are required in the matter of M/s Inder International & Ors.

DISCUSSION AND FINDINGS

24.5 I have carefully gone through the entire records of the case and the evidences produced by the department, applicable laws/rules in the matter and both written and oral submissions made by the Noticees.

24.6 I have carefully gone through the facts of the case, available records, submissions and evidences referred as above. I note that the Show Cause Notice dated 13.12.2016 could not be adjudicated, as the said SCN was challenged by



the Noticees in the Hon'ble Punjab and Haryana High Court. Consequently, the case was placed in the 'Call Book' on 14.03.2018 with approval of competent authority. In the instant matter, Hon'ble High Court of Punjab and Haryana, has passed the order dated 31.01.2019 without expressing any opinion on the merits of the case and disposed off the petition. In compliance of the said order, personal hearing was fixed on 24.06.2019, however no one appeared on behalf of the noticees. Subsequently, further personal hearing were scheduled on 11.07.2019 and 31.10.2019 and these opportunities were also not availed by the noticees.

Meanwhile, ADG, DRI Ludhiana Zonal Unit informed about the fresh writ petition no. 8295/2023 filed by the noticees in the Hon'ble Punjab and Haryana High Court for quashing of the Show Cause Notice in view of Canon India Judgement of Hon'ble Supreme Court of India. Thereafter, the case was once again placed under 'Call Book' on 13.07.2023 in view of DRI letter dated 02.06.2023, communicating their stand *"that the adjudication process of Show Cause Notice vide F.No. DRI/LDZU/856/ENQ-48(INT-19)/2015/VII dated 13.12.2016 will need to be stayed till further order of the Hon'ble High Court in the matter"*. Therefore, the matter was transferred to call book by the competent authority in terms of para 9.3(ii) of the CBIC Master Circular No. 1053/02/2017-CX dated 10.03.2017 and information in this regard were also informed to the noticees as well as the DRI vide office letter no. GEN/ADJ/Comm/33/202-ADJN dated 13.07.2023.

Subsequently, the case was taken out of the Call Book on 07.02.2025 in view to disposal of combined case of 49 CWPs that included CWP 8295/2023 dated 09.01.2025 moved by M/s Inder International and M/s Shree Laxmi Steels wherein the Hon'ble High Court ordered that *"disposed of by restoring such notices for adjudication by the proper officer under Section 28 of the Act, 1962 and all the petitioners are directed to file reply within a period of 30 days. The time limit of 30 days granted to all the petitioners for filing reply in the impugned notices would start from the date of receipt of copy of this judgment. The respondents are further directed to adjudicate the matter in accordance with law"*.

Pursuant to the disposal of the said writ petition by the Hon'ble High Court vide order dated 09.01.2025, the case was taken out of the Call Book with the approval of the competent authority dated 07.02.2025 for further adjudication on merits. I, therefore, proceed to decide the case based on the facts on record, the submissions made, and the available evidence, in accordance with law.

24.7 The noticees have vehemently argued in their submission regarding delayed adjudication in this matter. In this case SCN was issued on 13th



December, 2016 and in this connection, I note that Section 28(9) fixes the timeline to adjudicate the case and determine duty under section 28(8) within one year from the date of issuance of SCN under section 28(4) *ibid*. However, the said provisions came into effect from the year 2018. It is evident that SCN was issued in the year 2016, hence no timeline was fixed for the SCNs issued prior to the year 2018.

(i) I find the Appellant has relied upon various case laws in favour of their claim. However, I pay attention on Para 1 and Para 2 of the letter F No. 275/11/2022-CX BA, dated 21.7.2023 issued by Commissioner (Legal), Ministry of Finance, Deptt of Revenue, Legal Cell (CBIC): issued to *M/s Swati Menthol & Allied Chemicals Ltd*, Rampur were quashed on the grounds delay in adjudication.

"The Department had filed SLP (C) No. 20072/2021 (Converted into Civil Appeal No.4320/2023) before Hon'ble Supreme Court against the Order dated 17.5.2021 passed by the Hon'ble High Court of Punjab & Haryana in CWP No. 9340/2021, whereby 2 SCNs issued to M/s Swati Menthol & Allied Chemicals Ltd., Rampur were quashed on the ground of delay in adjudication".

2. *The Hon'ble Supreme Court has disposed the aforesaid SLP vide Order dated 10.7.2023 whereby, aforesaid Order dated 17.5.2021 of the Hon'ble High Court has been set aside and the matter has been remanded back to the Commissioner of GST (adjudicating authority) with a direction to conclude the proceedings within the time-period specified in the Order."* Hence, keeping in mind the above said guidelines as well as the discussed Hon'ble SC decision, I find no merit in the argument of the Appellant in respect of the delayed of the adjudication.

Hence, all their cited judgments are of no help to them after recent landmark judgment (10.7.2023) of Hon'ble SC in the matter of *Commissioner GST and Central Excise Commissioneate II &Ors Vs. M/s Swati Menthol & Allied chemicals reported in 2023 (7) TMI 662-SC* in favour of department on subject "delay in adjudication".

Further, I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticees. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions / contentions made by the Noticees.



24.8 I find that SCN has alleged that M/s. Inder International & M/s Shri Laxmi Steels were importing **Hot Rolled flat products of non-alloy steel in coil and sheet form having width more than 600 mm** by mis-declaring these as **Cold Rolled Coils**, thereby also evading the provisional safeguard duty @ 20% ad valorem, imposed vide Notification No. 02/15- Customs (SG) dated 14.09.2015. Further, information was also received that the modus-operandi adopted by these importers is that they import these Hot Rolled flat products of non-alloy steel of width greater than 600 mm in pickled & oiled form, so as to avoid their detection by the local Customs authorities.

It was further alleged that importer has claimed duty exemption under the India-Korea PTA (Notification 53/2011-Cus.) for their imports of Hot/Cold Rolled Coils and Sheets. The applicable duty rate varies by the tariff heading, which depends on the thickness of the coils. DRI, Ludhiana recovered two sets of invoices for the same consignments and found discrepancies in the declared thickness of the coils submitted to Customs compared to the parallel documents, affecting the correct tariff classification.

Accordingly, the Show Cause Notice alleged that noticee no. 1 has short levied the Customs duty amount of Rs. 6,52,479/- by way of claiming wrong COO benefit in terms of notification no. 152/2009-Cus and evaded Safeguard duty amount of Rs. 11,57,486/- in terms of Notification No. 02/2015-Cus dated 14.09.2015 read with Notification No. 01/2016-Cus(SG) dated 29.03.2016. Further, it is alleged that Noticee No. 02 has short levied the Customs duty amount of Rs. 22,68,790/- by way of claiming wrong COO benefit in terms of notification no. 152/2009-Cus which is proposed to be recovered under Section 28(4) of the Customs, 1962, along with applicable interest. Furthermore, the Show Cause Notice also proposes confiscation of the impugned goods under Section 111(m) of the Customs Act, 1962 and imposition of penalty on the importer under Section 112(a) and 114A and 114AA of Customs Act, 1962.

24.9 The noticees have contended that a matter once decided cannot be reopened before the same or any other court in India. However, I find from the facts of the case produced before me make it clear that this contention is misplaced and the issue was never decided by any court of law, whereas the Hon'ble High Court of Punjab and Haryana has disposed of combined case of 49 CWPs that included CWP 8295/2023 dated 09.01.2025 moved by M/s Inder International and M/s Shree Laxmi Steels and ordered that ***"disposed of by restoring such notices for adjudication by the proper officer under Section 28 of the Act, 1962 and all the petitioners are directed to file reply within a period of 30 days. The time limit of 30 days granted to all the petitioners for filing reply in the impugned notices would start from the date of receipt of copy of this judgment. The respondents are further directed to***



adjudicate the matter in accordance with law". Accordingly, the submission of the importer is untenable.

25. I find that the noticees have also contended that, since the goods were finally assessed and the Department has already preferred an appeal against the assessment order passed in respect of Bill of Entry No. 4289284 dated 17.02.2016, the issuance of the impugned Show Cause Notice (SCN) on the same issue is bad in law and that the proceedings initiated therein ought to be dropped in the interest of justice. In this regard, it is pertinent to note that where the Department is aggrieved by any decision or order passed under the Customs Act, 1962, it is fully empowered to challenge the same before the appropriate appellate forum as provided under the Act. Furthermore, if the Department subsequently detects any discrepancy or irregularity in earlier clearances, it is legally competent to issue a Show Cause Notice under Section 28 read with Section 124 of the Customs Act, 1962, for the recovery of duties that were not levied, not paid, short-levied, short-paid, or erroneously refunded.

In light of these statutory provisions, the contention of the importer that the issuance of the impugned SCN is illegal or without authority of law, is devoid of merit and cannot be accepted.

25.1 Further, I find that the noticees contested that the DRI officers do not have legal authority to issue SCN in cases where assessment has been done. Before examining all the contentions of the Appellants, I shall discuss 'whether DRI is the proper officer for issuance of Show Cause Notice issued under section 28 of the Customs Act, 1962' after the enactment of legislative amendment prescribed under Finance Bill, 2022.

(a) I observe that the Supreme Court (SC), in *Canon India v. Commissioner of Customs (2021 (376) ELT 3)*, had held that an officer of the Directorate of Revenue Intelligence (DRI) is not a 'proper officer' to conduct investigations/enquiries and issue Show-cause Notices (SCN) to demand duty under Section 28 of Customs Act, 1962 (the Act). This decision, adverse to Revenue, was again reiterated by the SC in the *Agarwal Metals case (C.A. No. 3411 of 2020)* in August 2021. The decision of the Apex Court is also being followed by various High Courts and tribunals to strike down duty demands.

(b) I find that The Finance Bill, 2022 amended the definition of Proper Officer under Section 2(34) of the Customs Act, 1962 amended Section 3 to include DRI, DGA and officers of Customs (Preventive) to be Customs Officers and further inserted sub-Section (1A) and (1B) in Section 5 granting specific powers to CBIC to assign functions of Proper Officer onto any other officer. Supplementing this



with a validation provision, the acts done by DRI like issuance of Show Cause Notice, Notification issued by CBIC earlier and the pending proceedings that emanated from DRI actions, have now found legal sanction. Any proceeding arising out of any action of DRI and are pending as on date, will now be disposed of in accordance with proposed amendments under Finance Bill 2022 which is now enacted.

(c) Further, I have gone through *CBIC Circular No. 7/2022-Customs dated 31.3.2022* on the Subject: Changes in the Customs Act, 1962 vide Sections 86, 87, 88 and 94 of the Finance Act, 2022 (enacted on 30.03.2022) and notifications related thereto with reference to appointment of officers of customs and assignment of functions. I am reproducing some important Amendments in Customs Act vide Finance Act, 2022 which empowers DRI officers, Preventive Commissionerate officers and Audit officers to assign functions as 'the proper officer' under the Customs Act, 1962.

"Clause (34) of section 2 contains definition of "proper officer". This section is being modified to specifically state that assignment of functions to an officer of Customs by the Board or the Principal Commissioner of Customs or the Commissioner of Customs shall be done under the newly inserted sub-sections (1A) and (1B) of Section 5 in the Customs Act, 1962 (52 of 1962).

Section 3 is being amended to specifically include the officers of DRI, Audit and Preventive formation in the class of Officers. This amendment has been made to remove any ambiguity as regards the class of officers of Customs.

Sub-Section (1A) and 1(B) to Section 5: Sub-section (1A) and (1B) have been inserted in section 5 of the Act to explicitly provide power of assignment of function to officers of customs by the Board or as the case may be by the Principal Commissioner of Customs or Commissioner of Customs. This amendment has been necessitated to correct the infirmity observed by the Courts in recent judgments that the Act required explicit provision conferring powers for assignment of function to officers of Customs as "proper officers" for the purposes of the Act, besides the definition clause (34) in section 2 of the Customs Act.

Sub-section (5) to Section 5 is being inserted to ensure that wherever necessary, for the proper management of work, two or more officers of customs, can concurrently exercise powers and functions (for example in the case of faceless assessment)

Section 110AA is inserted with a view to affirm the principle that, wherever, an original function duly exercised by an officer of competent jurisdiction, is the subject matter of a subsequent inquiry, investigation, audit



or any other specified purpose by any other officer of customs, then, notwithstanding, such inquiry, investigation, audit or any other purpose, the officer, who originally exercised such jurisdiction shall have the sole authority to exercise jurisdiction for further action like reassessment, adjudications, etc. consequent to the completion of such inquiry, investigation, audit or any other purpose.

Other legislative amendment in Customs vide Clause 96 of Finance Bill, 2022 this clause [] has been inserted in the Finance Bill, 2022. This clause seeks to give validation to any action taken or functions performed before the date of commencement of the Finance Act, 2022, under certain Chapters of the Customs Act by any officer of Customs, as specified in Section 3 of the Customs Act, as amended, where such action was in pursuance of their appointment and assigning of functions by the Central government or the Board under the Customs Act.”

(d) I observe that Clause 96 of the Finance Bill , 2022 also seeks to retrospectively validate any action taken or duties performed by officers of DRI or Customs before the enactment of the Finance Bill 2022, notwithstanding the decisions of the Courts, Tribunals or Authorities. It has also been clarified that any proceeding arising out of action taken under the clause and pending on the date of commencement of the Finance Act, will be disposed of under the amended provisions.

(e) Hence, this retrospective amendment made by the legislature under Clause 96 of the Finance bill, 2022 have an overriding effect on the outcome of pending SCNs/Appeals/petitions where jurisdiction of DRI officers has been challenged. The statement explaining the amendment says that “this amendment has been necessitated to correct the infirmity observed by the Courts in recent judgments that the Act required explicit provision conferring powers for assignment of function to officers of Customs as “proper officers” for the purposes of the Act, besides the definition clause (34) in section 2 of the Act”. Hence, in short, Finance Act, 2022 had made the following amendments:

1. DRI officer is an officer of customs;
2. the CBIC has been empowered to assign functions to officers under the Customs Act;
3. Power to validate the past actions of the DRI as the proposed changes would deem to have been in force from all time.

(f) Further, the Kolkata bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that the show-cause notices issued by the DRI would become valid in view of the recent amendment in Finance Bill, 2022



only after the enactment of the Bill. The Tribunal bench comprising Mr. P K Chaudhary (JM) and Mr. P V Subba Rao (TM) was considering an appeal filed by *M/s Beriwala Impex Pvt. Ltd against commissioner of Customs (port)* wherein the Tribunal held that "if the Finance Bill becomes the Act, DRI officers will be at par with Customs officers under the Customs Act by virtue of the substitution of section 3 and their various actions such as searches, seizures, arrests may not become void because of non-entrustment of those functions by the Government under Section 6."

(g) Also, I rely on the Hon'ble High Court decision in the case of *M/s N. C. Alexander Versus the Commissioner of Customs, Chennai II Commissionerate, Chennai*, [2022(6) TMI 723-Madras high Court], wherein the whole issue of 'the proper officer' has been discussed in light of Finance Act, 2022 viz a viz Canon India Judgment and confirmed officers of DRI are proper officers for the purpose of issuance of Show Cause Notice Under section 28 of the Customs Act, 1962. Further, it has been held at Para No. 298 the pending proceedings have to be decided in light of validation in Section 97 of the Finance Act, 2022. Hence, all pending SCNs wherein issue of 'the proper officer' was challenged due to Hon'ble SC judgment in case of *M/s Canon India*, has now validated under the section 97 of the Finance Act, 2022. Hence, by virtue of the Finance Act, 2022, the contention raised by the Appellant has now been settled and officers of DRI are now 'the proper officer' for the purpose of issuance of SCN.

25.2 Further, I find that the Noticees have placed reliance on various judgments of Tribunals, High Courts and Apex Court 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(1) 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."**

25.3 One other reference on the situation, I have noted is 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."

In view of the above facts and circumstances in the cases relied upon by the noticees are different from that of the present case. So, the case laws relied upon by the noticees cannot be considered.

25.4 After having addressed the above point raised by the Noticees, the substantial issues proposed in the SCN need to be decided 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. On careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided sequentially as under: -

(A) Whether or not the imported goods imported by M/s Inder International & M/s Shri Laxmi Steels, (details as per Annexure-A&B attached to the subject SCN wherein duty demanded of Rs. 6,52,479 & 22,68,790/-) which were classified under CTH-72091710 should be reassessed under CTH-720990 and thereby importer is not eligible for exemption of basic customs duty in terms of notification no. 152/2009-Cus dated 31.12.2009 and differential duty is liable to be demanded under section 28(4) along with applicable interest under section 28AA of the customs act, 1962.

(B) Whether or not the imported goods imported by M/s Inder International (details as per Annexure-C attached to the subject SCN) be liable to charge Safeguard duty amounting to Rs. 11,57,486/- in terms of Notification No. 02/2015-Cus dated 14.09.2015 read with Notification No. 01/2016-Cus(SG) dated 29.03.2016.

(C) Whether or not the subject goods having total declared Assessable Value of Rs. 45,61,339/- & Rs. 5787431/- and Rs. 1,59,24,717/- imported vide Bills of Entry (details as per Annexure-A, C and B respectively attached to



the subject SCN) of Noticee no. 1 and Noticee no.-2 should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, and redemption fine in lieu of confiscation be imposed on them (M/s Inder International & M/s Shri Laxmi Steels) under Section 125 of the Customs Act, 1962.

(D) Whether or not penalty under Section 112(a) and 112(b) and Section 114A and 114AA of the Customs Act 1962 should be imposed on M/s Inder International.

(E) Whether or not penalty under Section 112(a) and 112(b) and Section 114A and 114AA of the Customs Act 1962 should be imposed on M/s Laxmi Steels.

(F) Whether or not penalty under Section 112(a) and (b) and 114AA of the Customs Act 1962 should be imposed on Shri Indresh Jain partner of M/s Inder International who look after the overall affairs of Noticee-1 and Noticee-2 and whether or not penalty under Section 112(a) and (b) and 114AA of the Customs Act 1962 should be imposed on Shri Abhay Jain.

25.5 Now, I proceed to discuss each issue in detail, taking into account the facts of the case, the submissions made by the noticees, and the records placed before me.

(A) Whether or not the imported goods imported by M/s Inder International & M/s Shri Laxmi Steels, (details as per Annexure-A & B attached to the subject SCN where duty demanded of Rs. 6,52,479 & 22,68,790/- respectively) which were classified under CTH-72091710 should be reassessed under CTH-720990 and thereby imported goods is not eligible for exemption of basic customs duty in terms of notification no. 152/2009-Cus dated 31.12.2009 and differential duty is liable to be demanded under section 28(4) along with applicable interest under section 28AA of the customs act, 1962.

25.5 I find that the Noticees had classified the goods under CTH-72091710, however, the Show Cause Notice proposed the subject goods classifiable under CTH 720990 and demanded the differential duty with interest from the Noticees. Therefore, the foremost issue before me to decide in this case is as to whether the imported goods imported by the noticees vide Bills of Entry mentioned in Annexure-A and B to the SCN, are classifiable under CTH-7209170 or under CTH- 720990.

25.6 I find that the noticees have contended that the thickness of the coils were found to be in the range of 1.5 mm to 2.0 mm, and that no contrary evidence



has ever been placed on record or furnished to them at any point in time. They have further submitted that it remains unclear how the DRI determined or measured the thickness of the impugned goods. In this regard, it is pertinent to note that at para-20 of the Show Cause Notice explicitly reiterates that the verification of the thickness of the coils imported from the Republic of Korea was carried out through Examination Reports dated 06.04.2016, 19.04.2016, 20.04.2016, and 21.04.2016, as well as the Panchnama-cum-Examination Report dated 22.04.2016. The said measurements were further ascertained and corroborated by the Bokaro Steel Plant.

25.7 In view of the above, I proceed to examine the contention of the Importer that the impugned goods are classifiable under chapter 72091710 under the respective CTH depending on the thickness and manufacturing process of the impugned goods.

25.8 I find from the records available and discussion at para-20 of the Show Cause Notice where it has been re-iterated that the verification of thickness of the coils imported from Republic of Korea was conducted vide Examination Reports dated 06.04.2016, 19.04.2016, 20.04.2016 & 21.04.2016 and Panchnama-cum-Examination Report dated 22.04.2016, despite lack of cooperation from the importers.

The noticees had declared their imported coils / sheets to be having thickness from 0.5mm to 1.00mm and declared their import goods to falling under tariff heading 720917. The tariff heading 720917 pertains to "Flat rolled products of iron or non-alloy steel, of a width of 600mm or more, cold rolled (cold reduced), not clad, plated or coated"

-In coils, not further worked than cold rolled (cold reduced):

-- of a thickness of 0.5mm or more but not exceeding 1mm:

72091710— Plates

72091720—Sheets

72091730— Strip

72091790— Others

and claimed the benefit of Preferential Trade Agreement (in short 'PTA'), based on country of origin certificate which appears not admissible to them, as on examination the goods were found to have varying thickness i.e. more than the declared thickness of 0.5 to 1.0mm and correct Tariff classification on such goods 720990 where no exemption is admissible.



25.9 Further, it is found that the Government of India has issued Notification No. 187/2009-Customs (N.T.) dated 31.12.2009 framing there-under Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009. That further the Government of India has also issued Notification No. 152/2009-Cus. dated 31.12.2009 (as amended) vide which effective rate of duty has been prescribed on specified goods imported from Korea. Hot & Cold Rolled Coils and/ or Sheets fall under the customs tariff 7208 and 7209 respectively: that further, the exact tariff heading up to 6 digit level is determined on the basis of their thickness. Further, the effective rate of ad valorem customs duty leviable on these Hot & Cold Rolled Coils and / or Sheets, in respect of these goods originating from the Republic of Korea, is as given below:-

Sr. No.	CTH of the import goods	Description of the import goods	Rate (in percentage)
	7208	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, hot-rolled, not clad, plated or coated.	
1	720825	Other, in Coils, not further worked than hot-rolled, pickled - Of a thickness of 4.75 mm or more	5
2	720826	Other, in Coils, not further worked than hot-rolled, pickled - Of a thickness of 3 mm or more but less than 4.75mm	0
3	720827	Other, in Coils, not further worked than hot-rolled, pickled - Of a thickness of 3 mm	1.25
4	720836	Other, in Coils, not further worked than hot-rolled, Of a thickness exceeding 10mm	0
5	720837	Other, in Coils, not further worked than hot-rolled, Of a thickness of 4.75 mm but not exceeding 10 mm	1.25

6	720838	Other, in Coils, not further worked than hot-rolled, Of a thickness of 3 mm but less than 4.75 mm	1.25
7	720839	Other, in Coils, not further worked than hot-rolled, Of a thickness less than 3 mm	1.25
8	720840	Not in Coils, not further worked than hot-rolled, with patterns in relief	1.25
9	720851	Other, not in Coils, not further worked than hot-rolled - Of a thickness exceeding 10 mm	1.25
10	720852	Other, in Coils, not further worked than hot-rolled - Of a thickness of 4.75mm or more but not exceeding 10 mm	0
11	720853	Other, not in Coils, not in further worked than hot-rolled - Of a thickness of 3mm or more but less than 4.75mm	1.25
12	720854	Other, not in Coils, not further worked than hot-rolled - Of a thickness of less than 3mm	1.25
13	720890	Other	5
	7209	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, cold-rolled (cold-reduced), not clad, plated or coated	
14	720915	In coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of 3mm or more	1.25
15	720916	In coils, not further worked than cold-rolled (cold-reduced) - Of a thickness exceeding 1mm but less than 3 mm	1.25
16	720917	In coils, not further worked than cold-rolled (cold-	0



		reduced) - Of a thickness of 0.5mm or more but not exceeding 1mm	
17	720918	In coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of less than 0.5mm	1.25
18	720925	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of 3mm or more	1.25
19	720926	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness exceeding 1mm but less than 3mm	1.25
20	720927	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of 0.5mm or more but not exceeding 1mm	0
21	720928	Not in coils, not further worked than cold-rolled (cold-reduced) - Of a thickness of less than 0.5mm	1.25
22	720990	Other	No exemption

That from the above, it can be seen that the rate of customs duty leviable on the imports of Hot-rolled and Cold-rolled flat products varies on the basis of their tariff heading up to 6 digits: that this tariff heading up to 6 digits is determined in respect of these Hot-rolled and Cold-rolled flat products on the basis of their thickness.

It is pertinent to mention here that the Importer imported the same goods in past imports, the case of declared imports of Secondary & Defective Cold Rolled Coils of width greater than 600mm and of varying widths had filed Bills of Entry No. 2591776 dated 14.09.2015 at Mumbai sea port declared their import goods, having country of origin Denmark, under tariff heading 72099000.

26. I found on the records that it is important to note that the similar goods imported by the Noticee No.1 from Belgium, vide bill of entry No. 3753509 dated 29.12.2015, have been classified under customs tariff 72099000. It is a general



practice for the importers to declare their tariff heading in case of imports of Secondary & Defective Cold Rolled Coils of width greater than 600 mm and of varying thicknesses in 72099000 (heading defined as others under the Customs Tariff Act, 1975) because their consignments comprise of coils of different thicknesses, a condition in which the imports of the importers from the Republic of Korea would not have been eligible for any exemption of customs duty. In the present case also goods have been found to be of varying thickness from 0.3 mm to 4.00 mm (variations found in individual coils also) warranting classification of goods under custom tariff heading 720990 and in such a situation the impugned imports from the Republic of Korea would not have been eligible for any exemption of customs duty.

As the thickness were varying in each of the individual coils (being in the range from 0.3 mm to 4.00 mm), none of the consignments imported from the Republic of Korea could be classified under any specific tariff heading (up to 6 digit level) in 7209. In such cases where the goods cannot be classified under one specific tariff heading, these are to be classified under the heading of "Others" for which the correct tariff heading is 720990.

26.1 In the present case, the noticees classified the imported goods under CTH 72091710, a sub-heading that covers flat-rolled products of iron or non-alloy steel "of a thickness of 0.5 mm or more but not exceeding 1 mm." However, as per the examination report and the test report furnished by Bokaro Steel Plant, the actual thickness of the subject goods ranges from 0.3 mm to 4 mm. This range does not fall within specific sub-heading of CTH 720917 and the appropriate classification for the goods is under the residual sub-heading CTH 7209 99 ("Others"). Therefore, the tariff heading declared by the noticees—CTH 7209 17 10—is incorrect and does not entitle them to claim any exemption from Basic Customs Duty under that sub-heading in terms of Notification No. 152/2009-Cus. Dated 31.12.2009 (as amended) read with Notification No. 187/2009-Customs (N.T.) dated 31.12.2009.

26.2 Further, I found on the records of the case that the Hon'ble High Court vide Order dated 03.06.2016 in CWP Nos. 10021 & 10036 of 2016 had directed for re-drawl of samples and their testing at Bokaro Steel Plant to determine whether the imported coils / sheets are the Hot Rolled / Cold Rolled. The work assigned to Bokaro Steel Plant by the Hon'ble High Court vide Order dated 03.06.2016 was only to test and report whether the material was Hot Rolled or Cold Rolled. However, the Bokaro Steel Plant while forwarding its Report dated 02.07.2016 also indicated the thickness of the samples of imported coils/ sheets in respect of the material imported from the Republic of Korea. However, these



samples did not represent the full import consignment of coils / sheets imported by the petitioner as these were only small pieces of sheets cut from the full coils / sheets (not in coil form). Hence, the Examination Reports dated 06.04.2016, 19.04.2016, 20.04.2016, 21.04.2016, and 22.04.2016 with respect to the verification of thickness of the coils / sheets conducted by the Department in view of Orders dated 04.04.2016 & 12.04.2016 are the proper examination reports on the basis of which the thickness of the coils / sheets imported by the petitioner from the Republic of Korea could be determined. There were in total 4 Bills of Entry representing the consignments of coils / sheets imported by the noticees from the Republic of Korea and the basic customs duty is to be charged at applicable rate of duty which amounts to Rs. 25,60,756/- (Twenty five lakhs sixty thousands seven hundred fifty six) as detailed below:-

Sr. No.	Name of the Importer	B. E. No. and Date	Description of the goods (declared)	Tariff item	Country of Origin	Assessable value of the goods	BCD involved	Examination reports in r/o of measurement of thickness as per orders dated 04.04.2016 and 12.04.2016 of the Hon'ble High Court in CWP No. 572 & 4641 of 2016	Test Report by Bokaro Steel Plant
1	M/s Shri Laxmi Steels	3480776 dt. 04.12.2015	Defective Secondary Cold Rolled Coils (M.S) Thickness 0.5mm to 1mm. In Commercial Invoice and on actual examination Sheets were	72091710	Republic of Korea	5040706.13	630088.27	Examination Report dated 22.04.2016	Test Report No. 4 shows sample to be Cold Rolled with thickness of 0.2mm



			found.						
2	M/s Shri Laxmi Steels	3552261 dt. 11.12.2015	Defective Secondary Cold Rolled Coils (M.S) Thickness 0.5mm to 1mm.	72091790	Republic of Korea	6033590.06	754198.76	Examination Reports dated 06.04.2016, 19.04.2016 & 22.04.2016	Test Report No. 1 shows sample to be Cold Rolled with thickness of 1.5mm.
3	M/s Shri Laxmi Steels	3749151 dt. 29.12.2015	Defective Secondary Cold Rolled Coils (M.S) Thickness 0.5mm to 1mm.	72091790	Republic of Korea	4850420.44	606302.56	Examination Reports dated 20.04.2016 & 21.04.2016	Test Report No. 2 shows sample to be Cold Rolled with thickness of 1.0mm.
4	M/s Inder International, Ludhiana	4289284 dt. 17.12.2016	Defective Secondary Cold Rolled Coils (M.S) Thickness 0.5mm to 1mm.	72091790	Republic of Korea	4561338.11	570167.26	NA	Test Report No. 6 & 7 shows sample to be of thickness of 0.25mm & 1.98mm respectively and also to be Cold Rolled.
		TOTAL					2560756.84		

All the test reports, except Test Report No. 2, obtained from Bokaro Steel Plant show the thickness of the sample of sheets / coils imported from the Republic of Korea to be not falling under the declared thickness range of 0.5mm - 1mm. Only Test Report No. 2 shows sample to be having thickness of 1.0mm. These samples were not fully representative of thickness of the imported coils / sheets as the Hon'ble High Court vide Order dated 03.06.2016 in CWP No. 10021 & 10036 of 2016 had only assigned to Bokaro Steel Plant the task of testing and reporting whether the material was Hot Rolled or Cold Rolled. The Hon'ble High



Court vide Orders dated 04.04.2016 read with 12.04.2016 of the Hon'ble High Court in CWP Nos. 572 & 4641 of 2016 had directed for measurement of thickness by the DRI officers. During examination conducted by the Department in terms of the afore-said Orders of the Hon'ble High Courts, the thickness of the coils / sheets were found to be varying; that further even if the coils / sheets were taken to be of cold rolled nature as per Bokaro Steel Plant report, the same could not be classified under one specific tariff heading, due to the variation of their thickness. Hence, these coils / sheets imported from the Republic of Korea would merit to be classified under the heading of "Others" for which the correct tariff heading would be 720990 (up to six digit level) and the same, it appears, would therefore be not eligible for any exemption of basic customs duty in terms of Notification No. 152/2009-Cus. Dated 31.12.2009 (as amended) read with Notification No. 187/2009-Customs (N.T.) dated 31.12.2009.

26.3 In view of the above, it is found that the goods imported by the Noticee No. 1 vide bill of entry no 4289284 dated 17.02.2016, and Noticee No. 2 vide bills of entry nos. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29.12.2015 had been wilfully mis-declared with respect to their thickness and, therefore, with respect to their classification, in contravention of the provisions of section 17 and 46 of the customs Act, 1962, in order to evade payment of customs duty by availing inadmissible benefit of Notification No. 152/2009-Cus.dated 31.12.2009 (as amended), It is found that benefit of aforesaid Notification No. 152/2009-Cus. dated 31.12.2009 is not admissible to them, and the differential customs duties as detailed in Annexure-A&B (**Rs. 6,52,479/- & Rs.22,68,790/-**) to be recoverable from them.

(B) Whether or not the imported goods imported by M/s Inder International (details as per Annexure-C attached to the subject SCN) be liable to charge Safeguard duty amounting to Rs. 1157486/- in terms of Notification No. 02/2015-Cus dated 14.09.2015 read with Notification No. 01/2016-Cus(SG) dated 29.03.2016.

26.4 I find that the noticee has contested that their imported goods were Cold Rolled Sheets only and they relied upon the test report of Bokaro Steel plants whereas SCN alleged that the imported goods imported by M/s Inder International was Hot Rolled is liable to charge Safeguard duty amounting to Rs. 1157486/- in terms of Notification No. 02/2015-Cus dated 14.09.2015 read with Notification No. 01/2016-Cus(SG) dated 29.03.2016. The brief provision of the said notification 01/2016(SG) dated 29.03.2016 is under: -

Whereas, in the matter of import of "Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more" (hereinafter referred to as the subject goods), falling under heading 7208 or tariff item 7225 30 90 of the First

Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), the Director General (Safeguard), in his preliminary findings, published vide number G.S.R. 690 (E), dated the 9th September, 2015, in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), dated the 9th September, 2015, had come to the conclusion that increased imports of subject goods into India has caused and threatened to cause serious injury to the domestic industry and producers of subject goods, thereby necessitating the imposition of provisional safeguard duty on imports of the subject goods into India;

And whereas, on the basis of the aforesaid findings of the Director General (Safeguard), the Central Government has imposed provisional safeguard duty on import of the subject goods into India for a period of two hundred days with effect from the 14th day of September, 2015 vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 2/2015-Customs (SG), dated the 14th September, 2015 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 694 (E), dated the 14th September, 2015;

And whereas, in the final findings vide number G.S.R. 308(E), dated the 15th March, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), the Director General (Safeguard) has recommended the imposition of safeguard duty on subject goods falling under heading 7208 or tariff item 7225 30 90 of the First Schedule to the Customs Tariff Act for a period of two years and six months from the date of levy of provisional safeguard duty;

Now, Therefore, in exercise of the powers conferred by sub-section (1) of section 8B of the Customs Tariff Act, read with rules 12, 14 and 17 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 2/2015-Customs(SG), dated the 14th September, 2015 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 694 (E), dated the 14th September, 2015, the Central Government, after considering the said findings of the Director General (Safeguards) and subject to the provisions of paragraph 2, hereby imposes on subject goods falling under heading 7208 or tariff item 7225 30 90 of the First Schedule to the Customs Tariff Act, when imported into India, a safeguard duty at the following rate, namely:-

(a) twenty per cent ad valorem minus anti-dumping duty payable, if any, when imported during the period from 14th September, 2015 to 13th September, 2016 (both days inclusive);

(b) eighteen per cent ad valorem minus anti-dumping duty payable, if any, when imported during the period from 14th September, 2016 to 13th March, 2017 (both days inclusive);

(c) fifteen per cent ad valorem minus anti-dumping duty payable, if any, when imported during the period from 14th March, 2017 to 13th September, 2017 (both days inclusive); and

(d) ten per cent ad valorem minus anti-dumping duty payable, if any, when imported during the period from 14th September, 2017 to 13th March, 2018 (both days inclusive).

In this regard, it is found from the Test Report No. 5 of Bokaro Steel Plant (in r/o Bill of Entry No. 3753509 dated 29.12.2015 pertaining to M/s Inder



International in r/o goods imported from Belgium) where it was mentioned that microstructure having fine equiaxed ferrite grains is typical of hot rolled: however, in final conclusion, it was opined that the consignment was of unrolled portion of CR Coil. The dispute in respect of the contradictory facts mentioned in the Test Report was also brought in the knowledge of the Hon'ble Punjab and Haryana High Court vide Affidavit on 12.07.2016 vide additional Affidavit dated 16.10.2016.

Moreover, it is also pertinent to mention here that M/s TCR. Laboratory vide Report No. BR3968 dated 17.02.2016 had also mentioned the goods to be Hot Rolled. In view of the aforesaid, the goods imported vide Bill of Entry No. 3753509 dated 29.12.2015 by M/s Inder International from Belgium were considered to be Hot Rolled, and the same is to be liable for the payment of safeguard duty amounting to Rs. 1157486/- under Notification No.2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/2016-Customs (SG) dated 29.03.2016 (Details as per Annexure-C) and since Bill of Entry No. 3753509 dated 29.12.2015 falls within the period specified under Column (a) of the aforementioned Notification No. 01/2016 dated 29.03.2016, the said import consequently attracts Safeguard Duty at the rate of 20%. The Noticee No.1 has contravened of the provisions of section 17 and 46 of the Customs Act, 1962, in order to evade payment of customs duty payable under Notification No. 2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/2016-Customs (SG) dated 29.03.2016, and the differential customs duty amounting to Rs. 11,57,486/- are recoverable from them.

It is a settled principle, reaffirmed by the *Hon'ble Supreme Court in Commissioner of Customs (Import) v. Dilip Kumar and Company [(2018) 9 SCC 1]*, that exemption and concessional notifications must be interpreted strictly and that the burden of proving eligibility lies entirely with the assessee. Any ambiguity must be resolved in favour of the Revenue.

In the present case, the Noticees have failed to discharge this burden and mis-classified the imported goods under an incorrect tariff heading. This mis-classification and evading of applicable duty was designed to attract a lower customs duty in direct contravention of the customs regulation. Accordingly, benefit of Notification No. 152/2009-Cus. dated 31.12.2009 is not admissible to noticees as well as safeguard duty is also required to be collected from the noticees. Therefore, the differential customs duties as detailed in Annexure-A,B & C (Rs. 6,52,479/- & Rs.22,68,790 & Rs.11,57,486 respectively) is recoverable from the Noticee in accordance with law.

26.5 Having determined that the imported goods are not eligible for the aforesaid Notification No. 152/2009-Cus. dated 31.12.2009 and is also liable to



charge Safeguard duty amounting to Rs. 11,57,486/- in terms of Notification No. 02/2015-Cus dated 14.09.2015 read with Notification No. 01/2016-Cus(SG) dated 29.03.2016. Now, the next issue is to be addressed is the demand and the recovery of the differential duty under section 28(4) *ibid*, as detailed in Annexures-'A,B & C' to the Show Cause Notice.

It is an undisputed fact that the Noticees wilfully mis-declared the goods and wrongly claimed a concessional benefit of Notification No. 152/2009-Cus. dated 31.12.2009 and also evade applicable safeguard duty in terms of Notification No. 02/2015-Cus dated 14.09.2015 read with Notification No. 01/2016-Cus(SG) dated 29.03.2016.

Section 46(4) of the Customs Act, 1962 mandates that every importer must make a true, complete, and correct declaration in the Bill of Entry. Section 17 further imposes a responsibility on the Noticees to correctly self-assess the classification, value, rate of duty, and applicable exemptions.

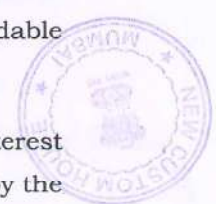
26.6 I find the Noticees were a regular importer of steels. However, in the present case, the Noticees deliberately failed to fulfil these statutory obligations. By knowingly classifying the goods under an inapplicable concessional entry, the Noticee not only misdeclared the goods but also sought to evade payment of legitimate duty. Such conduct is neither inadvertent nor a result of misunderstanding — it amounts to a wilful misstatement and suppression of material facts.

Section 28 of the Customs Act, 1962 empowers the proper officer to recover duties not levied, short-levied, or erroneously refunded. Sub-section (4) specifically provides for recovery in cases involving collusion, wilful misstatement, or suppression of facts, and also allows for the extended period of limitation.

Given the deliberate nature of mis-declaration and the intent to evade duty, this case squarely falls within the ambit of Section 28(4) of the Customs Act, 1962. The Noticee's actions — including incomplete description of goods and a willful claim of COO benefit and evading safeguard duty — demonstrate a clear intent to evade duty, which resulted in direct loss to the exchequer.

Hence, considering the above discussed facts and *Hon'ble Supreme Court judgment in the matter of Commissioner of Customs (Import) v. Dilip Kumar & Company [(2018) 9 SCC 1]*, I hold that the differential duty is lawfully demandable under Section 28(4) of the Customs Act, 1962.

In addition to the duty demand, the Noticees are also liable to pay interest under Section 28AA of the Customs Act, 1962. This provision, introduced by the



Finance Act, 2011, mandates payment of interest on duties that are not levied, short-levied, short-paid, or erroneously refunded. The interest is compensatory in nature and arises automatically from the date the duty became due until its actual payment.

(C) Whether or not the subject goods having total declared Assessable Value of Rs. 45,61,339/- & Rs. 5787431/- and Rs. 1,59,24,717/- imported vide Bills of Entry (details as per Annexure-A, C and B attached to the subject SCN) (Annexure-A & C pertains to M/s Inder International and Annexure-B pertains to M/s Shri Laxmi Steels) of Noticee No. 1 and Noticee-2 should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, and redemption fine in lieu of confiscation be imposed on them (M/s Inder International & M/s Shri Laxmi Steels) under Section 125 of the Customs Act, 1962.

26.7 With respect to the issue of confiscation of the impugned goods under section 111(m) the Customs Act, 1962, the Noticees, M/s Inder International & M/s Shri Laxmi Steels have contended that the goods already cleared for home consumption cannot be confiscated, consequently redemption fine cannot be imposed and they relied upon the case law of **Bussa Oversease & properties Pvt. Ltd. Vs. C.L. Mahar, Assit. C.C. Bombay 2004 (163) E.L.T. 304 (Bom.) and Commissioner of Customs(EP Mumbai v/s AMP Export 2017 (354) E.L.T 624 (Tri-Mumbai).**

In this connection, the provision of section 111(m) of the Customs Act, 1962, is re-produced herein below:

"SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation:

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

26.8 I find that the noticees had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 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.

Further, I find that the Hon'ble High Court of Bombay in the case of *COMMR. OF CUS. (IMPORTS), NHAVA SHEVA Versus IMPERIAL TRADING LLC [2010 (253) E.L.T. 373 (Bom.)]* held that:

Under sub-section (4) of Section 17 of the Customs Act, 1962, the importer is required to make declaration and subscribe to the truth of the contents while filling the bill of entry. Section 17(4) provides for cases where declaration is found to be different from the actual contents of the consignment. Together these provisions cast duty on the importer to make true declaration of the goods. Proviso to Section 46(4) also stipulates that when the importer is unable to furnish all particulars for want of full information, he may request for examination of the goods, pending production of such information. Therefore, if the importer has any difficulty in making proper declaration of the goods due to doubts or any other reason, he has to avail remedy under the said proviso. Despite these safeguards and cautions provided in law, if the bill of entry is found to contain erroneous declaration, it is not open to the importer to claim that it is not mis-declaration.

However, the importer has violated section 46(4) of the Customs act, 1962 while filing bill of entry no. as mentioned in Annexure-A & B and C of the said Show Cause Notice. Further, they attempted to import of Steel Coils by way of mis-declaration of their thickness and nature of the goods for evading applicable Customs duty.

26.9 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil; Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

Section 2 - Definitions, Sub-section (2) - assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

27. From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the Noticees to correctly self-assess the goods in respect of

classification, valuation, claimed exemption notification and other particulars. With effect from 08.04.2011, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s Inder International & M/s Shri Laxmi Steels has deliberately failed to discharge this statutory responsibility cast upon them.

27.1 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the bills of entry has resorted to deliberate suppression of facts and wilful mis-classification of goods under CTH 72091710, whereas the imported goods were correctly classifiable under CTH 720990 and were also evaded applicable safeguard duty by the noticees. Further, the above said mis-classification was done with the sole intention to fraudulently avail the less rate of duty. Thus, the Noticees have failed to correctly classify, assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

27.2 I find that the Noticees had mis-classified the imported goods under CTH 72091710. As already elucidated in the foregoing paragraphs, the impugned imported goods were correctly classifiable under CTH 720990 and thereby benefit of aforesaid Notification No. 152/2009-Cus. dated 31.12.2009 is not admissible to them. Further, by way of mis-declaration in the nature of the goods i.e Hot Rolled flat products of non-alloy steel in coil and sheet from having width more than 600 mm by mis-declaring as Cold Rolled Coils, importer evaded applicable safe-guard duty with respect to Notification No. 2/2015-Customs (SG) dated 14.09.2015 read with Notification No. 1/2016-Customs (SG) dated 29.03.2016.

Therefore, it is apparent that the Noticees have not made the true and correct disclosure with regard to the actual classification and nature of the goods in respective bills of entry leading to suppression of facts. From the above discussions and findings, I find that the Noticees have done deliberate suppression of facts and wilful mis-classification as well as description of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to mis-classify them knowing fairly well that



the goods imported by them were classifiable under CTH 720990. Due to this deliberate suppression of facts and wilful mis-classification, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Therefore, Importer has failed to comply with the conditions mentioned above as the importer misclassified the goods and description of the goods; therefore, the imported goods are liable for confiscation in terms of Section 111(m) of the Customs Act, 1962.

27.3 However, I find that the goods imported vide Bills of Entry as detailed in the Annexures-A&B and C to the impugned SCN, are not available for confiscation. In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. I rely upon the order of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)]* wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:-

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

27.4 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that

there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:-

(a) *M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);*

(b) *M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);*

(c) *M/s Saccha Saudha Pedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);*

(d) *M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)*

(e) *M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:*

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

Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. as reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

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

27.5 With respect to the above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the goods become liable for confiscation. Hon'ble Bombay High Court in case of *M/s Unimark reported in 2017(335) ELT (193) (Bom)* held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111. Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.



27.6 In view of the above, I find that the decision of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.)*, which has been passed after observing decision of Hon'ble Bombay High Court in case of *M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)*- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

(D) Whether or not penalty under Section 112(a) and 112(b) and Section 114A and 114AA of the Customs Act 1962 should be imposed on M/s Inder International.

(E) Whether or not penalty under Section 112(a) and 112(b) and Section 114A and 114AA of the Customs Act 1962 should be imposed on M/s Laxmi Steels.

27.7 I observe that the Show Cause Notice proposes the imposition of penalties on M/s Inder International and M/s Laxmi Steels under Sections 112(a) and 112(b) and 114A, and 114AA of the Customs Act, 1962. In this regard, the noticees have contended that penalties under Section 112 of the Customs Act, 1962 can be invoked only in cases where the goods have been "improperly imported." It is further submitted that the noticees duly imported the goods in question, paid the appropriate customs duties, and that the consignments were released by the Customs authorities after due verification. In view of this, it is argued that the imports cannot be categorized as "improper," and therefore, the proposed penalties are untenable and liable to be set aside in the interest of justice. The proposals in the SCN relating to the imposition of penalties, as well as the rebuttals offered by the importers, require a comprehensive examination in light of the statutory framework and judicial principles governing such penal provisions. The relevant penal sections of the Customs Act, 1962 are reproduced below:-

SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

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

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

Shall be liable

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



- (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:

Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the orders of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

"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."

27.8 With respect to submissions made by the noticees and after verification of the facts recorded in the Show Cause Notice, it is observed that the noticees had declared the goods at the time of import as "Cold Rolled Steel Sheets." However, the test report issued by Bokaro Steel Plant, read with the Customs examination findings, conclusively establishes that the actual thickness and nature of the steel sheets did not correspond with the description declared in the Bills of Entry. This discrepancy has changed the classification of the goods and consequently affects the eligibility of the noticees to claim the benefit of the Country of Origin notification as well as exemption from Safeguard Duty. The mis-declaration has resulted in the incorrect availing of statutory concessions to which the importer was not entitled.

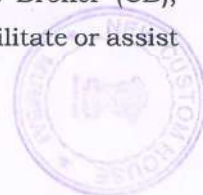


Further, the records reveal that M/s Inder International and M/s Laxmi Steels were directly concerned with the import of the impugned goods and that they failed to disclose the correct description and specifications at the time of import. Such omission and commission amounts to a misdeclaration of material particulars, evidently intended to evade the appropriate customs duties. This conduct renders the goods liable to penal action under the relevant provisions of the Customs Act, 1962.

Coming to the issue of levy of penalty under Section 112(a) and 112(b) of the Customs Act, 1962, I find that plain reading of the said Section makes it clear that the penalty under Section 112(a) and 112(b) would be imposed in the case of improper importation of goods which has rendered the imported goods liable to confiscation under Section 111. Apparently, Clause of section 112(a) & 112(b) has two parts -

27.9 The first part "improper importation of goods by any person who, in relation to any goods ... would render such goods liable to confiscation"; implies that a mere importation that would render such goods liable to confiscation, as indicated above, is sufficient to attract a penalty. As per intention of the legislature, this part of clause (a) is applicable to importer, and/or beneficial owner, as any omission/ commission of conditions of Section 111, by them rendered the goods liable to confiscation. My above view that the existence of mens rea is not an essential ingredient to establish contravention of a civil law, is supported by the judgments of the Supreme Court in the case of *Chairman, SEBI v. Shriram Mutual Fund - 2006 (5) S.C.C. 361* and *Pine Chemicals Suppliers v. Collector of Customs*, followed and applied by the High Court of Madras in *Commissioner of Customs (Export), Chennai-I v. Bansal Industries [2007 (207) E.L.T. 346]*. I also place reliance on the decision of the Hon'ble jurisdictional High Court in the case of *Sankar Pandi v. Union of India reported in 2002 (141) E.L.T. 635 (Mad.)* which decision has thereafter been upheld by the Hon'ble Apex Court [2018 (360) E.L.T. A214 (S.C.)], wherein a similar penalty has been upheld.

28. The second part of Section 112(a) starts with "or abets the doing or omission or such an act and 112(b) starts with "*who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe*would render such goods liable to confiscation." Perusal of this part revealed that for abetting an offence, the existence of mens rea is an essential ingredient due to mention of the word "abet". Second part is applied to other persons such Customs Broker (CB), Shipping-line, Custodian, Courier etc or any other person, who facilitate or assist



principal offender (importer, exporter and/or beneficial owner) in improper Customs clearance work as stated above.

28.1 I find that the Noticees have claimed that the penalties under Section 112, Section 114A and 114AA are not imposable, however, in the instant case I find that the Noticees had mis-classified the imported goods with malafide intent, despite being fully aware of its correct classification and payable of safeguard duty. I have already elaborated in the foregoing paras that the Noticee has willfully suppressed the facts with regard to correct classification of the goods and deliberately mis-classified the goods, with an intent to evade the applicable higher BCD. I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. In the instant case, the wilful mis-classification and suppression of correct CTH of the imported goods by the Noticees tantamount to suppression of material facts and wilful mis-statement. Thus, willfully mis-classifying the goods amply points towards the "mens rea" of the Noticees to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticees to evade payment of legitimate duty, clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

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

"31. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the



others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (*Ram Chandra Singh v. Savitri Devi and Ors.*[2003 (8) SCC 319].

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

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd.* - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

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

Suppression of a material fact would also amount to a fraud on the court [(Ref: *Gowrishankarv. Joshi Amha Shankar Family Trust*, (1996) 3 SCC 310 and *S.P. Chengalvaraya Naidu's case* (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: *UOI v. Jain Shudh Vanaspati Ltd.* - 1996 (86) E.L.T. 460 (S.C.) and in *Delhi Development Authority v. Skipper Construction Company (P) Ltd.* - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained



playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1: AIR 1994 SC 853. *Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education* (2003) 8 SCC 311.

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

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

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

28.3 Section 114A, Customs Act, 1962 imposes penalties for short-levy or non-levy of duty due to collusion, willful misstatement, or suppression of facts, typically applied to importer or person who is liable to pay the duty or interest. But a penalty under Section 112 cannot be imposed if a penalty is imposed under Section 114A by virtue of the fifth proviso to Section 114A, whereas it is mandated that *Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

28.4 I find that imposing penalty under Section 114A on M/s Inder International and M/s Laxmi Steels company is more appropriate as being beneficial owner/ importer defined under under Section 2(26) of the Customs Act, 1962. Further, it is a mandatory penalty which is required to be imposed in case of demand of duty under section 28(4) of the Customs Act, 1962. The penalty under Section 114A equals the duty evaded and interest, reducible to 25% if paid within 30 days of the Order-in-Original.



Therefore, I refrain myself from imposing a penalty under Section 112 (a) & 112(b) on Noticee No.1 & Noticee No. 2 considering fifth proviso to the Section 114A.

28.5 Further, Section 114AA of the Customs Act, 1962 states that "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." The section applies to any person who deliberately submits false or incorrect information in documents or statements related to customs transactions, such as mis-declaration of goods, their value, country of origin or any other particulars during Customs clearance of the goods. The provision emphasizes the need for knowing or intentional action, meaning the person must have acted with deliberate intent to sign or use, or cause to be made, signed or used, any false or incorrect declaration, statement or document for the purpose of Customs clearance. The Tribunal in *Amglo Resources Pvt Ltd. v. CC, Ahmedabad* (2024) held that:

In relation to penalty imposed under Section 114AA, It is submitted that the key words in the aforesaid Section is 'knowingly' and 'intentionally' and therefore unless mens-rea is established beyond doubt Penalty under the said section cannot be imposed. Hence, since Section 114AA specifically requires proof of mens rea (guilty mind) and deliberate intent.

28.6 Further, Noticees No. 1 and 2 have vehemently contended that Section 114AA can be imposed only in case where there is any mis-declaration, mis-statement or any false declaration or forged document which states any false or incorrect material particular and in this case, the noticees have not made any false declaration, however, it is observed that the language of the provision and judicial interpretations demonstrate a broader scope. I find that section 114AA of the Customs Act, 1962 penalizes any person who fraudulently or knowingly makes a false claim for the purpose of evading duty or obtaining undue advantage under the Customs Act, 1962.

28.7 I observed from para-5.3 of the Show Cause Notice where it is mentioned that the office of DRI informing therein that during searches conducted at the business premises of the Noticee No. 1 firm, the office of DRI, Ludhiana had resumed various incriminating records evidencing the fact that HROP sheets and coils (HROP stands for Hot Rolled Oiled & Pickled) were imported by them in the guise of CR sheets and /coils in the recent past. Besides this, it was also informed that the office of DRI, Ludhiana had also resumed certain records which show that certain consignments of coils cleared from the Mumbai sea port

were declared to the Customs to be Secondary & Defective CR Coils whereas the same were declared before the Excise & Taxation Department by the party at the state entry barrier to be HR Coils and this act of behaviour of the said importer proved that they used false and incorrect material before the customs department to clear the goods thereby rendering their acts of omission and commission liable to penal action under Section 114AA of the Customs Act, 1962.

28.8 I further find that the legislative intent behind Section 114AA of the Act is to safeguard revenue interests by penalizing fraudulent practices in customs transactions, whether they pertain to imports or exports. I find that in "*Nitin Khandelwal vs. Principal Commissioner, Customs (Import) ICD Tughlakabad, New Delhi* (Final Order dated 13 September 2024)", the Hon'ble CESTAT in Para 45 held that, *"A plain reading of the above shows that the person who knowingly making any false declaration statement or produce a 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 under Section 114AA. Bills of Entry are certainly documents meant for transaction under the Customs Act. There is nothing in the text of section 114AA which shows that it is confined only to export and does not apply to imports. Learned counsel relied on the 27th Report of the Standing Committee of the Finance in support. We have examined it. The Committee had expressed concerns about the introduction of an additional section 114AA as it was considered harsh. In response, the Ministry explained that this has been introduced consequent upon several cases of fraudulent exports for which no goods were being exported or papers being created claiming benefits under the scheme. After the Ministry's response, the Committee felt that the proposal to introduce Section 114AA was in the right direction but advised the Government to monitor the implementation of this provision with due care. Nothing in this report indicates that it is confined only to cases of export it only states the background in which this provision was made. At any rate, any discussion during the Committee meeting cannot form the law. The law has to be read as it has been enacted by the Parliament. Nothing in the text of section 114AA shows that it applies only to exports and not to imports."*

28.9 With regards to the point of penalty on directors of a partnership company/firm, the noticees contended that the penalty could not be imposed on partners as well as on the company separately and submitted some cases laws. In this regard, I am reproducing section 140 of the Customs Act, 1962.

140. Offences by companies.

(1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained



in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2)Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-(a)"company" means a body corporate and includes a firm or other association of individuals; and (b)"director", in relation to a firm, means a partner in the firm.

29. I find law is lucid wherein, sub-section 2 clearly states that "where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly". As discussed above, it has proved that partners of M/s Inder International and proprietor of M/s Laxmi Steels were part of the whole cartel with only motive to evade customs duty. Hence, both partners are liable for penalty separately. Similarly, Indresh Jain partners in M/s Inder International has proved their roles, accordingly both will be penalized separately as partner of the said company.

(F) Whether or not penalty under Section 112(a) and (b) and 114AA of the Customs Act 1962 should be imposed on Shri Indresh Jain partner of M/s Inder International who look after the overall affairs of Noticee-1 and Noticee-2 and whether or not penalty under Section 112(a) and (b) and 114AA of the Customs Act 1962 should be imposed on Shri Abhay Jain.

29.1 The next issue before me is to examine the issue of penalties under Section 112(a)&(b) and Section 114AA of the Customs Act, 1962. I find that SCN has proposed penalty on Sh. Indresh Jain and Sh. Abhay Jain under section 112(a) & (b) and 114AA ibid individually each of them in respect of the goods covered under Bills of Entry as detailed in the Annexure A, B and C to the SCN. SCN has also alleged to impose a penalty under Section 112(a) & 112(b) and 114AA for mis-declaring the classification to evade the applicable safeguard duty on behalf of M/s Inder International & M/s Laxmi Steels.



29.2 It is clear from the above that Section 112(a) of the Customs Act includes two categories of persons, who may be liable for penalty. The first category of persons is those who, in relation to any goods, do or omit to do any act which renders the goods liable for confiscation under Section 111 of the Customs Act. The second category of persons comprises of those who abet the doing or omission of such acts. In other words, it penalizes the main offender, but simultaneously, it has also cover offences of facilitator by addition of word "abet".

However, section 112(a) of the Customs Act primarily addresses the liability of goods to confiscation in cases of non-compliance with the relevant legal provisions. The section highlights the significance of adhering to prescribed customs procedures, which, when violated, can lead to severe consequences, including the confiscation of goods. In this context, it is pertinent to examine the actions of Sh. Indresh Jain, who, despite being fully aware of the true nature and classification of the goods in question, intentionally sought to evade the appropriate customs duties.

29.3 I find from the records that Sh. Indresh Jain, having a clear understanding of the classification criteria under the applicable tariff schedules, was fully cognizant of the correct customs duties that should have been levied on the goods. However, in an attempt to circumvent the lawful payment of these duties, he deliberately misclassified the goods under an incorrect tariff heading and also evade applicable safeguard duty. This misclassification and evading of applicable safe-guard duty was designed to attract a lower customs duty, in direct contravention of the customs regulations.

Furthermore, Sh. Indresh Jain sought to an erroneous notification and falsely claimed the benefit of a Country of Origin Certificate, which he knew would facilitate the wrongful exemption or reduction of customs duties. By making these false representations, he attempted to unlawfully benefit from preferential treatment, thereby circumventing the intent and provisions of the Customs Act, 1962. The actions of Sh. Indresh Jain represent a clear case of deliberate evasion of customs duties through misclassification and the manipulation of documentation to secure unauthorized duty benefits. Such conduct undermines the integrity of the importer and highlights the importance of stringent enforcement of regulations to prevent abuse and safeguard the revenue of the government.

As far as Section 112(b) of the Customs Act, 1962 is concerned, it applies to any person who acquires possession of, or is in any way involved in carrying, removing, depositing, harbouring, keeping, concealing, selling, purchasing, or otherwise dealing with any goods in contravention of the Act. However, upon a



thorough examination of the show cause notice, no evidence has emerged to indicate the presence of any such ingredients necessary to attract the provisions of Section 112(b). Accordingly, the invocation of this section is not substantiated on the facts of the present case.

29.4 In the instant case, I find that it has been proved without doubt that Shri Indresh Jain who look after work of Noticees No. 1 and 2 had knowingly used the invoices with incorrect description, thickness, quality i.e hot or cold rolled, COO benefit for presenting the same before the customs Authorities and was abetted or helped by Sh. Indresh Jain. This activity of Shri Indresh Jain resulted into the evasion of Customs duty of the goods. Such acts of omissions and commissions on his part have rendered the impugned goods liable for confiscation under the provisions of section 111(m) of the Act *ibid*. Thus, I find that Shri Indresh Jain is liable for penalty under Section 112(a) of the Customs Act, 1962.

29.5 From the facts of the case, I find that the importer was aware and had knowingly used the invoices wherein incorrect description, thickness, and quality of the goods & country of origin mentioned. Thus, I find that the importer had knowingly used and caused to be used such particulars as mentioned above that were false for the transactions under the Customs Act as explained in the preceding paragraphs. The importer caused wrong declarations made in respective bills of entry and submitted falsified documents. I find that they had knowingly used and caused to be used such particulars as mentioned above that were false for the transactions under the Customs Act as explained in the foregoing paras. Accordingly, on examination of the role of the importer vis-à-vis the legal provisions and ratio of judgement relied above, I hold that Shri Indresh Jain, partner of M/s Inder International is liable to penalty under Section 114AA of the Customs Act, 1962.

29.6 I find that the noticee no-2 is a proprietorship firm having Shri Abhay Jain, brother of Shri Indresh Jain, as its proprietor and SCN has proposed penal action against Section 112(a) & (b) and section 114AA of the Customs Act, 1962. In this context, as far as proposal of imposition of penalty on proprietorship firm as well as the proprietor thereof is concerned, I am of the opinion that the penalty cannot be imposed against both the sole proprietor and the said firm as the same rather amounts to double jeopardy. Simultaneous imposition of penalty on the proprietorship firm and the proprietor is not warranted as various high courts judgement have held that there is practically no distinction between the proprietor and the firm. I rely upon the judgement of Delhi High Court in the



case of *Anil Kumar Mahensaria vs. Commissioner of Customs reported as [2008 (228) ELT 166(Del)]* wherein it was held that only one set of penalty can be imposed either on the proprietor or upon his proprietorship firm.

In respect of the penalty imposed on the proprietor, the Hon'ble Punjab and Haryana High Court in the case of *Vinod Kumar Gupta Vs. CCE-2013 (287) E. L. T. 54 (P & H)* have held as under:-

Having heard learned counsel for the parties, we are of the considered opinion that proprietorship firm or proprietor thereof cannot be treated as two different legal entities. Partnership firm is a firm in mercantile usage, however, penalty imposed on the proprietorship or partnership firms would mean penalty on the proprietor or partners thereof, therefore, imposition of penalties one on the proprietorship firm and second on the proprietor would amount to imposition of penalty twice, which cannot be sustained in the eyes of the law.

Hence, in view of the aforesaid omissions and commissions attributable to the noticee, which have resulted in the goods becoming liable to confiscation under the relevant provisions of law, I hereby opine that being a proprietorship firm, the penalty is applicable either upon the M/s Lakshmi Steels as firm, or its proprietor, Shri Abhay Jain.

Accordingly, I pass the Order as follows:

29.7

ORDER

(i) I reject the classification of the goods imported by **M/s Inder International** under Bill of Entry No. 4289284 dated 17.02.2016 under CTH 7209 1710. The goods are hereby ordered to be reclassified under CTH 7209 90, and the effective tariff rate of customs duty as indicated in Annexure-A to the SCN, is to be charged instead of the concessional rate of duty claimed under Notification No. 152/2009-Cus., dated 31.12.2009 (as amended) read with notification no.187/2009-Cus(N.T) dated 31.12.2009.

(ii) I determine and confirm the demand of differential Customs duty of **Rs. 6,52,479/- (Rupees Six Lakhs Fifty Two Thousand Four Hundred Seventy Nine only)**, from **M/s Inder International** for the goods imported vide bill of entry no. 4289284 dated 17.02.2016 (as per Annexure-A) under section 28(8) along with interest under Section 28AA of the Customs Act, 1962.

(iii) I determine and confirm the demand of differential Safeguard duty of **Rs. 11,57,486/- (Rupees Eleven Lakhs Fifty-Seven Thousand Four Hundred Eighty Six only)**, in respect of bill of entry no. 3753509 dated 29.12.2015 (as per Annexure-C) from **M/s Inder International** for the goods imported vide bills of entry under section 28(8) along with interest under Section 28AA of the Customs Act, 1962.

(iv) I order to confiscate the goods imported under bill of entry no. 4289284 dated 17.02.2016 (as per Annexure-A) to the SCN) having Assessable value of **Rs.**



45,61,339/- (Rupees Forty-Five Lakhs Sixty-One Thousand Three Hundred Thirty-Nine only) under section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs.4,60,000/- (Rupees Four Lakhs Sixty Thousand only)** on M/s **Inder International** under Section 125 (1) of the Customs Act, 1962.

(v) I order to confiscate the goods imported under bill of entry no. 3753509 dated 29.12.2015 (as per Annexure-C the SCN) having Assessable value of **Rs. 57,87,431/-(Rupees Fifty-Seven Lakh Eighty-Seven Thousand Four Hundred Thirty-One only)** seized vide letter F.No. DRI/LDZU/856/ENQ-48(INT-19)/2015-III/431-433 dated 22.02.2016 (as detailed in Annexure-C to the SCN), under section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 5,80,000/-(Rupees Five Lakhs Eighty Thousand only)** on M/s **Inder International** under Section 125 (1) of the Customs Act, 1962.

(vi) I Impose penalty equal to the duty of **Rs. 18,09,965/- (Rupees Eighteen Lakhs Nine Thousand Nine Hundred Sixty-Five only)** (as per Annexure-A&C) along with applicable interest on **M/s Inder International** under Section 114A of the Customs Act, 1962.

(vii) I impose penalty of **Rs.1,03,48,770/-(Rupees One Crore Three Lakhs Forty-Eight Thousand Seven Hundred Seventy only)** under Section 114AA of the Customs Act, 1962 on **M/s Inder International**.

(viii) I reject the classification of the goods imported by **M/s Lakshmi Steel** under Bills of Entry No. 3480776 dated 04.12.2015, 3552261 dated 11.12.2015, and 3749151 dated 29.12.2015 (Annexure-B to the SCN) under CTH 7209 1710. The goods are hereby ordered to be reclassified under CTH 7209 90, and the applicable effective tariff rate of customs duty is to be charged, in place of the concessional rate of duty claimed under Notification No. 152/2009-Cus., dated 31.12.2009 (as amended) read with notification no.187/2009-Cus(N.T) dated 31.12.2009.

(ix) I determine and confirm the demand of differential Customs duty of **Rs. 22,68,790/- (Rupees Twenty-Two Lakhs Sixty-Eight Thousand Seven Hundred Ninety only)**, from **M/s Lakshmi Steel** for the goods imported vide bills of entry (as per Annexure-B to the SCN) under section 28(8) along with interest under Section 28AA of the Customs Act, 1962.

(x) I order to confiscate the goods imported under bills of entry (as per Annexure-B) to the SCN) having Assessable value of **Rs. 1,59,24,717/- (Rupees One Crore Fifty-Nine Lakhs Twenty-Four Thousand Seven Hundred Seventeen only)** under section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs.16,00,000/-(Rupees Sixteen Lakhs only)** on **M/s Lakshmi Steel** under Section 125 (1) of the Customs Act, 1962.

(xi) I Impose penalty equal to the duty of **Rs. 22,68,790/- (Rupees Twenty-Two Lakhs Sixty-Eight Thousand Seven Hundred Ninety only)**, along with applicable interest on **M/s Lakshmi Steel** under Section 114A of the Customs Act, 1962.



(xii) I impose penalty of **Rs. 1,59,24,717/- (Rupees One Crore Fifty-Nine Lakhs Twenty-Four Thousand Seven Hundred Seventeen only)** under Section 114AA of the Customs Act, 1962 on **M/s Lakshmi Steel.**

(xiii) I Impose penalty of **Rs. 1,80,996/- (Rupees One Lakh Eighty Thousand Nine Hundred Ninety-Six only)** along with applicable interest on **Sh. Indresh Jain partner of M/s Inder International** under Section 112(a) of the Customs Act, 1962.

(xiv) I impose penalty of **Rs.1,03,48,770/- (Rupees One Crores Three Lakhs Forty-Eight Thousand Seven Hundred Seventy only)** under Section 114AA of the Customs Act, 1962 on **Shri Indresh Jain.**

29.8 This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

प्रद्युम्न

(प्रद्युम्न कुमार त्रिपाठी)

(Pradyumn Kumar Tripathi)
Commissioner of Custom, Import-I,
New Custom House, Mumbai Customs-I.

To,

1. M/s Inder International, H.No. 594, Nirankari Street-1, Overlock Road, Miller Ganj, Ludhiana.
2. M/s Shri Lakshmi Steels, 467, Industrial Area B. Millerganj. Ludhiana – 141003.
3. Shri Indresh Jain, H.No. 594, Nirankari Street -1, Overlook Road, Miller Ganj, Ludhiana.
4. Shri. Abhay Jain, Industrial Area B. Millerganj. Ludhiana – 141003.

Copy to:-

1. The Chief Commissioner of Customs, Mumbai Customs – Zone I.
2. The Principal Additional Director General, Directorate of Revenue Intelligence, 213, Rani Jhansi Road, Civil Lines Ludhiana-141001.
3. The Dy. Commissioner of Customs, Gr. IV, NCH, Mumbai-1
4. Notice Board, CHS, Mumbai Customs - I.
5. EDI Section for uploading at Mumbai Customs Zone1 Website.
6. Office Copy.

