



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. : S/26-MISC-45/2017-18/Gr. IV & E-OFFICE F NO. CUS/AG/MISC/2290/2023-ADJN

के द्वारा जारी किया गया : विवेक पाण्डेय

आदेश दिनांक: 31.08.2023

आयुक्त सीमाशुल्क (आयात-1)

जारी दिनांक: 28.09.2023

सी.ए.ओ. क्रमांक : 36/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023097700000072327B

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 अभिप्रमाणित 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 ड्रॉफ्ट 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 साढ़े 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।



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)
2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
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F.No. : S/26-MISC-45/2017-18/Gr. IV & & E-OFFICE F NO. CUS/AG/MISC/2290/2023-ADJN

Passed by: VIVEK PANDEY
COMMISSIONER OF CUSTOMS (IMPORT-I)

Date of Order: 31.08.2023
Date of Issue: 28.09.2023

C.A.O. No.: 36/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023097700000072327B

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.

Subject: Third round of adjudication in respect of Show Cause Notice issued vide F. No. DRI/BZU/SPL/3(1)/99 dated 21.07.1999 by DRI, Bombay Zonal Unit, alleging evasion of customs duty in 5 live consignments by M/s. Aryan Overseas Ltd., by undervaluation and misdeclaration in description and quantity in the import of M.S. Sheets, Tin Free Secondaries and Tin Plate Waste - reg.

Brief facts of the case

The said SCN was adjudicated ex parte in first round vide **Order-in-Original No. 1573/2000/CAC/CC/MKB dated 12.12.2000**. The noticees preferred an appeal against the said OIO in CESTAT. Hon'ble CESTAT disposed of the said appeal vide **Final Order No. C-I/133&138/WZB/2004 dated 25.11.2003** and observed: "*We are of the view that this matter needs to be re-adjudicated after the copies of documents are supplied to the appellants and to the adjudicator and thereafter the appellants are given proper notice of hearing regarding which extensive submissions were made by both sides and the matter be re-determined on all aspects*".

2. Subsequently, the matter was adjudicated in the second round of adjudication vide Order-in-Original No. 137/2005/CAC/CC/PK dated 16.12.2005, which was challenged by the noticee-1 & noticee-2 in Tribunal. In this regard, Hon'ble Tribunal disposed of the said appeal vide Final Order No. A/87999-88003/17/CB dated **12.06.2017** and observed: "*6. We have heard Learned Counsel for appellants at length. Learned Authorized Representative also submitted his arguments. We find that the impugned order has not recorded a disposal of the request of the importer re-test of the samples. Unless the test report is able to confirm that the goods have been misdeclared, the entire proceedings, based as they are on the allegation of attempt to evade the stipulation of floor prices imposed as a condition of import, would fail. The credibility of the test report has to be established beyond doubt. The consequence of abandonment of goods has also not been examined in the impugned order. 7. Considering the critical nature of these two aspects on the final outcome of proceedings, there is need for a re-consideration of the submissions made by the importer. A proper appreciation of the circumstances can be rendered only at the level of the adjudicating authority. To enable that to be done, we set aside the impugned orders and remand the matter back to the original authority for a fresh decision after hearing the submissions of the importer*".

In pursuance of the said Hon'ble Tribunal's Order, the said SCN/case is now before me for third round adjudication.

3. **DRI, Bombay Zonal Unit** initiated an investigation based on the intelligence inputs that **M/s. Aryan Overseas Ltd¹** were importing 'Tin plated sheets' misdeclaring as 'Tin Free Sheets and were also misdeclaring the quantity of the goods imported. Officers of the Directorate of Revenue Intelligence, Bombay Zonal Unit (hereinafter referred as DRI, BZU) searched the office premises of the said company situated at 1511, Maker Chamber V, Nariman Point, Mumbai on **19.04.1999**. During the course of the search the officers recovered certain

¹ hereinafter referred to as the Importer/AOL/Noticee-1



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documents which interalia confirmed the information, certain documents of live consignments as well. During the course of investigation, certain live consignments imported by M/s. Aryan Overseas Ltd. were identified which were covered under bills of entry no. 291 dated 01.04.1999 and 3702, 3681, 3912 and 3705 all dated 12.04.1999, filed with the New Customs House, Mumbai. These goods were classified in sub-heading **721090** under description 'Tin Free Secondary Sheets' and customs duty paid was Rs.13,29,725/-. At the request of DRI, these consignments were subjected to 100% examination by Mumbai Customs in the presence of the DRI officers and thereafter subjected to actual weighment. The subject SCN covers live consignments filed under 05 bills of entry (as detailed to the Annexure-A of the SCN) which were attempted to clear as " Other than Negative List" items without obtaining import license from DGFT to import at lower price than the floor price fixed.

Statement of Shri Atul Bhatia

4. Statement of **Shri Atul Bhatia**², Director of M/s. Aryan Overseas Ltd, was recorded on 19.4.1999, 21.04.99 and 25.06.1999 under the provisions of Section 108 of the Customs Act, 1962; wherein he deposed, interalia that M/s. Aryan Overseas Ltd. is engaged in the import of MS Sheets, Tin Free Secondaries, Tin plate secondaries and Tin plate waste; that they buy the products from M/s. Bowler & Sons, U.K. , M/s. Hern & Co UK, M/s. Nicomet, Holland, M/s. Metro International, USA and M/s. Royal Canadian Steel, Canada, that on an average they imported about 1500 M.T. of the said goods; that from December 1998 onwards and after issue of notification by DGFT fixing floor price for import of Tin plate waste/secondary and Tinfree secondary sheets under OGL, **they have been misdeclaring 'Tin Plate secondary and Tin plate waste as Tin free secondaries'** in the Bills of Entry filed for the clearance of the said goods; that **they did this because floor price fixed for Tin plate secondaries is US\$ 545 per MT whereas the floor price for Tin Free Secondaries is US\$ 311 per MT**; that on their request the foreign suppliers were describing Tin Plate waste and secondaries as Tin Free Secondaries and also indicating the value as per their requirement, in the invoices received from time to time; that generally the invoice price range was between US\$ 315 to US\$ 320; that they have been receiving extra quantity of about 20% of the weight declared in the invoices in most of the shipments received by them from December 1998 onwards; that the goods in 34 containers covered under 12 Bills of Entry are pending clearance from Customs; that in these 12 Bills of Entry, the imported goods have been described as Tin Free Secondary Sheets and MSCR; that he will be able to explain the actual description of the goods contained in the said containers after perusing the documents from the respective shippers; that these documents were seized by the DRI officers under panchanama dated 19.04.1999; that after perusing page No. 83 of Box file No. 4 seized under panchanama dated 19.04.1999, he stated that the same was received from M/s. Royal Canadian Steel on 02.03.1999 by fax which shows the details regarding Container No, actual description of goods and actual weight. Based on these document, he stated that the goods in three containers covered by Bill of Entry No. 291 dated 01.04.1999 are Tin plate as against the declared desorption of Tin free secondary and the actual

² hereinafter referred to as the noticee-2

weight of the goods is 64.6 MT as against the declared weight of 45.29 MT; that After perusing the documents at page no. 73,75,77,85 87.89,91,93,95,101, 103 and 105 of Box file No.5 seized under panchanama dated 19.04.1999, he stated that the goods covered by Bills of Entry No. 3702, 3681, 3912 and 2705 all dated 12.4.1999 are actually Tin plate as against the declared description of Tin Free Secondary and the actual weight in respect of these consignments has not communicated by the Shipper M/s. Metro International Trading Corporation, New York.

5. The goods relating to the aforementioned Bills of Entry were subjected to 100% examination by the Customs Officers in the presence of the DRI Officers and thereafter subjected to actual weighment. The details of the same are as under:

5.1 Bill of Entry No. 291 dated 01.04.1999 was filed for clearance of 45.297 MT of goods declared as Tin free secondaries Misprint/mislaquered shipped by M/s. Royal Canadian Steel Inc Canada with a declared C & F value of US\$ 14268.55 at the rate of US\$ 315 per MT.

5.1.1 On examination, the above goods contained in three containers were found to have tags with description "ETP(MP)", "Misprint (G)" and "ETP(P)". A total number of 87 skids were found in the said consignment out of which 3 skids weighing 3430 Kgs are of strips and the balance are sheets of sizes 500 x 700 MM and larger. After actual weighment, the ascertained gross weight is 65.400 MT as against the declared gross weight of 46.227 MT. Hence, the excess weight found in the consignment is 19.173 MT. The net weight declared in the Bill of Entry is 43.297 MT. Thus the actual net weight of sheets with description ETP(MP), ETP(P) and Misprint(G) is 61.040 MT and the net weight of strips with description ETP(MP) is 3.430 M.T.

5.1.2 Six representative samples were drawn from the said consignment and forwarded to the Deputy Chief Chemist, New Custom House, Mumbai for ascertaining whether the same are Tin free sheets or Tin plated sheets. The Deputy Chief Chemist vide test reports, all dated 07.06.1999, informed that all the six samples are 'Tin plated steel(Magnetic)'. The said six test reports were shown to Shri Atul Bhatia, who accepted the same.

5.2 Bill of Entry no. 3702 dated 12.04.1999 was filed for clearance of 29.052 MT of goods described as Tin Free Steel Secondaries (misprints/mislaquered) shipped by M/s. Metro International Trading Corporation, New York, with a declared C&F value of US\$ 59151.38 at the rate of US\$ 315 per MT.

5.2.1 On examination of the goods in two containers & total of 27 skids containing sheets were found in the consignment. Out of this, 20 skids were found to contain TinPlate secondary sheets and the balance 7 skids were found to contain Tin Free secondary sheets. On weighment, the consignment was found to contain 23.00 MT of Tin Plate secondary sheets and 11.010 MT of Tin Free secondary sheets totalling to 34.010 MT as against the total declared weight of 29.052 MT.

5.2.2 Five representative samples were drawn and forwarded to the Deputy Chief Chemist, New Customs House, Mumbai for test. The Deputy Chief Chemist forwarded test reports all dated 07.06.1999 for the said five samples in which it has been reported that the samples of Tin

Plate sheet and Tin Free sheet drawn from container no. EISU-3002814 are composed of 'tin plated steel (Magnetic)' and "steel magnetic, not tin plated" respectively. The two samples of Tin Free secondary sheets (drawn from skid no. 323 & 326) and the sample of tin plated secondary sheet (drawn from skid no. 324) in container no. EISU-3044609 have been reported as composed of 'Steel (Magnetic) not tin plated' and 'Tin plated steel (Magnetic)' respectively. The five reports were shown to Shri Atul Bhatia, who accepted the same.

5.3 Bill of Entry no. 3705 dated 12.04.1999 was filed for clearance of 29.437 MT of goods described as Tin Free secondaries (Misprint/Mislaquered) shipped by M/s. Metro International Trading Corporation, New York, with a declared C&F value of US\$ 9272.66 at the rate of US\$ 315 per MT.

5.3.1 On examination of the goods in two containers, total 34 skids containing sheets were found in the consignment. Out of this, 32 skids were found to contain Tin Plated secondary sheets and 2 skids were found to contain Tin Free secondaries. On weighment, the consignment was found to contain 32.340 MT of Tin Plated secondary sheets and 3.150 MT of Tin Free secondary sheets totalling to 35.490 MT as against the total declared weight of 29.437 MT.

5.3.2 Three representative samples (two of tin plated secondary sheets and one of tin free secondary sheets) were drawn and forwarded to the Deputy Chief Chemist, New Customs House, Mumbai for test. The Deputy Chief Chemist forwarded the test reports all dated 07.06.1999 for the said three samples, in which it has been reported that the samples of tin plated secondary sheets are composed of 'tin plated steel (Magnetic)' and that the sample of tin free secondary sheet is composed of 'steel (magnetic), not tin plated'. The test reports were shown to Shri Atul Bhatia, who accepted the same.

5.4 Bill of Entry no. 3681 dated 12.04.1999 filed for clearance of 28.762 MT of goods declared as tin free steel secondaries (misprint/mislaquered) shipped by M/s. Metro International Trading Corporation, New York, with a declared C&F value of US\$ 9060.03 at the rate of US\$ 315 per MT.

5.4.1 On examination of the goods in two containers, a total of 38 skids containing sheets were found. Out of this, 35 skids were found to contain tin free secondary sheets. On weighment, the consignment was found to contain 32.050 MT of tin plate secondary sheets and 4.500 MT of tin free secondary sheets totaling to 36.550 MT as against the declared weight of 28.762 MT.

5.4.2 Four representative samples (three of tin plate secondary sheet and one of tin free secondary sheets) were drawn and forwarded to the Deputy Chief Chemist, New Customs House, Mumbai for test. The Deputy Chief Chemist forwarded the test reports all dated 07.06.1999 for the said four samples, in which it has been reported that the samples of tinplate secondary sheets are composed of 'tin plated steel (Magnetic)' and that the sample of tin free secondary sheet is also composed of 'tin plated steel (Magnetic)'. The test reports were shown to Shri Atul Bhatia, who accepted the same.

5.5 Bill of Entry no. 3912 dated 12.04.1999 filed for clearance of 28.761 MT of goods declared as tin free steel secondaries (Misprint/mislaquered) shipped by M/s. Metro International Trading Corporation, New York, with a declared C&F value of US\$ 9059.72 at the rate of US\$ 315 per MT.

5.5.1 On examination of the goods in two containers, a total of 31 skids containing sheets were found in the consignment. Out of this, 27 skids were found to contain tin plated secondary sheets and 4 skids were found to contain tin free secondary sheets. On weighment the consignment was found to contain 51.570 MT of tin plated secondary sheets and 3.870 MT of tin free secondary sheets totalling to 55.440 MT as against the total declared weight of 28.761 MT.

5.5.2 Three representative samples (two of tin plated secondary sheets and one of tin free secondary sheets) were drawn and forwarded to the Deputy Chief Chemist, New Customs House, Mumbai for test. The Deputy Chief Chemist forwarded reports all dated 07.06.1999 for the said three samples, in which it has been reported that the samples of tin plated secondary sheets are composed of 'tin plated steel (Magnetic)' and that the sample of tin free secondary sheet is composed of 'steel (Magnetic) not tin plated'. The test reports were shown to Shri Atul Bhatia, who accepted the same.

6. The goods covered under the said five bills of entry were placed under seizure vide memorandum dated 12.05.1999 and 31.05.1999 under the reasonable belief that the same are liable to confiscation under the provisions of the Customs Act, 1962.

7. The import of seconds and defective Tinplate falling under heading 7210 of the Customs Tariff are restricted in terms of licensing notes inserted at para (3) in chapter 72 of the ITC(HS)Classification of Export and Import Items 1997-2002. Vide Notification No. 34(RE-98)1997-2002 dated 10.12.1998 as amended, issued by the Director General of Foreign Trade, the seconds and defectives of Tin plate(including Tinplate waste/ waste/Tin plate Misprints) are not freely permitted for imports if the CIF value of the said goods is below US\$ 545 per MT. Similarly the said notification also stipulates that plates falling under heading 7208/7211 are not permitted for import freely if the CIF value of the said goods is below US\$ 311 per M.T.

8. During course of investigation, DRI has taken references of the contemporary import of 'ETP (Electro Tin Plated) Secondary in coils and TinPlate Waste/Waste in sheets' having been imported in close proximity of time in CTH 721012 from USA and Canada by various other Indian importers mentioned as follows:

8.1 **M/s. Bombay Crown Industries**, 20, Sona Udyog Industrial Estate, Parsi Panchayat Road, Andheri (E), Mumbai-69 imported 40.425 MT of ETP Second in coils classified under sub-heading 721912 of the Custom Tan under of Entry No. 5151 and 11.6.1999. The said goods are covered by invoice No. IN9044522TP dated 19.4.1999 of M/s. Breen International, 1960, Montour West Industrial Bivd Covaopolis, PA 15108 USA and were shipped from Baltimore to Mumbai under Bill of Lading No. RD025 BADB002 dated 19.04.1999. The unit price of the

said goods indicated on the invoice dated 19.4.1999 of M/s. Breen International was **US\$ 547 per MT (C&F)** The said Bill of Entry indicated that the said goods were of USA origin.

8.2 M/s. Deccan Cans & Printers Pvt. Ltd. Plot No. 19, Road No. 19, MIDC, Marpl Andheri (1), Mumbai-93 imported 321 MT of TinPlate Waste/ Waste Sheets classified under sub-heading 721012 of the Customs Tariff. The said goods had been imported under Bill of Entry No. 8535 dated 20.05.1999 and are covered by invoice No. 4373/950722 dated 11.04.1999 of M/s Lefer Blanc Inc 613, Paramus Road, Paramus, NJ 07652. The goods were shipped from Norfolk to Mumbai under Bill of Lading No. BALA012942 dated 11.04.1999. The unit price for the goods declared in the said invoice was **US\$ 550 CIF per MT**. The said Bill of Entry indicated that the said goods were of USA Origin.

8.3 M/s. Zenith Cans & Containers, A/18, Nand Bhuvan, Industrial Estate, Mahakali Caves road, Andheri(E), Bombay -400093 imported 37.49 MT of Tin place secondaries classified under sub-heading 7210 of Customs Tariff under Bill of Entry No. 5942 dated 14.5.1999, the said goods were covered by Invoice No. (Export Reference No. CFF/99065H dated 18.01.1999 of Steel Canada Ltd. 375 Traders Blvd E Mississauga, Ontario, Canada LAZ.2E5 and were shipped under Bill of Lading No. NSLUNTCMTR-0049681 dated 18.01.1999, The unit price of the said goods indicated on the invoice dated 18.1.1999 was **US\$ 545 per MT CIF**. The said Bill of Entry indicated that the goods were of Canadian origin.

8.4 M/s. Pooja Fab, Kala Silk Factory Compound Shed No. 24, Kashi Village, Post- Mira, Dist-Thane, Maharashtra-401104 imported 37.64 MT of Tin plate secondaries classified under sub-heading 7210 of Customs Tariff under Bill of Entry No. 3820 dated 12.04.1999. the said goods were covered by Invoice No. (Export Reference No. CFF/99065C dated 18.01.1999 of Steel Canada Ltd. 375 Traders Blvd E Mississauga, Ontario, Canada LAZ. 2E5 and were shipped under Bill of lading No. NSLUNTCMTR-0049681 dated 18.01.1999. The unit price of the said goods indicated on the invoice dated 18.1.1999 was **US\$ 545 per M.T CIF**. The said Bill of Entry indicated that the goods were of Canadian origin.

9. The above mentioned contemporary import data of 'Tin plate/Waste and Secondary coils' (commodity in question) pertaining to the other Indian importers clearly indicated that the unit price of the impugned goods of USA origin ranged between US\$ 545 (CIF) to US\$ 550 (CIF) per M.T. at Mumbai. The goods covered by the Bills of Entry as discussed in the foregoing para are similar to the goods i.e. Tin Plate Sheets secondaries imported by M/s. Aryan Overseas Ltd. from the USA. M/s. Aryan Overseas Ltd. have also imported the said goods at or about the time when the said similar goods have been imported from USA and Canada by other importers. It appeared that M/s Aryan Overseas Ltd. has misdeclared the value of the goods in addition to misdeclaration of description and weight as discussed above at the time of import of the said goods. It therefore appeared that the goods i.e. tin plated secondary sheets imported by M/s. Aryan Overseas Ltd, were liable to be assessed at the rate of US\$ 545 (CIF) per MT. (which is the lowest of the available invoice price) for similar goods in terms of Rule 6 of the Customs Valuation Rules, 1988.

10. The foregoing appears to show that:-

10.1 M/s. Aryan Overseas Ltd. imported goods covered by the aforementioned bills of entry as summarized below:

Table-1				
S. No.	B/E No. & Dt.	Tin plated steel secondary sheets quantity (MT)	Tin plated steel secondary strips quantity (MT)	Tin free steel secondary sheets quantity (MT)
1	291/01.04.99	61.04	3.430	-
2	3702/12.04.99	23.00	-	11.010
2	3705/12.04.99	32.340	-	3.150
3	3681/12.04.99	32.050 (+4.500)	-	-
4	3912/12.04.99	51.570	-	3.870
	Total	204.500	3.430	18.03

10.2 M/s. Aryan Overseas Ltd. have imported the said TinPlate Secondary Sheets 204.500 MT falling under sub-heading 721012 of the Customs Tariff and, willfully mis-declared the same as Tin Free secondary sheets classifying them under sub-heading 721090 with a uniform C&F value of US\$ 315 MT. The goods were assessed accordingly and the Customs duty was paid on the declared value at the rate of US\$ 315 per MT. C&F. They did this in order to under-value the goods to the extent of US\$ 230 per MT and thereby evade customs duty as the minimum CIF value noticed for the import of similar Tinplate Secondary Sheets under OGL was US\$ 545 per MT.

10.3 Since no import license was furnished by M/s. Aryan Overseas Ltd. for the import of the said TinPlate Secondary Sheets, it appears that the said goods were liable to be reassessed to a value of US\$ 545 per MT (CIF).

10.4 On reassessment of the goods covered under the five bills of entry, the total assessable value of Rs. 50,92,017/- and the Customs duty payable thereon is Rs. 30,88,818/-. Whereas M/s. Aryan Overseas Ltd. paid Customs duty of Rs. 13,29,725/- on the said goods of assessable value of Rs. 21,92,097/-. Thus, the differential duty of Rs. 17,59,093/- as detailed in Annexure "B" of the SCN.

10.5 The said goods i.e. 'TinPlate Secondary Sheets' weighing 204.500 MT assessable value Rs.48,01,165/- (redetermined) against declared assessable value Rs.19,01,745/-, falling under heading 7210 of the Customs Tariff appeared to have been imported in contravention of the provisions of Notification No. 34(RE-98) 1997-2002 dated 10.12.98, as amended, issued under Section 5 of the Foreign Trade (Development & Regulation) Act 1992, since the said goods when imported with a declared C&F value of US\$ 315 per MT can be imported only under

cover of a valid import license. No such license particulars were furnished in the Bill of Entry filed by M/s. Aryan Overseas Ltd. Hence, the said goods were liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

10.6 The said goods also appeared to have been misdeclared with regard to the value, description and quantity as found during the course of investigation of DRI, MZU. 'Tin Plate Secondary Sheets' falling under sub-heading 721012 and 'Tin Plate secondary strips' falling under sub heading 721210 respectively had been declared as 'Tin Free Secondary Sheets' and classified under sub-heading 721090. Further, quantities in excess of the declared weight have been found during examination of the goods. It, therefore, appeared that the said goods were liable for confiscation under the provisions of section 111(l) and 111(m) of the Customs Act, 1962.

10.7 'Tin Free Steel Secondaries' have been used for concealing 'Tin Plated steel sheets Secondaries'. Therefore 18.03 Metric Tons of 'Tin Free Steel Secondaries' were liable for confiscation under Section 119 of the Customs Act, 1962.

10.8 Both Shri Arul Bhatia (noticee-2) and M/s. Aryan Overseas Ltd. (noticee-2) have been in relation to the said goods, done acts and/or omitted to do acts which acts and/or omissions have rendered the said goods liable for confiscation. They have, therefore, rendered themselves to penal action under the provisions of section 112 (a) of the Customs Act, 1962.

10.9 The goods covered under the said five Bills of Entry were assessed to duty and the duty has been short levied by reason of wilful misstatement and suppression of facts by M/s. Aryan Overseas Ltd. and Shri Atul Bhatia. They are, therefore, liable to pay a penalty equal to the duty evaded, under the provisions of section 114A of the Customs Act, 1962 and interest under Section 28 AB, *ibid*.

11. Now therefore Shri Atul Bhatia, Director of M/s. Aryan Overseas Ltd. and M/s. Aryan Overseas Ltd. were required to show cause to the Commissioner of Customs (Import), New Customs House, Mumbai as to why-

- a) The 204.500 MT of Tin plated secondary sheets covered under the five bills of entry should not be classified under sub-heading 721012 of the Customs Tariff and should not be reassessed to a unit value of US\$ 545 per MT (CIF).
- b) The 3.430 MT of Tin Plate Steel Secondary Strips covered by Bill of Entry No. 291 dated 01.04.1999 should not be classified under sub-heading 721210 of the Customs Tariff.
- c) The said goods i.e. 204.50 MT of Tin Plated Secondary Sheets should not be held liable for confiscation under the provisions of Section 111(d) and/or 111(l) and/or 111(m) of the Customs Act 1962.
- d) 18.03 MT of Tin Free Steel Secondaries should not be confiscated under Section 119 of the Customs Act, 1962.

- e) The differential duty amounting to Rs. 17,59,093/- as detailed in the annexure to this show cause notice should not be recovered under the provisions of Section 28 of the Customs Act 1962 together with interest in terms of Section 28AB, *ibid*.
- f) Penalty should not be imposed on them under the provisions of Section 112 and /or Section 114A of the Customs Act 1962.

12. The noticees were informed that they were required to specifically state in their reply whether they wish to be heard in person by the Adjudicating Authority i.e. the Commissioner of Customs (Imports), New Custom House, Mumbai, before the case is adjudicated, If no reply is received within 15 days from the receipt of this notice or they fail to appear before the Adjudicating Authority, whenever the case is posted for personal hearing, the case will be adjudicated on the basis of evidence on record without any notice to them. In case they wish to inspect any of the documents mentioned and relied upon in this Show Cause Notice (as shown in Annexure ("C")) and to obtain copies thereof, they may do so by prior appointment with the Assistant Director, 'B' Cell, DRI, Mumbai.

12.1 This notice was served at the office address as well as the residence address of Shri Atul Bhatia (Noticee-2) asking him to appear before the Adjudicating Authority for personal hearing. However, all the letters sent at the office address (located at Nariman Point) remained undelivered. Then, Shri Atul Bhatia, Director was requested to appear in person but he did not comply. Instead, only his Advocate appeared for personal hearing. When the adjudication Section officer office visited both the address of office and residence, it was found that Shri Atul Bhatia has sold the registered office premises to some other firm without intimating to the Department. Subsequently, this office vide letter F. No. S/26-Misc.-45/2017-18/Gr.IV dated 15.06.2023 requested SIIB (I), New Customs House, Mumbai, to record a statement of Shri Atul Bhatia, Director of M/s. Aryan Overseas Ltd. to ascertain the facts, namely the present status, assets and liabilities, last balance sheet, profit & loss account details, status of the assets of the firm, directors of the firm, present address of the firm, other related companies of the same family and directors and any other information relevant to the present case.

12.2 Subsequently, SIIB (I), NCH, Mumbai vide letter F. No. CUS/SIIB/MISC/421/2023 - SIIB-O/o COMMR-CUS-IMP-I-ZONE-I-MUMBAI dated 24.08.2023 has reported that Shri Atul Bhatia, Director of M/s. Aryan Overseas Ltd. was summoned; that his statement was recorded on 26.06.2023 in which he stated that the firm is closed since 1999 and no transaction or business has taken place since then; that the firm's premises located at 1511, Maker Chamber, Nariman Point, Mumbai has been sold out to M/s. P. S. F. Trading Pvt. Ltd.; that thereafter, M/s. P. S.F. Trading Pvt. Ltd. summoned on 04.07.2023 but the summon letter was returned with 'Not Known' comment; that furthermore, during visit of said address (Nariman Point) by an intelligence officer of SIIB (I), it was learnt that M/s. P. S. F. Trading Pvt. Ltd. does not exist at the said address; that Shri Atul Bhatia vide letter dated 12.07.2023 was summoned again, to which he had submitted reply vide letter dated 17.07.2023 stating that he has nothing to add and it is no more relevant in adjudication of the matter. The above developments indicate the non-transparent and clandestine behaviour of the noticees.

RECORD OF PERSONAL HEARING

13. Personal hearings in this third round of adjudication were conducted with both the noticees on 21.01.2020, 11.11.2022 and 24.05.2023. The submissions made during these personal hearings are summed up in upcoming para.

13.1 A personal hearing was held on **21.01.2020** in which Shri Akhilesh Kangsia, Advocate appeared in person on behalf of the noticees (noticee-1 & 2) and who inter-alia stated that the **goods have been abandoned**. Hence there is no question of payment of duty, interest and fine; that issue with respect to penalty under Section 112 of the Customs Act 1962 and charge is that confiscation should be done under Section 111 (d) & 111 (m) of the Customs Act 1962 that allegation is with respect to misdeclaration of the goods (tin free as declared or tin plated), quantity & price; that policy Notification No. 31(RE-98)/1997-2002 dated 01.11.1999, 34(RE-98)/1997-2002 dated 10.12.1998 & 35(RE-98)/1997-2002 dated 11.12.1998 is a temporary notification having validity of 2 months and thus proceeding does not service after expiry of Ntnf.; that reliance placed upon various case laws, namely a) M/s. Ajay Industrial Corporation versus Commissioner of Customs (Export Promotion), Mumbai, reported in 2006 (201) E.L.T. 410-(Tri.-Mumbai); b) M/s. Fibre Boards Pvt. Ltd. versus Commissioner of Income Tax reported in 2015-TIOL-178-SC-IT (Para-23); that he further argued that once goods are relinquished, the penalty is not impossible and reliance is placed upon various case laws, namely a) M/s. Nalakath Spices Trading Co. versus Commissioner of Customs reported in 2007 (213) ELT 283 (Tri.-Bang.); b) Commissioner of Customs, ICD, New Delhi versus Sewa Ram & Bros reported in 2003 (151) ELT 344 (Tri.-Del.); c) Garima Trade Services Ltd. versus Commissioner of Customs reported in 2002 (146) ELT 150 (Tri.-Chennai) and reiterated that CESTAT has asked for retesting.

13.2 Further, a personal hearing was held on **11.11.2022** in which Shri Akhilesh Kangsia, Advocate and Ms. Apoorva Parihar, Advocate appeared in person on behalf of noticees (1 & 2) and inter alia stated that goods have already been abandoned and so they argued for no penalty on Shri Atul Bhatia, Director of M/s. Aryan Overseas Ltd.; that they also informed that the main noticee company i.e. M/s. Aryan Overseas Ltd. no longer exists; that they did not have a copy of request for re-testing and so they will submit the grounds for retesting request by 21.11.2022. Also they will try to submit relevant documentary proof of non-existence of the main noticee.

13.3 Last personal hearing took place on **24.05.2023**, Shri T. Vishwanathan advocate appeared on behalf of noticee-1. The proceedings of personal hearing are summed up as below.

- i. Advocate Shri T. Vishwanathan was questioned about the non-availability of request letters for the retest of goods from the department's records. The Advocate responded that even if the request letters were not currently available, the Tribunal recognized the pending request. The retest request related to consignments covered by two Show Cause Notices, with file numbers DRI/BZU/SPL/3(1)/99 and DRI/BZU/SPL/3(2)/99.
- ii. The advocate was shown an addendum DRI/BZU/SPL/3(2)/99 dated 14.12.1999 to 2nd SCN dated 29.11.1999, test report letter dated 25.11.1999 issued by Director, CRCL

covering 11 samples and receipts of aforesaid addendum by the noticees vide acknowledgement dated 15.12.1999 and this acceptance has never been retracted. He acknowledged that the department seems to have already undertaken and presented this retest.

- iii. When asked about the adjudicating authority's handling of the consequences of abandoning goods in previous rounds of adjudications, the advocate pointed out that the importer had already suffered significant losses due to this abandonment. He emphasized that a penalty should not have been imposed given the circumstances.
- iv. Advocate Vishwanathan was questioned about a third Show Cause Notice, SCN no. DRI/BZU/SPL/3(3)/99 dated 17.04.2000 and its adjudication. He stated that, to his knowledge, this notice had not been adjudicated, and no subsequent order had been received.
- v. In response to a claim made during a previous hearing, the advocate clarified that M/s Aryan Overseas Limited is not closed but is, in fact, defunct.
- vi. The advocate was asked for further information about the directors of M/s Aryan Overseas and the company's financial statements. He committed to providing these details by 26.05.2023.
- vii. Lastly, the advocate was requested to provide sales documents detailing the transfer of the office of M/s Aryan Overseas Limited to M/s. PSF Trading. He agreed to obtain and provide these documents, if available, by 26.05.2023.

13.4 The noticees did not provide the above details and documents relating to other Directors of the firm, its latest financial statements, documents relating to sale of its registered office, etc. till the time of issuance of this Order.

Written Submissions

14. During the personal hearing held on 21.01.2020, Advocate submitted written submission dated 21.01.2020. In the written submission it was argued:

That the notifications dated 10.12.1998 & 11.12.1998 are temporary statute .

14.1 That the goods imported are of cold rolled sheets falling under heading 72.08. The value of the goods imported is less than the minimum price of 232 US\$ per MT stipulated in Notification No. 34(RE-98)/1997-02 dated 10.12.1998. The said Notification No. 34 dated 10.12.1998 was amended by Notification No. 31 (RE-99)/1997-02 dated 01.11.1999 introducing licence note and revising the minimum CIF value stipulated in the parent notification and stipulating that the restriction will be effective for a period of two months from the date of issue of the notification, and the minimum import prices as indicated above in the said licensing note shall be treated as withdrawn after the said period of two months. The notification expired on 31.12.1999 without any savings clause.

14.2 By virtue of the decision of the Hon'ble Supreme Court in **Kohlapur Cane Sugar Co. Ltd.**³, Section 6 of General Clauses Act will apply only to Central Act and not to rules or notification. Notification dated 1.11.1999 being a subordinate legislation will not attract application of Section 6 of General Clauses Act. Additionally, as the Notification dated 10.12.1998, as amended by Notification dated 1.11.1999, expired on its own, the same is not repeal. Hence, Section 6 of the General Clauses Act will not apply for this reason as well.

14.3 The Mumbai Tribunal, in case of **Ajay Industrial Corporation**⁴ dealt with the Notification dated 10.12.1998 as amended by Notification dated 01.11.1999 and held that the restriction imposed in the notification expired on its own without a saving clause. Also, the Notification being in the nature of temporary statute, the application of General Clauses Act was precluded. The Tribunal further held that after the expiry of the notification on 31-12-1999, no order can be passed holding a person liable for penalty for contravention of the Notification dated 10-12-1998 as amended on 01-11-1999 even if the act of contravention took place when the Notification was in force. The said decision of the Tribunal in Ajay Industrial has been accepted by the department. This is evident from the Order-in-Original No. 8/10-ACAO 229/09/YSR/AC/GR. VIIC dated 21.8.2009 passed by the Assistant Commissioner.

14.4 In the present case, the SCN was issued on 21.07.1999. However, the first order adjudging the violation of the Notification was passed only on 16.12.2005 by which date the Notifications had expired. Therefore, Notification No. 34(RE-98) dated 10.12.1998 fixing floor price on the imported goods expired when the order of confiscation was passed. In the light of decision of the Tribunal in Ajay Industrial Corporation, the impugned goods are not liable for confiscation under Section 111(d).

14.5 Further, the Hon'ble CESTAT in number of decisions has held that no penalty is imposable once the importer relinquished the title of the goods.

14.6 **No mis-declaration of value or quantity by the noticees:** There is no mis-declaration of the value in the present case since the invoice value represents the transaction value. Also, the goods have been described by the noticees as per the purchase order placed on the foreign supplier and invoice issued by the foreign supplier.

14.7 Further, it is submitted that the reliance by the customs department on the test report to support its case on mis-declaration of description of the goods is not proper. This is because the noticees have requested for retest of the samples. This submission has been appreciated by the Hon'ble CESTAT in Final Order dated 16.02.2017 and the same has been recorded as one of the reasons for remand and in the absence of re-testing of the samples, the allegation of misdeclaration of description of the goods is sustainable. In view of these facts, confiscation under Section 111 (m) is not sustainable.

³Kohlapur Cane Sugar Co. Ltd. Vs. Union of India- reported in 2000 (119) ELT 257

⁴ Ajay Industrial Corporation Vs. CC- reported in 2006 (201) ELT 410 (T)

14.8 The department has also alleged that the quantity declared by the noticees is incorrect and the same is a case of mis-declaration. However, the customs duty is leviable on ad valorem basis and since for the purpose of valuation what is relevant is the price actually paid or payable, the mis- declaration of the quantity is irrelevant. Further, it is not the case of the department that the noticees have paid to the foreign supplier, over and above the price mentioned in the invoice, Therefore, confiscation under Section 111(l) is not sustainable.

14.9 Invocation of Section 111 of the Customs Act, 1962 for confiscation of goods is not sustainable since the goods are already abandoned. The noticees have abandoned the impugned goods and the same still remain in the custody of the customs department. The noticees are not under the control of the impugned goods and no import has been completed. Therefore, the proposal to invoke clauses of Section 111 for confiscation is not valid and justified.

14.10 **Penalty is not imposable:** In light of the foregoing submissions, goods are not liable to confiscation under Section 111. As the goods are not liable to confiscation under Section 111, penalty under Section 112 is not imposable on the noticees. In any case, the goods are available with the customs. Hence, in these facts and circumstances, no penalty ought to have been imposed on the noticees.

14.11 As mentioned above, there is no mis-declaration of the value of the goods. Further, without admitting even if it assumed that there is mis-declaration of description of the goods and therefore, the goods are liable for confiscation under Section 111(m), the penalty of an amount Rs. 5,000-/ alone can be imposed under Section 112(ii) of the Customs Act 1962. This is because there is no evasion of duty as the value of the goods have been correctly declared.

15. During personal hearing held on 11.11.2022, Advocate submitted synopsis retreating the same as in the synopsis dated 21.01.2020, alongwith 1) Chapter 1 of Foreign Trade Policy 1997-2002 as amended up to 05.11.1999; 2) **Garima Trade Services Ltd.**⁵; 3) **Cooper Pharma**⁶; 4) **Classic Colour Photo**⁷; 6) **N. K. Wollen and Silk Mills**⁸; 7) **Geep Industrial Syndicate Ltd.**⁹; 8) **Yamuna Gases and Chemicals Ltd.**¹⁰

DISCUSSIONS AND FINDINGS

16. The case involves two noticees and their 5 live import consignments. The two noticees are :

Noticee-1 (M/s. Aryan Overseas Ltd.) &

Noticee-2 (Shri Atul Bhatia, Director).

⁵ Garima Trade Services Ltd. versus CC, Visakhapatnam reported in 2002 (146) ELT 150 (Tri.-Madras)

⁶ Cooper Pharma versus CC (I) reported in 2009 (243) ELT 199 (Tri.-Mumbai)

⁷ Classic Colour Photo versus CC reported in 1994 (70) ELT 750 (Tri.-Delhi)

⁸ N. K. Wollen and Silk Mills versus CCE reported in 1989 (43) ELT 686

⁹ Geep Industrial Syndicate Ltd. versus Union of India reported in 1992 (58) ELT 493

¹⁰ Yamuna Gases and Chemicals Ltd. versus CCE reported in 2017 (347) ELT 291 (Tri.-Chandigarh).

I have gone through all the case records especially SCN, defense reply of the noticees and their submissions made during the personal hearings.

17. This is the third round of adjudication in this case. The subject SCN dated 21.07.1999 was adjudicated in the first round vide **Order-in-Original No. 1573/2000/CAC/CC/MKB dated 12.12.2000** issued in F. No. S/10-56/99 /Adj. by Commissioner of Customs (Adjudication), New Customs House, Mumbai. Aggrieved with the said OIO, the noticees appealed against it in the Hon'ble Tribunal, Mumbai vide Appeals Numbers C/404, 423, 424/01, C/803, 804 and 805/03. Hon'ble Tribunal vide Final Order No.C-I/133138/EZB/2004 dated **25.11.2003** remanded the case back to the original adjudicating authority with directions to provide copies of relevant documents. . Following the directions of the Hon'ble Tribunal, the matter was re-adjudicated vide **Order-in-Original No. 137/2005/CAC/CC/PK dated 16.12.2005** issued from the even number file. Again aggrieved with the said OIO, the noticees appealed in the Hon'ble Tribunal, Mumbai vide Appeal No. C/344 to 347/2006. Hon'ble Tribunal vide Final Order No. A/87999-88003/17/CB dated 07.02.2017 remanded the case back again on the following two points:

- i. *disposal of the request of the importer for re-test of the samples*
- ii. *consequence of abandonment of goods has also not been examined*

The case remained in call book for long due to impact of Mangali Impex and Canon India Judgements. In compliance with the Order of the Hon'ble Tribunal, the matter is now being taken up for denovo adjudication.

18. The SCN alleges evasion of customs duty by misdeclaration of description and quantity and undervaluation in the import of 'Tin Plated Sheets' misdeclared as 'Tin Free Sheets' under **05 live bills of entry processed at Mumbai Port**, as detailed in Table-2 below:

Table-2 (Bills of Entry with actual quantity and nature of goods found on examination)				
S. No.	B/E No. & Dt.	Tin plated steel secondary sheets quantity (MT)	Tin plated steel secondary strips quantity (MT)	Tin free steel secondary sheets quantity (MT)
1	291/01.04.99	61.04	3.430	-
2	3702/12.04.99	23.00	-	11.010
3	3705/12.04.99	32.340	-	3.150
4	3681/12.04.99	32.050 (+4.500)	-	-
5	3912/12.04.99	51.570	-	3.870
	Total	204.500	3.430	18.03

19. Based on the submissions of the noticees and observations of the Hon'ble tribunal, the following issues arise for determination in this adjudication:

- I. Whether misdeclaration and undervaluation of tin plated sheets by the noticees is proved or not ?
- II. Disposal of the request of the importer for re-test of the samples.
- III. The noticees' claim that there is no offence as the Notification No. 34 (RE-98) dated 10.12.98 issued under the Foreign Trade Regulation Act 1998 did not have a saving clause unlike the Customs Act which has a saving clause in Section 159A. The interpretation is based on reading of the Section 6 of the General Clauses Act read with Hon'ble Supreme Court's judgement in the case of Kolhapur Cane Sugar Co. Ltd.
- IV. Consequences of the abandonment of the goods as regards to the demand of differential duty, confiscation and penal action on the noticees.

Now let me take up the above issues one by one:

20. Whether misdeclaration and undervaluation of tin plated sheets by the noticees is proved or not ?

20.1 Para-3 of the said SCN records that the imported goods covered under the 5 BEs were subjected to 100% examination and actual weighment by Customs. Thereafter, multiple representative samples from each consignment were tested by the Deputy Chief Chemist ,NCH, Mumbai. The results are summed up below .

- i. All the 06 test reports all dated 07.06.1999 of all the 06 samples drawn from the goods covered under Bill of Entry No. **291 dated 01.04.1999** have confirmed that all the goods were 'Tin plated steel (Magnetic)' against the declared 'Tin free secondaries Misprint/mislaquered';
- ii. The 05 test reports all dated 07.06.1999 of all the 05 samples drawn from the goods covered under Bill of Entry No. 3702 dated 12.4.99 have confirmed that the samples of Tin plate sheet and Tin free sheet drawn from container no. EISU-3002814 were composed of 'Tin plated steel (Magnetic)' and 'steel magnetic, not tin plated' respectively. The two samples of Tin Free secondary sheets (drawn from skid Nos. 323 and 326) and the sample of tin plated secondary sheet (drawn from skid No. 324) in container No. EISU- 3044609 had been reported as composed of 'Steel (Magnetic) not tin plated and 'Tin plated steel(Magnetic)' respectively;
- iii. The 03 test reports all dated dated 07.06.1999 of all the 03 samples drawn from the goods covered under Bill of Entry No. 3705 dated 12.04.1999 have confirmed that the samples of 'Tin plated secondary sheets' were composed of 'Tin plated steel (Magnetic)' and the sample of 'Tin free secondary sheet' was composed of ' Steel (Magnetic), not Tin plated';

- iv. The 04 test reports all dated 07.06.199 of all the 04 samples drawn from the goods covered under Bill of Entry No. 3681 dated 12.04.1999 have confirmed that the samples of 'Tin plate secondary sheets' were composed of 'Tin plated steel(Magnetic)' and the sample of 'Tin free secondary sheet' was also composed of 'Tin plated steel(Magnetic)';
- v. The 03 test reports all dated 07.06.1999 of all the 03 samples drawn from the goods covered under Bill of Entry No. 3912 dated 12.4.99 have confirmed that the samples of 'Tin plated secondary sheets' were composed of 'Tin plated steel(Magnetic)' and the sample of 'Tin free secondary sheet' was composed of 'Steel (Magnetic) not tin plated'.

20.2 Para-3 of the SCN also records that substantial excess quantity was found on weighment done during 100% examination of the goods. The excess quantity found is detailed below.

- i. On weighment of 03 containers covered under Bill of Entry No. 291 dated 01.04.1999 filed for clearance of declared net weight 45.297 MT, the consignment was found to contain 64.47 MT (61.040 MT of sheets with description ETP(MP), ETP(P) and Misprint (G) and 3.430 MT of strips with description ETP(M P) against declared net weight 45.297 MT.
- ii. On weighment of 02 containers covered under Bill of Entry No. 3702 dated 12.04.1999 filed for clearance of declared net weight 29.052 MT, the consignment was found to contain 34.010 MT (23.000 MT of Tin plate secondary sheets and 11.010 MT of Tin free secondary sheets) against the total declared weight of 29.052 MT.
- iii. On weighment of 02 containers covered under Bill of Entry No. 3705 dated 12.04.1999 filed for clearance of declared net weight 29.437 MT, the consignment was found to contain 35.490 MT (32.340 MT of Tin plated secondary sheets and 3.150 MT of Tin Free secondary sheets) against the total declared weight of 29.437 MT.
- iv. On weighment of 02 containers covered under Bill of Entry No. 3681 dated 12.04.1999 filed for clearance of declared net weight 28.762 MT, the consignment was found to contain 36.550 MT (32.050 M T of Tin plate secondary sheets and 4.500 MT of Tin free secondary sheets) against the declared weight of 28.762 MT.
- v. On weighment of 02 containers covered under Bill of Entry No. 3912 dated 12.04.1999 filed for clearance of declared net weight 28.761 MT, the consignment was found to contain 55.440 MT (51.570 MT of Tin plated secondary sheets and 3.870 MT of Tin Free secondary sheets) against the total declared weight of 28.761 MT.

20.3 The above test results of the nature of goods (whether tin plated or tin free) and the results of actual weighment are summed up in Table-3 below.

Table-3 : Details of Misdeclarations

S.	B/E No. &	Declared with Customs	As found on testing & examination by DRI
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No.	Date	Description	Net Qty (MT)	Description	Net Qty (MT)
1	291/01.04.1999	Tin Free steel secondaries (misprint/mislabeled)	45.297	Tin Plated Steel (Magnetic) Secondary Sheets	61.04
				Tin Plated Steel Secondary Strips	3.43
2	3702/12.04.1999	Tin Free steel secondaries (misprint/mislabeled)	29.052	Tin Plated Steel (Magnetic), 'steel magnetic, not in plated'	23
				Tin Plated Steel Secondary Strips	3.43
3	3705/12.04.1999	Tin Free steel secondaries (misprint/mislabeled)	29.437	Tin Plated Steel (Magnetic), 'steel magnetic, not in plated'	32.34
				Tin free steel secondary sheets	3.15
4	3681/12.04.1999	Tin Free steel secondaries (misprint/mislabeled)	28.762	Tin Plated Steel (Magnetic),	36.55
5	3912/12.04.1999	Tin Free steel secondaries (misprint/mislabeled)	28.761	Tin Plated Steel (Magnetic), 'steel (magnetic) not tin plated)	51.57
				Tin free steel secondary sheets	3.87
Total			161.309		225.96

20.4 Shri Atul Bhatia (Noticee-2) has accepted the misdeclarations in quantity, description and value in his voluntary statement dated 25.06.1999 under Section 108 of the Customs Act, 1962. He explained his modus operandi with illustration at page no. 3 of the statement. The same is being reproduced as Image No.1 on Page No. 18.

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3

A Goods declared in Bill of Entries.

Item	Tinplate Secondaries.
Quantity Declared	100 MT
Unit Price declared	= \$ 315 CIF.
Amount Payable	Total \$ 31,500

B Goods Actually Imported.

S.No	Description	Quantity	Unit Price	Amount
1	Tinplate Waste [Assorted].	10 MT	\$ 400 per MT	\$ 4,000
2	Tinplate Secondary [Assorted].	20 MT	\$ 300 MT	\$ 6,000
3	Tinplate Secondary [Assorted].	40 MT	\$ 250 MT	\$ 10,000
4	Tinplate Secondary Unassorted	30 MT	\$ 130 MT	\$ 3,900
5	Tinplate Secondary low grade, unassorted, strictly, misprints both sides	50 MT	\$ 70	\$ 3,500.
			Total Amount	\$ 31,500
			140 MT	

From the above it is very clear, that even after misdeclaring in description and misdeclaring of weight the total amount of all our imports are covered within the commercial invoices presented in customs and paid through the bank.

25-6-99

Image No. 1 : Illustration of modus operandi as per statement dated 25.06.1999 of Noticee No. 2

20.5 The imports of seconds- and defective Tin Plate falling under CTH 7210 were restricted in terms of licensing notes inserted in Para (3) in Chapter 72 of the ITC (HS) Classification of Export and Import Items 1997-2002. Vide Notification No. 34(RE-98) 1997-2002 dated 10.12.1998 as amended and issued by the Directorate General of Foreign Trade, the seconds and defective Tin Plate (including TinPlate Waste/Waste/TinPlate Misprints) were not freely permitted for imports if the CIF value of the said goods was below US\$ 545 per MT. Similarly, the said Notification also stipulated that Plates falling under heading CTH 7208/7211 were not permitted for import freely if the CIF value of the said goods was below US\$ 311 per MT. Thus, the imported goods, imported in violation of the above licensing restriction, become prohibited attracting confiscation under section 111(d) of the Customs Act, 1962.

20.6 After examining the contemporaneous import data of similar goods having like characteristics, same component material, originating from the same countries; DRI, MZU

found that similar goods were being imported at Mumbai Port at the rate of US\$ 545 to 550 per MT by various importers as detailed in Para 6 of the Show Cause Notice. Thus, the said goods were also found to be under-valued and their transaction value was liable for rejection in terms of Rule 12 of the CVR 1988.

20.6 Thus, the proposal in the Show Cause Notice to reject the transaction value of the imported goods and redetermine the same at the rate of US\$ 545 per MT under Rule 6 of the CVR 1988 appears to be correct.

20.7 Hence, I conclude that there was mis-declaration in terms of description and quantity and also undervaluation in the imported goods with the intent to bypass the restriction imposed in the DGFT Notification. Hence I find that the imported goods were liable for confiscation under Section 111 (d), 111 (l) and 111 (m).

21. Disposal of the request of the importer for re-test of the samples.

21.1 The above discussion clearly brings out as to how the consignments covered under the said 5 Bills of Entry imported by the noticees were mis-declared as Tin Free Sheets whereas, they actually contained Tin Plated Sheets and some Tin Free Sheets were used to camouflage the Tin Plated Sheets inside the container. The test results of the nature of goods found and the actual weight found as summed up in Table 3 above, also show that the total quantity under the said 5 BEs was found to be 224.96 MT instead of declared 161.3 MT. DGFT Notification prescribed the minimum floor price for Tin Plated Sheets as US\$ 545 per MT under CTH 7210, whereas the importer had mis-declared the Tin Plated Sheets at US\$ 315 per MT. Based on contemporaneous import data of similar goods, of same quantity, of same component material originating from the same country; DRI, MZU found the value of the said goods to be US\$ 545 to 550 per MT as mentioned in Para 6 of the SCN. Hence, the imported goods were not only mis-declared in terms of the nature and quantity but were also grossly undervalued. The 100% examination, Panchnama proceedings, samples for testing and actual weighment were all done in the presence of the importer or his representatives. All the test reports showing the nature to be Tin Plated Sheets issued by Deputy Chemist, NCH, Mumbai were accepted by Sh. Atul Bhatia, Director. He has also illustrated the modus operandi of mis-declaration and undervaluation in his own handwriting as illustrated in **Image No. 1 above**. One of the acceptance letters issued by Sh. Atul Bhatia to the Assistant Director, DRI dated 23.06.1999 accepting the 21 test reports of the consignments imported under the said 5 Bills of Entry is also reproduced on Page No. 20 as Image No. 2.



ARYAN OVERSEAS LIMITED

H. O. : 1511, MAKER CHAMBERS V,
NARIMAN POINT, MUMBAI - 400 021.
PH. : 283 6603 / 04 FAX : 285 6971.

BR.: 490, BARTAN MARKET,
SADAR BAZAR, DELHI - 5.
PH.: 521 824, 777 5510.

23-6-99

To
The Asst. Director,
D. R. I.
Bombay.

Sir,

I have been shown the test-
reports relating to samples drawn from our
consignments imposed under Bill of Entry No 291 dt
1-4-99 & Nos. 2902, 2905, 3681 & 3912 (all test
reports).

I have perused the same & I accept
the test reports.

Thanking You

Yours faithfully

For Aryan Overseas Ltd

Director

Arun Bhatia

Image No 2: Contemporaneous acknowledgment of the test reports signed by the Noticee -2

21.2 On the issue of Hon'ble Tribunal's direction to examine the importer's request for retest, I find that from the records of investigation pertaining to the present SCN dated 21.07.1999, no request for retest of the samples appears to have been made by the importer during the course of investigation. On these 5 Bills of Entry, the importer appears to have never challenged the credibility of the test report nor requested the Department for retesting of the samples. **During the personal hearing on 24.05.2023**, Sh. T. Vishwanathan, Advocate of the noticees while accepting the addendum dated 14.12.1999 relating to the 2nd Show Cause Notice categorically admitted that " *it seems the retest has already been undertaken by the Department and shown to the importer which stands accepted*". He also did not raise any point of retesting relating to the present/first SCN dated 21.07.1999. Hence from the above discussion, I conclude that the question to consider the importers request for retest does not arise in the present case/SCN .

22. The noticees' claim that there is no offence as the Notification no. 34 (RE-98) dated 10.12.98 issued under the Foreign Trade Regulation Act 1998 did not have a saving clause unlike the Customs Act which has a saving clause in Section 159A. The interpretation is based on reading of the Section 6 of the General Clauses Act read with Hon'ble Supreme Court's judgement in the case of Kolhapur Cane Sugar Co. Ltd.

22.1 The Counsel representing the noticees has advanced the argument that Section 6 of the General Clauses Act is inapplicable to notifications once they have been repealed, basing this interpretation on the Supreme Court's Judgement in the case of **Kolhapur Cane Sugar**¹¹, they posit that this section does not extend its applicability to notifications which have lapsed.

22.2 Upon examination, it becomes clear that the circumstances and context in the aforementioned Kolhapur Cane Sugar case are distinct from the matter at hand. The case in question pertained to Rule 10-A of the Central Excise Rules, which subsequently faced omission and was not about any notification falling under the FTDR Act. The core issue revolved around an exemption notification under the Central Excises and Salt Act, 1944. The crux being that a subsequent amendment in 1975 rendered this exemption incongruent with the parent statute. The Hon'ble Supreme Court adjudicated that such a notification cannot perpetuate under Section 6 of the General Clauses Act, as it would be at odds with the modified parent statute.

22.3 Drawing parallels with the present case, the notifications issued by the DGFT, which introduce floor price restrictions, do not create any inconsistency with the Foreign Trade (Development & Regulation) Act, 1992. These notifications are harmonious with the delegated rule-making powers enshrined within the parent statute. As a result, the interpretation and the precedent set in the Kolhapur Cane Sugar supra concerning any discord between delegated legislation and the parent Act do not find relevance or applicability in the present case.

22.4 Also, in the present case, it is amply clear that the said DGFT notification had prescribed the floor price of 'tinplate sheet' as US\$ 545 per MT classifying in CTH 7210. The noticees attempted to escape the license condition by misdeclaration of 'tinplate sheet' as 'tin free sheets' and undervaluation by declaring the value as US\$ 315 per MT instead of US\$ 545 per MT. In addition to these offences, the noticees also grossly misdeclared the quantity/weight of the imported sheets. Thus, I find that the noticees have committed multiple offences in the present case as listed below

- i. Misdeclaring 'Tin Plated Sheets' as 'Tin Free Sheets'.
- ii. Mis declaring the quantity of such 'Tin Plated Sheets'.
- iii. Using some quantity of 'Tin Free Secondary Sheets' to camouflage and cover 'Tin Plated Sheets'.
- iv. Declaring a lower value for the 'Tin Plated Sheets' than the minimum floor price set in the DGFT notification, making the goods prohibited as they were without a valid DGFT license.

22.5 The first three offences are independent offences under the Customs Act 1962 and fourth one is an offence under the Foreign Trade Regulation Act, 1992 read together with the Customs Act, 1962. Hence, I find that the above defence taken by the noticees that the FTDR Act 1992 not having a saving clause, will not save the present adjudication proceedings, is without legal

¹¹ Kohlapur Cane Sugar Co. Ltd. Vs. Union of India-2000 (119) ELT 257

basis and lacking proper understanding of the case. The FTDR Act, 1992 is an allied Act of the Customs Act, 1962. Section 159A is the saving clause under the Customs Act, 1962, which protects the present adjudication proceedings even though the DGFT notification relating to valuation of 'Tin Plated Sheets' has expired due to the sunset clause. Since the offences in this case are joint offences under the FTDR Act, 1992 and the Customs Act 1962 read together, therefore section 159A will be applicable to the present case. In this regard, I rely upon the case of **Shah Diagnostic Institute Pvt. Ltd.**¹², wherein the Hon'ble Bombay High Court observed :

"33. That Section 159A is deemed to have been inserted on and from 1st February, 1963 cannot be questioned. It, therefore, has to be held that Section 159A was operating on 1st April, 1994 when the Notification No. 64/88-Cus was rescinded. In other words, rescission of the Notification No. 64/88 does not affect the liability acquired, accrued or incurred by the petitioners with regard to fulfilment of clause 2(b) of the said notification".

22.6 In light of the above discussion, I conclude that the Kolhapur Cane Sugar case dealt with a different issue, where a specific rule contradicted a changed main law, a situation different from the present case. So, the General Clauses Act's Section 6 will still apply to the withdrawn DGFT Notifications. Given the compounded nature of the violations and offences related to both the FTDR Act, 1992 and the Customs Act, 1962, the safeguard provided by the saving clause under section 159A of the Customs Act, 1962 remains applicable in favour of the Department's case.

23. The consequences of abandonment of the goods as regards to the demand of differential duty, confiscation and penal action in respect to the act of the noticees.

23.1 The noticees have argued that since the imported goods have been abandoned, the adjudication proceedings and proposal to demand duty, confiscate goods and impose penalty are bad in law as the import has not been completed and the department has no control over the goods. The noticees have placed reliance upon the case laws of **Ajay Industrial Corporation**¹³, **M/s. Nalakath Spices Trading Co.**¹⁴, **Garima Trade Services Ltd.**¹⁵, **Sewa Ram & Bros**¹⁶, **Cooper Pharma**¹⁷ and **Classic Colour Photo**¹⁸. Now let me deal with these case laws one by one.

23.2 In the case of **Ajay Industrial Corporation** supra, the issue involved was that the Department had proposed confiscation of the imported goods on the ground that the goods were imported under advance licence whose validity was till 31.07.1999. The Customs Department

¹²Shah Diagnostic Institute Pvt. Ltd. Vs. Union of India, reported in 2008(222) E.L.T.12(Bom.)

¹³ Ajay Industrial Corporation Vs. CC — reported in 2006 (201) ELT 410 (T)

¹⁴ M/s. Nalakath Spices Trading Co. Vs. Commissioner of Customs, reported in 2007(213)ELT283(Tri.-Bang.)

¹⁵ Garima Trade Services Ltd. Vs. Commissioner of Customs, reported in 2002(146)ELT150(Tri.-Chennai)

¹⁶ Commissioner of Customs, ICD, New Delhi Vs. Sew Ram & Bros., reported in 2003(151)ELT344(Tri.-Del.)

¹⁷ Cooper Pharma v. Commissioner of Customs (Import), Nhava Sheva, reported in 2009(243)ELT199(Tri.Mumbai)

¹⁸ Classic Colour Photo V. Collector of Customs, Delhi, reported in 1994(70)E.L.T.750(Tribunal)

alleged that the goods were actually shipped on 17.09.1999 and the Bill of Lading was manipulated to be shown as of 31.07.1999 to take benefit of the licence. The Hon'ble Tribunal held that even if the Bill of Lading was mis-declared it was not a ground for confiscation under Section 111 (m) as there was no direct offence under the Customs Act. In the present case, gross mis-declaration of the nature of goods and their quantity is clearly established by the test reports and therefore, Section 111 (l) and (m) are clearly attracted which distinguishes the present case from the case of Ajay Industrial Corporation.

23.3 The case law of **Nalakath Spices Trading Co** supra, is based on the ratio of **Garima Trade Services** supra, which in turn relies upon the case law of **Peirce Leslie India**¹⁹. In the case of Peirce Leslie India supra, the appellants were the steamer agents and 3 pieces of timber logs were found to be in excess of the manifested quantity of goods in the vessel at the Mangalore Port. The appellants themselves applied for permission to unload the same for clearance subsequently, therefore, there was no fraud or suppression involved. Hence, again the facts of Peirce Leslie India are starkly different from the facts of the present case.

23.4 In the case of **Sewa Ram & Bros** supra, also no suppression of facts was involved and the SCN was issued to the importer for not clearing the rags from the port. In the case of **Cooper Pharma** supra, the importers were not able to clear the goods due to heavy demurrage and the Single Member Bench of the Hon'ble Tribunal allowed the refund of the Customs duty paid by the importer. Both these cases were of irregularities without involving fraud or suppression. The present case being a case of fraud and misdeclaration with intent to bypass the DGFT imposed minimum floor price of tin plated sheets is clearly different.

23.5 As already discussed in detail above, the noticees grossly mis-declared the TinPlate Sheets contained in the consignments of the 5 impugned Bills of Entry by declaring them as Tin Free Sheets and also understating their quantity. They also undervalued the Tin Plate Sheets with the intent to bypass the minimum floor price notified in the said DGFT Notification. Hence the acts of omission and commission of the noticees have rendered the imported goods liable for confiscation under Section 111(d), 111(l) and 111(m). Since the importer has abandoned the goods, the goods deserve to be absolutely confiscated. In this regard, I place reliance on the case law of **HRB Boarding & Lodging Pvt. Ltd.**²⁰, wherein Hon'ble Madras High Court held that

"in para-21, when the DGFT Notification dated 04-08-2011 allowed free import of marble blocks/tiles provided the CIF value is US \$60 per sq. mt., the petitioners were expected to declare the same, however, contrary to the same, they have declared below the US \$60 and thereby, the authority has rightly confiscated the same and therefore, confiscation of the goods is justified."(emphasis added)

¹⁹ Peirce Leslie India Ltd. v. CC, Bangalore- 1995(77) E.L.T. 161 (T)

²⁰ HRB Boarding & Lodging Pvt. Ltd. Vs. Union of India, reported in 2015 (322) E. L.T. 452 (Mad.)

23.6 Since the goods have been abandoned by the importer, I agree with the noticees that there cannot be any demand for duty.

23.7 On the noticees' argument that no penalty should be imposed on them as the consequence of the abandonment of the goods, I find that all the case laws relied upon by the noticees were cases involving technical irregularities like the importer was not able to clear the goods on time, importer was not able to clear the goods due to heavy demurrage charges, importer voluntarily applied for permission for clearance of goods found in excess of the manifested quantity, mis-declaration of the date of Bill of Lading, etc. There was no fraud or suppression or intention to evade Customs Duty in these cases. The present case is a case where the intention of the importer to evade Customs Duty is evident and various acts of omission and commission on his part amount to fraud and suppression. The abandonment of goods has also taken place after initiation of investigation by DRI. Hence, the action of abandonment does not undo the fact that the goods have been improperly imported in the present case. Hence, the penalty under Section 112(a) for improper importation of goods is imposable on the noticees even though they might have abandoned the goods.

23.8 Further , I concur with my predecessor's observation at para 18.5 of the 2nd round OIO dated 16.12.2005 that “ *Noticee No. 1 has under-stated the quantity and value of the goods and deliberately misdeclared their description which act has rendered the goods liable for confiscation. Noticee No. 2 as Director of Noticee No.1 has consciously and willfully misdeclared the goods imported in the name of Noticee-1 with the deliberate intent to circumvent the licensing restrictions and also to evade the Customs duty payable thereon, his acts of omission and commission have rendered the goods liable for confiscation under Section 111 (d), 111 (l), 111 (m) of the Act. Both the noticees (Noticee No. 1 & Noticee No. 2) are liable for penal action under Section 112 (a) of the Act*”.

24. It is also relevant to point out here the evasive and non-transparent behaviour of the noticees observed during the personal hearing. When the personal hearing notices were sent to the registered offices of the Noticee firm at 1511, Makers Chamber V, Nariman Point, Mumbai - 21 it was found that the Noticee had sold out this registered office premises long back without informing the Customs Department. Despite specific requests Sh. Atul Bhatia, Director never appeared in the personal hearing. The Advocate of the noticees was again requested during the PH on 26.05.2023 to provide details of other directors of the firm, their latest financial statements, documents relating to sale of its registered office; but the same was not submitted till date. The stand of the advocates of the noticees namely Sh. Akhilesh Kangsia, Mrs. Apoorva Parishar and Sh. Vishwanathan was evasive and non-transparent on the issue of the present status of the Noticee firm.

25. **Penalty in remand proceedings not to be enhanced:** I find that various Courts in the cases of **Banshi Dhar Lachhman Prasad**²¹, **SPL Industries Limited**²² and **Gautam**

²¹ Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

²² SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

Diagnostic Centre²³ have held that remand proceedings ordered on a person's own appeal cannot be subjected to a greater penalty than that imposed on him in the original order unless specifically stated in the remand order.

26. Accordingly, I pass the following order:-

ORDER

26.1 I absolutely confiscate the goods covered under the said 05 Bills of Entry under Section 111 (d), 111 (l) and 111 (m) and 'Tin free sheets' under Section 119 of the Customs Act, 1962.

26.2 I impose a penalty of Rs. 5,00,000/- (Rs. Five Lakhs only) on M/s. Aryan Overseas Ltd. under Section 112 (a) of the Customs Act, 1962.

26.3 I impose a penalty of Rs. 2,50,000/- (Rs. Two Lakhs Fifty Thousand only) on Shri Atul Bhatia Director of M/s. Aryan Overseas Ltd. under Section 112(a) of the Customs Act, 1962.

26.4 Other proposals in the show cause notice are dropped on account of abandonment of the goods by the importer .



Vivek
31.08.23
(Vivek Pandey)

आयुक्त सीमा शुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमा शुल्क भवन मुंबई-01
New Custom House, Mumbai-01

To,

1. M/s. Aryan Overseas Ltd ,
1511, Maker Chamber V, Nariman Point, Mumbai-21
2. M/s. Aryan Overseas Ltd.,
A-209, Steel Chamber Towers, Kalmboli,
Mumbai-410218.
3. Shri Atul Bhatia
1/24, Nanik Nivas, Bhulabhai Desai Road,
Mumbai-36.

Copy to:

- 1) The Pr. Chief Commissioner of Customs,
New Customs House, Mumbai Customs Zone - I,

²³ Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678(T)

- Mumbai-400001.
- 2) The Principal ADG,
Directorate of Revenue Intelligence, Mumbai Zonal Unit,
13, Vithaldas Thackersay Marg, Opp. Patkar Hall,
New Marine Lines, Mumbai - 400 020.
 - 3) The Additional Director General,
Central Economic Intelligence Bureau,
A-Wing, 1st Floor, Janpath Bhawan, Janpath, New Delhi-
 - 4) The Deputy Director (INV),
Unit-II, Income Tax,
Department Aayakar Bhavan, New Marine Lines, Mumbai-20.
 - 5) The Deputy Commissioner of Customs,
Adjudication Cell, Import-I, Mumbai
 - 6) Office copy.